

[INDIRECT TAXES]

Indirect taxes

Simplified notes

Finance Act 2010

Circulars, notifications up to 31.12.2010

For May/June 2011

Nov/Dec 2011 exams

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Central Excise

Customs

Service tax

Vat

CST



Central excise
Customs

Service tax

Vat and CST

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Dear Students

An attempt is made to simplify indirect taxes, and it provided in a simple and easiest way for better understanding of subject to the students,

The books cover FA 2010 all the amendments made up to 31.12.2010.

For in-depth and expert knowledge on the subject, students are advised to read case studies, after completion of these notes.

Every attempt is made to avoid errors and omissions; if any error crept it is unintentional.

Author is not responsible.

Approach to Examination

General

Reading the Question paper: First of all, read the question paper quickly, and- i) Select the questions that you will answer; ii) Decide the order in which the answers are to be attempted; and iii) Plan, how you will answer the questions.

Selecting the Questions : You are the best judge, while selecting the question or its part, underline key words in the questions and understand them well.

Order for Answering Questions :

i) Remember that a serious attempt at one question is more valuable than casual attempt at two.

ii) First answer the questions in which you are more confident to answer correctly. It will reveal your best to the examiner

Answering Theory Questions

- ⌚ Before answering each question, read the question very carefully **word by word**, answer to what the question demands.
- ⌚ Answer to the point and in brief. Don't write irrelevant answer.
- ⌚ Present your answer in points or as a list wherever possible.
- ⌚ Questions that use words such as describe and discuss require longer narrative answers. Present such answers in paragraphs with appropriate headings.
- ⌚ Present examples and illustrations frequently.
- ⌚ Tabulate the comparative points (in a columnar fashion), when you answer questions asking for comparison/distinguish, etc.
- ⌚ Avoid writing long and more descriptive answers
- ⌚ When you forget some points when writing the examination, leave some space and start an answering new question. You can return later and complete the previous answer when you recollect the points.
- ⌚ If you are sure of the case laws and sections, provide these in the answer. But in case of ambiguity, avoid quoting wrong section /case law.
- ⌚ Maintain good handwriting. Avoid overwriting.

Answering - Application of theory questions

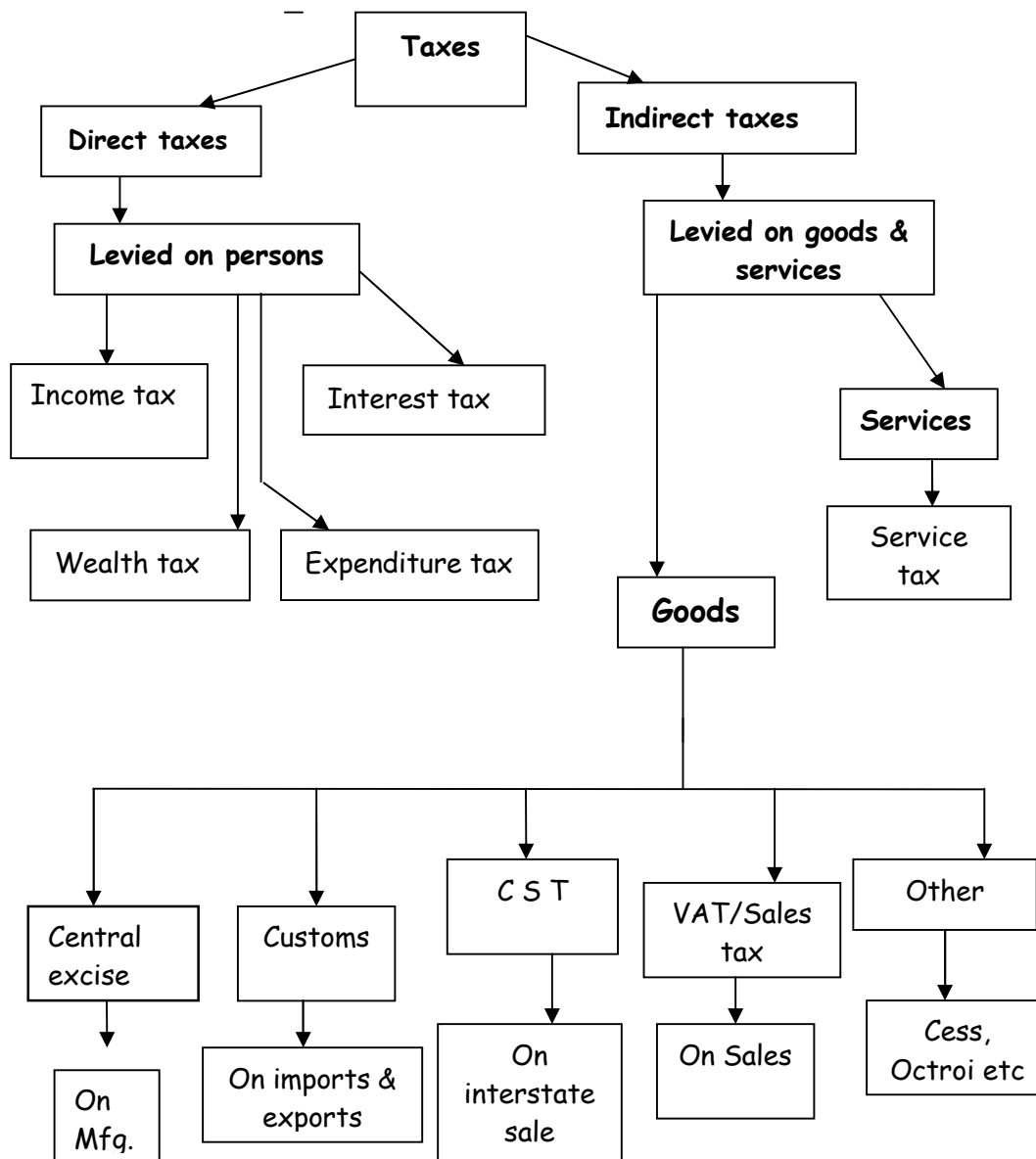
- ⌚ Identify the section/rule on which the question is given
- ⌚ Write the relevant section/rule briefly
- ⌚ Apply the section/ rule to the given question
- ⌚ Write the decision with supporting case if any

Answering Numerical Problems

- ⌚ Answer to the point what required. Present the solution neatly
- ⌚ Write the assumptions & working notes clearly. Provide alternative solution if any.
- ⌚ In case of problems in valuation/SSI, a brief note on inclusions and exclusions/rule should be mentioned.

Good Wishes

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Chennai 31.01.2011



Difference between direct and indirect tax

S No	Direct taxes	Indirect taxes
1	Levied on persons	Levied on goods and services
2	Person paying the tax has to bear the burden	Burden will pass on to consumer
3	No cascading effect	Cascading effect in some cases (increases certain prices of goods and services)
4	Will not be allowed as deduction (income tax wealth tax) in computing income	Allowed as deduction in computing income

Chapter – I

Central excise

As amended by FA 2010 and included notifications and circulars up to 31.12.2010

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Indirect taxes- Central Excise- simplified

Chapter 1 Central excise Excise duty -Basic Concepts

- Excise is a duty an indirect tax levied as per Entry No. 84 of list I of Seventh Schedule to the Constitution
- It is levied on excisable goods manufactured or produced in India except on alcoholic liquor for human consumption. Excise on alcoholic liquor levied by state government.
- The tax is administered by Central Government.

Central Excise is governed by

- Central Excise Act 1944
- Central excise Tariff Act 1985
- Central Excise rules 2002
- Central Excise Valuation rules 2000
- Cenvat Credit Rules 2004
- Central Excise rules for removal goods at concession Rate
- Central Excise Manual 2001
- Central Excise Appeal Rules 2001
- Central Excise Settlement cases rules 2007
- Cestat procedure Rules 1982
- Central Excise Notifications & Circulars

Excise Act coverage chapter wise

Chapter I	Short title, extent and commencement of the Act including definitions
Chapter II	Levy and collection of duty
Chapter IIA	Indicating amount of duty in the price of goods, etc., for purpose of refund and crediting certain amounts to the Consumer Welfare Fund
Chapter III	Powers and Duties of Officers and Land Holders
Chapter IIIA	Advance Rulings
Chapter V	Settlement of Cases
Chapter VI	Adjudication of Confiscations and Penalties
Chapter VIA	Appeals
Chapter VIB	Presumptions as to Documents
Chapter VII	Supplemental Provisions

Excise Act -Short title, extent and commencement Section 1

- This Act may be called the Central Excise Act, 1944.

Indirect taxes- Central Excise- simplified

- It extends to the whole of India.
- It shall come into force 28-02-1944

Basic conditions of excise liability

Charging section 3 of Central Excise Act

- Levy is manufacture/Production of excisable goods
- Manufacture/Production should be in India
- No levy on goods manufactured in SEZ..
- Duty payable at the rates specified in Schedule I and II of CETA
- EOUs /EPZ pay duty for their clearance in in India (Domestic Tariff Area -DTA) at the rate of 50% of basic customs duty and Excise duty equal to if that goods are manufactured in India.
- Goods produced and manufactured by Government also attract excise duty. Govt liable to pay excise duty

Basic conditions of excise liability

Four basic conditions should be satisfied for levy

- The duty is on goods
- The goods must be excisable, movable and marketable
- The goods must be manufactured or produced
- Such manufacture or production must be in India.

Goods manufactured in SEZ are 'excluded excisable goods' –But they are not 'exempted goods'. No excise duty levied on goods manufactured in Special Economic Zone. SEZ treated located out of India, when SEZ removed goods for use in India, they have to pay import duty.

Excisable goods manufactured in 100% EOU attract Excise duty, if these goods are removed to DTA, Excise duty is payable @ 50% of Basic customs duty and CVD equal to excise duty.

Concept of Goods under Central Excise

- The word "goods" has been defined under the Central Excise Act. Wide explanation to sec 2(d) w e f 16.5.2008

Goods includes

- any article, material or
- substance which is capable of
- being bought and sold
- for a consideration and
- such goods shall be deemed to be marketable

The word "goods", for purpose of levy of Excise duty, must satisfy three requirements i.e.

- They must be movable and
- They must be marketable.
- They must be excisable

Goods must be movable

They must be movable from one place to another place. Capable of being transport from one place to other For sale/Marketing U o I Vs. Delhi Cloth Mills (SC) / South Bihar Sugar Mills Vs. U ol(SC)

Movement can be on any mode rail, road, air, water, pipe line etc

Indirect taxes- Central Excise- simplified

- No duty on immovable goods. *Immovable goods means land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."*

Goods must be Marketable

- Goods should be Saleable (Actual sale is not necessary) Union Carbide India Ltd. Vs. UOI (SC)
C.C.EX. Vs. Ambalal Sarabhai Enterprises (SC)
- Good should be Fit for Consumption
- Goods should Fetch some price
- At least one buyer is enough to buy the goods.
- Occasional or distress sale is not treated as marketable

Goods Must Excisable.

Excisable goods means goods mentioned in Central excise tariff. Central excise tariff is book contains details of goods and rate of duty payable on these goods. The description of goods should be mentioned in Central excise tariff, and then only they are called excisable goods

Types of Excisable Goods

- 1. Goods charged to duty
- 2. Goods charged to nil rate of duty
- 3. Goods charged to duty but exempted by way of notification.
- All three are excisable goods (Wallace Flour Mills Ltd. Vs. C.C.EX.(SC)

Goods Charged to duty:

- These goods are mentioned in excise tariff, where certain duty is payable.. for example blasting powder, Gun powder, Binoculars, musical instruments all are charged to duty at 10%

Goods charged to nil duty

- These goods are mentioned in excise tariff, where duty column will be mentioned as nil or Zero. For example, unbranded fruit jam, sewing needle, note books, bricks, cabbage, carrot, radish etc. For all these goods duty column will be mentioned as NIL

Goods Charged duty but exempted by notification

- These goods are mentioned in excise tariff, where certain duty is payable, however the Central Government issued notification for exemption of duty on these goods. Example condensed milk, Water purifiers etc

All the three Conditions of movability, marketability and excisability to be satisfied to call them as goods and for the purpose of levy of excise duty. Bhor Industries Ltd. Vs. C.C.EX(SC)
Ion Exchange India Ltd. vs. C.C.EX (SC)

Non excisable goods and duty on which appropriate duty was paid

- Goods not included in CETA are 'non-excisable goods'
- goods on which appropriate duty has been paid' means that on which excise duty has been paid at 'appropriate' or correct rate, but not nil duty goods *CCEX. vs. Dhiren Chemical Industries (S.C).*

What are the goods. (Examples of Goods)

- Gas, Steam etc –
- Electricity: Drawing, designs Etc:
- Machinery
- Branded Software: (lotus, oracle, etc,)
- *Waste and Scrap-*
- Aluminum paint having shelf life of 8 to 10 hours is marketable

Indirect taxes- Central Excise- simplified

- Columns: Columns fabricated at a place and removed to another place for erection, if they cannot remove after erection without dismantling they are not goods.

What are not "Goods" (Examples what are not goods)

- *Some cases where the product was held as not 'goods' are illustrated here.*
- *Goods having very short life are not 'goods',*
- *Lift –*
- *Storage system Installed at a site:*
- *Zinc scaling and Zinc Flux*
- *Aluminum Cans and Torch Bodies:*
- *Unbranded software (not goods but it is a service- service tax payable)*

Excisable goods and Non Excisable goods

Excisable goods means Goods mentioned in Central excise tariff first and second schedule and including salt.

Non Excisable goods means Goods not mentioned in Central excise tariff first and second schedule
Excisable goods may be dutiable or non dutiable, Where are Non excisable goods always non dutiable only

Dutiable goods and Exempted goods, and Goods charged to nil rate of duty.

Dutiable goods mean duty payable as per excise tariff. Where Exempted goods are mentioned in tariff and duty payment was exempted by notification. Goods charged to nil rate of duty goods are excisable and where is duty column will be "nil"

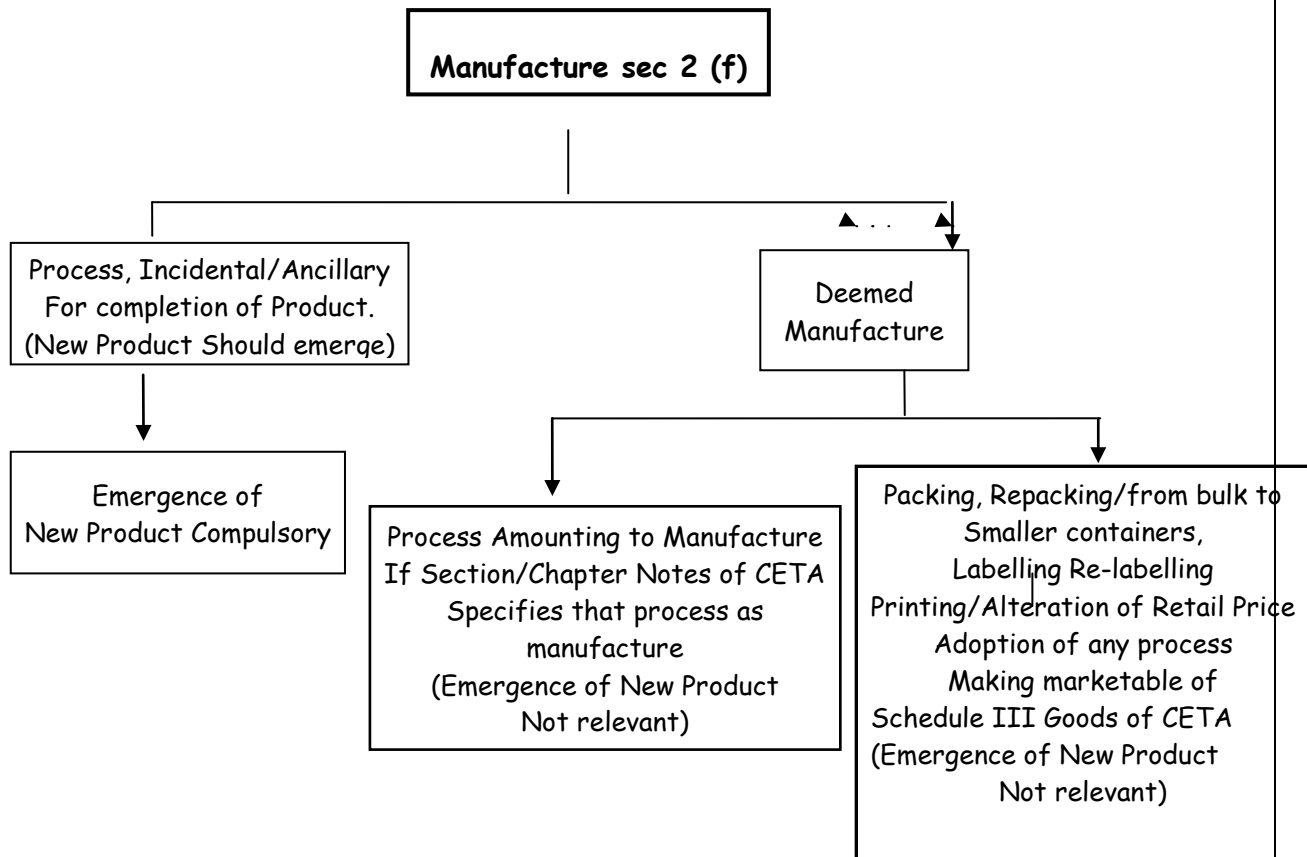
Manufacture

First part of a definition: Manufacture is a Process, Incidental/Ancillary, for completion of Product. Process means stages, a series of action in manufacturing the product. Incidental means occasional or casual process it is not absolute necessity and it is optional. Ancillary means auxiliary, compulsory. Manufacture is complete only when all ancillary and incidental processes are complete. A product comes to market only when incidental and ancillary process is carried out.

All the process cannot be termed as manufacture. As per well established court decisions, Manufacture implies a change, but every change is not manufacture. By virtue of process, a new and different article must emerge having a *distinctive name, character or use*. The new product should be commercially different identifiable product, then only it is manufacture and excise duty liability will arise.

Pictorial diagram of manufacture

Indirect taxes- Central Excise- simplified



Delhi cloth mills Case SC on Manufacture

- Manufacturing is a process
- But every process cannot be termed as manufacture.
- Manufacture implies a change,
- But every change is not manufacture.
- By virtue of process, a new and different article must emerge having a *distinctive name, character or use*.
- The new product should be commercially different identifiable product,
- Then only it is manufacture and excise duty liability will arise.

Examples on Manufacturing

- Cutting of fabrics to make bed sheets etc.
- Making of 'pan masala' by mixing various ingredients
- Making masala powder
- Turmeric to turmeric powder
- Paddy to rice
- Wheat to wheat flour
- Ice from water
- Processing of grey yarn to 'dyed yarn'
- Processing grey fabrics by bleaching, dyeing, printing of fabric
- Making welding wire from MS wire

Indirect taxes- Central Excise- simplified

- Fruit pulp to fruit drink
- Processing non-woven fabrics
- Conversion of yarn to thread
- Stitching of cloth
- Making car matting from rolls
- Ordinary cotton into surgical cotton
- Making chicken kabab, chicken kofta, chicken pakodas from chicken meat

Examples on not Manufacturing

- Changing colour of an article
- Changing engine
- Charging of dry batteries
- Cleaning and repairs of old ornaments
- Cleaning, washing
- Coating
- Compressing and bottling gas
- Conversion of marble blocks into marble slabs/tiles
- Cream into butter
- Crushing/powdering
- Cutting of jumbo rolls into small sizes
- Cutting, sizing to requires size
- Cutting, stamping, folding etc. of processed fabrics
- Plain glazed tile to decorated tiles
- Powdering of lumps of minerals
- Printing of Aluminum foil
- Printing of logo and colour on glass bottle
- Purification and packing of water in bottles
- Roasting, salting, spicing of nuts
- Sawing of timber logs
- Separating mineral sand from ordinary sand
- Sieving of duty paid goods
- Sizing of yarn
- Slitting/cutting of jumbo rolls of tissue paper into small sizes
-

Deemed Manufacture (Second part of definition)

- Any process mentioned in CETA 1985 is a manufacture, it is a manufacture
- Here the question of emergence of new product not necessary

Examples for deemed Mfg of section Chapter notes in Ceta

S No	Name of goods	Nature of process	Central excise Tariff	
			Chapter No	Note No
1	Edible vegetable oils	Refining	15	6
2	Metallic wire	Drawing rod in to wire	Sec XV	10
3	Medicines	Conversion of powder in to tables/capsules	30	6
4	Iron/Steel	Galvanizing(However Circular 19/94 says it is not manufacture as	73	4

Indirect taxes- Central Excise- simplified

		per Gujarat Steel tubes case)		
5	Audio/video Cassettes and tapes	Recording	85	8
6	Motor Vehicles	Body building	87	5
7	Textile products	Dyeing, printing, bleaching, twisting doubling, cabling etc	52	2
8	Milk and dairy products	Labeling, relabelling, repacking from bulk to small containers and any other treatment to make it marketable	4	6
9	Vegetable fruit nuts,	Labeling, relabelling, repacking from bulk to small container	20	3
10	Inorganic chemicals	Labeling, relabelling, repacking from bulk to small container	28	10
11	Readymade garments	Affixing brand name, Labeling, relabelling, repacking from bulk pack to small pack	61/62	4
12	Photographic films, rolls, plates	Cutting, Slitting and perforation from Jumbo rolls- Circular 13/92	37	3

The activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10 because the tankers cannot be termed as bulk packs. [Circular No. 910/30/2009-CX dated 16-12-2009]

Process of pickling and oiling (removal of surface oxides and other contaminants such as dirt from metal) not amount to manufacture since no new product emerge. **Circular No. 927/17/2010-CX Dated 24/6/2010**

Deemed manufacture in case of schedule III of CEA Goods (Second part of definition)

There are about 98 goods in schedule III of CEA. The goods are where MRP valuation is applicable. The goods are mainly consumer goods and eatables. Example: milk products such as cheese, butter, Biscuits etc. Packing or Repacking of these goods in to unit container is manufacture.

- Manufacture' includes any process,
- which, in relation to goods specified in Third Schedule to Central Excise Act,
- involves packing or repacking of such goods in a unit container
- or labeling or re-labeling 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'.
-

Key issues in the packing/ repacking manufacturing concept

- Packing/repacking will be 'deemed manufacture' only if it is from bulk to in unit container. In such case, putting MRP may or may not be done.
- Labelling/relabelling should include declaration or alteration of retail sale price. Otherwise, mere labeling or relabelling will not be 'deemed manufacture'
- Any other treatment will be 'deemed manufacture' only if it renders the product marketable to consumer
- Packing repacking will be manufacture only when there is value addition in the packing process

Indirect taxes- Central Excise- simplified

- If goods are already marketable, mere packing and repacking them is not a manufacture.

Putting Stickers indicating MRP. Putting stickers on the imported medicines to provide information as per Drug and Cosmetics Act is amount to manufacture **CBEC Circular No 576/12/2001 dated 16.05.2001. However there is a contrary view held in**

1. Putting label name and address of manufacturer and MRP on imported chocolates is not a manufacture –**Lal International Vs CCE (2003) 154ELT520 CEGAT**
2. Putting label name and address of manufacturer as required under standard weights and measures act is not a manufacture. **CCE Vs Pancheseel Soap factory (2002) 145 ELT 527 CEGAT**

Activity of transferring the goods from tankers into smaller drums not amounts to manufacture

As per note 10 to Chapter 29, the activity of repacking products mentioned in the said Chapter from bulk packs to retail packs shall amount to manufacture under section 2(f)(iii) of the Central Excise Act, 1944. In this regard, it has clarified that the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10 because the tankers cannot be termed as bulk packs. [**Circular No. 910/30/2009-CX dated 16-12-2009**]

Produce

- The word produced has wider connotation than the word 'manufacture'.
- Every 'manufacture' can be characterized as 'production',
- Every 'production' need not amount to manufacture
- World *produced* is used to cover items like tobacco, tea, coal, dairy products, ground vegetables, ores etc, which are *produced*, but no manufacturing process may be carried out.

The following are get produced during course of manufacturing

- By-products, intermediate products and residual products,
- Waste, scrap
- Produced goods are dutiable even if they are not manufactured, as they are doing get 'produced' during the process. Excise duty payable not only on manufacture but also on production.

Curing:

It includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture. This is a process, which amounts to manufacture. Curers are liable to pay excise duty. For example, Coffee curers liable to pay excise duty

Assembling

Assembling is a manufacture when –

- Assembling of various parts and components result in new product which is movable and marketable.

Examples

Assembly of kits of components into monitor is manufacture.

- Assembling of computers from duty paid bought out parts is 'manufacture'.
- Assembly of data processing unit from duty paid parts is also 'manufacture'.
- Assembly of purchased electronic components into Electronic final product
- Assembly of components of air conditioner in car does not amount to manufacture - CBE&C Circular No. 479/45/79-CX dated 17-8-1999.

Assembly of SKD or CKD parts

Indirect taxes- Central Excise- simplified

- When goods are despatched In CKD SKD (completely/semi knocked down) condition for transport convenience. Goods are actually manufactured at the place of manufacturer. These are sent in parts only for transport convenience. In such cases assembly by dealer is not a manufacture.

Example

- Cycles, Automobile industry parts, Computers, Imported components in SCD/CKD

Exception

- Some components are imported in CKD packs and balance procured separately and final product assembled in India, assembly would amount to manufacture.

Manufacturer Section 2(f)

Persons who manufactures the goods and include

- (a) Persons who get the goods manufactured through hired labour
- (b) Persons who engage in manufacture of goods on their own account. These may be termed as 'deemed manufacturers' (persons manufactures for their own consumption)

Who is Manufacturer

- A Person who assembles the parts in a factory would be the manufacturer and not the owner of factory-
- Job Worker is a Manufacturer
- A Contractor is a manufacturer.
- A person who engages hired labor is a manufacturer.
- Sub-contractor is manufacturer if relation to the main contractor is on principal-to-principal
- Person who transforms commodity in to another commodity having distinct name and character is manufacturer-
- Persons who manufacture under franchise are a manufacturer- For example if Cola companies supply concentrates to bottlers and cool drinks manufactured by bottler, the Bottler is a manufacturer.

Who are not manufacturer

- Brand name Owner is not the Manufacturer even he supplies material
- Person who gives machine on hire basis
- Loan licensee under drug control
- Brand name owner will not be manufacturer even if he supplies raw material
- Raw material Supplier is not the manufacturer –

Raw material supplier is manufacturer in the following cases

- Relation between Manufacturer and raw material supplier is on agency basis
- Person Employed by raw material supplier and goods return it to him –
- Labour doing work allotted to them under the supervision of Principal-
- Job worker function like a hire labour and there is no principal to principal basis-

Manufacture must be in India

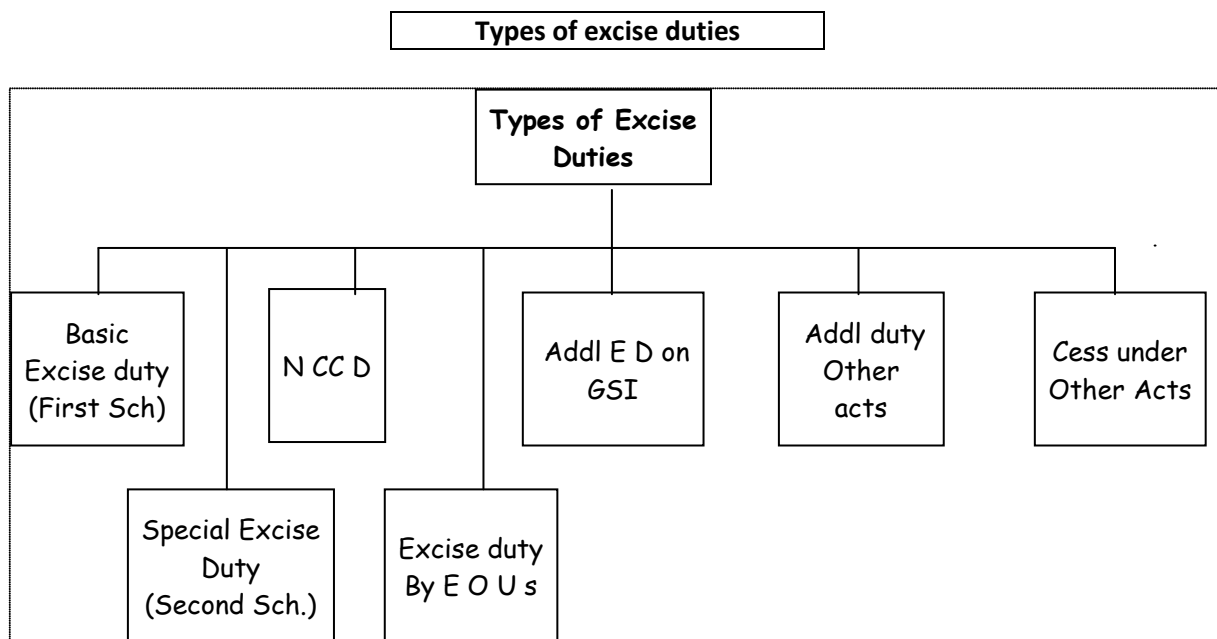
- Excisable goods must be manufactured or produced in India.
- Thus, excise levy cannot be imposed on imported goods or goods manufactured Outside India
- If goods are imported in SKD or CKD condition and they are only assembled in India, as no new product emerges -.
- However, Manufacture -If actually components or sub-assemblies are imported, and its assembly in India .Excise duty payable.

India means

- India includes its territorial waters
- Territorial waters means water extending up to 12 nautical miles from Base line
- Sea bed and subsoil under lying territorial waters and Air space over it.

Excise Duty liability will attract if goods are manufactured up to 200 nautical miles (up to exclusive economic zone). Example oil exploration in the sea.

Indirect taxes- Central Excise- simplified



Basic excise duty

- Cenvat- at the rates specified in First Schedule to CETA, read with exemption notification, if any... Normal rate 8%, (Up to 28.02.10). Generally it is payable on all products

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Special duty of excise –

Also known as auxiliary duty. Levied at rates specified in Second Schedule (8%)

- These duties will normally announce through finance bills.
- The purpose of Special duty is raise resources for some specified objects.
- Some goods where special duty levied is pan masala, cars, air-conditions, soft drinks etc.]. These items are covered in Schedule II to Central Excise Tariff.
- (This duty was abolished by the Finance Act 2006 with effect from 01.03.2006, vide notification No.9/2006 dated 01.03.2006)

ED in case of clearances of EOU

–Excise duty in case of clearances by EOU –

–If they clear their final product in DTA (domestic tariff area) ie for used in India.

- The rate of excise duty will be equal to customs duty on like article if imported in India.

–Even if rate of customs duty is considered for payment of duty, actually the duty paid by them is Central Excise Duty.

–The rate of customs duty is taken only as a measure

- The Calculation and payment of duty is as follows:

- Duty is payable @ 50% of aggregate of customs duties plus excise duty payable on like goods; vide Notification No. 10/2008-CE dated 1-3-2008.

- No additional customs duty u/s 3(5) is payable

- However it sales tax/vat is exempt on the goods customs duty u/s 3(5) is payable

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National Calamity contingent DUTY (NCCD) –.

This duty is in the nature of Surcharge. Introduced as per Section 136 of Finance Act 2001. General Rate 1%. Higher rates for tobacco products 10%, 23% and 45%

Mostly imposed on All Tobacco Products, Most of the all types of Polyester yarn(1%)

Indirect taxes- Central Excise- simplified

Most of the all types of vehicles except two wheeler (1%)

Can also levied on specific duty/tariff value basis

Example: Cigarettes rate varies from Rs. 20 to Rs. 235 per thousand on cigarettes.

Additional Duties of Excise (Goods of Special Importance) Act, 1957

This goods are similar goods that of declared goods under CST Act. This duty provides collection of all taxes at one stage by single authority will be convenient for payment and administration. In case of some items where additional duty will be collected instead of sales tax and such additional duty will be distributed among various States..

This duty has been abolished with effect from 01.03.2006 vide notification no 11/2006 dated 01.03.2006.

Duties under Acts

Some duties and cess are levied on manufactured products under other Acts. The administrative machinery of central excise is used to collect those taxes. Provisions of Central Excise Act and Rules have been made applicable for levy and collection of these duties /cess.

The Coffee Act 1942

Medical and Toilet Preparations (Excise Duties) Act, 1955.

Mineral Products (Additional Duties of Excise and Customs) Act, 1958

Additional Duties of Excise (Textile and Textile articles) Act 1978.

CESS: A cess is payable under

The Rubber Act 1947

Industries Development Regulation Act 1951

The Tea Act 1953

Textile Committee Act 1963

Lime Stone & Mines Labour Welfare Act 1972

Iron, manganese, Chrome Ores Labour Welfare Act 1976

Iron, manganese, Chrome Ores Labour Welfare Act 1976

Sugar Cess Act 1975

Jute Manufactures Cess Act

Education Cess

An education of 2% and higher education cess 1% total 3% was payable on all duties

Difference between tariff rate of duty and effective rate of duty

Tariff Rate' is the rate of duty of a product under each Chapter head and subhead mentioned in Excise tariff. Where as actual duty payable as per exemption notification is called effective rate of duty'.

Difference between Excise duty and other Indirect Taxes
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Excise duty and Customs Duty

	Excise duty	Customs Duty
1	Excise is a duty is levied on excisable goods manufactured. The duty is relate to industrial activity	Customs duty is levied on movement of goods across custom frontier
2	Excise is a duty levied on excisable goods manufactured in India	Customs duty is levied in goods imported in to India

Excise duty and Sales Tax

	Excise duty	Sales tax/VAT
1	Excise is a duty is levied on excisable goods manufactured. The duty is on removal, irrespective of Sale	Sales tax/Vat is levied on Sale of goods
2	Excise is a duty levied on Manufacturer	Sales tax/Vat is levied on Seller of goods
3	Excise is a duty administered by Central Government	Sales tax/Vat administered by State Government

Indirect taxes- Central Excise- simplified

4	Excise is levied when the existence of new Commodity.	The taxable event is Sale .The existence of new Commodity is irrelevant for levy of Sales tax/Vat
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Excise duty and Service tax

Excise duty	Service tax
Excise is a duty is levied on excisable goods manufactured. The duty is on Goods	Service tax is levied on Services rendered to Customers and Clients

Excise duty and Entry Tax and Octroi

Excise duty	Entry Tax/Octroi
Excise is a duty is levied on excisable goods manufactured.	Entry tax /Octroi levied on enter of goods in to Specified area
Excise is a duty administered by Central Government	Entry tax /Octroi administered by State Government

Clean Energy Cess Effective from 01.07.2010

- A cess known as clean energy cess is payable on the specified goods(raw coal, raw lignite and raw peat) at the time of removal from mine
- Excise department will administer the cess.
- The effective date for payment of cess is 01.07.2010
- The rates will Rs.50 per ton (as of now).
- The due date for payment of cess will be 5th of the Second month. Ie July 2010 removals duty payable on or before September 5th.
- Delay in payment interest @13%.
- If delay exceeds 30 days, it is assumed that goods removed without payment of cess, it will result in penal consequences.
- Excess amount of cess paid can be adjusted in the next month instead of claiming of refund
- adjustment of excess amount paid shall be subject to the condition that such excess amount paid is on account of reasons not involving interpretation of law, taxability, or applicability of any exemption notification
- Every existing producer of goods shall register with CEO by making application with 30 days from 01.07.2010
- the new producer should register within 30 days from the date of production
- In case of centralized billing one registration can be done for all the mines
- Goods should be removed with proper documents. Cess should be shown separately in invoice. Rounding of cess to nearest rupee
- Records to be maintained (similar to DSA).
- Monthly return to be filed in form I giving mine wise details on or before 10th of the second month. For example July 2010 removals return to be filed on or before September 10th.
- Assessment will be self assessment
- CEO has right to access the premises or mine, can verify records
- Clean Energy cess exempts all goods produced or extracted as per traditional and customary rights enjoyed by local tribals in the State of Meghalaya without any license or lease required under any law for the time being in force
- Raw coal, raw lignite and raw peat will be exempt from education cess.
- The provisions regarding demand, refund, recovery penalties etc of excise applicable to cess. General penalty Rs.10,000/-

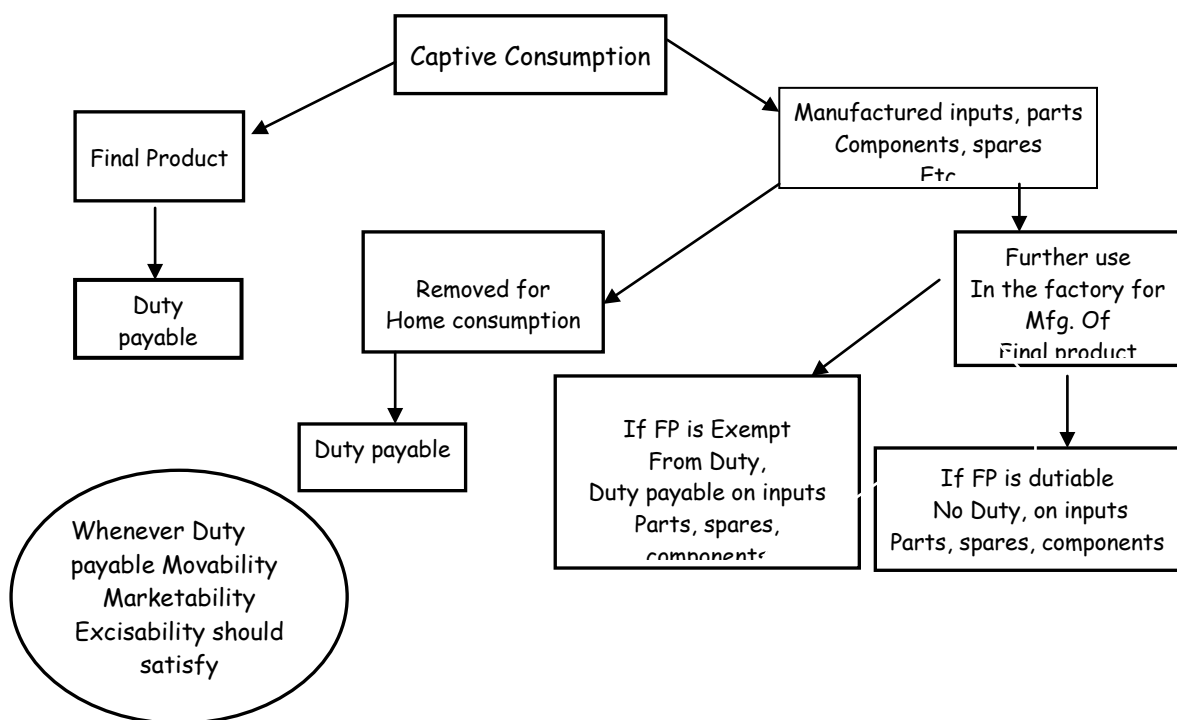
Indirect taxes- Central Excise- simplified

Captive consumption

Meaning

- Goods used by manufacturer with in the factory or branch or some other unit of manufacturer or for own purpose
- Excise duty is on manufacture and not on sale. Hence duty payable on captive consumption subject to certain conditions

Duty liability on captive consumption



Note: If there is any exemption for Captive consumption No duty payable. For example capital goods manufactured and used with in factory no duty payable and duty is exempted.

Exemption to captive consumption if duty paid on final product: The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit or (b) Used for in or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. [Notification No. 67/95 dated 16-3-1995].

Intermediate product

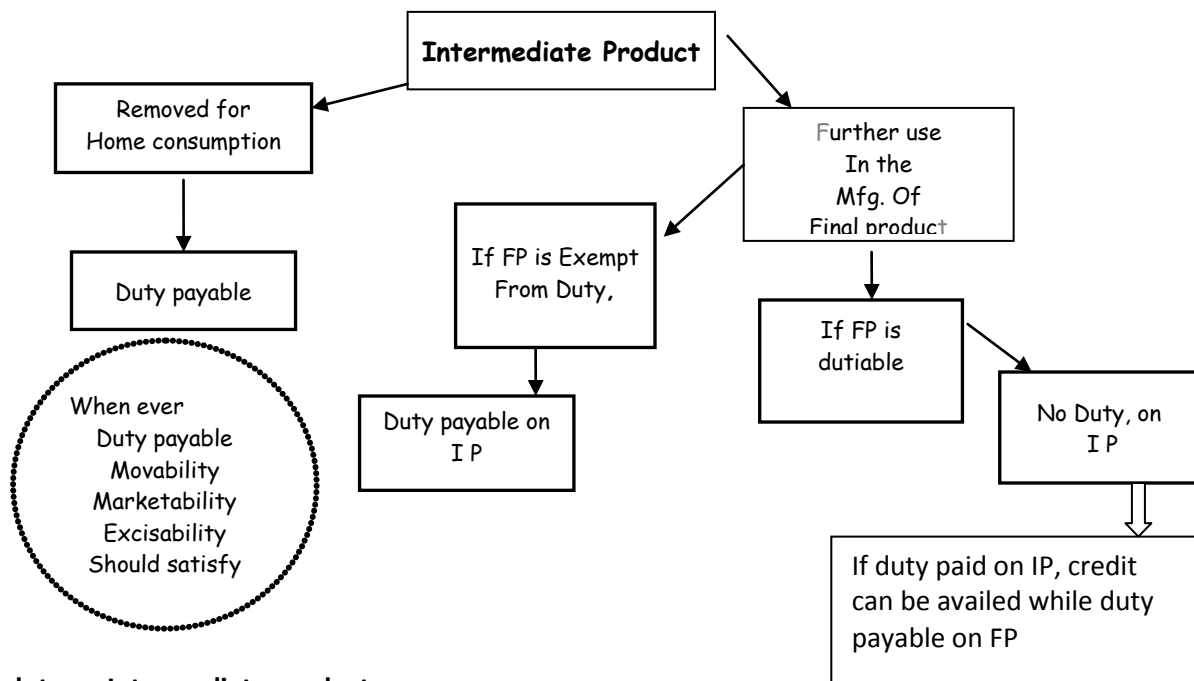
- I P means product emerged during the course of manufacture of final product
- They get produced in manufacture of final product
-

Examples

- Waste and Scrap

Indirect taxes- Central Excise- simplified

- Byproducts and joint products
- Molasses in case of manufacture of sugar
- Pulp/Cake in case of extraction of oil



No duty on Intermediate product

In the following cases no duty on intermediate products if it is used for captive consumption for manufacture of final product, even no duty payable on final product

- Final product cleared for deemed export i.e., cleared to EOU, STP/EHTP
- Final products cleared to ILO, WHO, UNDP, UNIDO programme etc. are exempt under Notification
- Final product cleared to defense, railways, & Indian Navy,
- Final product cleared by SSI under availing turnover exemption. However, if final product is fully exempt under any other notification, duty will be payable on intermediate product, or its value will be considered for calculating limits
- Final product is cleared for export under bond
- Final product is cleared by payment of amount of 10% as per cenvat credit rules

Intermediate products manufactured and used within the factory for manufacture of final products are exempt from duty, even if CT-3 certificate is not issued and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules [earlier Chapter X] procedure is not followed, subject to the condition that documents/records are available with manufacturer that the intermediate goods have been used for export purpose only - CBE&C circular No. 229/63/96-CX dated 8-7-1996, amended vide 303/19/97-CX dated 11-3-1997.

No duty is payable on intermediate product if final product is cleared for export under bond without payment of duty. Circular No. 10/75-CX 6 dated 3-4-1975, issued by Ministry of Finance confirms that goods exported under bond cannot be treated as exempt from duty or chargeable to

Indirect taxes- Central Excise- simplified

nil rate of duty - CBE&C circular No 278/112/96-CX dated 11.12.1996] & *Orissa Synthetics Ltd. v. CCE* 1995 (77) ELT 350 (CEGAT). Same view in *Indian Aluminium Co. Ltd. v. CCE* 1995 (79) ELT 111 (CEGAT).

Goods falling under chapter 68 Manufactured at site is exempt from duty: goods manufactured under Chapter 68 at construction site (Stone, plaster, Cement, asbestos etc.,)for construction use at site is exempt from duty

Notification No 5/2006 dt01.03.2006 amended on 07.07.2009

Dutiability of waste and scrap

- Duty not only on Manufacture but also on Production.
- Waste should arise (get produced) during the course of Manufacture
- If Waste is movable, Marketable & Excisable, duty is payable
- Confirmed in *Khandelwal Metal & Engineering Works Vs. U.O.I (SC)* , UOI vs Indian Aluminum Co.Ltd (SC)
- If the waste does not get produced/or manufactured in the process, there is no duty liability even waste is marketable and excisable. For example, waste arising during the demolition of building is not dutiable. Because building demolition is not a manufacture/production. Similarly steel pipe waste arising from cutting of steel pipe is not dutiable
- Waste and scrap is a final product for the purpose of utilization of cenvat credit.

Bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty. **Circular No. 904/24/2009-CX Dated 28/10/2009**

Excisability of plant & machinery assembled at site CBEC Circular dated 15.01.2002 –

- Duty cannot be levied on immovable property.
- Duty can be levied on parts and components leaving the factory according to condition they removed.
- If plant is so embedded to earth that it is not possible to move it without dismantle, no duty can be levied.
- If machinery is superficially attached to earth through foundation by way of nuts and bolts for operational efficiency, it is not an immovable property and can be easily removed without dismantling, duty is leviable
- When the parts and Components are fixed and installed in such a way where the final article is comes into existence only in shape of immovable property no duty leviable.
- Where the plates, Channels taken to site for fabrication, say for tank, is done at site and it is lifted and placed in a position permanently attached to earth, the tank come in existence as a goods. However if piece by piece attached to earth for the tank comes in existence, it would be immovable property.
- Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable

Conclusion as per various decisions on the excisability of plant and Machinery

- If the goods are movable at the time of removal and subsequently they are installed and fixed to earth, if they are not able to move, without dismantling, they are immovable property and no duty even it is marketable and excisable. Example lift. Lift cannot be moved without dismantling the building. Similarly tanks erected. Similarly kitchen cabinets, kitchen cupboard etc;, water treatment plant,. Turnkey projects.

Indirect taxes- Central Excise- simplified

- If the goods are fixed/installed in earth for administrative convenience and if they can be moved without dismantling, they are goods and liable of duty if they are marketable and excisable. For example, machinery installed with nuts and bolts can be moved. Moved. Similarly AC compressor fixed with clamps nuts and bolts.

Sec 3A levy of excise duty based on Annual capacity Production

- New section 3A introduced by Finance Act 2008 Effective from 16.05.2008
- This new section 3 A is s over riding section of section 3 (Charging section)
- The Central Government may notify in official gazette, the excisable goods of any description where levy of excise is based on annual capacity of production.(Unmanufactured tobacco bearing a brand name, Chewing tobacco & Jarda scented tobacco)
- Notification is issued considering the safe guard of interest of revenue, extent of evasion of duty and other relevant factors.
- Excise rules provide the manner of determination of annual capacity by CEO not below rank of AC/DC
- Annual capacity is deemed to the annual production.
- Where the factory operated only part of the year , production altered, modified, the annual production is to be calculated proportionately.
- Where a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.
- The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production
- The provisions of this section shall not apply to goods produced or manufactured, by a hundred per cent. Export-oriented undertaking and brought to any other place in India.
- The duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985, for the purpose of CVD under customs tariff Act.
-

Duty Liability Rule 4

Duty liability on Manufacture or production of goods in India' Collection of duty at the time of removal for admin Convenience

Who are liable to pay Duty

1. Manufacturer in the case of goods manufactured (Ownership of goods not relevant) Rule 4
2. In case of warehouse goods-Ware house keeper/Person who stores goods without payment of duty (Rule 20)
3. In case of Khandasari Molasses- Purchaser/Procurer

Excise duty is payable even it was not collected or not charged in bill.

Rate of duty and tariff Valuation in case of excisable goods Rule 5

As the rate of duty is keep on changing due to notifications of government. The rate of duty applicable for payment of duty is relevant

S No	Particulars/Places of removal	Rate of duty applicable
1	Goods removed from factory	Rate on the date of removal from factory
2	Goods removed from Warehouse	Rate on the date of removal from Warehouse
3	In case of Khandasari molasses	Rate on the date of receipt of molasses in factory
4	When goods cleared for captive	Rate on the date when goods used/issued for

Indirect taxes- Central Excise- simplified

	consumption	production
5	Goods cleared for export but not exported	Rate on the date of removal from factory
6	Goods clandestinely removed	Rate on the date of removal from factory

Rate of duty in case of Pre budget stock

In case of Excisable goods (Whether goods charged to duty, exempted by notification or charged to nil duty)

Rate of duty applicable on the date of removal

Wallace Flour Mills Co. Ltd. v. CCE 1989(44) (SC),

In case of Non Excisable goods (Ie Goods bring in to Excise tariff for First time)

No Duty on Pre Budget stock.

Duty payable on the goods manufactured from the effective date of Notification.

Vazir Sultan Tobacco-1996 (SC)

Power to grant exemption from duty of excise Section 5 A

- If the Central Government is satisfied that it is necessary
- In the public interest so to do,
- It may, by notification in the Official Gazette,
- Exempt duty generally either absolutely or
- Subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification,
- Excisable goods of any specified description from the whole
- Or any part of the duty of excise leviable thereon:
- Goods Manufactured in FTZ/SEZ/100% EOU/ the exemption notification, will apply only when it is specifically provided in such notification,
- When duty exempted absolutely in notification – availment of the benefit mandatory.
- Exemption of duty should not exceed more than statutory duty.
- All notifications of exemption should be published.

Emergency power of the Central Government to increase duty of excise

Section 3 of CETA 1985

- Where, in respect of any goods,
- The Central Government is satisfied that the duty leviable thereon
- Under Section 3 of the Central Excise Act, 1944 should be increased
- And those circumstances exist which render it necessary to take immediate action,
- The Central Government may, by notification in the Official Gazette,
- Direct an amendment to the First and second Schedule with new rate of duty
- (a) The new rate should not exceed 15% in case of goods charged to is nil a rate of duty
- In any other case, a rate of duty as it thinks necessary.

Remission of duty on goods

Remission because of Natural Loss – Section 5

‘Remission’ means waiver or cancellation of excise duty legally payable.

The Central Government may, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause (evaporation/volatile, fire, accident, flood etc.,) are found to be deficient in quantity.

Norms for the rules may be permitted, considering the

- Nature of the excisable goods or
- Processing or of curing thereof,
- The period of their storage or transit and
- Other relevant considerations,

Indirect taxes- Central Excise- simplified

- The department will fix the limit or limits of percentage beyond which no such remission shall be allowed:
- Different limit or limits of percentage may be fixed for different varieties of goods
- For different areas or for different seasons.
- The remission will be granted up to prescribed limits,
- on proof from the assessee,
- at the discretion of Central excise officer

Remission because of Natural Loss and Unfit for Consumption/marketing – Rule 21

- Where it is shown to the satisfaction of the Excise Officer
- 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,
- he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:
- When the goods are claimed as bad they should be destroyed under the supervision of excise authorities.
- The destruction should be done in such a manner, the goods are irretrievable.- CBEC Manual
- Depending on the quantum of remission of duty, it is proved to the satisfaction of excise officer the goods are irretrievable.

Goods lost because of theft or dacoit cannot held as goods loss because of natural loss or unavoidable loss and hence remission cannot be granted

- Adjudication powers of CEO in respect of Excise and Service tax

S No	Excise officer to be approved	Issue of SCN for duty/Service tax	Remission of duty for loss of goods	Other Powers
1	Superintendent	Up to Rs. 1 Lakh (except fraud cases,)	Up to Rs.10,000	----
2	Assistant/Deputy Commissioner	>1,00,000<=5,00,000 and Cases where sup., cannot issue (fraud cases etc).,	Up to Rs,1,00,000	Issue R C and Refund claim without limit.
3	Joint/Additional Commissioner	>5,00,000 <=50,00,000	Up to Rs 5,00,000	Rebate on export under bond/rebate during transit of goods to WH, No monetary limit.
4	Commissioner	Without Limit	Without Limit	-----

Restriction on possession of excisable goods. Sec 8

- Central government will notify the date in official gazette and it may provide rules in respect of goods specified in second schedule of CETA
- The rules or notifications may provide the limits or maximum amount of such goods or variety or class of goods may be possessed by at any one time by person.
- Notified goods for these purpose is tobacco

Excise Classification

- Classification means Grouping and sub grouping of goods for rate purpose
- It is necessary to identify the numerous products through groups and sub-groups and
- And then to decide a rate of duty on each group/sub-group
- Classification covered by Central Excise tariff Act

The Central Excise Tariff Act

1985 (CETA)

Indirect taxes- Central Excise- simplified

Salient features

- Classifies all the goods under 95 chapters
- There are over 1,200 tariff headings and 2,500 sub-headings.
- Goods classified using Harmonized System of Nomenclature (HSN),
- Goods classified with 8 digit

Schedules in CETA

- The first schedule gives----- basic excise duties (i.e. Cenvat duty) ,
- Second schedule-----gives list of items on which special excise duty is payable. Only few items.
- In addition to schedules there is annexure containing Third schedule ---contains goods where the MRP Valuation is applicable., Where NCCD is Payable.

Sections of CETA

20 sections. .

- A 'section' is a grouping of a number of Chapters, which codify a particular class of goods. Each of the sections is related to a broader class of goods

Examples

- Section I is 'Animal Products',
- Section VII is 'Plastics and Articles thereof',
- Section XI is 'Textile and Textile Articles',

Chapters in CETA

Section divided in Chapters – for example

- Section XI relates to Textile and Textile Articles and within that Section
- Chapter 50 is Silk, Chapter 51 is Wool, Chapter 52 is Cotton, and Chapter 53 is other vegetable textile fabric,
- Groups and Sub-groups within the Chapter -. For instance, Chapter 50 relating to silk is further divided into 5 headings. 50.01 relate to Silkworm, 50.02 relates to raw silk, 50.03 relates to silk waste, 50.04 relates to silk yarn and 50.05 relates to woven fabric of silk.

Eight Digit Classifications

All goods are classified using 8 digits system.

- First two digits related to the Chapter Number,
- Next two digits relate to heading of the goods
- Next two 2 digits indicate sub-heading
- Last two digits indicate tariff heading.
- A 4 digit code is called as 'heading' and
- A 6 digit code is called as 'sub-heading'
- 8 digit codes are called 'tariff entry'. .

Coding of Single and Double dashes

-Single dash (-) indicates a group,

-Two dashes (- -) a sub-group.

-Triple dash (- - -) and four dashed (- - - -) are used for further classification.

-

Rules for Interpretation of CETA

The Manufacturer has to classify his goods using classification rules

This Classification RULES TO BE APPLIED SEQUENTIALLY. I.e. in order

Rule 1

The titles of sections and chapters for of reference only, Classification to be done as per description of the heading, read with relevant section or chapter notes. Section chapter notes have legal effect.

For example Chapter 39 deals with plastic articles, just by reading the heading plastic articles all plastic articles cannot be classified under chapter 39

Chapter 39 notes specifically excludes clocks, watches drawing instruments made of plastic Parts of vehicle aircrafts made of plastic, Toys games articles made of plastic. These goods were covered under different chapter

Indirect taxes- Central Excise- simplified

Classification of Incomplete Goods/unassembled finished goods Rule 2(a)

- Such goods to be Classified as finished and assembled article if contain essential character of finished goods

Examples:

- Passenger coach not fitted with seats will still be a passenger coach
- Motor vehicle not yet fitted with wheels, battery or tyres classify as motor cycle
- Bicycles without saddles and tyres * classify as bicycle
- Photographic camera without an optical element classify as Photographic camera
- Electric supply meter without its totaling device. classify as Electric supply meter

Un-assembled finished goods –

- The heading will also include finished goods removed un-assembled or disassembled i.e. in SKD or CKD packs.

Example

- Cycle removed in CKD condition is to be classified as 'cycle and not parts of cycle

Sub-assemblies of air conditioning machines removed in CKS/SKD packs will be classified as complete machine, if it contains essential elements of air conditioning machine. – **CBEC circular No. 666/57/2002-CX dated 25-9-2002**

This rule applicable only when the parts/components required for one product removed at a time. When the all the parts are removed over a period of time in different consignments this rule not applicable. In such case they have to classified as parts only

Classification of Mixture or Combinations [Rule 2(b)].

Any reference of goods will also include the reference to mixture or combination of that material or substance with other Materials or substance

- e.g. 'Article of Gold' will include an Article, which is made partly of Gold.
- Steel contains small quantity of carbon still it is referred as steel only.

Rule in case of Conflict between various headings [Rule 3]

- If there is conflict between two headings as per rule 2 b Specific Description preferable over general heading

Example: In case of foot ball, the bladder is made of rubber and outer case it made of leather. But foot ball was specifically classified under chapter 95 Toys, games and sports requisites. Here Chapter 40 and 42 general headings to be ignore and football is classified under chapter 95

Classification as per Essential Character [Rule 3(b)]/ Multi utility articles

- If Rule 3 cannot useful ; it should be classified as if they consisted of the material or component, which gives it their essential character

Examples..

- A pen stand with clock- Classify as pen
- A radio with clock -Classify as radio.
- A floppy diskette/CD is attached to a book. Such diskette/CD is supplementary or accessory to the book, which either explains contents of book or supplies some freeware or some tutorials. Here the essential character is a book
- A manual is supplied along-with software.- Classify as software
- Lock for motor vehicle classify as lock for motor vehicles and not a burglary /fire alarm.
- Data recorded on dvd/hard disk- classify as data not as dvd
- Os loaded in laptop –Classify as laptop. There should not be 2 classifications one as software and other as laptop.
- Printer + Fax + Scanner + Photostat for Rs 7500 - Classify as Printer
- Mobile Telephone + Camera + MP-3 Player for Rs 5000 -Classify as Mobile Telephone

A manual is supplied along-with software. The manual gives instructions as to how to use the software. Here the 'essential character' is 'software'. Hence, the goods will be classified according to 'essential character' as per rule 3(b). - **CBE&C circular No. 528/10 6/93-Cus (TU) dated 24-8-1993.**

Indirect taxes- Central Excise- simplified

If two or more are specific headings Latter the better [Rule 3(c)].

For example

●39.19 Self Adhesive tape / 85.46 Electrical insulators -

Classify as per latter heading 85.46 as electrical insulators.-

VIP bag is Plastic article as per general heading, but suitcase is specific heading

Classification as per Akin Goods [Rule 4].

If the classification is not possible by any of the aforesaid rules, then it should be classified under the heading appropriate to goods to which they are most akin. This is only a last resort and a desperate remedy to resolve the dispute as the matter of classification cannot be kept hanging indefinitely

Classification in case of Packing Material/Containers Rule 5

Certain packing materials are

- Specifically Shaped/Designed to contain an article or a set of articles;
- Suitable for long-term use;
- Presented along with the article for which they are intended;
- Of a kind normally sold with the article for which they are intended (i.e., as a normal prevalent trade practice)

Classify such packing material as that article and not as packing material

This provision will not applicable for durable and returnable packing.

Goods can be compared at the same level only [Rule 6].-

●Sub-Headings can be compared only at the same level; this means that if one heading contains 5-6 sub-headings, these sub-headings can be compared with each other. However, sub-heading less than one heading cannot be compared with sub-heading under a different heading. Thus, first heading has to be decided and then one of the sub-headings within that heading has to be selected.

Classification of Parts

Classification of parts is subject to notes in Sections and Chapters.

A part, which is essential and integral part of machinery, Equipment, Vehicles, furniture should be classified as main product only.

For example Tyres and tubes of vehicles should be classified under vehicles, as automobile parts and not as rubber articles

Parts of General Use

Parts of general use are to be classified in their respective heading and not as part of the machine or equipment

Example tube and pipe fittings, stranded wire, ropes, cables, chains,

Nails, screws, bolts, Padlocks, locks; fittings. Etc.,

Trade parlance theory Classification

- Applicable only when classification rules does not provide conclusive answer.
Based on popular sense
- Classification based on customer use and identity of a product

The consumer buys an article because it performs a specific function for him. This mental association with a product is highly important for classification. Atul Glass Industries (P.) Ltd. v. CCE - (1986) (SC),

Examples on trade parlance.

Carbon paper cannot be classified as a paper.

Lal Dhant Manjan (Red Tooth Powder) cannot be classified as a Medicine. It is tooth powder only

Mineral Water cannot classified as a beverages

Mirror cannot be classified as glass article. It is cosmetic item only

Plastic torch cannot be classified as plastic article.

Coconut is not a fruit or not a vegetable.

Windscreen cannot be classified as glass article. It is automobile part only

Indirect taxes- Central Excise- simplified

Prickly heat powder cannot be classified as toiletry preparations and should be classified as medicines

Classification of coconut oil CBEC Clarification Circular No. 890/10/2009 CX dated 03.06.2009

S.No.	Use by the consumer	It would be classified as
1.	Coconut oil packed in packages which are generally meant for sale in retail as hair oil (packed in containers upto 200 ml)	Hair oil under heading 3305 even though few consumers may use it as edible oil)
2.	Coconut oil packed in say 1 liter or 2 liter packages, which are generally used by consumers for edible purposes	Vegetable oil under Chapter 15 (even though some customers may use it as hair oil)

Excise Valuation

- After the product is correctly classified, and duty liability is established,
- The next question is 'determination of Excise Duty payable.
- Valuation deals with the value on which rate of duty to be applied
- Value is the amount on which excise duty is payable
- Value also known as Assessable value (A.V)
- Excise duty payable = Assessable Value x Rate of excise duty

Excise duty is payable on one of the following basis:

- Specific duty / Tariff Value Section 3(2)
- Duty payable based on Annual Capacity Production (Applicable for pan masala)
- Compound levy Scheme Rule 15
- Duty based on Maximum Retail Price
- Duty as % based on *Assessable Value* fixed under Section 4- Transaction value valuation (*ad valorem duty*)

Specific Duty:

- It is the duty payable on the basis of certain unit like weight, length, volume, etc. of a product
- The disadvantage of this duty is that even if selling price of the product increases, revenue earned by Government does not increase correspondingly. The Government will keep on revising the rates

Presently, specific rates have been specified for:

- cigarettes -on the basis of length
- matches- per 100 boxes or packs
- sugar -on the basis of quintal
- marble slabs and tiles- on the basis of square meter
- colour TV (only when MRP is not marked on the package or it is not the sale consideration) -on the basis of screen size in cm
- cement clinkers –on the basis of per tone
- molasses –on the basis of per ton

Indirect taxes- Central Excise- simplified

For example,

- Cigarettes less than 60 mm –Rs. 168 per thousand
- Cigarettes greater than 60 mm less than 70mm –Rs. 546 per thousand
- Filter cigarette ranging from Rs. 1260 to 2163 Per thousand
- Molasses, Rs. 1000 per Ton

Tariff Value:

Government from time to time fixes tariff value. This is a “Notional Value” for purpose of calculating the duty payable. Once 'tariff value for a commodity is fixed, duty is payable as percentage of this 'tariff value' and not the Assessable Value fixed u/s 4. This is fixed u/s 3(2) of Central Excise Act. Government can fix different tariff values for different classes of goods or goods manufactured by different classes or sold to different classes of buyers.

•When tariff value is prescribed under the law, that value will form the basis for assessment (and not any other value)

Example on tariff value

If retail sale price is printed on the retail pack (Pan masala) and having betel nut content not exceeding 15%,- 78% of the printed retail sale price

Compound Levy Scheme Notification No 34/2001

Applicable only for steel pattas Pattis, Aluminum Circles process under cold rolling

- Scheme is only optional
- Duty payable based on the basis of per cold rolling machine (steel pattas Rs. 30000/ Aluminum Circles Rs. 12000 per machine per month (Approx)
- No Cenvat Credit
- Assessee has to make an application for availing of the scheme
- Assessee should avail the scheme for consecutive 12 months.
- Lesser period may be permitted by AC/DC by recording reasons
- Assessee can extend the period by making application before the expiry of period. If he does not make application for extension of period it is deemed he has opted out of the scheme.
- Any proposed change in the number of machines should be intimated to Superintendent before such change and assessee should get approval
- Central government has got powers to notify the rates of duty for compound levy scheme

Value based on Retail Sale Price/MRP Valuation

•MRP provisions are overriding provisions of transaction value . (Sec 4 A). If MRP provision applicable valuation is to be done as per MRP basis only and not under transaction value or under valuation rules.

•MRP Valuation is applicable only when goods are sold or intended to sold in retail. For example when MRP covered goods issued as free samples, MRP valuation not applicable.

Meaning of MRP

• Retail sale price' means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and

• MRP includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale. - -

• In certain cases of Drugs – Retail price means price excluding local taxes

Valuation in case of MRP Provisions

- MRP Printed on the packet xxxxxxxx
- Less Abatement % xxxxxxxx
- Value for Excise to pay duty xxxxxxxx

The abatement % will be notified by Central Government ranging from 20% to 50%

Indirect taxes- Central Excise- simplified

Salient features of MRP Valuation

- The goods should be covered under provisions Both Standards of Weights and Measures Act, and Central excise notification (Schedule III).
- MRP printed on the packet less abatement notified by Central Government will be the valuation
- If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered
- Different prices are printed on different packages; each such price will be 'retail price'.
- If retail price declared on the package at the time of removal is subsequently altered to increase the price, such increased retail price will be retail price for purpose of section 4 A
- When assessee declares two MRP on the packet, and if higher MRP is scored out to show saving, scored out MRP is ignored even it is visible. (CBEC Circular No 673/64 dated 28.10.02)
- If goods covered under MRP provisions are imported, CVD will be payable on basis of valuation u/s 4A i.e. on basis of MRP printed on carton.
- If retail price not indicated or wrongly indicated at the time of removal, the goods are liable to confiscation. In such case, the 'retail sale price' will be ascertained as per MRP Valuation rules in the prescribed manner and duty will be payable as per the rules.(Market MRP Price/identical goods MRP is considered. More than one MRP highest MRP is considered)
- MRP provision is applicable even goods manufactured on job work basis.
- When some goods are sold partly in whole sale and partly retail, for whole sale goods MRP not applicable. For Retail sale MRP Valuation to be done.

CVD duty rate on imported goods when product covered under MRP –

- If goods covered under MRP provisions are imported, CVD will be payable on basis of valuation u/s 4A i.e. on basis of MRP printed on carton.
- If imported goods are printed with MRP if they are not sold, but used for process CVD payable based on transaction value

Some of the situations where MRP cannot be printed are and No MRP Valuation.

Bulk supplies for personal as well as industrial use, however some cases goods supplied for industrial use, MRP applicable example. Cement supplied to industrial construction.(upto 50 Kg pack)

Bulk supplies against contract,ex ice cream sold to hotel bulk, not for resale.

Supplies to canteen store depots of defence,

Item supplied free with another consumer item,

Items supplied free as marketing strategy or market response,

Items meant for export.

In the above cases MRP valuation will not applicable .CBE&C circular No. 625/16/2002-CX dated 28-2-2002. – followed in *Bharti Systel v. CCE 2002(145) ELT 626 (CEGAT)*.

MRP not applicable as per Standard weights and measures Act

Items weighing more than 25 kgs (Except Cement),

Items weight less than 10 g, 10 ml-

Packed fast food items-

Domestic LPG Gas,

Agricultural products above 50 Kgs (Any how it will cover under above 25 Kg category)

Free samples where Samples covered under MRP

The valuation should be done on the basis of MRP valuation u/s 4A. Circular No. 915/05/2010-CX dated 19.02.2010. If samples not covered under MRP they should be valued under valuation Rule No 4. Circular No. 813/10/2005-CX dated 25.4.2005

MRP in case of Multiple and Combination Packages

(CBEC Circular No 673/64 dated 28.10.02)

Indirect taxes- Central Excise- simplified

•In case of multiple piece packages consisting of 2 or more items of same kind, valuation is to be done as below:

MRP printed on Multiple packet will be considered valuation when

- Individual items cannot be sold separately/marked should not sell separately
- If individual items supplied free and no MRP printed on individual items –for example face gel supplied free along with anti dandruff shampoo, MRP printed on shampoo to be considered when only one MRP is indicated. No need to add Market MRP of face gel.
- If individual items have MRP printed but scored out to show shaving

Aggregate of MRP of individual packets will be considered when

- Individual items capable of sold separately and no restriction on the sale of individual items
- Department cannot challenge the MRP printed on the packet- Held in ITC Ltd case (Sc)

Assessment based on Value (Invoice Price)/ Transaction Value

- Where Central Excise is payable on the basis of value, it is known as “advalorem duty”.- Sec 4
 - It is Duty charged based on Value (Invoice) with certain additions and deductions.
- When the duty of excise is chargeable with reference to value, the 'transaction value' on each removal of goods, considered for the purpose of valuation if all the following conditions are satisfied –

- The goods should be sold at the time and place of removal.
- Buyer and assessee should not be related to each other
- Price should be the *sole consideration* for the sale.

1. The goods should be sold at the time and place of removal.

The Price of Goods sold at the time and place of removal is only relevant. Any increase or decrease after the removal of goods is not relevant Section 4(1)(a). Example delivered to another buyer after removal at different price is not relevant for valuation. However where the agreement provides escalation clause, Price realized as per escalation clause after removal is the value and should be considered for valuation.

Place of removal -' means

- a factory or any other place or premises of production or manufacture of the excisable goods from where such goods are removed *or*
- (ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty from where such goods are removed
- (iii) A depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from factory. [Section 4(3)(c)].

Time of removal - As per section 4(3)(cc),

- In case of sale from depot/place of consignment agent, 'time of removal' shall be deemed to be the time at which the goods are cleared from factory.

Examples when there is no sale at factory- Depot sales, samples, FOR contracts etc., in these cases transaction value not applicable

2. Buyer and seller should not be related to each other

Persons shall be deemed to be "related" if,

- They are inter-connected undertakings as per MRTP Act (ICU will be treated relative only When they become ICU by virtue of Holding and Subsidiary Company)
- They are so associated that they have interest, directly or indirectly, in the business of each other.
- Amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
- They are relatives as per Clause 41 of Sec 2 of Companies Act
- Except the above four categories none of the other persons are treated as relatives. For example same management companies, Common director companies, common partners firms, one side interest etc are not treated as relative persons

Relative as per Clause 41 of Section 2 of the Companies Act

Indirect taxes- Central Excise- simplified

A person shall be deemed to be a relative of another if, and only if, —

- They are members of a Hindu undivided family; or
- They are husband and wife; or
- Father, Mother,
- Brother, sister, son and daughter and their spouses
- Grand father and grand mother Both maternal and paternal
- Grand son grand daughter and their spouses
- Under this clause a natural living person can only treated as relative. A Company, a firm and HUF cannot treat as relatives.

Price must be sole consideration –

- Price should be sole consideration of sale.
- Price is the consideration given for purchase of a thing

If the Price is not sole Consideration

- The price is to be adjusted for by adding,
- Cost of raw material supplied by buyer at free or reduced cost
- Cost of tools, design drawing, moulds supplied by buyer
- Interest free deposits received from buyer, if the price is reduced

Meaning of Transaction Value

- Price actually paid or payable for goods by buyer to Seller or to third person on behalf of
- The payment should be 'by reason of, or in connection with the sale'. The amount may be payable may be before or after sale. (Price should quantifiable at the time of removal,)
- Any amount charged By Seller for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter is includible

However, these expenses are includible only when following conditions are satisfied i.e.

- (a) The amount should be paid or payable to assessee or on behalf of assessee and
- (b) Payment should be by reason of sale or in connection with sale.

Each removal will be treated as a separate transaction and 'value' for each removal will be separately fixed. For example. Sale to industrial use, sale to Govt, sale in whole sale and sale in retail etc., In each price the value of goods is taken separately.

Inclusions in Transaction Value

Packing charges:

- All Packing Primary, Secondary. Or special, will form part of the transaction value. Packing supplied by buyer should also be includible; .Packing which is normally used at whole sale trade at factory gate is only includible in valuation.
- Durable and Returnable packing includible only if the audit report reveals that cost was not amortised -circular No. 643/34/2002-CX dated 1-7-2002.
- Durable and returnable packing supplied by buyer not includible in valuation.(Ex cylinder for sulphur dioxide-TCP Ltd-- Cestat
- Design and Engineering Charges of product- includable
- Consultancy charges relating to manufacturing - includable
- Compulsory after Sales Service / service in warranty period - includable
- Loading and handling charges within the factory -includable
- Commission to Selling Agents- includable

Free after Sales Service Warranty includible in valuation- they are includible whether they are optional or compulsory- **-CBEC Circular NO 354/81/2000 dated 30.06.2000.**

Indirect taxes- Central Excise- simplified

After-sale Service and Pre-delivery Inspection charges were to be included in the assessable value 'These services are provided free by the dealer on behalf of the assessee, the cost towards this is reimbursed to him and thus is a consideration to him for the sale of the goods, therefore will be includible in the assessable value'. **Circular No. 936/26/2010-CX dated 27.10.2010**

Exclusions in Transaction Value

Local Taxes: sales tax; Excise duty and other taxes payable on finished product- Equalized deduction of taxes not permissible – Since each clearance is a separate transaction for assessment, that taxes are deductible only on actual basis and not on average basis. **CBE&C, vide its circular No.**

643/34/2002-CX dated 1-7-2002

Outward handling, - not includible in valuation

Freight and transit insurance charges from factory to buyer place,

Processing cost after removal if such process does not amount to 'manufacture' – CBE&C circular No. 138/08/2000-CX.4 dated 3.1.2001.

•Notional Interest on security deposit/advances – Includible only when the price is reduced because of deposit

Interest on Receivables and on Delayed payment – CBE&C circular No. 643/34/2002-CX dated 1-7-2002.

Shall not be regarded as part of the assessable value provided that:

- The interest charges are clearly distinguished from the price actually paid or payable for the goods;
- The financing arrangement is made in writing; and
- Where required, assessee demonstrates that such goods are actually sold at the price declared as the price actually paid or payable

Installation and Erection Expenses – CLARIFICATION BY CBE&C

- The Board has clarified with regard to erection an commission charges is as follows
- If final product is not excisable, question of including erection and commissioning charges does not arise.
- If a machine is cleared from a factory on payment of appropriate duty and later taken to premises of the buyer for installation/erection and commissioning into an immovable property, no further duty will be payable
- If parts/components are brought to site and the machine is erected/installed and commissioned, if the product is excisable commodity, cost of erection, installation and commissioning would be included in assessable value. **-CBE&C circular No. 643/34/2002-CX dated 1-7-2002.**

Bank charges for collection of sale proceeds- not includible in valuation

Training charges to customer –

•Training charges to customer will be includible if they are in connection with sale or by reason of sale. If the transaction of providing training to employees of customer is an independent transaction, it may be 'in relation to sale', but not 'in connection with sale'

Inspection charges / addition testing charges paid by buyer

- Assessee carries out his own inspection- includable
- Customer carries out additional inspection borne by the buyer. Not includible
- If such testing is a mandatory requirement, it should be includible whether borne by assessee or buyer.
- This is because there is no sale without such testing.

Subsidy / Rebate obtained by assessee from Government

•A general subsidy / rebate are obviously not being includible as it has no connection with individual clearances of goods.

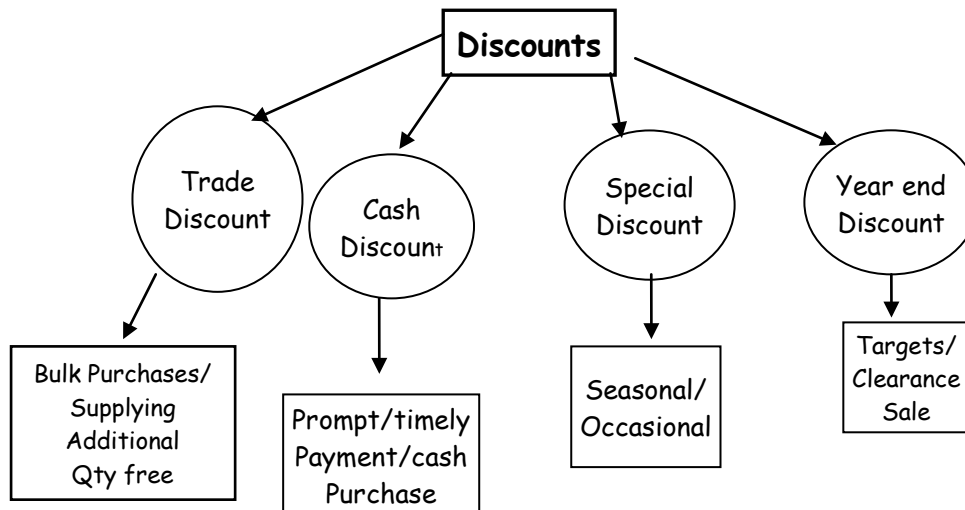
Profit earned on post removal activity –

Indirect taxes- Central Excise- simplified

Profit earned on post removal activity is not to be added unless there is any deliberate attempt to divert a part of the genuine price and show it as other charges

Advertisement and sale promotion Expenses- incurred by buyer if done on his own, are not to be includable,

Discounts



- All discounts are deductible if benefit passes on to buyer.
- Discount need not be uniform. Different discounts to be given to different persons
- There is no condition or provision that amount of such discount should be known at the time of removal of goods from factory. Differential discount is also permissible. Cash discount will be deductible only if actually passed on to buyer,. CBE&C circular No. 643/34/2002-CX dated 1-7-2002
- Discounts can be given at any time -. For example year-end discount or turnover discount.

Valuation Rules

- Rules applicable when any of the conditions of transaction value not fulfilled

Valuation in case if goods are not sold: (Rule 4)

- Examples Samples, free warranty claims
- value will be Value of identical similar goods sold by Assessee at Same time
- If does not sell the goods on the same time Value at the nearest date subject to adjustment for price variance in dates of delivery.

Example on sample valuation

- **Case- 50 pieces of Samples are removed on 1.7.2010**

Alternative 1

- 50 pieces also sold on 1.7.2010 at Rs. 120 per Piece. Value for sample- Rs. 120 per piece

Alternative 2

- 50 pieces are not sold on the same day, but different quantities are sold at different price on 1.7.2010. Value for sample can be taken on price at which Highest qty sold (Whole sale price/Normal transaction value) can be taken.

Indirect taxes- Central Excise- simplified

Alternative 3

• There is no sales on 1.7.2010

• Value will be taken at nearest date sale price, subject to adjustment for price variance if any between nearest date and samples removed date.

Value in case of new product issued as sample-

- Where the value is not determinable at the time of removal and value can be known at subsequent date- request can be made for Provisional Assessment/Alternatively Cost + 10% can be considered for valuation.

Value in case of old sample

- Old sample different qty, size, and Different character. Value can be made under rule 11 (BOJ)

Valuation of samples - CBE&C, vide circular No. 813/10/2005-CX dated 25-4-2005 has clarified that in case of samples distributed free, valuation should be done on basis of rule 4. If the samples covered under MRP they should be valued under MRP Valuation.

Goods sold at different place /other than place of removal (Rule 5)

• Ex FOR delivery contract

• Value will be FOR price minus freight .The actual cost of transportation from place of removal up to place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis.

• The deduction of Freight will be allowable only if the invoice indicates; the transportation cost does not include freight for return/empty journey- Circular No.827/4/2006-CX dated 12.04.2006

Clarification by CBEC on exclusion of return fare :As per Rule 5 the actual cost of transportation from the place of removal up to the place of delivery is only to be excluded. [Cost of return fare of vehicles is not required to be added for determining value. Tribunal held that where onward freight was not includible in the assessable value of the excisable goods, there was no question of return freight being included in the assessable value, whether or not the return freight was mentioned in the relevant invoices(Circular No. 923/13/2010-CX dated 19.5.2010)

Example on Valuation under Rule 5

Factory at Chennai (Place of removal). Buyer place At Bangalore (Place of delivery). No sale at Factory. Sale at buyer place in Bangalore. FO R price up to Bangalore Rs. 120 per unit. freight from Chennai to Bangalore per unit Rs. 10 . Value per unit will be Rs. 110 (120-10)

Factory at Chennai. Depot at Bhuvanewar (Place of removal). Buyer place At Kolkatta (Place of delivery). No sale at Factory. No sale at Deport .Sale at buyer place in Kolkotta.. FO R price up to Kolkotta. Rs. 200 per unit. freight from Chennai to Bhuvanewar Rs. per unit Rs. 20 . freight from Bhuvanewar to Kolkotta . Rs. 10 Per unit Value per unit will be Rs. 190 (200-10) . and not 170 (200-20-10) . No deduction for freight as Chennai is not a place of place of removal

Value when price is not the sole consideration [Rule 6]

• 'Assessable Value' will be the price charged by assessee, plus money value of the additional consideration received.

Example

• The buyer may supply any of the following directly or indirectly, free or at reduced cost.

• Materials, components, parts and similar items including packaging materials

• Tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used

• Engineering, development, artwork, design work and plans and sketches u

• In case of interest free advances received by seller, notional interest will be added only when the price was reduced because of interest free advance.

Example on price is sole consideration

Example 1

Indirect taxes- Central Excise- simplified

- A seller sell a unit at price of Rs. 100
- Assume, Buyer supplies material worth Rs. 60 per unit
- Design and drawing worth Rs. 10 per unit
- Buyer will pay only balance Rs. 30 (100-60-10).
- Here the Rs. 30 paid by buyer is not sole consideration for sale.
- Value will be 30 +10+60 = 100 is the value

Example 2

- A seller normally sell a unit at price of Rs. 100
- Assume , the buyer paid price in advance and also some deposit
- The Seller reduces the price to Rs. 80 because of advance payment and deposit
- Here the price Rs. 80 is not sole consideration for sale
- Rs, 20 to be added to Rs. 80 to arrive the value

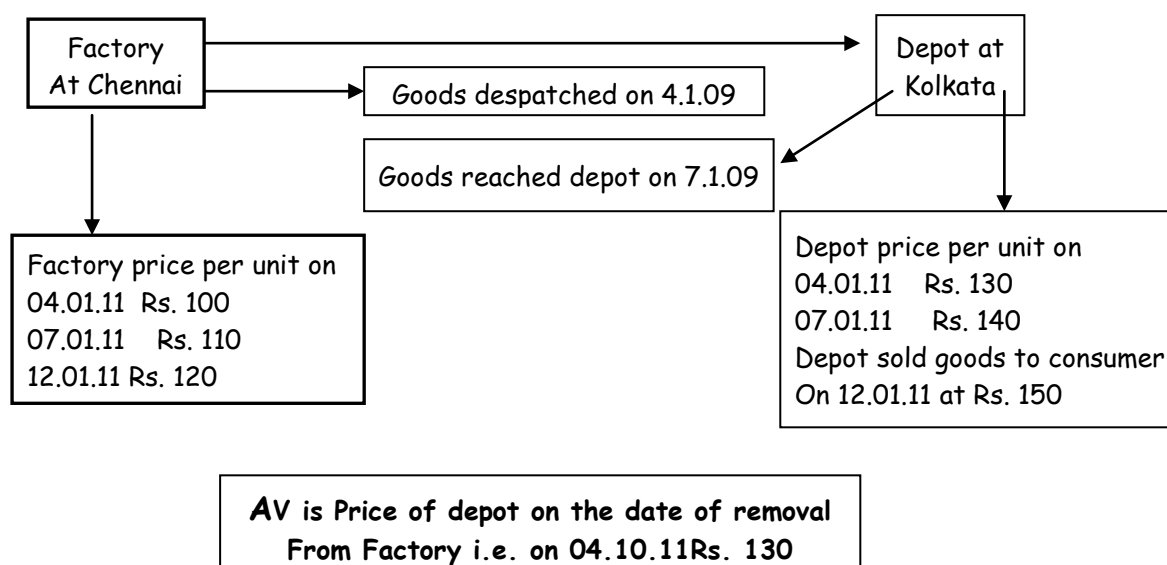
Valuation for Sale at depot / consignment agent place [Rule 7]

- Place of removal includes depot/ place of consignment agent,
- Time of removal in case of depot is time when such goods are removed from factory.
- Value is price (Normal transaction value) prevailing at the depot as on date of removal from factory.
- Price at which such goods are subsequently sold to buyer from the depot is not relevant for purpose of excise valuation
- No deduction for freight from factory to depot
- One day different prices. Price at highest qty sold is the value ('normal transaction value)
- If the price of depot on the date of removal is not available depot price at nearest date can be taken subject to adjustment for variance if any
- Freight and insurance from depot onwards to buyer place is not includible in value.

Meaning of 'normal transaction value'

• As per Valuation Rule 2(b), "normal transaction value" means the transaction value at which the greatest aggregate quantity of goods is sold. The term 'greatest aggregate quantity' is used in rule 7 of Customs Valuation Rules. For example if 65 units are sold @ Rs. 1000, 55 units are sold @ Rs. 950 and 80 units are sold @ Rs. 900; then greatest aggregate quantity is 80 which is sold @ Rs. 900 per unit, which will be the basis for valuation.

Example on depot valuation:



Valuation in case of captive consumption (Rule 8)/

Indirect taxes- Central Excise- simplified

- Captive consumption means goods are not sold but consumed within the factory.
- Valuation shall be done on basis of cost of production plus 10%. Cost of production is to be determined as per CAS 4

Cost of production as per CAS 4

Material consumed (Cost should be exclusive of local taxes and excise)	xxxxxxx
Direct labour/wages	xxxxxxx
Direct expenses	xxxxxxx
Works overheads	xxxxxxx
Quality control costs	xxxxxxx
Research and development costs	xxxxxxx
Administration overheads relating to production	xxxxxxx
Less: Sale of scrap	xxxxxxx
Cost of production	xxxxxxx
Add: 10%	xxxxxxx
Value for excise (Assessable value)	xxxxxxx

Selling and distribution costs to be ignored

CBEC has clarified that if same goods are partly sold by assessee and partly consumed captively, goods sold have to be assessed on basis of transaction value and goods captively consumed should be assessed on basis of rule 8. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002**, the reason is, as per new section 4, transaction value has to be determined separately for each removal. In case of captive consumption, cost calculation should be as per CAS-4 issued by ICWAI

Valuation in case of Sale to/through related person Rule 9/ Sale through ICU (Holding and Subsidiary company) Rule 10

Rule 9 and 10 applicable only

- When all goods are sold only to or through related persons. Or
- When there is a substantial sale to related persons and minor amount of sale to unrelated person.

Relative person valuation rule not applicable

- When the goods are sold partly to related persons and partly to unrelated persons (Applicable rule is rule 11 BOJ)
- When the price of RP and URP is same. ie sale to RP at market whole sale price

Value will be price at which the relative person sold to unrelative person.

Example on relative person valuation

Mr. A Sell goods to Mr. B @ Rs 100 per Unit. The same goods was Sold by Mr. B to Mr.C at Rs. 110 per Unit. A and B are related persons, B and C are unrelated persons. The Assessable for Mr. A removal will be Rs. 110 per unit. If B and C are related persons, the price of C to unrelated person will be the value. If B or C are not sold the goods and consumed captively. Valuation to be done as per rule 8 (Captive consumption basis)

Value in Case of Job Work- Rule 10 A (Applicable from 01.04.2007)

Indirect taxes- Central Excise- simplified

- Where the goods are sold from the place of job worker, the principal manufacturer (the person who supplies material to jobworker) transaction value (selling price) will be value, where the buyer and principal manufacturer are not related and Price is sole consideration.
- Where the goods are not sold from the place of job worker, removed from goods from job worker place and sold at some other place, Price of such goods at nearest place of removal is the value, where the buyer and principal manufacturer are not related and Price is sole consideration.
- Where the value cannot be determined as above two cases, the value will be determined as per other valuation rules
- With this new rule, profit margin of principal manufacturer is brought in to tax net.

Example for Job work value

- Cost of the leather supplied by principal manufacturer for making a pair of leather shoes Rs. 500
- Job worker charges Rs. 150 per pair towards labour charges and his profit
- Cost of transport from raw material supplier to jobworker place Rs. 10
- Jobworker finish the work and principal manufacturer wants to sell the shoes from the job worker place at Rs. 999-95.
- The A V will Rs. 999-95

Valuation in case of body building of a vehicle

When automobile manufacturer send chasis to independent body builder under stock transfer on payment of duty. The body builder availed the CENVAT credit of the duty paid on the chasis and cleared the same on payment of duty to the Depot/Sales Office/Distributor of the Motor Vehicle (MV) manufacturer. The duty was discharged by the body builder on the assessable value comprising the value of Chassis and the job charges i.e. cost construction method. The Depot/Sales office of the MV manufacturer sold the vehicles at a higher price than the price on which duty had been paid. Accordingly, after the insertion of rule 10A, the practice of discharging the duty on cost construction method by the body builder is not legally correct. Hence value should be done as per rule 10 A.

Best judgment Assessment Valuation [Rule 11]

BOJ only when it not possible to value from Rule 4 to 10A

- The value shall be determined using reasonable means consistent with the principles and general provisions of these rules and of section 4(1) of the Act. . It is mixture and combination of rule 4 to 10 A.
- This rule is applicable when the goods are sold partly to related and partly to unrelated persons, as there is no specific provision made.

Valuation in case of Computer Software

• Value of preloaded operational software not includible of valuation in case of computer; even computer cannot function without software. Software is not a part of Computer. Computer is complete without software. CCE Vs Acer India Ltd (2004) (SC) 172ELT289

Cum Duty price

- When the price is not sole consideration and if any Additional Consideration is added to arrive Assessable Value it should be treated, as cum duty price - If Assessee removes goods without payment of duty by mistake (treating dutiable goods as exempted goods), the price should be treated as cum duty price CCE Vs Maruthi Udyog Ltd (2002) (SC). If the goods are covered under MRP, abatement deduction will not available
- If the information is specific (in exam question) it should be cum duty price
- And calculation should be made backwards-
- $A V = (\text{Cum duty price minus-permissible deduction} \times 100 / 100 + \text{rate of duty})$

Valuation in case of Bought out goods / spare parts /Consumables/ Accessories

Bought out spares, parts fitted and delivered and along with main product includible in valuation

Indirect taxes- Central Excise- simplified

Valuation in case of accessories

Cost of Accessories, which are optional whether fitted, or not to the main product will not be includible in the Valuation.

Cost of Consumable is not includible in the valuation; even the main product cannot function with out such consumable.

Example, ribbon in case of typewriter, cassette in case of tape recorder and needle in case of gram phone.

Valuation application Chart

Step 1

First check whether duty is payable based on Annual capacity production, if yes pay duty based on annual capacity production

Step 1

If Annual capacity Production valuation not applicable check whether duty payable based on tariff values , if yes value as per tariff values

Step 2

If tariff values does not apply, check whether MRP Valuation applicable, and MRP printed goods are sold or intended to sold , if yes value as per MRP provision

Step 3

If MRP Valuation does not apply, check whether 4 conditions of Transaction value is satisfied, if yes value as per transaction value

Step 4

If 4 conditions of transaction value not satisfied, value as per valuation rules.

Excise Procedures

Excise Procedures include

- Registration
- Maintaining proper production and stock registers.
- Procedures to be followed when removing of goods
- Payment of duty and
- Filing of Returns
- Special procedure for large tax payer.

Coverage of excise procedures. The procedures are covered in

- Excise Rules 2002
- Cenvat Credit Rules 2004
- Excise Manual 2001
- Excise removal of goods At concession rate Rules 2001
- Excise Circulars Notifications

Registration of factory/warehouse Sec 6 Rule 9

Notification NO 35 &36/2001

Persons requiring registration

- Every manufacturer of excisable goods (including Govt, autonomous corporations) on which excise duty is leviable.
- An importer / Dealers who desire to issue CENVATABLE invoices
- Persons holding private warehouses.
- Persons who obtain excisable goods for availing end-use based exemption notification.
- Exporters manufacturing or processing export goods intending to claim rebate of such duty
- EOU units procuring goods from DTA or supplying goods to DTA

Persons Exemption from Registration Notification No. 36/2001- dt.26.6.2001,

Indirect taxes- Central Excise- simplified

- Persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification
- SSI units availing the slab exemption based on value of clearances under a notification. Only declaration when the value of their clearances touches Rs.40 lakhs.
- job-worker of ready-made garments need not get registered if the principal manufacturer undertakes to discharge the duty liability
- Persons manufacturing excisable goods by following the warehousing procedure under section 65 of Customs Act,
- The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in Cenvat Credit Rules, 2004).
- 100% EOU/SEZ licensed under the provisions of the Customs Act

Procedure for Registration

- Application in form A-1 duly filled up and signed along with self-attested copy of PAN should be submitted to Jurisdictional AC/DC.
- EOU located in port towns, application should be submitted to DC/AC Customs,
- If PAN is not available, copy of application made for PAN should be submitted
- AC/DC will scrutinize the application
- Registration certificate will be granted with in 7 working days
- Reg. No is based on 15 digit PAN (E C C No.)
- Range Officer and Sector Officer shall verify address and premises within 5 working days after registration

Other Provisions with regard to registration

- Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory
- Registration Certificate may be granted to minors if guardians conduct business
- Registration is not transferable.
- Any Change in constitution to be intimated within 30 days of change. No fresh registration required.
- If there is any change in information given in form A-1, the change should be informed in form A-1

Closure of business

- Apply for de-registration. Surrender original RC and pay duty up to date.
- Registration can be revoked or suspended if manufacturer or his employee breach of any of the provisions of Central Excise Act or Rules or has been convicted under section 161 of Indian Penal Code.

Penalty for non-registration

- Up to duty of contravening goods or Rs.2,000 whichever is higher
- In addition, Confiscation
- It is also an offence under section 9 of CEA imprisonment up to seven years (minimum 6 months) can be imposed

Factory' under Central Excise - Section 2(e)

- Factory means as any premises, including the precincts thereof, wherein or in any part of which, excisable goods are manufactured
- Precincts mean area enclosed by compound wall. A Canteen, a recreation club, a shed a cycle stand located in side the compound wall will be a factory
- Whole premises will be 'factory' if in any of its part, excisable goods are manufactured.
- It is not necessary that factory registered under factories act.
- Whole premises will be 'factory' if in any of its part, excisable goods are manufactured

Records for storage of goods

Daily Stock Account of stored goods Rule 10

- A daily stock has to be maintained by every assessee.

Indirect taxes- Central Excise- simplified

- DSA should be maintained on daily basis, in a legible manner,
- Entry in DSA to be made after goods are fully manufactured, duly tested and packed

Particular of DSA

- Date
- Description of goods manufactured or produced
- Opening Balance
- Quantity produced or manufactured
- Inventory of goods
- Quantity Removed
- Assessable Value
- Amount of duty payable
- Particulars regarding amount of duty actually paid.
- Manufacturer or his authorized agent authenticates the first page and last page of such book.

Period

- All such records shall be preserved for 5 years.

Penalty will be levied

- for not maintaining or Overwriting and cutting, or
- Difference between DSA stock and Physical Stocks

Penalty will be duty payable on goods or Rs. 2000 whichever is higher and Confiscation

Clearance of Goods for home consumption Rule 11

- 'Clearance' means removal of excisable goods from the factory.
- Excisable goods can be removed from factory only under Invoice'.

Requirements of Invoice Rule 11(2)

- Invoice should be serially numbered. Serial No by printing or by franking machine.
- The serial number should start from 1st April and will continue for the whole financial year.
- Before using serial numbers, the serial number shall be intimated to Range Superintendent

Invoice to be prepared in triplicate with suitable marks

- Original shall be marked 'ORIGINAL FOR BUYER'
- Duplicate copy shall be marked 'DUPLICATE FOR TRANSPORTER'
- Triplicate shall be marked 'TRIPLICATE FOR ASSESSEE'.
- Additional Copies if any can be maintained and they should be marked as 'NOT FOR CENVAT PURPOSES'.
- Only one invoice book should be used at a time
- Separate series of invoice for export and home consumption permitted. Assessee has to just intimate AC / DC.
- Invoice to be authenticated by owner or authorized person (Pre-authentication before used is not required Wef 01.04.2010)
- Invoice should be in book form
- The invoices can be 'loose leaf' only if Invoices are computerized.
- Non Compliance of above goods can be detained or Cenvat credit can be denied –
- In invoice duty payable should be rounded to in nearest rupee (sec 37 D) -

Contents of Invoice

- Name address, Registration Number of Manufacturer
- Name of proprietor in case of proprietor ship firm, Karta, Head in case of HUF
- Name and address of consignee
- Description and classification of goods
- Time and date of removal
- Quantity and Assessable Value of goods
- Rate of duty
- Duty payable on the goods.

Indirect taxes- Central Excise- simplified

- Mode of transport
- Name and Address of the jurisdictional Central Excise Division of assessee

Supplementary Invoice for differential duty –

- Prepared when Assessee may have to pay differential duty
- Should contain cross-reference to the original invoice

Computerization of Invoices

No permission is required.

Requirements

(1) In Case of running stationery

- the stationary should be pre-printed with all details
- After invoices are prepared, triplicate copy shall be retained in bound book form.

(2) If case of Blank stationery

Computer software should generate serial number automatically

- Same number cannot be generated more than once. –

Price of goods should indicate amount of duty paid there on Sec 12 A

Every person liable to pay duty at the time of clearance of goods, **prominently indicate** in all documents relating to assessment and sales invoice, the amount of duty which will form part of price at which goods are sold.

Manner of Payment of Duty Rule 8

Due date for payment of Excise duty

Nature of Assessee	Month	Due Date
All Assessee except SSI	April to Feb	5th of the following month
SSI-	April to Dec-	5th of the following Quarter (wef 01.04.2010)
All Assesses-	March (SSI -Jan to Mar)	March 31
In case of E payment	April to February SSI(April to Dec -3qtr)	6th of the following month 6 th of the following Quarter

EOU now can pay duty on monthly basis vide notification No 23/2008 dt 23/05/2008 (earlier day basis)

e-payment mandatory for payment of duty by all assessee who have paid excise duty of, rupees 10 lakh or more during the previous financial year or already paid Rs. 10 lakhs during the current financial year, Gross (before availing Cenvat credit) - WEF 01.04.2010

- Discharge of duty liability only if the amount payable is credited to C. G A/c
- Payment by Cheque the date of presentation of the cheque is the date of payment- subject to realization of that cheque.
- Payment of duty also include **payment of an amount** as per cenvat credit rules
- If the due date is holiday duty can be paid on next working day.

Delay in payment of duty- Interest payable @ 13% p.a starting from first day after due date till the payment of duty

If Assessee defaults payment of duty more than 30 days,

- Assessee will forego the monthly facility of payment of the duty
- Such forfeiture will be till such date on which all dues including interest thereof are paid,
- During such punishment period Payment of duty should be made on each consignment basis

without availing cenvat credit

- in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and penalties can be levied

GAR-7 Challan

Excise duty is to be paid using G A R 7 Challan. (TR 6 challan up to 31.03.2007)

Particulars of Challan

- Name address, telephone no of Assessee

Indirect taxes- Central Excise- simplified

- 15 Digit ECC No of assessee
- Commissionerate code, Division code, range
- 8 digit accounting code of duty/cess payable
- Payment should be made in Designated Bank with signature of Assessee
- The challan should be serially numbered, from 1st April onwards –
- Countersignature of excise officer is not necessary in challan
- After payment assessee should ensure the counter foil should contain with bank seal, BSR code of branch (7 digits) Date of deposit (8 digits) and challan serial number (5 digits). Total 20 digits known as CIN (challan identification Number) and it should be quoted in return

Personal Ledger Account (PLA)/ Current Account

- PLA is duty payment register
 - Assessee should pay duty through PLA.
 - No specific permission is necessary.
 - The PLA debited with duty payable and credited when duty is deposited in bank by GAR 7 challan
- PLA contains following details:**
- Serial No., and date,
 - Details of credit like GAR 7 challan number, date and amount for each subhead of excise duty details of debit and balance.

Maintenance of PLA

- PLA has to be maintained in triplicate using indelible pencil and both sided carbon
- Each entry should be serially numbered and should be made on a separate line.
- The running serial number should start from 1 every financial year.
- Both debit and credit entry should not be on same line
- PLA and Cenvat credit should be used only for payment duty and not for other payments like rent, fines, penalties etc
- Corrections in PLA are not allowed.
- If any correction is necessary, the original entry should be neatly scored out and attested by assessee. Fresh entry to be made in next row.
- Two copies of PLA and copies of GAR 7 receipted challan shall be submitted along with Excise return

Periodical returns- Rule 12

The following are the various returns are to be filed by the assessee, the return is required *in quintuplicate*, and Assessee will have sixth copy as his record copy.

Form of Return	Description	Who is required to file	Due date for filing return
ER-1[Rule 12(1) of Central Excise Rules]	Monthly Return by large units	Manufacturers not eligible for SSI concession	10th of following month
ER-2[Rule 12(1) of Central Excise Rules]	Return by EOU	EOU units	10th of following month
ER-3[Proviso to Rule 12(1) of Central Excise Rules]	Quarterly Return by SSI	Assessee availing SSI concession	10 th of following quarter Wef 01.04.2010
ER-4[rule 12(2) of Central Excise Rules]	Annual Financial Information Statement	Assessee paying duty of Rs one crore or more per annum through PLA	Annually by 30th November of succeeding year
ER-5 [Rules 9A(1) and 9A(2) of Cenvat Credit Rules]	Information relating to Principal Inputs	Assessee paying duty of Rs one crore or more per annum through PLA and manufacturing goods under specified tariff headings	Annually, by 30th April for the current year (e.g. return for 2010-11 is to be filed by 30-4-2010).
ER-6 [Rule 9A(3) of	Monthly return of receipt	Assessee required to	10th of following month

Indirect taxes- Central Excise- simplified

Cenvat Credit Rules]	and consumption of each of Principal Inputs	submit ER-5 return	
ER-7 [Rule 9A(4) of Cenvat Credit Rules]	Annual Installed Capacity production Statement	Assesseees required to submit ER-5 return	Annually, by 30th April for the current year (e.g. return for 2010-11 is to be filed by 30-4-2010)].

Certain Manufacturers are exempt from filing of Annual Installed Capacity production return such as biris, manufactured without the aid of machines, matches manufactured without the aid of power & reinforced cement concrete pipes Notification dated 26/2009 dt.18.11.2009

Submission of list of records Rule 22(2)

Every assessee should submit, a list in duplicate of all records Prepared or maintained by him

- For receipt, purchase goods
- For Manufacture, storage of goods
- For Sale or delivery of goods
- Registers should be maintained for inputs and capital goods.
- The above records and Cost Audit Report, Income Tax Audit Report u/s 44AB of Income Tax Act Should be submitted for scrutiny in case of inspection to Range officer, Audit persons

Meaning of 'record'

- All accounts, agreements, invoice, price list, return, statement or any other source document, whether in writing or in any other form, sales invoice, purchase invoice, journal voucher, delivery challan and debit or credit notes. -

Electronic filing of Returns mandatory when duty payment exceeds Rs. 10 lakhs

CBE&C has introduced the facility of filing the monthly/quarterly excise returns electronically.

Where the duty payment Gross (including utilization of Cenvat credit) is Rs. 10 lakhs or more during the previous financial year, returns to be filed electronically. Even the (FSD/SSD) dealer required to file electronically. It is mandatory (WEF 01.04.2010)

- To avail the facility of e filing assessee should submits an application in the prescribed form for e filing
- Assessee should Submit returns after receipt confirmation, User ID and Password from the Department,

JOB WORK

Meaning-(Notification NO 214/86)

- Processing or working upon of raw materials or semi-finished goods
- So as to complete a part or whole of the process resulting in the manufacture Or finishing of an article or
- Any operation which is essential for the aforesaid process.

Persons eligible to send materials for job work

- (a) Manufacturers (b) Exporters (c) Units in SEZ, EOU, EHTP & STP (d) persons supplying U N O etc
- Job worker can use his own material and recover charges therefore from the principal manufacturer.

Inputs that can be sent for job work

- All inputs except diesel petrol and oil, filament yarn

Duty liability in case of Job Work

If job work process is a manufacture, job worker has to pay excise duty.

Job worker will exempt from payment of duty in the following cases

- Should not receive material from trader or buyer
- The manufacturer should give declaration to jurisdictional CEO that he will undertake duty liability
- After the job work, processed material, balance unused material and scrap should be returned to supplier.
- Goods can be cleared directly from the place of job worker with permission of Commissioner.

Exemption from duty for job worker when material received under Cenvat provisions

Indirect taxes- Central Excise- simplified

- Material received by a manufacturer under CENVAT can be sent to a job worker
- He should material brought back by the manufacturer for further processing.
- In such cases, there is no duty liability on the job worker and he is exempted from the same.

Large tax payer units Rule 12 BB

Meaning of Large tax payer unit

- Who is presently assessed to income tax in any of the five cities (Bangalore, Chennai, Delhi, Kolkata or Mumbai)
- has one or more registered premises under the Central Excise Act, 1944 or Service tax Act
- and an assessee under the Income Tax Act, 1961, who holds a Permanent Account Number issued under section 139A of the said Act, and

Who has paid during any in previous year to the year of filing application for option to avail STP

- excise duty in cash (account current) of Rs 5 crore or more; or
- service tax in cash (account current) of Rs 5 crore or more; or
- advance (income) tax/corporation tax of Rs 10 crore or more

A large taxpayer who satisfies the conditions mentioned above may file an application in prescribed form duly completed in all respects to the Chief Commissioner of Central Excise, indicating his willingness to be a large taxpayer. He can avail facility of all the excise, service tax and income tax at one place in single window clearance. However the scheme is only optional.

Procedure for LTP units

LTP can avail the following facility-

- Can remove excisable goods, except petrol and diesel oil without duty to any person registered premises except FSD/SSD
- Removal should be with invoice or transfer challan
- The goods can be cleared for Home consumption or export with in 6 months from the date of sending the material
- If not cleared the recipient premises has to pay duty will interest u/s 11 AB
- The transfer challan or invoice should contain similar particulars of invoice Rule 11
- A large taxpayer shall submit the monthly returns, as for each of the registered premises.
- A large taxpayer, on demand, may be required to make available all records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification as may be necessary.
- Availment of LT P scheme is optional
- A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

Power to impose restrictions in certain types of cases.

Central Government, if necessary in the public interest to provide for certain measures

Considerations for taking measures

- Extent of evasion of duty,
- Nature and type of offences or
- Such other factors as may be relevant

Measures:

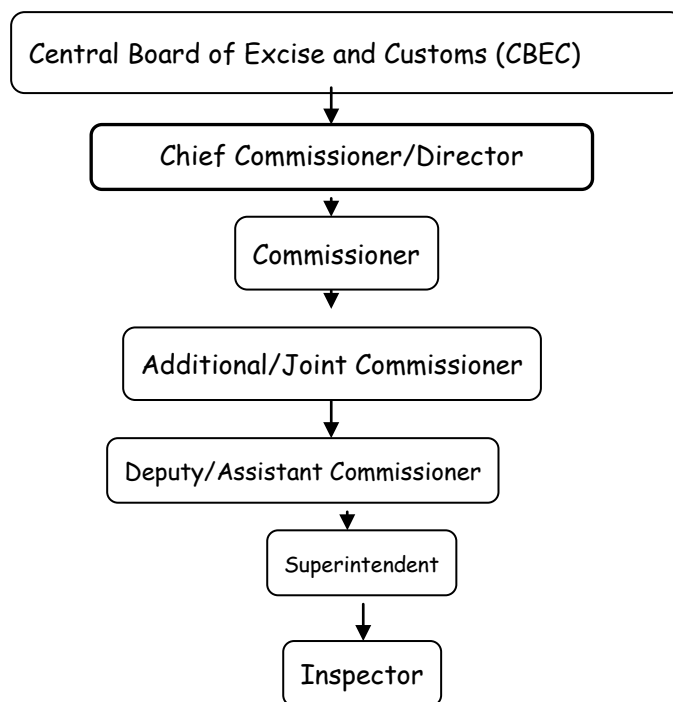
- May place restrictions on a manufacturer, FSD/SSD or exporter, specify nature of restrictions including suspension of registration in case of a dealer
- Types of facilities to be withdrawn
- Procedure for issue of such order by an officer authorized by the Board.

The circumstances under which the restrictions are place are

Indirect taxes- Central Excise- simplified

- Removal of goods without the cover of an invoice and without payment of duty; removal of goods without Correct Value
- Excess sale price realized not accounted;
- Availing CENVAT Credit without the receipt of goods/ specified documents
- Availing CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine
- Issue of excise duty invoice without delivery of goods specified in the said invoice;
- Claiming of refund or rebate which are not genuine

Excise Administration

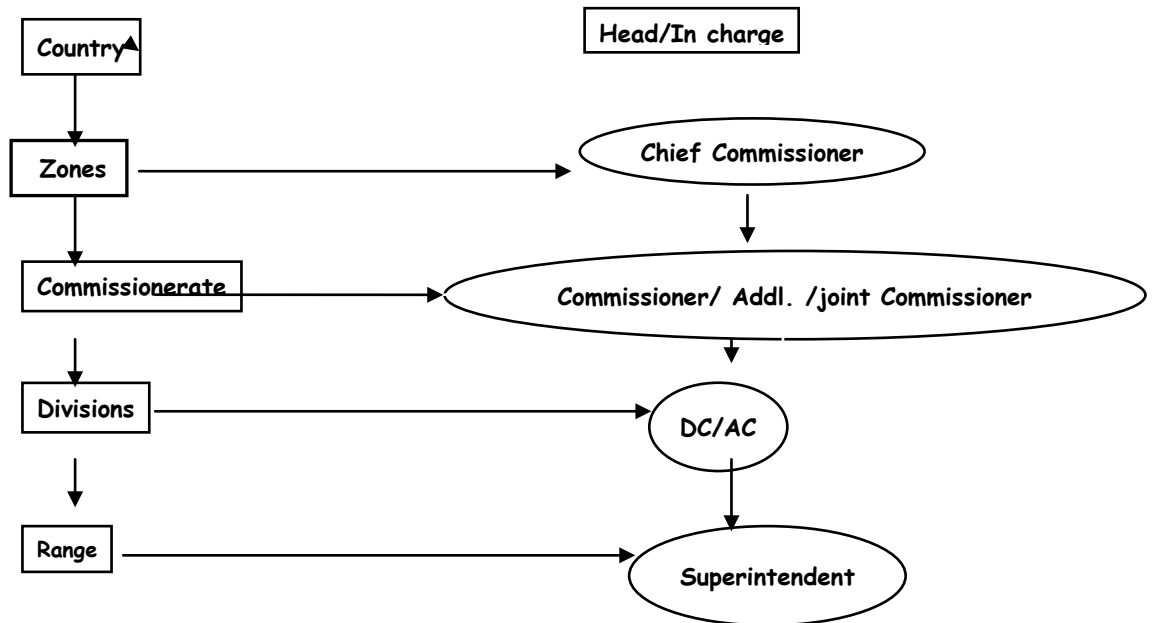


Meaning of CEO: All above in the hierarchy from Chief Commissioner to Inspector including Commissioner (Appeals) and Officer of State government if CBEC entrusted any powers to him

Meaning of Adjudicating authority: Authority who has right to pass orders decisions under Act excluding Commissioner Appeals, Appellate tribunal and CBEC

Indirect taxes- Central Excise- simplified

Segregation of excise functions



Board - CBE&C.

- Formed under Central Boards of Revenue Act, 1963. Head Quarter in New Delhi
- Consisting of six to seven members, headed by Chairman,
- Chairman has powers to administer the Excise Act/distribute work
- Central Excise Rules authorizes Board to appoint Central Excise Officers. Rule 3(1)
- Board can exercise all powers conferred on these officers under the Central Excise Act.
- Board can authorize CC/C/JC/DC/AC to appoint officers below rank of AC.
- Section 37B of CEA authorizes Board to issue orders, instructions and directions to Central **Excise Officers**

The Provisions with regard to Excise Officer are similar in section 4(1) and 151 A of Customs Act as below.

Chief Commissioner of Central Excise

- Country is divided in several zones.
- Each 'zone' is under supervision of '*Chief Commissioner of Central Excise*'
- Board Specify the jurisdiction of Chief Commissioner, Commissioner or Commissioner (Appeals).

Commissioner of Central Excise

- Each 'zone' covers various Commissionerate and
- Commissioner of Central Excise (CCE) is Administrative in-charge of the 'Commissionerate'.

Additional Commissioner of CE –

- There may be one or more Additional Commissioner in a Commissionerate.
- Restrictions on powers of Additional Commissioner have been placed through administrative instructions.
- Commissioner has unlimited powers of adjudication, while Addl Commissioner has restricted powers of adjudication.

Deputy Commissioner/Assistant Commissioner

- Each Commissionerate of Central Excise is divided into divisions
- Each division is under administrative control of 'Deputy Commissioner' or 'Assistant Commissioner of Central Excise'
- Assistant Commissioner (Senior Scale) is designated as 'Deputy Commissioner'

Indirect taxes- Central Excise- simplified

- Both Assistant Commissioner and Deputy Commissioner have same powers.

Superintendent

- The division under each Deputy / Assistant Commissioner of Central Excise is further divided into various ranges
- Each range is under control of Superintendent of Central Excise, who is of the rank of a Gazetted Officer.
- Inspectors work under Superintendent and some powers have been delegated to them. Inspectors are not a Gazetted Officers.

POWERS OF CENTRAL EXCISE OFFICERS

Excise Officer Power to Access to registered premises.

- An officer empowered by the Commissioner shall have access to any registered premises
- He can carry out any scrutiny, verification and checks.
- Every assessee, and FSD & SSD shall furnish to the officer, a list in duplicate of all the records
- Records and Audit reports make available to the officer or the audit party

Visit Book of Excise Officers

- Each factory is required to maintain a visit book in prescribed form.
- Inspector and Superintendent visiting the factory are required to fill in the book.

Restrictions on visit to SSI

- Excise Officers and departmental audit parties can visit SSI units for specific purposes only and on specific written permission of Assistant/Deputy Commissioner.

Excise officer power to stop conveyance, search and seize:

- If he has reason to believe that the goods are being carried with the intention of evading duty.

Power to detain or seize the goods -Rule 24 of Central Excise Rules.

- any goods, which are liable to excise duty but no duty is paid thereon or
- the said goods are removed with intention of evading the duty payable thereon,

Return of Seized Documents/ books Rule 24 A of Central Excise Rules (Notification No 17/2009 dt 07.07.2009

The books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or the rules made there under, shall be returned within **thirty days** of the issue of said notice or within **thirty days** from the date of expiry of the period for issue of said notice:

Provided that the Commissioner of Central Excise may order for the retention of such books of accounts or documents, for reasons to be recorded in writing and the Central Excise Officer shall intimate to the assessee or such person about such retention.

Excise Officers power to issue summons sec 14

- Asking a person to appear before the named authority and give evidence and produce documents or other things.
- Person summoned is bound to attend and state the truth upon the required subject

Excise officer power to arrest a person [Section 13].

- An Excise Officer not below the rank of Inspector, to arrest a person whom they have '*reason to believe*' to be liable to be punished under provisions of the Act
- Such arrest can be only with prior approval of Commissioner of Central Excise.

Indirect taxes- Central Excise- simplified

Cenvat Credit

Cenvat Credit Highlights

- Cenvat Credit Rules, 2004 with effective from. 10-9-2004.
- Integration of Central Excise and Service tax
- Applicable for Manufacturer, Service provider
- Manufacturer can take credit for excise duty and Service tax
- Service provider will take credit for service tax and Excise duty
- Credit of duty paid on inputs and Service tax paid on input services providing output service
- The input may be used directly or indirectly in or in relation to manufacture
- No input credit if final product/output service exempt from duty/ service tax –
- Cenvat Credit Rules do not require input-output correlation to be established
- Credit for specified duties
- Credit of duty service tax only based on documents
- Records to be maintained and returns to be furnished

Important Definitions

Exempted Goods

- Excisable goods fully exempted from duty
- Excisable goods Charged to Nil duty

Exempted Service

- Services Where no service tax payable;
- Taxable service wholly exempted from tax

Final Product

- Excisable goods manufactured or produced using input or input service

First Stage Dealer

- Dealer who purchases goods directly from Manufacturer from his factory, depots, Consignment agent with invoice

Second Stage Dealer

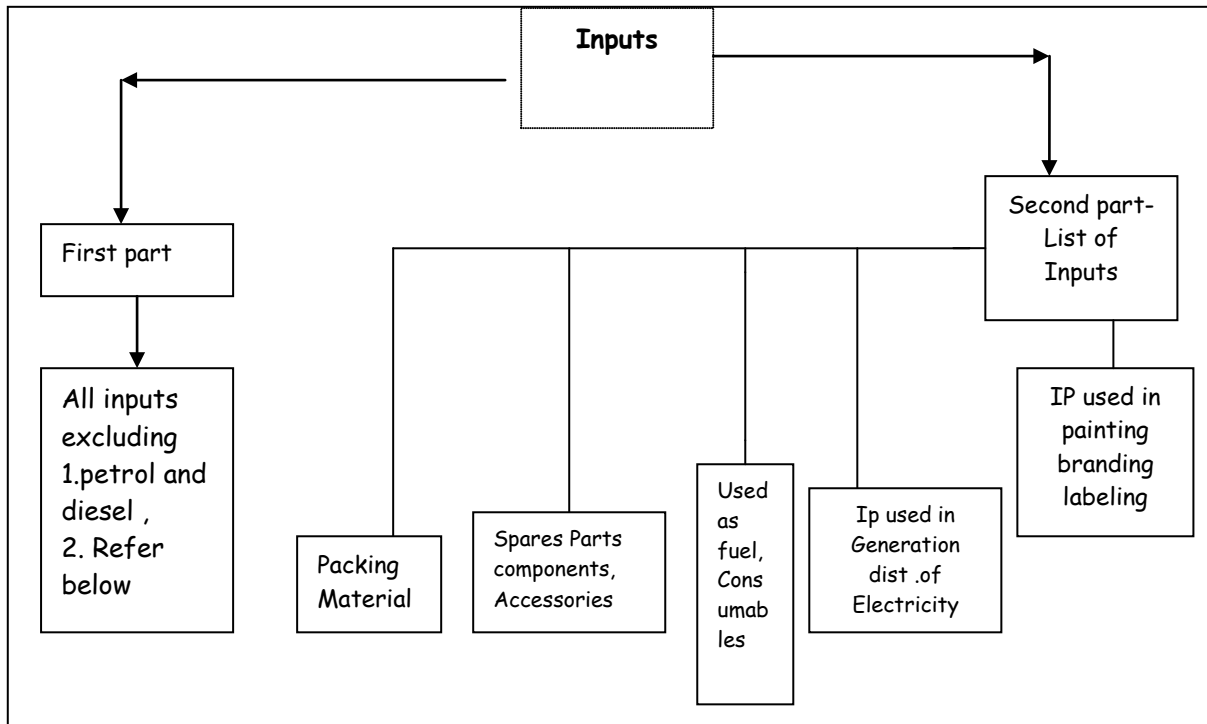
- Dealer who purchases goods directly from First Stage dealer

Output service“

- any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person

Pictorial diagram of Inputs

Indirect taxes- Central Excise- simplified



2. Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer **but shall not include** cement, angles, channels, Centrally Twisted Deform bar(CTD) or Thermo Mechanically Treated bar(TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods ;

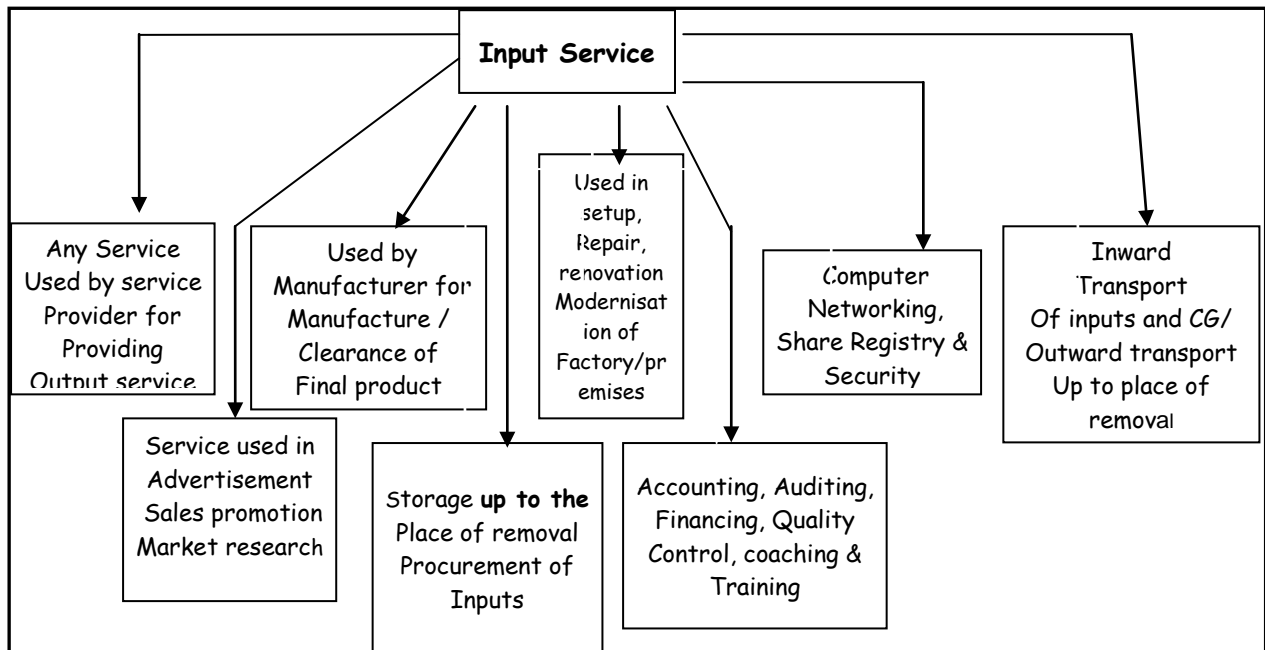
Conditions for availing the credit

- Inputs should be used in the factory
- If Inputs used outside factory, no credit .(in case of cement manufacture inputs can be use outside factory (mines). Credit can be availed.- Vikram Cement (SC)
- Inputs can be used directly or indirectly for manufacture of final product or providing output service.
- Inputs may or may not present in final product
- Input output correlation not necessary i.e. One to one Correlation not required
- Credit on input process loss will also be allowed
- No credit if inputs destroyed during transit or before issue for production
- Credit can be availed if inputs destroyed during the process/in the course of manufacture.
- In case of service provider Inputs should be **used in relation to providing output put service is eligible. ie inputs directly used for providing service only eligible for cenvat credit.**

Illustrations on inputs eligible for cenvat credit

- Process losses and handling loss are allowable
- Loss of inputs during handling eligible
- Excessive loss also permissible
- Inputs required for quality control tests are eligible
- Repeated use is not a bar for availing Cenvat credit
- Inputs used in effluent treatment plant eligible
- Defective final product is 'input' for purpose of availing Cenvat credit
- All the inputs necessary to make goods marketable are eligible for cenvat credit

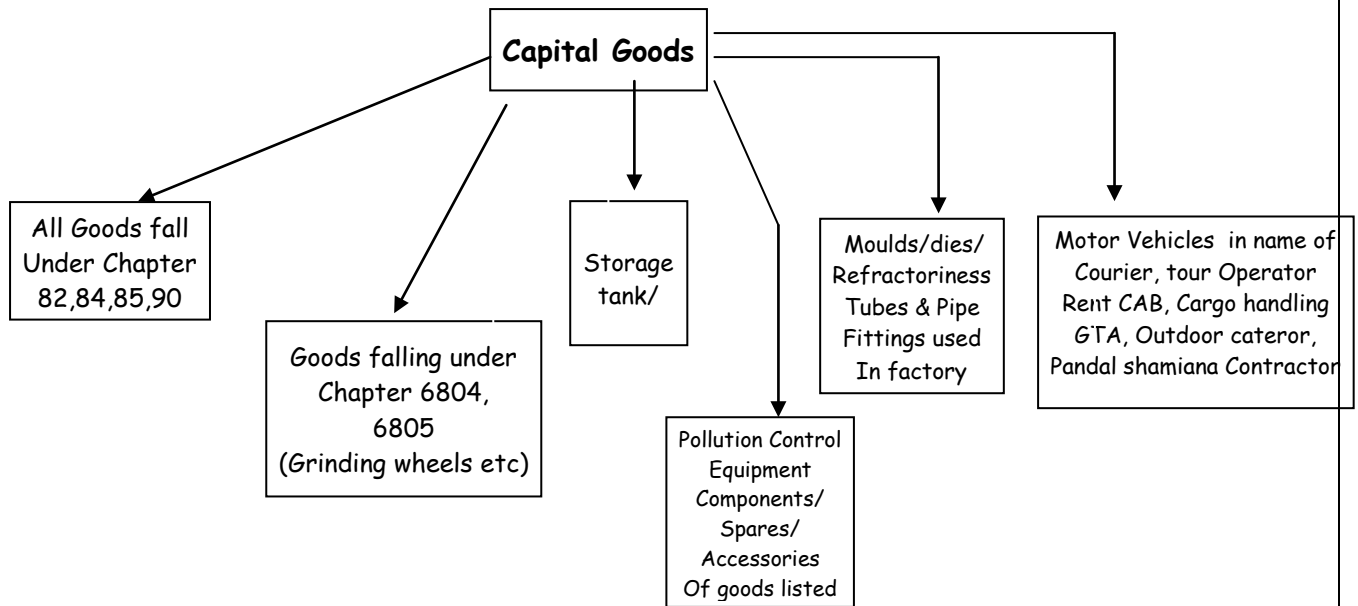
Indirect taxes- Central Excise- simplified



Illustrations for input service eligible for cenvat credit- Payments made for

1. Any service where the amount is includible in valuation
2. Outward freight whether includible in value or not
3. Inward freight
4. Courier
5. Vehicle servicing
6. Premises, Machinery service, repairing
7. Outdoor catering
8. Travelling agents, Rent a cab
9. Manpower
10. All expenses up to port in case of export
11. Commission paid to agents, brokers
12. Amount paid to consultants
13. Group insurance of family
14. Mobile phones directors employees
15. Landline phones at residence of officer used for business
16. Import of services in case of- service receiver

Indirect taxes- Central Excise- simplified



Office equipments/Appliances are not capital goods for manufacturer. Service provider can take credit on office equipment and appliance if they use for providing output service
Capital Goods should be received in the factory of manufacturer/premises of service provider to avail cenvat credit

Dumpers or tippers, falling under Chapter 87 of the First Schedule to the CETA is the Capital goods for the services (1) site formation and clearance, excavation and earthmoving and demolition and such other similar activities & ,(2) mining of mineral, oil or gas Services (WEF 01.04.2010)

Items used in Ceramic industry such as alumina balls/ ceramic pebbles & bolting cloth/ screens/ silicon cylinders are the parts and Components of Machines, hence they are capital goods *Circular No. 920/10/2010 - CX dated 01.04.2010*

Components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services such as Courier, tour Operator Rent CAB, Cargo handling GTA, Outdoor cateror, Pandal shamiana Contractor site formation and clearance, excavation and earthmoving and demolition and such other similar activities & ,(2) mining of mineral, oil or gas Services Notification No. 29/2010-CE (NT) Dated 24/9/2010

Capital goods which are not defined as capital goods will be eligible as inputs if they used in the manufacturing- Telco Ltd (SC)

Cenvat Credit Rule 3

Who can avail Cenvat Credit?

- Manufacturer
- Service provider
- E O U when they clear goods to DTA

Duties on which credit can taken

- .1.Basic excise duty – First Schedule of CETA
- .2.Special excise duty- Second Schedule of CETA
- .3. Additional Excise Duty Of GSI
- .4.Additional Excise Duty of Textile Articles
- .5.Additional Excise Duty Clause 85 of Finance Bill 2005 (Payable on tobacco Products)

Indirect taxes- Central Excise- simplified

- 6. National Calamity Contingent Duty
- 7. Education cess on duty of all above
- 8. Additional Customs Duty (CVD) u/s 3(1) & 3(3) of CETA equivalent to 1 to 6
- 9. Additional Customs duty CVD u/s 3(5) (service provider cannot avail)
- 9. Education cess and secondary/higher education cess Levied on imports equal to above 1 to 6
- 10. Service tax paid on input Services

Note

- Credit for 4 to 6 and corresponding CVD will be utilized only for payment of respective duties
- Additional Excise Duty Of GSI credit can be utilised only for same duty as well as Basic excise duty and special excise duty
- Credit on Education cess will be available only for payment of EC

The credit of additional duty of customs under 3(5) of the Customs Tariff Act, 1975 shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

There is provision for refund of CVD u/s 3(5) if cenvat credit was not availed, when sales tax was paid on the removals

Utilization of Cenvat Credit Rule 3(4)

The Credit of Cenvat can be utilized for the following- for the payment of

- duty on final product by manufacturer
- an amount equal when inputs removed as such or after partial processing
- amount when capital goods cleared as such
- an amount when goods cleared after repairs
- an amount when inputs sent for Job work not returned within 180 days
- an amount When payment of 10% on the exempted value of goods
- For reversal of Cenvat credit when common inputs used for dutiable and exempted products
- For payment of Service tax by service provider

By product, waste scrap and Intermediate product is treated as final product for availing cenvat credit

Credit can be availed only up to month end supplies

Cenvat credit of any duty cannot be utilized for payment Clean energy cess WEF 01.07.2010

Cenvat Credit When F P ceases to exempt and dutiable Rule 3(2)

Cenvat credit can be taken on

- Input lying in stock
- Input present in process and final product

Cenvat Credit When dutiable F P become to exempt and no duty payable Rule 11(3) & 11(4)

When the dutiable product becomes exempt by virtue of notification u/s 5 A of Central Excise Act or where the manufacturer /service provider is availing conditional exemption,

The manufacturer or service provider should be reverse or pay an amount equal to cenvat credit availed on

- Input lying in stock
- Input present in process and final product

There is no necessity to reverse or pay on cenvat credit availed on input service.

Similar Provision also made in case of SSI units who is not availing the benefit of exemption notification and decided to avail exemption notification

Removal of Inputs/Capital goods Rule 3(5)& (5A)

When manufacturer/Service provider removes inputs/ Capital goods" as such" after availing Credit- (as such means- without using)An amount equal to cenvat credit availed should be paid. Such

Indirect taxes- Central Excise- simplified

payment is not required when service provider removing inputs or capital goods for providing Output service.

- If capital goods removed after use an amount equal to cenvat credit availed is reduced by points calculated on the straight line method @ 2.5 % per quarter of **from the date of availment** is to be paid. In case of computers and peripherals , the amount reduced will be for each quarter in the first year @ 10%, (ii) for each quarter in the second year @ 8%
- (iii) for each quarter in the third year @5% (iv) for each quarter in the fourth and fifth year @1% (Notification No 6/2010 dated 27.02.1010. wef 01.04.2010
- If capital goods removed after use as a scrap duty should be paid based on transaction value

Written off of inputs and Capital goods in books of account before use Rule 3 (5B)

If the value of any,

- (i) Input, or
- (ii) Capital goods before being put to use,

on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

If the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules.”

Written off of finished goods and Work in progress Circular No. 907/27/2009

CX dated 07.12.2009

In case, finished goods are written off in the books of accounts:-

(i)

S.No.	Excise duty on the finished goods under rule 21 of the Central Excise Rules, 2002 has	Treatment
1.	Not been remitted (No waiver of duty)	The manufacturer would be liable to pay excise duty. Thus, he need not reverse the CENVAT credit taken on inputs.
2.	been remitted (waiver of duty)	The manufacturer would be required to either:-reverse the credit on the inputs used, or pay the excise duty.

(ii) In casework in Progress are written off in the books of accounts:-

S.No.	Stage of Completion of WIP	Treatment
1.	It can be considered as manufactured goods	same treatment as applicable to finished goods in point (i) mentioned above
2.	It cannot be considered as manufactured goods	Treat it as inputs and reversal of Cenvat credit is required

Breakage loss of inputs –reversal of Cenvat credit:

In case of breakage loss of input, which is fully written off in the books of account, credit availed is required to be reversed as per the provisions of Rule 3(5B) of CENVAT Credit Rules, 2004.
Circular No. 930/20/2010-CX dated 9.7.2010

Indirect taxes- Central Excise- simplified

Reversal of Cenvat Credit in case of Remission of duty Rule 3 (5C)

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 used in the manufacture or production of said goods shall be reversed."

Cenvat Credit in respect of amount paid on Capital goods removed Rule 3 (6)

The amount paid when capital goods removed after use and duty paid when capital goods removed as scrap is eligible for Cenvat credit for the buyer .

Cenvat Credit in respect of EOU/STP/EHTP Rule 3(7)

When goods cleared to DTA Cenvat credit can be availed as below

- $X \times \{(1 + \text{BCD}/200) \times (\text{CVD}/100)\}$
- where X is the assessable value,
- BCD is the basic customs duty and
- CVD is the additional duty of customs. [Notification No. 48/2008 CE (N.T.) dated 05.12.2008.]

Cenvat Credit in case of Buyer of goods from EOU/STP/EHTP

The buyer who purchases goods from the EOU/STP/EHTP can avail cenvat credit on CVD (additional Customs duty) paid u/s 3(1) and Special CVD u/s 3(5) – ie 4% - Notification No 22/2009 dt 07.09.2009

Reversal of Cenvat Credit in case of discount after removal/reduction in duty

- When manufacturer availed credit on duty on the based on invoice
- Subsequently the supplier gives discount by way of reduction of price, but duty was not reduced , no need to reverse of cenvat credit availed,
- However supplier gives discount in reducing the duty also, the manufacturer can avail cenvat credit only the duty amount paid to supplier.
- The reduced amount of duty should be reverse
- CBEC Circular No. 877/15/2008-CX Dated 17/11/2008

Direct despatch from manufacturer to final buyer, but sale is through dealer i.e. Transit sale - If whole consignment is despatched to buyer from manufacturer, Cenvat will be permissible, if name of the final buyer is shown as consignee. (Invoice will be in name of dealer). The consignee can avail Cenvat on the basis of duplicate copy of manufacturer issued under Rule 11 (*that time Rule 52A*). In such cases, the goods need not be brought to the premises of registered person. Invoice of Registered person (dealer) is not required for availing Cenvat by the consignee -**CBE&C Circular No. 96/7/95-CX dated 13-2-1995.**

Cenvat credit on capital goods used in manufacture of exempt intermediate product - It may happen that capital goods may be used in manufacture of an exempt intermediate product, but final product may be dutiable. In such case, Cenvat credit is available on such capital goods, if final product is chargeable to duty. - **CBE&C circular No. 665/56/2002-CX dated 25-9-2002.**

Conditions for availing credit Rule 4

When Credit can be availed

- In case of inputs Immediately after receiving in to factory, No need to wait till utilization
- In case of Input service only after payment of input service bill
- In case of capital goods after receiving in to factory/Premises of service provider.

Indirect taxes- Central Excise- simplified

•In case of transaction between associated enterprises, credit can be availed in respect of input service, when entries made by way of debit notes, credit notes or any other mode. Circular No 122/03/2010 dt.30.04.2010

Quantum of Credit

For Inputs- Full on all eligible duties

In case of Capital goods- 50% in the First year and Balance in next years

When Capital goods cleared in the same year as such full 100% credit can be availed. However reversal of credit is required.

In case of an SSI Full credit of 100% in the first year can be availed in respect of capital goods (Notification No 6/2010 dated 27.02.2010 wef 01.04.2010)

CENVAT credit can also be availed even capital goods acquire on lease, hire purchase or loan agreement.

No Cenvat credit on duty amount, if manufacturer claims depreciation on duty amount u/s 32 of Income tax Act

If inputs, Capital goods, can be sent to job worker.

•They should be returned back with in 180 days. If not returned, an amount equal to cenvat credit availed is payable. Credit can be taken after they receive back.

•Jigs, fixtures, moulds, jigs, dies can also be sent to job worker, no provision to return in 180 days.

Cenvat credit can be availed and no need to reversal of credit when they sent for use in another manufacturer/Jobwork- Notification No 6/2010- dated 27.02.2010 wef 01.04.2010

Clearance of goods from Job worker place

•Prior approval of commissioner to be obtained

•Approval for each job worker in one financial year is require,

•Bond to be executed if necessary

•Commissioner can impose any restrictions.

Refund of Cenvat Credit Rule 5

Where any input or input service is used in the final products/providing output service which is cleared for export under bond or letter of undertaking, or any input used in intermediate product which is cleared for export the CENVAT credit in respect of the input or input service shall be utilized towards payment of,

▪(i) Duty of excise on any final products cleared for home consumption or for export on payment of duty; or

▪(ii) Service tax on output service,

And where for any reason such adjustment is not possible,

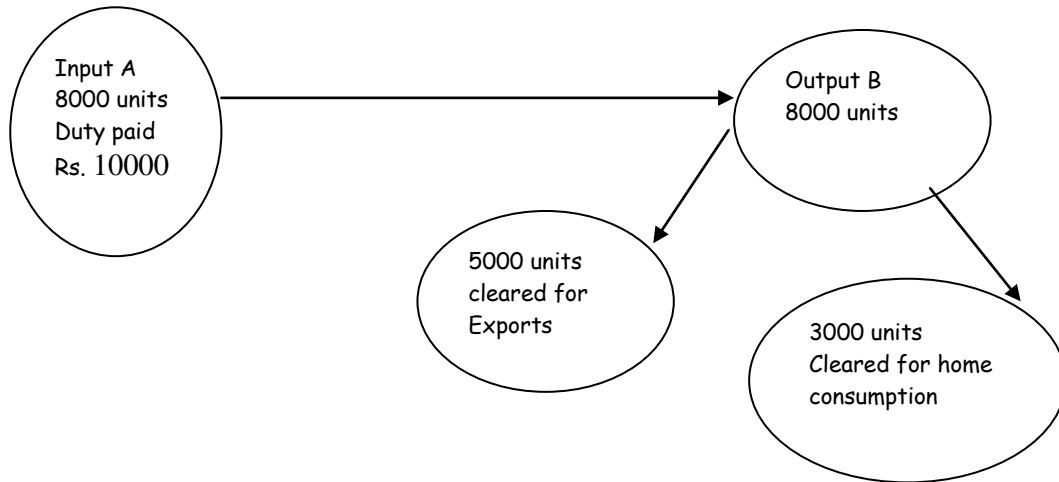
▪The manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations.

▪Cenvat refund not eligible for Exports to Nepal/Bhutan

▪No Cenvat if goods exported and exporter claims duty drawbacks. However customs portion will be paid.

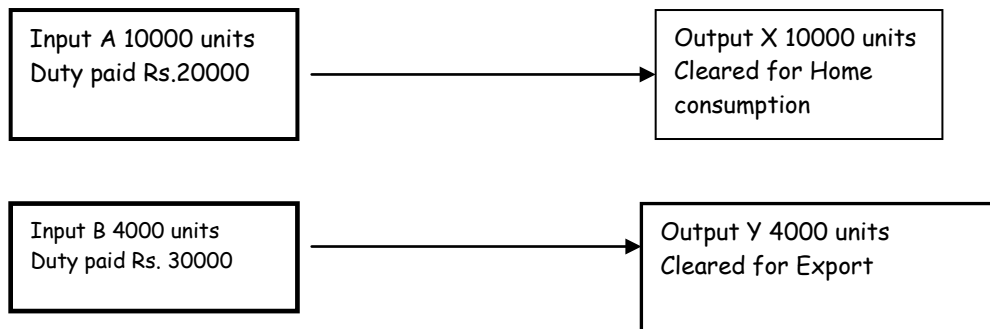
Example 1

Indirect taxes- Central Excise- simplified



Credit of duty paid on inputs used in 5000 units of product exported, can be utilised on while paying duty on 3000 units cleared for home consumption.

Example 2



While paying duty on X, credit can be utilised on the duty paid on Input A as well as Input B

Refund of Cenvat Credit in case of goods cleared to North eastern states Rule 5 A

The new rule provides that the Central Government may allow refund of CENVAT credit of duty taken on inputs used in the manufacture of dutiable final products cleared to North eastern states, if the manufacturer unable to adjust the credit in respect of clearances for other part of country for home consumption.

Indirect taxes- Central Excise- simplified

Common inputs for dutiable and exempted goods Rule 6

Where any input/input service which is exclusively used for manufacturing of exempted final product or exempted service no Cenvat credit

When inputs/input services are used partly for manufacture of dutiable goods/taxable services and partly for exempted goods/services.

In such cases, the manufacturer/service provider has three options –

Option 1

- Maintain Separate books for all inventory used for exempted goods/Services and dutiable goods and taxable service
- No Cenvat available on inputs used in exempted goods/exempted services

Option 2

- Where there is no separate books
- Manufacturer has to pay an amount at 5% on the assessable value of Exempted goods and he can avail credit on all inputs and in case of Service tax pay 6% on the Assessable value of exempted services.

Option 3

- Where there is no separate books
- Manufacturer has avail cenvat credit based on prorated and reverse of credit on prorated on exempted goods and services. An Intimation to CEO about exercising option.

Example: Input A quantity purchased 2000 units and duty paid Rs. 50,000 and it is used for Manufacture of two Products X and Y, where X is dutiable and Y is exempted. In such cases The manufacturer has three options as below

Option 1

Maintained separate records How much quantity of A was used to X and How much quantity of A was used to Y and avail credit only duty paid on Quantity used to manufacture A

Option 2

If separate records are not maintained, pay an amount of 10% on the Assessable value of Y and credit can be taken on all units of A

Option 3

- Where there is no separate books, avail credit prorated Manufacturer has avail cenvat credit based on prorated

•**In case of service provider** if no separate records are maintained, service provider has to pay an amount equal to 6% of Assessable value.

In case of service provider who is rendering general insurance services 6% is optional and he can follow other prescribed procedure,

Payment of 6% not Applicable (Non applicability of separate records)

In case of certain 17 categories of service tax such as (Repairs & maintenance, Installation, inspection, consultancy, interior decoration, Real Estate agency, Auditing etc) These service should not be used exclusively for exempted services. They can be used partly for exempted service/taxable service

The maintenance of separate records/payment of 5% on exempted product will not applicable (Credit can be availed) in case of (Preferential removals)clearances to

- Final product is dispatched to SEZ unit or developer of SEZ unit, EOU, EHTP or STP.
- Final product is supplied to United Nations or an international organisation for their official use or supplied to projects funded by them, which are exempt from duty.
- When final product is exported under bond without payment of duty
- Gold or silver arising in course of manufacture of copper or zinc by smelting.
- Goods supplied against International Competitive Bidding
- all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under of section 3 (1) of the

Indirect taxes- Central Excise- simplified

said Customs Tariff Act when imported into India and are supplied, Notification No 6/2010 dated 27.02.2010 WEF 01.04.2010

- (a) against International Competitive Bidding; or
- (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
- (c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006
- supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents (WEF 01.07.2010)

Eligibility of Cenvat Credit on 5% or 6% amount: It is an amount and not duty, hence no EC payable. The amount to be paid within due dated specified in rule 8. In addition the amount of 5% or 6% should be shown separate column mentioning duty nil. **No cenvat credit** to the buyer on 5% or 6% of the amount CBEC Circular No 870/08/2008 dated 16.05.2008.

Distribution of Credit by Input Service Distributor	Rule 7
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Input service distributor Meaning

- Managing Office of business of manufacturer/Service Provider
- Which receives invoices under service tax rules and who distribute the credit through bill, invoice Challan

Conditions

- Credit can be availed only when input service bill was paid
- Total amount of distribution of credit should not exceed the amount of Service tax paid
- Credit of service tax cannot be distributed when the input service was used exclusively for exempted service

Example

- An adverting agency renders service for a company Head office and for its various branches
- Ad agency raises bill on Head office and charges service tax of Rs. 3 lakhs on the bill
- Head office is known as input service distributor
- Head office can distribute this service tax to head office and various braches based on suitable proportion, by way of challan
- Braches can take credit on the basis of challan issued by Head office

Storage of inputs outside factory Rule 8

- AC/DC under exceptional Circumstances
- Considering the
- Nature of goods
- Shortage of space in factory
- By order
- permit manufacturer to store inputs outside the factory
- Cenvat credit can be availed in respect of these inputs
- AC/DC Can impose restrictions/Conditions/Limitations
- If these inputs are not used as per rules, the manufacturer shall pay an amount equal to cenvat credit availed

Documents for Availing cenvat credit Rule 9
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Cenvat Credit can be availed only based on the following documents

For Excise Duty / CVD

- An invoice of the manufacturer factory/deport/consignment agent place
- An invoice of the importer
- An invoice of the First / Second Stage Dealer
- A supplementary Invoice
- A bill of entry

Indirect taxes- Central Excise- simplified

- A certificate issued by an appraiser of customs in case of goods imported through post office

For Service Tax

- Invoice / bill / challan of the service provider
- Invoice / bill / challan of the input service distributor
- Where the specified persons are liable to pay Service Tax on the basis of challan

Essential Requirements of Documents to avail cenvat credit

- Payment of duty or service tax
- Description of goods or taxable service
- Assessable value
- Registration Number of Central excise or service tax
- Name and address of the factory or warehouse or provider of input service.
- New rule 9(2) of Cenvat Credit Rules provides that Cenvat Credit can be taken only if document contain all details as prescribed in Rules (rule 11 of excise and service tax rules) are available. If even one detail as required under Rules is missing, permission from Assistant/ Deputy Commissioner will be required.
- In case of invoice issued by FSD/SSD, credit can be taken only, the invoice should indicate duty suffered or prorata duty suffered in case proportionate stock is sold.

Records and Returns in Cenvat credit.

▪ For Inputs and Capital Goods: -

The Manufacturer/ provider of output service shall maintain proper records containing the following details:

- Receipt;
- Disposal;
- Consumption;
- Inventory of Input and Capital Goods;

For Value of input / capital goods;

- Duty paid ;
- Cenvat Credit Taken;
- Cenvat Credit Utilized; and
- Particulars of Supplier of input or capital goods.

For Input Services: -

The provider of output service shall maintain proper records containing the following details;

- Receipt of input services;
- Consumption of input services;
- Value of input services;
- Tax Paid;
- Cenvat Credit Taken;
- Cenvat Credit Utilized; and
- Particulars of provider of service

Returns under Cenvat Credit

- Monthly return by manufacturer within 10 days from close of Month [rule 9(7)]
- Quarterly return by SSI within 20 days from close of quarter [rule 9(7)]
- Quarterly return by first stage/second stage dealer within 15 days from close of quarter [rule 9(8)]
- Half yearly return within one month from close of half year, by provider of output services [rule 9(9)]
- Half yearly return within one month from close of half year, by Input Service Distributor [rule 9(10)]
- Monthly return by manufacturer in respect of principal inputs within 10 days from close of Month [rule 9A]
- Output service provider or the input service distributor to rectify mistakes or omission and file revised return within 60 days from the date of filing of original return

Indirect taxes- Central Excise- simplified

Transfer of Cenvat Credit

Rule 10

If a manufacturer shifts his factory to another site, transfer his business/ provider of output service transfers his business by way of

- Change of ownership
 - Sale, lease
 - Merger, Amalgamation
 - Manufacturer/Service provider can transfer unutilised Cenvat Credit
- Transferee can avail the cenvat credit when only
- Transfer was with the specific provision for transfer of liabilities
 - The transferor transfers Inputs, Inputs in process and Capital goods
 - Transferee should account credit properly to the satisfaction of AC/DC

Procedure for LTP units Rule 12 A

LTP can avail the following facility-

- Can remove excisable goods, except petrol and diesel oil without duty to any person registered premises except FSD/SSD
- Removal should be with invoice or transfer challan
- The goods can be cleared for Home consumption or export within 6 months from the date of sending the material
- If not cleared the recipient premises has to pay duty with interest u/s 11 AB
- The transfer challan or invoice should contain similar particulars of invoice Rule 11

Procedure for LTP units

- A large taxpayer shall submit the monthly returns, as for each of the registered premises.
- A large taxpayer, on demand, may be required to make available all records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification as may be necessary.
- Availment of LTP scheme is optional
- A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

Power to impose restrictions in certain types of cases

Central Government, if necessary in the public interest to provide for certain measures

Consideration for taking measures

- Extent of evasion of duty,
- Nature and type of offences or
- Such other factors as may be relevant

Measures:

- May place restrictions on a manufacturer, FSD/SSD or exporter, specify nature of restrictions including suspension of registration in case of a dealer

Types of facilities to be withdrawn

- Procedure for issue of such order by an officer authorized by the Board.

Power to impose restrictions

The circumstances under which the restrictions are place

- Removal of goods without the cover of an invoice and without payment of duty;
- removal of goods without Correct Value
- Excess sale price realized not accounted;
- Availing CENVAT Credit without the receipt of goods/ specified documents
- Availing CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine
- Issue of excise duty invoice without delivery of goods specified in the said invoice;
- Claiming of refund or rebate which are not genuine

Indirect taxes- Central Excise- simplified

▪If a manufacturer, first stage or second stage dealer, or an exporter is found to be knowingly involved in the removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs i

Restrictions include, when evasion exceeds Rs. 10 lakhs

- Withdrawal of monthly payment , restrictions on availing credit
- the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken
- the assessee may be required to intimate the Superintendent of Central Excise regarding the receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order

Recovery of Cenvat Credit wrongly taken or erroneously refunded
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Rule 14

- Where the CENVAT credit has been taken or utilized wrongly has been erroneously refunded
- same along with interest shall be recovered from the manufacturer/Service provider
- sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply

Liability of interest where CENVAT credit was wrongly taken but reversed by assessee before utilization

Interest shall be recoverable when credit has been wrongly taken, **even if it has not been utilized**, in terms of the wordings of the present Rule 14. P&H high court ruling in the case of CCE, Maruti Udyog Ltd. [2007) and supreme court order was in case of old rule 57 I was not relevant now.

Circular No. 897/17/2009-CX Dated 3/9/2009

Confiscations and Penalty Rule 15 (new wef 01.04.2010

- ✦ If any person, **takes** CENVAT credit in respect of input/ capital goods/*input services* wrongly or in contravention of the rules the goods are liable for confiscation and penalty will equal to duty payable on goods, *tax payable on services* or Rs. 2000 which ever is higher.
- ✦ If any person, takes CENVAT credit in respect of input/ capital goods/input service on account of fraud, willful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Excise Act or the rules made there under with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act (penalty equal to duty or service tax If duty and Interest paid with in 30 days penalty reduced to 25% of duty)/sec 78 of service tax (Penalty equal to twice the amount of Service tax)
- ✦ Before issuing SCN on above, the rules of natural justice should be followed

Non reversal of CENVAT credit. Sec 5 B of Central excise Act

"Where an assessee has paid duty of excise on a final product and has been taken credit of the duty or tax or cess paid on inputs, capital goods and input services used in making of the said product, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for **non-reversal** of such credit allowed to the assessee subject to such conditions as may be specified in the said notification:

The order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him:

Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product."

Indirect taxes- Central Excise- simplified

Export and Other procedures for removal of goods

Export Procedures

No Excise duty on exports, but control is necessary to avoid goods diverted for Home consumption
There are basically two procedures for exporting the goods out of India

(a) In the first procedure, duties are paid and subsequently rebate (refund) is claimed after exportation of such goods (**Rule 18 of Central Excise Rules**).

(b) Another procedure is to export goods under bond without payment of excise duty. On actual exportation of goods the bond is released on presentation of necessary proofs regarding exports, (**Rule 19 of Central Excise Rules**).

Export can be made either of the following ways

Export procedure under supervision of C E O

Export procedure under self Sealing of Manufacturer

Export procedure under supervision of C E O:

- 1 The application for removal should be made with in 24 hours before removal of goods in form No. ARE I
- 2 ARE I has to be prepared in 5 copies. Original White, Duplicate Buff, Triplicate Pink. Quadruplicate Green. Quintuplicate-Yellow Color band can also used
- 3 Particulars of ARE I are Similar to that of Invoice. Additional Particulars are Duty Paid/Bond details, Amount of rebate Claim, Certification of CEO in part A., Certification of Customs officer in Part B and Rebate sanctions order.
- 4 CEO will verify Value inspect the goods Certification and endorse the ARE I
- 5 Two Copies of ARE I retain and three copies handover to assessee CEO seal the packets Out of 2 copies retain one will send by CEO to maritime commissioner
- 6 Export should be made with in 6 months
- 7 At the port exporter has to submit documents. No Physical verification at port unless seals tampered.
- 8 Customs officer will certify Part B of ARE I
- 9 Manufacturer has to submit ARE I and Other documents to claim rebate

Export procedure under self Sealing of Manufacturer: The procedure is similar to that of above. Except the following

- One Copy of ARE I will be delivered to CEO with in 24 hours of export
- There is no verification and endorsement by CEO on ARE I
- Goods will be verified at customs port and certification of ARE I by Customs officer
- In case of in case of exports under free Shipping Bill, i.e., Shipping Bills wherein no export benefits are being sought, the manufacturer-exporter shall mandatorily resort to self-sealing of containers.

Export within 6 months - Goods must be exported within 6 months from date of removal from the factory, unless extension is granted. Extension can be granted by AC / DC / Maritime commissioner. - **Chapter 7 Part II Para 2.2(i) of CBE&C's CE Manual, 2001.**

LOUT under excise

When goods are exported without payment of duty

- Manufacturer has to execute –**Letter of Undertaking**- LOUT
- Other Persons has to execute-Bond

LOUT

- Submitted by Manufacturer to CEO/Maritime commissioner in form UT-1

Indirect taxes- Central Excise- simplified

- Executed in favor of President of India through CEO
- Contains the particulars of manufacturer and registration number

In LOU or in Bond Manufacturer/exporter has to declare that

- Export goods within 6 months
- Comply with excise rules, regulations, Act
- Export the goods to the satisfaction of AC/DC
- Duty, interest will be paid in event of failure to export

LOU should be accepted by CEO

Bonds under Excise

Bond' means an undertaking given by the assessee to Government for due fulfillment of certain obligation

Types of Bond – 2 types

Surety Bonds and Security Bonds

Surety Bonds

- Surety bonds are covered Indian of Contract Act.
- In Surety Bond, another person stands as surety to guarantee the performance
- Surety should be for full value of bond Surety should be solvent to the extent of bond amount.
- The department is at liberty to enforce the recovery of dues either from the obligor or from the surety. –

Security Bonds

- Executed where security is offered instead of guarantee
- Security can be in nature of Post Office saving deposit, NSC, Bank Deposits, Govt. Securities etc
- Bank Guarantee can also be accepted as surety/security

Particulars of Bonds

- Name address, registration no of assessee
- Declaration about compliance of rules, regulations,
- Surety liability clause, damages etc.
- Bond should be accepted by CEO

Forms/ kinds of Bonds

Bonds are of different nature and for various purposes. Forms of bond etc. have been standardized.

The main bonds are as follows:

B-1 general bond

- The bond is for due dispatch of excisable goods removed for export without payment of duty.
- The bond can be with surety or security.

B-2 Bond

- This is a General Bond for provisional assessment.
- It can be with security or surety.

B-4 Bond

- The bond is for provisional release of seized goods.
- It can be only security bond.
- Bond should be for whole value of seized goods.
- Amount of security will be as determined by adjudicating authority taking into consideration of gravity of offence (normally 25%)

B-8 Bond

- This bond is for obtaining goods at Nil or concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules.

B-11 Bond

- This is not prescribed under new rules.
- However, it has been clarified that the old B-11 form should be used to clear seized goods on provisional basis. –

B-17 Bond

Indirect taxes- Central Excise- simplified

- 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 account / disposal of excisable goods procured without payment of duty.

Bringing goods for repairs, re making, Recondition etc .Rule 16

- Assesses can take Cenvat credit of duty paid as if such goods are received as inputs under Cenvat Credit Rules.
- All such goods brought back should be accompanied by duty paying document,
- If No such document Prior permission from Commissioner is required before bringing such goods to the factory

Removal after repairs / re-making etc.

- At the time of clearance, duty should be paid under Invoice as follows –
- If the process carried out on the goods brought amounts to manufacture, assessee should pay duty at the rate applicable on date of removal.
- If the process does not amount to manufacture, and amount' equal to Cenvat credit taken at the time of receipt of final product is payable.
- The buyer can avail Cenvat credit of this 'amount'. [Rule 16(2)].

Credit on duty paid goods return to Factory Rule 16

When buyer returns goods or reject the goods as they the goods can be brought back.

- There is no time limit and goods can be brought any time.

Procedure to be followed

- Goods should accompany duty paying document
- Intimation to Superintendent with in 24 hours of receipt
- Assessee should wait 48 hours to enable CEO to verify
- Such goods should be stored separately from non duty paid goods.
- Cenvat credit can be availed.

At the time of clearance

- duty payable if any process done which amount to manufacture on Assessable value
- If no process cenvat credit availed should be reversed

Removal of goods for Job Work Rule 16 A

Any inputs received in a factory may be removed for a job worker

- Goods can be removed only under Job work challan
- Permission of the Commissioner to be obtained
- Manufacturer has to undertake duty liability
- If required, Bond to be executed
- If goods not returned within 180 days cenvat credit should be reversed
- Commissioner can impose any restrictions and conditions.

Removal of excisable semi finished goods for Certain purposes Rule 16 B

- The Commissioner of Central Excise may by special order and subject to conditions permit a manufacturer to remove semi finished excisable goods for carrying out certain manufacturing processes, to some other premises
- After the process the goods can be bring back to factory
- The manufacturer can remove these goods for home consumption with payment or duty or for export without payment of duty from such other registered premises.

Removal of excisable goods for test or for any process not amounting to manufacturing Rule 16 C

- The Commissioner of Central Excise may by special order and subject to conditions permit a manufacturer to remove semi finished excisable goods for carrying out certain manufacturing processes, to some other premises

Indirect taxes- Central Excise- simplified

- After the process the goods can be bring back to factory
- The manufacturer can remove these goods for home consumption with payment or duty or for export without payment of duty from such other registered premises.
- This rule shall not apply to the goods known as “prototypes” which are sent out for trial or development test.

Procedure to be followed for sending goods under Rule 16 A, 16 B and 16 C

- The goods can be removed along with prescribed Challan or Consignment note
- If the manufacturer desires to remove the goods from the place where the goods are sent, he shall pay duty on such excisable goods and prepare an invoice, as per rules 8 and 11 **except for mentioning the date and time of removal of goods** on such invoice.
- The original and the duplicate copy of the invoice so prepared shall be sent by him to other premises, where goods intended to clear.
- The processor shall fill up the particulars of date and time of removal of goods before the clearance of goods and after such clearance the processor shall intimate to the said person, the date and time of the clearance of goods for completion of the particulars by the said person in the triplicate copy of the invoice.
- The processor shall clear the goods after filling in invoice the time and date of removal and authentication of such details. The rate of duty on such goods shall be the rate in force on date of removal of such goods from the premises of the processor and no excisable goods shall be removed except under the invoice.

Removal of Goods by EOU to DTA (Rule 17)

Procedure

- Invoice is to Prepared under Rule 11
- The duty is paid thorough debiting PLA (50% of aggregated of customs duties and CVD)
- Cenvat credit can be availed (Based on the restricted formula)
- The Monthly payment of duty facility not available
- Daily Stock Account should be maintained in Form AC 1, with the Particulars similar to DSA (rule 10)
- The unit should submit monthly return in ER2 by 10 of the following month.

Capital Goods manufactured for Captive Consumption within the 100% EOU shall be liable for duty at the time of clearance of such capital goods outside the 100% EOU or debonding or exit from the EOU Scheme. [Circular No.22/2009 dt.19.08.2009

Procedure for clearance to warehouse Rule 20

- Goods are removed from factory on payment of duty. However, in respect of certain goods, provision has been made to store the goods in warehouses without payment of duty.

Applicable to following goods.

- Petroleum products such as benzene, toluene and xylene
- Goods transferred to customs bonded warehouse as ‘Stores’.
- Goods removed by export houses or star trading houses for subsequent exports under rule 18 or rule 19 of Central Excise Rules - Notification No. 46/2001-CE(NT) dated 26-6-2001

Procedures to be followed

- Consignor is required to prepare application in quadruplicate in form ARE III
- Warehouse should be registered under excise provisions
- He is also required to prepare invoice under rule 11
- Three copies of application and duplicate of invoice should be sent along with goods to consignee.
- On arrival at destination, Consignee has to verify the goods notify the discrepancy if any.
- Consignee will send original to his range superintendent duplicate with endorsement (rewarehousing certificate) to the consignor

Indirect taxes- Central Excise- simplified

Range superintendent of consignee will counter sign ARE II and send his counterpart of consignor.

- If rewarehousing certificate is not received within 90 days, consignor shall pay the duty.
- Proper accounts shall be maintained at the warehouse. He will be responsible for payment of duty, penalty etc.
- Registered person can keep only goods belonging to him and not to someone else. He can keep other's goods only with permission of Commissioner.
- Owner of warehouse can sort, pack or repack the goods in warehouse and make such alterations as may be necessary for preservation, sale or disposal thereof.
- Maximum period of storage in warehouse 90 days

Conditions for bringing duty paid packing materials into the export warehouse:

The exporters shall be allowed to bring the duty paid packing materials into the export warehouse. The exporter must submit a written request to the Jurisdictional AC/DC who may grant the permission for one year.

The exporter has to maintain proper account of such goods and shall not claim any export benefit like rebate of duty paid on the said material. [Circular No.900/20/2009 dated 06.10.2009]

Receipt of Goods at concessional rate of duty

■ The provisions are contained in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. Earlier these procedures are known as Chapter X procedures

Procedure

- The manufacturer intending to procedure excisable goods to avail the benefit of notification u/s 5 A, should apply to AC / DC in quadruplicate in form specified at Annexure I to rules
- Separate application shall be filed for each supplier.
- B 8 Bond to be executed for duty liability for the amount prescribed by AC/DC
- Copy of this application duly signed by AC/DC will be sent to supplier-manufacturer.
- The supplier can clear goods on receipt of the certificate duly countersigned by AC / DC
- The removal details will be recorded on the application by the supplier-manufacturer.
- Proper accounts should be maintained for Goods
- **AC/DC should endure** that Goods should be used only for intended purpose (mere intention is not sufficient)
- If the goods are not used for intended purpose the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods and interest if any
- Clearance to another unit under same procedure

Return of goods to supplier

- The Supplier will add this return to his non-duty paid stock (in Daily Stock Account) and then deal with it.
- Monthly return should be submitted by procurer in prescribed form given in Annexure II by 10 of the following month. Regarding quantity received, used and balance etc)

Goods lost or destroyed during transport –

- It will not be treated as 'used for intended purpose'. Differential duty and interest will become payable. –

Indirect taxes- Central Excise- simplified

SSI Units -- Notification No 8/2003

The term SSI is not defined in the Central excise Act. The meaning of SSI can be understood as per notification No. 8/2003 dated 1-3-2003.

- ◆ As per the notification a unit is said to SSI where the previous year turnover is less than Rs. 4 crores. (400 lakhs)
- ◆ All industries irrespective of their investment or number of employees are eligible for concession if its previous turnover is less than Rs. 4 crores. (400 lakhs)

Concession for SSI-

- ◆ First 150 lakhs turnover No duty
- ◆ First 150 lakhs turnover means turnover starting from April 1st of financial year
- ◆ Balance turnover Normal duty
- ◆ No cenvat credit on first 150 lakhs turnover
- ◆ Balance turnover cenvat credit can be availed

Goods Eligible for SSI concession

- ◆ SSI exemption is available only if the goods covered under notification.
 - ◆ Many of goods manufactured by SSI are eligible for the concession.
- However, some items are not eligible for example goods like
- ◆ Pan masala, matches, watches, some textile products,
 - ◆ Tobacco products, Automobiles, primary iron and steel etc.

Other Concessions for SSI units

- ◆ Quarterly return
- ◆ No registration till crossing 150 Lakhs
- ◆ Duty payment Quarterly instead of monthly (Except for March). This facility is available even whether it do not want avail SSI benefit. The facility available for whole financial year, ie even it crosses 400 lakhs in the current year.
- ◆ Full 100 % Cenvat credit availability on Capital goods in the first year
- ◆ One Consolidated entry in PLA for all day removals
- ◆ SSI premises inspection with Prior Approval of C/CC
- ◆ Audit Once in 2 to 5 years
- ◆ Exemption for payment of duty if goods manufactured under brand name of others in rural area.

Obligation of SSI

- ◆ To file a declaration with Superintendent when turnover crosses 90 lakhs
- ◆ Registration and maintenance of records when turnover crosses 150 lakhs

Clubbing provisions of SSI

When calculating the limits of 150 lakhs and 400 lakhs, the following will be clubbed.

- ◆ Turnover of the all products manufactured by assessee
- ◆ Turnover of all the factories / Units of Assessee
- ◆ Turnover of factory used by more than one manufacturer in a financial year
- ◆ Turnover of Clearance in the name of bogus /dummy/sham units
- ◆ Turnover of two units where there is substantial funding between two units.
- ◆ Turnover of two units when change of ownership takes place during the previous year

No Clubbing of Turnover of

- ◆ Turnover of units of relatives
- ◆ Turnover of same management units
- ◆ Units having Separate registration
- ◆ Units having Separate Assessment
- ◆ Units having Common Partners/Common Directors

SSI Other Provisions

- ◆ Availment of concession of duty is not mandatory it is purely optional
- Assessee who does not want to avail benefit should intimate to AC

Indirect taxes- Central Excise- simplified

He should inform in writing to Assistant Commissioner with a copy to Superintendent of Central Excise, the following

- ◆ Name and address of manufacturer
- ◆ Location / locations of factory / factories
- ◆ Description of specified goods produced
- ◆ Date from which option under the SSI exemption notification has been exercised.
- ◆ Aggregate value of clearances of specified goods
- ◆ The option is available any time during the year,
- ◆ Once option once availed cannot be withdrawn during the financial year.

Reversal of Cenvat Credit on stock, WIP and final product when availing benefit subsequent year is required.

Simultaneous availment of Cenvat and SSI exemption not permissible –

CBE&C has issued instructions that if a manufacturer manufactures various products, he has to avail Cenvat for all items or opt for exemption from Cenvat for all products. It is not permissible to avail Cenvat for some items and avail SSI exemption for other products. - CBE&C Circular F. No. 22/46/86-TRU dated 8-9-1986 - reiterated in Circular Nos. 9/93-CX.8 dated 24-8-1993 and 361/77/97-CX dated 3-12-1997.

Calculation of turnover for limits

- ◆ **The calculation mode for Rs. 150 and 400 lakhs is same except few items.**

Exclusions from total turnover

The following shall not be considered/be excluded from the turnover calculation

- ◆ Export Turnover Other than exports to Nepal and Bhutan
- ◆ Clearance to SEZ/STP/EHTP/EQU/FTZ/EPZ/United Nations organisation
- ◆ Export under bond through merchant exporter
- ◆ Turnover of Goods Which are exempt from duty
- ◆ Turnover of Goods Which are Charged to Nil rate of duty
- ◆ Turnover of Non Excisable Goods ie which are not included in tariff

Turnover of Goods manufactured with other's brand name in urban area (Exclude for 400 lakhs calculation and include for payment of duty in 150 lakhs)

- ◆ Turnover of Goods of packing material manufactured with other's brand name
- ◆ Turnover of Inputs/Capital goods bought by assessee and cleared as such
- ◆ Job work turnover exempt under notification 214/86 ,83/94 and 84/94
- ◆ Goods may be exempt under some other notification, i.e. other than SSI exemption notification
Final product of such goods
- ◆ Value of intermediate products manufactured while producing final products which are eligible for SSI exemption
- ◆ Job work of test, repairs, reconditioning, processing etc which is not a manufacture.
- ◆ Packing material manufactured under brand name of others such as plastic bottles, and Plastic containers. Notification No 4/2010 dated 27.02.2010.

Inclusions

The following shall be taken in to account while calculating the turnover

- ◆ Exports to Nepal and Bhutan
- ◆ Goods manufactured with other's brand name in rural area (Includable in for 400 lakhs limits and exclude for 150 lakhs .SSI need not pay duty on these goods)
- ◆ Goods may be exempt under some other notification, i.e. other than SSI exemption notification
Intermediate product of such goods

Indirect taxes- Central Excise- simplified

Assessment Procedure

Assessment means determination of duty liability.

Assessment' includes self-assessment of duty made by the assessee and provisional assessment made under rule 7- rule 2(b)

Meaning of 'assessee' - Rule 2(c)

- any person who is liable for payment of duty assessed
- a producer or manufacturer of excisable goods
- a registered person of a private warehouse in which excisable goods are stored
- Includes an authorized agent of above persons.

Types of Assessments

Self Assessment- Rule 6

Provisional Assessment- Rule 7

Best of Judgment Assessment

Self Assessment Rule 6

- ◆ Assessee determines classification
- ◆ Assessee determines Valuation
- ◆ Assessee pays duty at appropriate rate
- ◆ Assessee file Monthly/Qty Returns

Assessee Declare in Self Assessment memorandum in the return that

- ◆ Value declared correctly
- ◆ Duty paid correctly
- ◆ GAR 7 Challan is genuine.

After submission of return by assessee, CEO will scrutinize the return

- ◆ Inspect assessee premises if require
- ◆ Verify the records and document
- ◆ Demand will be issued if necessary, based on verification

Provisional Assessment Rule 7

Assessee can request for provisional assessment in following circumstances

- ◆ Assessee is unable to determine the value of excisable goods
- ◆ Assessee is unable to determine rate of duty applicable.

Procedure:

- ◆ Application should be made to Ac/DC requesting for Provisional Assessment stating reason
- ◆ AC/DC may allow Provisional assessment and state the rate of duty payable
- ◆ Bond to be executed (B2 bond) for differential rate of duty minus Probable final rate of duty and provisional duty.
- ◆ Returns/records should be marked as Provisional Assessed wide order no.....
- ◆ Time limit to complete final assessment 6 months from the date of P A order
- ◆ At assessee request Commissioner can extend further 6 months by writing reasons
- ◆ Chief Commissioner can extend time beyond the period of one year
- ◆ After final assessment, difference duty paid/refunded
- ◆ If assessee does not pay duty within 15 days Bond will be enforced

Interest Assessee to pay 13% ,department on refunds 6% from the first day of succeeding month from the amount determined till the date of payment

- ◆ Doctrine of unjust enrichment is applicable in case of refunds.

Assessee cannot do on his own Provisional Assessment. Provisional assessment is only at express order of AC/DC

Best judgment assessment

When B O J Assessment is made

- ◆ Where assessee fails to provide record /information for the purpose of assessment
- ◆ department is unable to issue demand

Burden on Assessee

Indirect taxes- Central Excise- simplified

◆ Burden to provide information for re-determination of duty is on assessee
Assessment done be based on available information. Demand will be issued if necessary

Demands of Central Excise Duty Sec 11A

Demand of duty means excise department asking assessee to pay excise duty
Normally, excise duty has to be assessed at the time of clearance of goods and to be paid as per rule 8

◆ Sometimes it is possible that the duty paid may be lower than the duty actually payable, or
◆ Department may erroneously refund duty to assessee.

In such cases need for demand for duty will arise

Normally the following are Circumstances resulting demand

- ◆ Assessable value declared by assessee is not acceptable to Excise authorities.
- ◆ Classification and/or exemption notifications claimed by assessee are not acceptable to excise authorities.
- ◆ Excise duty paid at concessional rate though concession was not available.
- ◆ Treating dutiable goods as exempted goods/goods charged to nil rate of duty
- ◆ Clandestine removal, non-accounting of goods etc
- ◆ Clearance in name of dummy bogus units
- ◆ Duty erroneously refunded by department

Any other reasons due to which the excise officer is of the opinion that the duty paid is not correct

Issue of Show cause notice

- When duty is not levied or Not paid or
- has been short levied or short paid or
- erroneously refunded,

A notice can be issued by C E O asking the person why he should not pay the amount specified in the notice- sec 11 A (1)

Who can Issue of Show cause notice (SCN)

- Only CEO can issue
- SCN Contain date, name and address of assessee duty payable along with calculations

Serving of SCN

- By Register Post Acknowledgement Due to Assessee Address
- BY affixing at notable space of Assessee factory
- BY affixing Notice board of Excise office of assessee jurisdiction

Time limit to issue SCN

- One year from relevant date
- 5 years from relevant date in case of fraud, collusion, willful misstatement, violation of excise law with intention to evade duty, suppression of facts

➤ **Relevant date means**

S No	Circumstance	Relevant date
1	When assessee file return	Date of filling return
2	When assessee does not file return	Due date for filing of return
3	In case of Provisional assessment	Date of adjustment to final duty
4	In case of erroneous refund	Date of refund
5	In any other case	Date of payment of duty

Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

Option to a person to pay duty with penalty after receipt of SCN sec 11A (1A)

Indirect taxes- Central Excise- simplified

- This option available only to assessee involving fraud, collusion mis-statement suppression of facts intention to evade duty etc.,
- Assessee can voluntarily pay duty full or in part as accepted by him with interest and Penalty equal to 25% of duty
- Such payment should be made with in 30 days of receipt of SCN
- This is an additional facility given to settle the dispute at an early stage to reduce litigation and also aid in collection of tax dues more expeditiously
- In case of part payment, the remaining amount will be subject to regular proceedings as per the law.

Obligations of CEO after issue of SCN (Adjudication orders of CEO) sec 11 A (2)

- The CEO has to consider, the representation if any by person whom notice issued
- CEO should determine the duty payable **not exceeding** the amount specified in notice
- If the duty determined in excess of SCN issued, fresh SCN to be issued for excess amount
- **Where it is possible to do so** CEO should determine the amount of duty payable with in six months or within one year in case of fraud, collusion, intention to evade duty etc., from the date of service of notice.
- The time limit of one year and six months for passing adjudication order are not mandatory,

Example:

Situation 1- Representation of Assessee fully acceptable- SCN to be dropped

Situation 2- Representation of Assessee fully not acceptable-duty to be determined

Situation 3- Representation of Assessee partly acceptable and partly not acceptable

Acceptable portion SCN to be dropped and non acceptable portion duty to be determined

Payment of duty by a person before receiving SCN Sec 11A (2B)

- This facility available only to person who has not paid short paid duty under normal circumstances. It is not available in case of fraudulent cases
- Assessee can also pay duty before receiving SCN
- Such payment of duty can be on the basis on his own ascertainment or ascertainment by CEO
- No penalty will be levied if assessee paid duty before issue of SCN(WEF 01.04.2010)
- Assessee should inform CEO about the payment in writing.
- CEO cannot issue show cause notice after receiving intimation from Assessee.
- If a person does not pay the duty as determined by CEO, CEO can proceed to recover the duty from a person by issue SCN, the time limit of one year will be reckoned from the date of receipt of information from a person

Interest for late payment of duty Sec 11 AB of CEA and 28 of Customs Act

◆ Where the duty payable as per SCN or as per duty determined by assessee or by CEO

◆ Interest is payable on duty @ 13% per annum

Period of Interest

◆ from the first day of following month of due date of duty payable to till the date of payment

◆ In case of erroneous refund from the date of refund

Example

Situation 1. September month removal- Due date for payment 5th October

- Interest payable from 1st November

Situation 2. March month removal- Due date for payment 31st March

- Interest payable from April 1st

Situation 3. Duty erroneously refunded on April 16th

- Interest payable from April 16th

Other points

◆ Interest payable even during the period of stay or appeal

Indirect taxes- Central Excise- simplified

- ◆ As per Sec 37 B CBEC has power to issue instructions to Commissioners
- ◆ If a person pays duty voluntarily as per Board instruction within 45 days from the date of issue of board circular, without reserving right to appeal in future, **no interest payable**. In all other cases interest payable on whole amount including amount already paid
- ◆ Where the duty determined is increased or decreased, interest is payable on the increased or decreased amount.

Penalty for short levy or non levy of duty in certain cases
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Sec 11AC

- Applicable only in case of demand arising in case of fraudulent cases
- Where the person payable duty as per adjudication order of CEO, person is liable to pay penalty equal to duty so determined.
- If the duty paid with in **30 days** from the date of communication of order of CEO penalty will be reduced to 25% of duty.
- Reduction in penalty of 75% is available only if duty and penalty of 25% paid with in 30 days
- If the duty is increased/decreased by the order of appellate authority penalty is also increased or decreased.
- It is clarified that *when the conditions spelled out under section 11AC are fulfilled*, there is no discretion to reduce the mandatory penalty which is equal to duty even though the duty is paid before the issuance of show cause notice. Circular No 889/09/2009 dt 21.05.2009
- Benefit of reduced penalty under provisos to section 11AC not available at the appeal stage ie , if assessee pays duty, interest and the reduced penalty, benefit of reduced penalty is not available *within 30 days of the communication of the order of appellate authority*. Circular No 898/89/2009 dt 15.09.2009

Demand based on estimated production

- Applicable in case of clandestine removal,
- Clandestine removal means removals in name of dummy bogus units/removal of goods without invoice/without entry in DSA etc.

CE Officer can fix normal production based on

- installed capacity,
- raw material utilizations,
- labour employed,
- power consumed and
- such other relevant factors as necessary
- CEO will work out production and demand will be issued.

Recovery of Duty

Sec 11

When Assessee fails/ or refuses to pay Duty/any sum due under CE ACT or Rules / sum of duty recovered from buyer and not credit to Government/duty determined by Settlement Commission not paid

Department can recover the above amount from any of the following modes

- ❖ By setoff against refund due to assessee (Example duty, interest, rebate, drawback)
- ❖ Attachment of excisable goods belonging to Assessee
- ❖ As Arrears of Land revenue by issuing certificate to district revenue collector (sale by auction all property except cooking vessels and cloths)
- ❖ Recovery from surety in case of surety Bond
- ❖ Recovery from sale of securities in security bond
- ❖ Recovery from partner of firm, if firm fails to pay

Indirect taxes- Central Excise- simplified

- ❖ Recovery from Legal heirs/Representative from the movable or immovable property inherited by the legal heirs
- ❖ Recovery from successor of business from all assets acquired in succession with the permission of Commissioner of Central excise
- ❖ Detain of movable and immovable property of assessee with permission of Commissioner, if duty not paid within 30 days .sale of property (sec 142 of customs applicable to Excise)
- ❖ Chief Commissioner can grant maximum 36 Monthly installments for duty payment (CCE Hyderabad trade notice).Mandatory Interest is payable

Payment of Duty under Protest

Payment of duty under protest covered in Chapter 13 Part III Para 4 of CBE&C's CE Manual, 2001

Circumstances:

- ◆ If assessee does not agree with classification of goods by Department and he file appeal

Procedure

- ◆ Intimate Ac/DC and Obtain dated acknowledgement.
- ◆ Payment of duty under protest only till appeal is decided
- ◆ All Invoices, returns, PLA, Challan indicate duty paid under protest
- ◆ After appeal disposal- difference duty if any to be paid or claim refund.
- ◆ If he does not file appeal, he cannot pay duty under protest after period of appeal is over.

Advantage

The time limit of one year for refund is not applicable.

Refund of Duty

Sec 11 B

Assessee can claim refund when he has paid higher duty than required.

Such higher payment of duty may be due to

- ◆ wrong classification of goods
- ◆ treating exempted goods as dutiable goods,
- ◆ Pays higher duty to clear goods urgently

Who Can Claim Refund

- ◆ Assessee
- ◆ Buyer (FSD/SSD) if he does not pass burden to other

Procedure to claim refund of duty

- ❖ Application in Form No R along with supporting document as a proof for payment of duty , pre stamped receipt to made to AC/DC
- ❖ Refund less than Rs. 100 will not be entertained.

Time limit to claim for refund

- ◆ One year from relevant date

Relevant date means

1	In case of Export Rebate	
	Export through aircraft/vessel	Date of leaving aircraft/Vessel
	Export through vehicle	Date of leaving custom frontier
	Export through post	Date of dispatch of article
2	In case of Compound levy scheme	Date of reduction of duty
3	In Case of Exemption u/s 5 A	Date of exemption order
4	In Case of Provisional Assessment	Date of final adjustment of duty
5	In case of FSD/SSD	Date of Purchase of goods
6	In case of Order of court/Appellate authority	Date of order
7	In any other case	Date of payment of duty

Indirect taxes- Central Excise- simplified

Note: When duty paid under protest there is no time limit to claim refund.

Refund claim is scrutinized by AC/DC and will be sanctioned

Refund to assessee/buyer 11 B (2)

Refund amount instead of payment to manufacturer/buyer the amount will be credited to consumer welfare fund.

Refund of excise duty can be made to assessee /buyer only in following cases:

- ◆ Rebate of duty paid excisable goods exported out of India
- ◆ Rebate of excise on inputs used in manufacture of goods exported out of India (if he has not availed Cenvat credit)
- ◆ Refund of duty paid on inputs (if payable according to any rule or notification)
- ◆ To Manufacturer, if he has not passed on incidence of the duty to another person
- ◆ To Buyer, if he has borne the duty and if he has not passed on incidence of the duty to another person

Doctrine of Unjust Enrichment/Refund credit to consumer welfare fund

- ◆ It is always assumed unless contrary proved by manufacturer that excise Duty burden normally fully passed on to buyer sec 12 B
- ◆ In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him.
- ◆ He will get double benefit – One from consumer and again from the Government.
- ◆ At the same time, the duty is illegally collected and hence cannot be retained by Government.
- ◆ In such cases, the refund due should be transferred to a Consumer Welfare Fund instead of paying it to the manufacturer.
- ◆ The fund may be used for activities of protection and benefit of consumers.
Provisions of Unjust enrichment will apply to all types of refund, (Provisional Assessment, Captive consumption Duty paid under protest etc)

Non Applicability of Doctrine of Unjust enrichment (Refund paid to manufacturer / buyer)

- ◆ When duty is paid under protest and only lower amount of duty is charged to customer
- ◆ Pre-deposit of duty pending appeal
- ◆ When duty is paid subsequent to clearance
- ◆ When contract is for price inclusive of all duties
- ◆ When debit note is raised by buyer and amount deducted from bill
- ◆ When credit note issued to buyer and buyer account is credited,
- ◆ Refund of export rebate/incentive.
- ◆ Deposit taken from buyer against possible liability of excise duty. And deposit refunded

Time limit to sanction and pay refund [section 11BB of CEA,/ section 27A of Customs Act

- ◆ Refund due must be sanctioned within three months from date of application.
- ◆ Delay in sanction refund beyond three months interest@ 6% p.a., immediately after expiry of three months till the date of refund

Refund in cases where levy is declared unconstitutional

If the levy has been declared as unconstitutional, refund claim can be made by way of suit or a writ petition. Such refund claim will also be subject to provision of unjust enrichment,

Power not to recover duty of excise not levied or short Levied as a result of general practice.	Sec 11C/ Sec 28 A of customs
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- Applicable in case of misinterpretation or wrong understanding of law both by the manufacturer and CEO
- Such wrong understanding was occurred in assessment resulting short levy of duty
- Wrong understanding was because of Bonafide mistake on either side
- Such mistake should be not because of collusion/fraud cases

Indirect taxes- Central Excise- simplified

- In such cases C G is empowered to make an order **not to recover/collect** such short levy
- If a manufacturer paid differential duty despite C G notification, he is entitled to refund subject to doctrine of unjust enrichment
- Time limit to claim refund is **6 months** from the date of C G Notification

Duties of excise collected from the buyer to be deposited with the Central Government Sec 11D/ section 28B of Customs Act]

- Every person liable to pay duty, if he collect excess duty than assessed/ determined, paid/ he should pay such excess duty to credit of Central Government
- If a person does not pay the duty, CEO can issue SCN
- CEO after representation if any made by person CEO should determine duty
- Delay in payment to credit of Government interest @13% p.a., payable from the first day of succeeding month which duty payable. (sec 11 DD)
- The amount of duty paid by person will be adjusted in the final assessment
- If a person paid excess and if any surplus left after final assessment the excess amount will be refunded subject to doctrine of unjust enrichment

Provisional Attachment of Property in certain cases Sec 11DDA

- CEO can provisionally attach the property of assessee to protect the interest of revenue and if it is necessary to do so
- Such provisional attachment can be made in the course of proceedings where SCN was issued u/s 11 A and 11D
- Such provisional attachment can be made with the previous approval of Commissioner of excise by order in writing,
- Attachment order will be in force for a period of 6 months from the date of order
- Chief Commissioner has got power to extend time as he think fit.
- Total extension period by CC will be maximum two years
- Where the application made by assessee to Settlement Commission the period between from where the application made and order of settlement commission will be excluded in calculating the time limit of 6 months/ two years.

Special audit in certain cases Sec 14 A

Circumstance under which special audit ordered

- ◆ In case of nature and complexity of the case
- ◆ the interest of revenue
- ◆ the value has not been correctly declared or determined

Approval for ordering Special Audit

Ordered by AC/DC above rank previous approval of the Chief Commissioner

Areas of Audit:

- ◆ Factory,
- ◆ office, depots, distributors or
- ◆ any other place, as specified by the C E O

Period for completion

- ◆ Maximum including extension 180 days.

Who can do the Special audit?

- ◆ Cost accountant, or Chartered Accountant nominated by the C C Excise./

Other Points

- ◆ Order can be made to Audit of the accounts even if the accounts audited under any other law
- ◆ Audit report will be submitted to C E O.
- ◆ Opportunity to be given to assessee if any material of audit report proposed to be utilized

Indirect taxes- Central Excise- simplified

Special audit in cases where credit of duty availed utilized is not within the normal limits	sec 14 AA
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Circumstance under which special audit ordered

- ◆Credit of duty availed /utilized not within limits
- ◆ Utilization of credit with fraud, willful misstatement, collusion etc

Approval for ordering Special Audit

Ordered by AC/DC above rank previous approval of the Chief Commissioner

Areas of Audit:

- ◆Factory,
- ◆office, depots, distributors or
- ◆any other place, as specified by the C E O

Period for completion

- ◆Maximum including extension 180 days.

Who can do the Special audit?

- ◆Cost accountant/Chartered Accountant, nominated by the C C Excise.

Other Points

- ◆ Order can be made to Audit of the accounts even it the accounts audited under any other law
- ◆Audit report will be submitted to C E O.

Excise Departmental Checks

Visits of Officers

The Superintendent and Excise Inspectors working under him do occasionally visit factories.

And verify the records

Stock taking

New Central Excise Rules make no provision for 'store room' or 'stock taking'. However, it stock taking by excise authorities stock taking can be done of finished goods and Cenvat goods.

Road Checks

Surprise road checks are carried out to see that all goods moving are accompanied by duty paying documents.

Excise departmental audit/ 'EA-2000' [Excise Audit 2000]

An Audit section is attached to each Commissionerate. The Audit Party usually consists of inspectors and a Deputy Office Superintendent, headed by a Excise Superintendent. AC/DC and senior officers are also associated with the audit of large units. These audit parties visit factories periodically.

Frequency of audit

CBE&C has specified frequency of audit and time limit during which audit should be completed, as follows -

The schedule should be -

- All EOU units - mandatory audit every year
- Units paying duty through PLA over Rs. one crore per annum - 10 working days - to be audited every year
- Units paying duty of Rs. 10 lakhs to one crore per annum through PLA - 7 working days - to be audited at least once in two years
- Units paying duty less than Rs. 10 lakhs through PLA per annum - 5 working days - to be audited at least once in five years.

Duration of audit (5/7/10 working days as above) is the entire period spent on audit of a particular assessee from desk review to preparation of audit results. In case of audit of units paying less than Rs. 10 lakhs per annum through PLA, not more than three days should be normally spent in assessee's factory - CBE&C circular No. 731/47/2003-CX dated 1-8-2003.

Indirect taxes- Central Excise- simplified

EA-2000 AUDIT OF EOU - EOU in port cities are under administrative control of Commissioner of Customs. Since customs have no system of internal audit, the audit should be conducted by jurisdictional Commissioner of Central Excise.

Procedure of Excise Audit 2000 - Procedure of EA-2000 is explained in CBE&C's CE Manual, 2001, is as follows -

Selection of assessee

In each Commissionerate few units are selected based on 'risk factors', For example assessees who have bad track record (like evasion cases, major audit objections, past duty dues etc.) are given priority for conducting audit over those having clean record.

Desk review

Auditors assigned to assessee are required to gather advance information about assessee, from departmental records, published documents like balance sheet, annual statements and through market enquiries. This is done without interacting with assessee.

Gathering and Documenting assessee Information

At the stage of desk review, auditors will identify the areas which require closer examination. The auditor gather evidence based on documents and by a questionnaire

Touring of premises

The auditor then visits the unit of assessee to see the actual running of the unit, the systems that are followed for maintaining records in various sections, system of movement of goods and related documents within the unit. This gives auditor overview of the procedure adopted by assessee and the possible loopholes through which revenue leakage can take place.

Audit Plan

Based on the experience and the information, the auditor prepares an 'audit plan'. Based on the plan the auditor selects some of the documents/records maintained by assessee for actual verification, as verifying all records is impossible. Plan can be alter the audit plan midway after obtaining approval of the superior officers.

Verification

This consists of verification of actual records with the returns submitted. Auditor may enquire about vague entries. .

Audit Objection and audit para

If auditor finds instances of short payment of duty, he is required to discuss the issue with assessee. If he is not satisfied with the explanation of assessee, he will record the same as 'audit objection' or 'audit para' in his draft audit report. If possible, quantification of duty short paid should be made on the spot and incorporated in 'audit para'. If this is not possible, a note may be made in audit report.

Audit report

At the end of verification, auditor prepares a 'Draft Audit Report' which incorporates all audit objections/audit pars. It discusses the issue in brief, reply or explanation of assessee, reason for auditor not being satisfied with the reply or explanations, amount of short payment (if tabulated) and recoveries of same, it could be made on the spot. The draft audit report is submitted to superior officers for review, and finalization.. If assessee has not paid duty on the spot, demand notices are issued to assessee by department.

Form of audit report

Report should be submitted in the as per prescribed form. Apart from other information, the report should contain 'Risk Loss Analysis', 'Trend Analysis' etc.

EA-2000 is a participative audit

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The assessee is given full opportunity to explain his stand in the audit findings so that matters are resolved in full appreciation of legal position. Thus, EA-2000 is a participative audit.

CBEC instructions for EA audit 2000

Board has clarified that factories yielding annual revenue of Rs. 5 crores and above, or those availing annually Cenvat credit of Rs. one crore and above should be visited by Addl Commissioner/Jt Commissioner when the audit of factory is in progress. In addition, suspected units manufacturing commodities with particularly intricate complexities etc. may also be visited by Jt Commissioner (Audit) (that time - Dy Commissioner) -

The highlights of new system are as under -

- 15 days notice should be given before commencing audit.
- Audit will normally be completed in 5 to 7 days. If required, two audit teams may be deputed.
- Additional/Jt Commissioner (Audit) should join the team for some days. He should supervise audit notes/report and sign the same.
- Audit party will not issue any summons and powers of search, seizure or interrogation will not be exercised. If information is not supplied, they may refer the matter to Anti-Evasion wing of Commissionerate.
- Audit Wing will not issue show cause notices arising out of objections. The matter will be referred to Proper Officer (Jurisdictional Superintendent/Assistant/Deputy Commissioner).
- Proper data base will be created. Specially trained staff will be used.
- Workshop for trade and industry should also be organised
- An EA-Monitoring Cell consisting of 4-5 officers will be constituted headed by Commissioner. The cell will hold meetings once in fortnight and monitor the new audit system.
- Audit parties should check 'source documents/records' connected with production, manufacture, storage, delivery or disposal of goods, including raw materials; such as ledgers, inventory records, income tax returns, sales tax returns, balance sheets etc. Only relevant returns/records should be demanded.
- Audit work must be clearly documented in working papers. Summary sheet will be prepared.
- Assessee profile (database) shall be collected in standard prescribed format. Audit report will also be in prescribed format. It should be prepared within 20/25 days from commencement of audit. Scoring system has been evolved to evaluate audit report.
- Director General (Audit) will monitor the work of EA-2000.

Audit of registered dealers (FSD/SSD)

Selective audit of such registered dealers will be carried out with prior approval of Additional commissioner. Advance intimation of 15 days will be given. However, preventive checks can be carried out by surprise visits without any prior intimation to dealers. However, prior approval of Jt Commissioner (Prev.) will be taken. - CCE, Mumbai IV TN 39/2000 dated 1-6-2000.

CERA audit

Comptroller and Auditor General of India also carry out audits of all assessees. These are called 'CERA' i.e. Central Revenue Audit. These audit parties audit accounts of excise as well as customs assessees. These audits are conducted in addition regular audit under other laws. Frequency of CERA Audits depends upon the importance and availability of time.

Assessee is required to produce to audit parties (i) Records (ii) cost audit report (iii) Income Tax audit report.

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Penalties and Offences

CEA provides for penalties and punishments for violation of excise law. Penalties can be levied for civil and criminal liability. Civil Liability includes fines, confiscation of goods, etc., where as Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. Section 34A of CEA and section 127 of Customs Act specifically provide both departmental penalties and criminal prosecution for same offence is permissible.

Offence under central Excise Rule 25 of Central Excise Rules

Under rule 25(1) of Central Excise Rules, following are offences:

- Removing excisable goods in contravention of Excise Rules or notifications issued under the rules.
- Not accounting for excisable goods manufactured, produced or stored
- Engaging in manufacture, production or storage of excisable goods without applying for registration certificate u/s 6 of CE Act
- Contravening any provision of Central Excise Rules or notifications issued under these rules with intention to evade payment of duty.

Penalties imposable under rule 25

- (a) Confiscation of contravening goods
- (b) Penalties up to duty payable on such contravening goods or Rs.2000 whichever is higher.
- (c) Penalties can be imposed on Manufacturer, warehouse keeper, FSD/SSD

Mandatory penalty in case of fraud, suppression of facts etc. - Provisions of Rule 25(1) are subject to section 11AC, which means that provisions of section 11AC prevail over provisions of rule 25(1). The penalty u/s 11 AC is mandatory which is equal to duty evaded - **neither more nor less**. However, if the duty, interest and penalty are paid within 30 days from communication of order, penalty payable will be reduced to 25%.

Rules of Natural Justice

Penalty can be levied only by giving opportunity being heard to assessee

Personal penalty on director / partner / employee/ transporter / driver/Any person etc: Rule 26 of Central Excise rules

Rule 25 is applicable only to manufacturer, producer, and registered person of a warehouse or registered dealer. Penalty on others like transporter, person concealing goods etc. can be levied under rule 26

Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or rules, shall be liable to a penalty up to the duty payable on such goods or Rs 2,000 whichever is greater.

A director or partner or an employee will be personally liable to penalty if he is personally involved in clandestine removal etc.

Penalty on any person

Non issuance of excisable invoice, issuance of excise invoice without delivery of goods specified therein or issuance of any documents whereon receiver takes any ineligible benefit of CENVAT or refund. A penalty on such offence would be Rs.5000 or amount of benefits, whichever is greater.

Residual Penalty – Rule 27 of Central Excise Rules:

For breach of excise rules, if no penalty has been prescribed under Act or rules, the penalty would be Rs. 5,000 plus confiscation of goods in respect of which offence has been committed.

Indirect taxes- Central Excise- simplified

Confiscation of goods

Section 12 of CEA authorises Central Government to apply provisions of Customs Act These are (a) section 105(1) - Powers of search (b) section 110 - seizure of goods, documents and things (c) section 115 - confiscation of conveyances (d) section 118(a) - confiscation of packages containing goods (e) section 119 - confiscation of goods for concealing goods (f) section 120 - confiscation of goods even if form changes (g) section 121 - confiscation of sale proceeds of contravening goods (h) section 124 - issue of show cause notice before confiscation of goods (i) section 142(1)(b) and 142(1)(c)(ii) - Recovery of duty (j) section 150 - procedure for sale of goods.

Contravening goods liable to confiscation

- Under rule 25 of CE, following goods are liable to confiscation –

- Goods removed in contravention of Central Excise rules,
- Goods not accounted for
- Goods on which Cenvat credit is wrongfully taken
- Goods manufactured without registration of the factory.

Confiscation of Conveyance

Following conveyances are liable to confiscation under section 115(1) of Customs Act, as made applicable to Central Excise:

- any conveyance from which goods are thrown overboard or destroyed to prevent seizure
- Conveyance which is required to land or stop for inspection but fails to do so.
- Conveyance by which warehoused goods are cleared for export, but goods is unloaded without permission.

Confiscation of packages

When the goods are liable for confiscation, the packages in which contravening excisable goods are packed, such packages are also liable for confiscation.

Confiscation even form changes

Contravening goods are liable for confiscation even if there is any change in its form for example mixing with other.

Confiscation of sale proceeds

If the contravening goods are found to have been sold, sale proceeds of such sale are liable to confiscation

Redemption fine in lieu of confiscation

Whenever confiscation of goods is ordered, the adjudicating officer *may* give option to owner of goods to pay 'fine' in lieu of confiscation. After payment of redemption fine; the goods are returned to the owner of goods. Section 125(2) of Customs Act makes it clear that where any fine in lieu of goods is imposed, the owner of goods or the person from whom the goods were seized is liable to pay duty and charges in respect of such goods, in addition to the fine.

Limit for imposing redemption fine – As per proviso to section 125(1) of Customs Act, redemption fine up to market price of goods less duty chargeable thereon can be imposed.

Procedure after confiscation Rule 28(1) of Central Excise Rules

After confiscation, the goods shall vest in Central Government. The Central Excise Officer adjudging confiscation shall take and hold possession of things confiscated. Every Police Officer is required to assist excise officer in taking and holding such possession. (Parallel provision in Customs section 126.)

If the assessee does not pay fine in lieu of confiscation, the goods will be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct. [Rule 29].

If the assessee exercises option to pay fine in lieu of confiscation, he may be asked to pay storage charges as may be determined by adjudicating officer. [Rule 30]

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Prosecution for Offences

Section 9 defines following as offences punishable:

- Contravening provisions of restrictions of possession of goods in excess of prescribed quantity as prescribed under section 8.
- Contravening provisions of rules regarding transit of excisable goods
- Contravening provisions of rules regarding registration of a unit
- Evading payment of duty payable under CEA.
- Removing excisable goods, in contravention of provisions of Central Excise Act and Rules.
- Acquiring or in any way concerning himself with transporting, depositing, concealing, selling, purchasing or otherwise dealing with excisable goods where he knows or has reason to believe that the goods are liable to confiscation under Central Excise Act or Rules.
- Contravening any provision of Central Excise Act or rules in relation to Cenvat credit.
- Failure to supply information or knowingly supplying false information.

Quantum of Punishment that can be imposed

A. For first time Conviction

If the duty exceeds Rs. 1 lakh: imprisonment up to seven years (minimum 6 months) and fine (without limit) *or both* can be imposed.

If the duty does not exceed Rs. 1 lakh: imprisonment up to three years or fine (without limit) *or both* can be imposed.

B. For subsequent conviction:

Irrespective of value of duty: imprisonment up to seven years (minimum 6 months) and fine (without limit) *or both* can be imposed.

Imprisonment less than 6 months when

If there are special and adequate reasons for granting lesser punishment.

The following are **shall not be treated** as adequate reasons

- First time offence
- Age of the accused
- Accused is not a principal offender
- Punishment for second time for the same offence under CE Act

Further punishments Sec 9B/sec 135 B- Court has powers to order for further punishments like revocation of offer of redemption of fine and Publication of names, place of business or residence, nature of contravention etc in news paper.

Burden of proof – The burden of proof is on Excise department to prove the commitment of offence by a person. Similarly accused has to prove that there was no culpable state of mind like intention, knowledge, belief etc. Both proofs should be beyond reasonable doubt.

Relevancy of Statement before Excise / Customs Officer

[Section 9D of CEA – parallel section 138B of Customs Act]. Statement made and signed before any Central Excise Officer / customs officer of gazetted rank is allowed as evidence in the prosecution as follows

(a) In case of a person who is dead or if he cannot be found or whose presence cannot be obtained without undue delay or expenses, the statement *will be* allowed as evidence

(b) In case of person who is present before the Court and is examined as witness, Court *may* admit the statement if it is of the opinion that the statement should be admitted in the interest of justice. Discretion is given to Court in case of statements made before Excise Officer, only if such person is examined as witness.

The provisions apply to adjudication and appeal proceedings also.

Presumption regarding Documents seized from a person

Any document seized from a person shall be *presumed* to be true about the contents therein. Signature and other part of hand written document on such seized document, purporting to have been of a person or reasonably assumed to be of that person shall be presumed to be of that person.

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If such person claims that the document is not true or not signed by him, *the burden of proof* is on him

Computer print outs

Statement printed by Computer is admissible if

- Computer printout was produced during the period when the computer was used for storing and processing the information
- The information contained in the statement was regularly supplied to computer during the period
- computer was operating properly during the period or breakdowns were not significant to affect accuracy of documents
- The print out is reproduced in ordinary course of activities

Central excise Offence is non-cognizable [Section 9A of CEA]. - As per section 2(c) of Criminal Procedure Code, 'cognizable offence' means an offence for which a police officer may arrest without warrant. Offences under section 9 of CEA are non-cognizable. For offences under excise action will be taken by police only at the instance of CEO.

Offences by Companies Sec 9AA

For the offences committed by companies, Directors, officers are also responsible if they are involved in committing of breach/offence.

Compounding of Offence Sec 9A(2)

Any offence committed from sec 3 to Sec 12 of CE Act may, either before or after institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

Power of Central Government to Publish Names of persons (new section 37 E)

- This section provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest.
- The Central Government may publish name of any person and any other particulars relating to any proceedings in the public interest. The Government can do the publication in such manner as it thinks fit.
- The publication in respect to penalty shall be only after appeal time limit is expired or appeal is disposed of.
- In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.

Appeals and Revision

Excise Law as well as Customs Act makes elaborate provisions for departmental adjudication, appeals and revision. The provisions are almost identical in both the Acts, as below

Orders of the Authority	Appeal can be made with
Superintendent, Assistant Commissioner, Dy Commissioner, Jt. Commissioner, and Additional Commissioner)	Commissioner
Commissioner,	Tribunal.
Tribunal.	High Court
High Court	Supreme Court

Appeal to Commissioner (Appeals)

Appeal against order of Superintendent, Assistant Commissioner, Dy. Commissioner and Additional Commissioner lies with Commissioner (Appeals), u/s 35(1) of CEA - parallel section 128(1) of Customs Act.

Time limit for filing appeal

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Appeal must be filed within 60 days from date of communication of order. Commissioner (Appeals) has powers to extend this period by further 30 days if *sufficient cause* is shown.

Form of Appeal to Commissioner (Appeals) –

Appeal should be in prescribed form No. EA-1 (CA-1 in case of Customs) in duplicates and should be accompanied by a certified copy of the decision or order against which appeal is filed.

Stay application - If duty demanded and penalty/fine imposed is not paid, separate application for waiver of pre-deposit of duty and stay of recovery should be filed. If appeal is filed but stay application is not filed, appeal may be dismissed without hearing-

Duty demanded includes, duty payable as per sec 3, duty collected from buyer as per sec 11 D, duty erroneously refunded, amount payable as per cenvat credit rules and interest payable under act or rules.

Departmental appeal –

Departmental appeal should be in form EA-2 in duplicate (form CA-2 in case of Customs), with two copies of decision or order passed by adjudicating authority and a copy of order passed by Commissioner of CE directing the authority to apply to Commissioner (Appeals). The time limit for this appeal is one month.

Affixing Court fee stamps

In case of appeal to Commissioner (Appeals), the memorandum of appeal should bear court fee stamp of 50 Ps, while appeal to CESTAT should bear court fee stamp of Rs 2/-.

Order that can be passed

The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. [Section 35A(3) of Central Excise Act – parallel section 128(3) of Customs Act

Order of Commissioner (Appeals)

The order should be in writing, shall state all points for determination, give decision and reasons for the same [section 35A (4)]. Copy of the order should be communicated to (i) Appellant (ii) the adjudicating authority against whose order the appeal was filed and (iii) Commissioner.

Revision by Central Government

In some cases appeal does not lie with CESTAT. In such cases, a revision application has to be made with Central Government. [An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of Central Government].

Appeal against order of Commissioner or Commissioner (Appeals) lies with Tribunal against all orders, *except*

- (a) Loss of goods occurring in transit from factory to warehouse or to another factory
- (b) Rebate of duty on goods exported outside India or excisable goods used in manufacture of goods which are exported and
- (c) Goods exported without payment of duty.

In the aforesaid matters, Tribunal has no jurisdiction, but revision application can be filed with Central Government under section 35EE of CEA within three months. Central Government can annul or modify the order. In all other matters, appeal lies with Tribunal. , Assessee or the Commissioner of CE can file revision application.

In case of Customs, CESTAT has no jurisdiction in the matters of

- (a) baggage
- (b) payment of duty drawback and
- (c) Goods short landed in India. In these matters, revision application lies with Central Government [section 129DD of Customs Act].

Time limit for filing application –

Revision application must be filed in 3 months from communication of the order. This period can be further extended by three months on sufficient cause being shown. - .

Revision application by Commissioner –

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Application for revision can also be made by Commissioner of Central Excise, if he is of the opinion that order of Commissioner (Appeals) is not proper. No fees are payable along with such an application. No time limit has been prescribed for filing the application.

No provision of appeal against revision order

There is no provision of appeal against decision of Central Government in such revision applications (The only remedy is writ petition to High Court or SLP in Supreme Court).

Appeal to Tribunal (CESTAT)

Tribunal is a *quasi-judicial* body. This Tribunal hears appeals against orders of Commissioner as adjudicating authority and Commissioner (Appeals). Tribunal orders are binding on lower authorities. Tribunal is final fact finding authority. Finding of facts arrived at by Tribunal cannot be upset by higher authority unless found to be based on no evidence or irrelevant evidence or incorrect principles. Tribunal is creature of Statute and cannot traverse beyond provisions of Statute.

Constitution of CESTAT

Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has been formed under section 129 of Customs Act. The Tribunal is empowered to hear appeals in cases of Customs, Excise and Service Tax. CESTAT was known as CEGAT upto 14-5-2003]. The Tribunal consists of Judicial Members and Technical members, which give the Tribunal a balanced overall view of legal background and practical implementation of law.

Benches of Tribunal - Tribunal sits in benches. The benches may be single member bench and larger benches etc. Work among various benches will be allotted by President or in his absence senior most Vice President by special or general order.

Procedure for Appeal to CESTAT

Some procedures are prescribed in Central Excise Rules. Besides, Tribunal is empowered to regulate its own procedure vide section 129 C(6) of Customs Act, which has been made applicable to Excise Act. These procedures must be within the provisions of Act and Rules of Central Excise. Under these powers, Tribunal has framed CESTAT (Procedure) Rules, 1982

Filing of appeal – Appeal / application / cross objection should be filed within prescribed period. In case of appeals, the period is three months from date of receipt of order to be appealed against. In case of departmental appeal time limit is one month. Appeal / application / cross objection can be personally presented to Registrar of Tribunal or sent by registered post.

Fees payable for appeal - a fee must accompany the appeal. No fee is payable if appeal is filed by department.

Affixing Court fee stamps – Court fee stamp of Rs 2/- is required to be affixed on memorandum of appeal and 50 Ps on copy of order appealed against. However, non-affixing court fee stamp is a curable defect.

Stay applications and its immediate hearing - Application for stay of requirement of making deposit of any duty or penalty shall be presented in triplicate. Contents of application for stay must be supported by a verification regarding their correctness. The Bench may, in a particular case, direct the filing of affidavit by the applicant/respondent. [Rule 28A (4) of CESTAT Rules].

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Appeal in prescribed form - Appeal should be in prescribed form No. EA 3 (CA-3 in case of Customs) in quadruplicate with copy of order appealed against also in quadruplicate. –Departmental appeal should be in form EA-5 (CA-5 in case of Customs) in quadruplicate with equal number of copies of order appealed against and copy of order of CBE&C (Board) directing Commissioner to file appeal to CESTAT. – Rule 7(1) of Central Excise (Appeals) Rules [earlier Rule 217].

One of the copies of order should be a certified copy. The appeal can be in triplicate if it is to be heard by a single member bench. Further, if appeal is to be heard by larger bench, additional copies have to be supplied

The prescribed form asks for details like name, address, details of order appealed against, whether duty demanded has been deposited etc. Grounds of appeal, statement of facts and reliefs claimed are also to be given. Grounds of appeal should be concise and without argument or narrative and should be numbered consecutively.

Documents to be attached with Appeal

The appeal must be accompanied by (a) Copies of order appealed against - one of the copies must be a certified copy (b) Copies of original order appealed against, if appeal to CESTAT is a second appeal - one copy must be a certified copy. [CESTAT Procedure Rule 9(1).]

Grounds of Appeal - Applicant is expected to mention all grounds of appeal in the appeal memorandum. A ground not mentioned in grounds of appeal can be accepted only with permission of Tribunal.

Paper Book - A Paper Book containing copies of documents, statement of witnesses and other papers on which appellant wants to rely at the hearing of appeal should be filed.

Allocation of work - Appellant and respondent - In appeal filed by person other than Commissioner, Commissioner shall be respondent, while in case of appeal by Commissioner, other party shall be respondent.

Inherent Powers of Tribunal

Granting stay for recovery of duty

Tribunal can grant stay for recovery of duty and penalty pending appeal -.

Recall of order passed ex parte

Tribunal can recall an order passed *ex parte*, if sufficient cause is shown for absence of the party -

Recall if deposit of duty as ordered paid late - Tribunal can dismiss appeal if duty is not deposited. If assessee deposits duty though late, Tribunal can recall and restore order of dismissal of appeal.

Recall if glaring mistake - order was recalled when it was found that a different issue was decided and issue in appeal was not decided in final order at all.

Tribunal can quash its own order

Tribunal can recall and quash its own order in exceptional cases where it is shown that it was obtained by fraud or palpable mistake or was made in utter disregard of statutory provision.

Correct an error so that justice is done

Tribunal can review on merits where the error is apparent on the face of record. It was held that inadvertent error committed by Tribunal can be corrected.

Tribunal can recall an order to correct any error committed by itself so that justice is done to assessee and the revenue. Tribunal can also recall its order if there has been a mistake of the court prejudicing the party.

Limitations on inherent powers

Tribunal cannot use its inherent powers when (a) Alternate remedy is available (b) If the order can be appealed against (c) If the power would conflict with any specific provision of law which prohibits such a remedy. However, it can exercise power if (a) Non-exercise of power may result in abuse of the process of court (b) Non-exercise of power may result in failure of justice.

Tribunal is Final fact finding authority

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Tribunal is the final fact finding authority. High Court cannot go behind the facts found by Tribunal

Rectification of mistakes

Tribunal has no powers to review its orders. -. However, Tribunal can pass order for rectifying a mistake apparent from the records, within six months of passing of order. - Section 35C(2) of CEA - similar section 129B(2) of Customs Act. The mistake can be corrected only if it is apparent from records. The error could be of fact or an error in law

Limitations of Tribunal

Tribunal has no inherent powers to review its order –

Tribunal has to presume and accept legal validity of provisions of Central Excise Act and Rules. The Tribunal is created by Statute and cannot challenge validity of any provision of the statute itself. Tribunal cannot declare a provision of Statute as *ultra vires*

Tribunal is not empowered to issue writs.

Tribunal is not a Court, though it has been granted various powers. A Tribunal is a Tribunal and though exercises judicial powers; it cannot be equated to a court -

Tribunal is bound by judgments of High Court (and of course Supreme Court). In case of conflicting decisions of High Courts, decision of High Court in which the appellant is situated should be followed.

Appeal to High Court

Appeal to High Court on substantial question of law

Tribunal is final fact finding authority. However, if there is a substantial question of law arising out of order of Tribunal (in cases other than relating to rate of duty and valuation); an appeal can be made to High Court within 180 days. [Section 35G(1) of CEA] - parallel section 130(1) of Customs Act] The high court can admit appeal even after expiry of 180 days if there is a sufficient cause for not filing appeal within in time limit of 180 days.- In case of question relating to rate of duty and valuation, appeal lies with Supreme Court.

The appeal can be made either by the Commissioner of CE/Customs or the other party. If other party makes the appeal, the application should be accompanied by prescribed fee. The memorandum of appeal shall clearly state the substantial question of law involved. [Section 35 G(2)(c) of CEA - parallel section 130(2)(c) of Customs Act]. Appeal to High Court can be made against interim orders of Tribunal.

Hearing of appeal

High Court bench of at least two judges will hear the appeal. [Section 35G(7) of CEA – parallel section 130(7) of Customs Act]. Decision will be by majority. If the judges are equally divided on the issue, matter will be referred to third judge. He will hear only on the point on which the judges were differing. Majority, including those who had first heard the appeal, will then decide the point. [Section 35G(8) of CEA - parallel section 130(8) of Customs Act]. Provisions of Code of Civil Procedure relating to High Court will apply in case of such appeals.

Appeal to Supreme Court

Appeal to Supreme Court can be made in following cases:

Judgment of High Court in appeal, if High Court certifies it to be a fit case for appeal to Supreme Court

Order of Appellate Tribunal where it relates to question relating to rate of duty excise or value for purpose of duty.

By Special Leave Petition (SLP) under Article 136 of Constitution i.e. permission of Supreme Court, even in cases where High Court does not certify it to be a fit case for appeal to Supreme Court.

Such appeal should be presented within 60 days from the date the order is communicated. Appeal should be with seven extra sets and should recite all relevant facts and set forth objections to the order and ground of appeal. An authenticated copy of order appealed against should be attached. These are 'civil appeals'. Supreme Court passes orders after hearing appeals.

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Settlement Commission

Constitution of Settlement Commission

Settlement Commission has been constituted in June, 1999; The Commission consists of Chairman, Vice Chairmen and members, functioning under Department of Revenue, Ministry of Finance. The Chairman, Vice-Chairmen and other members of the Settlement Commission shall be appointed from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of Customs and Central Excise laws.

The powers and authority of the Settlement Commission will be exercised by a principal Bench sitting at Delhi and such additional Benches established by the Central Government at the places as it considers necessary. Settlement Commission deals with Customs and Central Excise matters. The purpose of constitution of settlement commission is for speedy completion of assessments and settlement of pending cases at the earliest.

Conditions to be fulfilled for making an application

- Assessee can make an application to settlement commission only when the case is pending before the adjudicating authority as on the date of application. It can only be approached when original adjudication is pending.
- The assessee shall be eligible to file an application only in respect of the goods for which he admits short levy on account of misclassification, undervaluation, and inapplicability of exemption notification or CENVAT credit
- the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;
- a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;
- The additional amount of duty accepted by the applicant in his application exceeds Rs. 3 lakhs (before 01.06.2007 Rs.2 lakhs).
- The applicant shall deposit the additional amount of excise duty accepted by him along with interest due under section 11AB at the time of **filing** of applications
- Where any excisable goods, books of account, other documents have been seized the assessee entitled to make an application only after the expiry of 180 days from the date of the seizure.
- In respect of an application filed before 1st June, 2007, but pending issuance of an order by the Commission, the applicant shall pay the accepted duty by 30th June, 2007, failing which the application shall be rejected.
- Once application is made to SC it cannot be withdrawn.

Application to Settlement Commission cannot be made

- Settlement Commission **cannot be** approached when an appeal is pending before a central excise officer or Central Government.
- It can also not be approached when the matter is remanded for further adjudication.

Procedure of Settlement Commission [New section 32F]

- Assessee should make application giving full disclosures along with all relevant documents should be submitted in quintuplicate in prescribed application along with prescribed fees.
- After receipt of application Settlement Commission shall issue a notice to the applicant within 7 days from the date of receipt of the application, asking the reason why application should be allowed
- Settlement commission will take into consideration the explanation provided by the applicant.
- Settlement Commission shall, within a period of 14 days from the date of the notice to assessee shall pass an order for allowing or rejecting the application.
- Where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed.

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- In case of rejection of application, the proceedings before the Settlement Commission shall abate on the date of rejection.
- A copy of accepting /rejecting order shall be sent by settlement Commission to the applicant and to the Commissioner of Central Excise having jurisdiction.
- Settlement Commission shall, within 7 days from the date of acceptance order shall, call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction.
- The Commissioner shall furnish the report within a period of 30 days from the date of the receipt of communication from the Settlement Commission.
- Where the Commissioner does not furnish the report within the aforesaid period of 30 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.
- Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary and it may direct, the Commissioner (Investigation) within 15 days of the receipt of the report, to make such further enquiry or investigation
- The Commissioner (Investigation) should furnish the report of such enquiry within a period of 90 days from the date of the receipt of the communication from the Settlement Commission.
- Where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order without such report.
- The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and on the matters not covered by application as per report of commissioner.
- An opportunity of being heard either in person or through a representative duly authorised in this behalf shall be given to the applicant and to the Commissioner of Central Excise having jurisdiction before passing of such order

Time Limit for passing order for Settlement commission

- In respect of application received before 01.06.2007 order should be passed by 29.02.2008
- In respect of application received on or after 01.06.2007, within 9 months from the last day of the month which application was made..
- This 90 days limit can be extended by another 3 months, by recording the reasons in writing (WEF 01.04.2010)

Consequences if SC not passed order with in Time limit

- The proceedings of SC shall abate.
- The adjudicating authority under which the case is pending shall proceed, as if no application is made to SC.

Order of Settlement Commissions

- The amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant
- In case of rejection of application, the order shall contain the reasons therefor.
- The order shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
- Where the order of Settlement is void, The Central Excise Officer complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void

Assesse should pay the amount

- The duty, interest, fine and penalty payable as per SC order shall be paid by the assessee within 30 days of receipt of a copy of the order by him.
- If the assessee fails to pay the amount which remains unpaid shall be recovered along with interest due thereon, as per sec 11 of CE Act.

Powers of Settlement Commission

- Settlement Commission has all powers of a Central Excise/Customs Officer.

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- It can attach property of applicant during pendency of proceedings, in the interest of revenue.
- It can regulate its own procedure and decide places where the bench will sit.
- The proceedings before the Commission are judicial proceedings.
- Every order of settlement is conclusive as to the matters covered by the order.
- SC has powers to grant immunity from prosecution penalty for an offence under Central excise and Customs Act
- SC has power to withdraw the immunity granted, if the payment is not made as per order,
- SC has power to send back case to CEO if assessee not cooperated during proceedings,

Settlement Commission has no power

- To grant immunity from prosecution or offence under Indian Penal Code any other Central Act
- To grant immunity from payment of interest under Central excise and Customs Act.
- To reopen completed Proceeding of Assessment in respect of cases where application made on or after 01.06.2007.
- To grant extension of time to pay the final sum specified in the settlement order.

Application for settlement permissible only once during the lifetime of the assessee in certain cases where application made before 01.06.2007

In respect of application made before 01.06.2007, Assessee cannot make subsequent application when

- Where the settlement commission imposed penalty in the order for concealment of duty liability
- After the Order Assessee convicted an offence under the Excise and customs Act
- When case referred back to CEO due to non co-operation of assessee

Remaining all other circumstances assessee can make application to Settlement commission more than once (ie application made before 01.06.2007 other than three above and all applications made after 01.06.2007)- WEF 01.04.2010.

Appeal against order of Settlement Commission

There is no specific provision for appeal against order of Settlement Commission; however writ can be filed in High Court.

Authority for Advance Ruling Sec 23 A to 23 H
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Advance Ruling' means determination of a question of law or fact specified in the application submitted by applicant regarding the liability to pay duty in relation to activity (of manufacture/production/import/export) proposed to be undertaken by the applicant.

Advance ruling brings certainty in determining duty/Service tax liability and it helps in avoiding long drawn and expensive litigation at a later date.

Constitution of the Authority

The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings, to be called as "the Authority for Advance Rulings (AAR) for Central Excise, Customs and Service Tax".

AAR under the Income Tax Act, 1961 shall exercise the powers of the AAR under Central Excise Act, 1944 (Sec 28 F Customs Act)

The Authority shall consist of the following Members appointed by the Central Government, namely:

- A Chairperson, who is a retired Judge of the Supreme Court/High Court

Indirect taxes- Central Excise- simplified

- An officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board;
- An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

Who can apply to the authority

- Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident
- A resident setting up a joint venture in India in collaboration with a non-resident or
- A wholly owned subsidiary Indian company, of which the holding company is a foreign company, where such holding company is undertake joint venture in India
- A Public sector Indian Company

“Joint venture in India” means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders are a non-resident having substantial interest in such arrangement. Thus, now in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.

Application can be made in respect of activity of production or manufacture (in case of Central Excise) or import and export (in case of customs) or liability to pay service tax in relation to service provided or proposed to be provided (in case of service tax). Such person is called ‘applicant’

Application for Advance ruling

The application in the question can be in respect of –

- classification of goods (or services in case of service tax)
- applicability of an exemption notification
- principles to determine value of goods for purpose of assessment
- notifications issued in respect of excise duty payable under CEA, CETA or any other law where duty is chargeable in same manner as duty of excise or customs duty payable under Customs Tariff Act or
- Admissibility of Cenvat Credit (service tax credit in respect of service tax).
- Whether a good is excisable goods or not” or “whether the process amounts to manufacture or not?”

The application shall be made in quadruplicate and be accompanied by prescribed fees.

An applicant may withdraw his application within thirty days from the date of the application.

Procedure on Receipt of Application

- Authority send a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records:
- Authority may admit or reject the application.
- Authority may reject the application if the case is already pending before appellate authority or court. Or court /Tribunal already decided the case.
- If application is admitted, authority will examine the material submitted by applicant or obtained by authority.
- On a request received from the applicant, personal hearing will be entertained.
- Authority will then pronounce its advance ruling within 90 days of receipt of application.
- Copy of the order, signed by members of Authority, will be sent to the party and Commissioner.

Applicability of Advance Ruling

The advance ruling will be applicable and binding only

- On the applicant who had sought it;
- In respect of any matter referred to it

Students are advised to read these case laws only after reading and understanding the relevant provisions from Act, rules etc. Mere knowing and reading the case law is of no use without knowing the law.

Excise Basic concepts

Circulars of Board cannot prevail over law laid down by Apex Court. Courts cannot direct that circulars should be given effect to when a contrary decision is expressed by a Supreme Court / High Court Decision. Hindustan Spinning and Weaving Mills Ltd. 2009 (SC0 /Bolpur v Ratan Melting & Wire Industries 2008 (12) STR 416

Circulars – Only Prospective Effect: CBEC's Circular can only have prospective effect, especially when the word "Henceforth" had been used in the Circular. **Jai Fibres Ltd (SC) 218 ELT 484**

Circular cannot amend Notification: By issuing a Circular subsequent to a Notification, the Department cannot add new condition to the Notification, thereby restricting the scope of Exemption Notification. **Inter Continental (India) (2008) 226 ELT 16**

Circular does not have overriding effect of notification *Belgaum v. Sandur Micro Circuits Ltd. 2008 (229) ELT 641 (S.C.)* SC held that a circular could not take away the effect of notifications statutorily issued. In certain earlier cases also, it had been held that the circular could not whittle down the exemption notification and restrict the scope of the exemption notification or hit it down. By issuing a circular a new condition thereby restricting the scope of the exemption or restricting or whittling it down could not be imposed

Manufacture

Conversion of Tarpaulin into Tarpaulin made-ups would not amount to manufacture. M/S. Tarpaulin International Equivalent 2010 (256) ELT 0481 (S.C.)

Process of stitching and fixing eyelets would not amount to manufacturing process, since tarpaulin after stitching and eyeleting continues to be only cotton fabrics. Purpose of fixing eyelets not to change the fabrics. Even if value addition the same minimum. To attract duty there should be a manufacture to result in different Goods and Goods sought to be subject to duty should be known in market as such. To Held that conversion of Tarpaulin into Tarpaulin made-ups would not amount to manufacture. . Tarpaulin still called tarpaulin made-ups even after undergoing the said process. Hence, cannot be said that process a manufacturing process

Duplicating Blank CD recording is a manufacture: Oracle Software India Ltd. 2010 (250) ELT 0161 (S.C.)

Assessee entitled to sub-licence the software developed by Oracle Corporation. Assessee imports Master Media of software from Oracle Corporation which duplicated on blank discs, packed and sold in market along with relevant brochures. Commercial duplication cannot be compared to home duplication. Assessee undertaken an operation which renders a blank CD fit for use for which it was otherwise not fit. Blank CD an input. By duplicating process undertaken by assessee, recordable media which unfit for any specific use gets converted into programme which embedded in Master Media. Blank CD gets converted into recorded CD by afore-stated intricate process. Marketed copies are goods and once they are goods, impugned process constitutes manufacture.

The case is relating to income tax to decide whether it is manufacture or not /industrial undertaking u/s 80 IA. The cases coated were TCS case and Grampone case. Held as manufacture.

Twisting and texturing of POY (partially oriented yarn) into yarn by thermo mechanical process is manufacture. Emtee poly yarn 2010 (SC) 250 ELT 321 Mere Twisting and texturing of marbles SC (2010)

Mere labeling or relabeling without repacking from bulk to retail does not amount to "deemed manufacture CCEx., Mumbai v. BOC (I) Ltd. 2008 (226) ELT 323 (S.C.)

The assessee, BOC, procured Helium from other manufacturers, affixed the labels and sold it under its own brand name. Revenue alleged that activity of affixing labels of their own name amounted to manufacture as per Note 10 of Chapter 28 of schedule to Central Excise Tariff SC observed that the respondent only labeled or relabeled the product and did not pack or repack from bulk packs to retail packs in the present case. Therefore, it held that the impugned activity did not amount to manufacture. The same view held in *CCEx., Mumbai v. Johnson & Johnson Ltd 2005 (188) ELT 467 (S.C.)*, SC was confirmed.

Swaging process amounts to manufacture Prachi Industries vs. CCEx., Chandigarh 2008 (225) ELT 16 (S.C.). The appellant used to purchase duty paid MS tubes from its manufacturers and cut the same into requisite length. Thereafter, put it in the swaging machine for undertaking swaging process (Bending) whereby dies fitted in the machine imparted "folds" to the flat surface of the MS tube/pipe. SC clarified that MS plane pipe/tube could carry water to the overhead tank whereas the work piece produced in the present case was useful as a decorative item or as an item which provided a strong grip in auto-rickshaw. Hence, SC held that swaging amounted to manufacture and thus, excise duty was payable by the assessee.

Cutting and slitting of steel sheets or polyester films used for lamination purposes amounts to manufacture M/S RAJPUROHIT GMP INDIA LTD. & ORS. – S.C- 2008

Addition of stabilizing agent, perfuming, masking agent etc. to the concentrated alletherin (liquid mosquito destroyer) does not amount to manufacture Karam Chand 2009 (236) E.L.T. 647 (H.P.): Held that no new substance was formed and only a diluted form of original substance was packaged under a different brand name alletherin in its concentrated form was an insecticide. The final product manufactured by the respondent was a diluted form of insecticide-alletherin which would only kill small insects like mosquitoes. Hence only the potency of the insecticide was being reduced. Therefore it could not be termed to be manufacture.

Cutting and Slitting of steel sheets and polyester films used for lamination purposes do not amount to manufacture. Rajpurohit GMP India Ltd. & Ors. (SC)

Recoding a cassette or tape is manufacture- Recoding or sound on duty paid magnetic tape is manufacture. Blank cassette is different from recorded cassette. Gramophone India Ltd (SC). Receiving a cassette from customer and recoding as per his choice can be service and will attract service tax.

Assembling of duty paid furniture parts components received in knocked down position is not a manufacture Blow Plast Ltd. 2009 (236) (Del.).

Parsavnath Furnishers Limited (PFL) is engaged in procuring the duty paid Office Furniture System/Work Stations (OFS/WS) from the suppliers and erecting and installing them at site of customers, from whom it has procured the orders. Held that assessee received was complete

Recent Case laws on indirect taxes relevant for May 2011 examination

OFS/WS and what it left on its clients' sites was also complete OFS/WS and nothing new had come into existence. Hence, no duty was payable by the assessee.

Blending and packing a tea is not manufacture. Tara Agencies (Sc) 2007

Goods/ Dutiability

Attachment of plant with nuts and bolts to foundation is movable and dutiable: Solid & Correct Engineering Works and Ors (SC)2010

Attachment of plant with the help of nuts and bolts to foundation not more than 11/2 feet deep intended to provide stability to working of plant and prevent vibration/wobble free operation does not qualify for being described as attached to earth. Because attachment of plant to foundation not comparable or synonymous to trees and shrubs rooted in earth. Hence dutiable

Unvulcanised sandwiched fabric assembly produced in the Assessee's factory and captively consumed for manufacturing of **footwear is not marketable** as the department not able prove the marketability and hence and No duty liability **Bata India Ltd.-2010-S.C.**

Fabricated sign poles made of iron and steel which installed in petrol outlets of IOC is movable.

They can be removed without dismantling. Hence they are goods and liable for duty. On the other hand assessee carried activity involving huge value under a contract with IOC without intimating the activity to the Department. The extended period of 5 years will apply for demand. **VIRGO INDUSTRIES (ENGINEERS) PVT. LTD. 2009 – CESTAT-**

Water treatment plant erection and instillation is immovable and not a goods- L & T Ltd 2009 (HC)

procurement, supply, transportation fabrication, of various components, making of civil construction and erection of waste water treatment plant and commissioning it at BPCL plant on erection and installation becomes an immovable property which is not excisable to tax. – SCN quashed. Showcause notice issued by Department is quashed.

Process of converting raw asfoetida into compounded asfoetida not amounts to manufacture

CCEx. v. Laljee Godhoo & Co. 2007 (216) ELT 514 (S.C.) the Apex Court upheld the Tribunal's decision holding that since the essential character of the impugned goods remained constant, there was no manufacture

Ms Scrap from building construction not dutiable ? Union of India v. Banswara Syntex Ltd.

2008 (221) ELT 360 (Raj.) MS Scrap arising as waste material of building construction, wherein credit of duty neither as inputs nor capital goods had been availed would be non- dutiable as it did not arise from manufacturing process.

An article mere does not become excisable by mere mention in Excise Tariff? CCEx., Chandigarh Vs Gurdaspur Distillery 2008 (224) ELT 337 (S.C.)

The assessee was engaged in the manufacture of de-natured Ethyl alcohol. During the manufacture of de-natured Ethyl alcohol, a residue known as spent wash came into existence. The same was reacted in a closed type digester and methane gas was being produced. This methane gas was being consumed captively by the assessee as a fuel in distillery. Revenue appealed that duty should be levied on the methane gas thereby produced. Department failed to prove the marketability of the goods in question, it was held that the methane gas produced by respondent was not marketable and hence, was not liable to duty.

Excise duty not leviable on intermediate product when finding on marketability is absent *White Machines v. CCEx., Delhi 2008 (224) ELT 347 (S.C.)*

The assessee manufactured C.I. castings which were captively consumed for producing C.I. Chilled Rolls. These Chilled Rolls were exempted from payment of excise duty. Revenue alleged that C.I. castings which were intermediary product were marketable. Therefore, excise duty would be payable on them as the final product was exempt from duty. Tribunal failed to record any finding regarding marketability of the said intermediary product i.e. C.I. castings. Hence, it was held that in the absence of any findings recorded by the Tribunal regarding the marketability, duty could not be levied on the goods in question.

Aluminum dross and skimming's having become excisable consequent to amendment to goods u/s 2(d) by FA 2008.by CE Act.

The High Court observed that effect of the explanation is to get over the judgment of the Apex Court in case of *Commissioner, Central Excise v. Indian Aluminium Co. Ltd. 2006 (203) E.L.T. 3 (S.C.)* wherein the Supreme Court held that everything that can be sold is not necessarily marketable.

Cement Concrete Armour Units not marketable and not constitute excisable goods? *Board of Trustees v. Collector of Central Excise 2007 (216) ELT 513 (S.C.)*

the assessee, Vishakhapatnam Port Trust, used Cement Concrete Armour Units for installation of break waters in the outer harbour for keeping the water calm. The Department did not produce any evidence to show that impugned units were bought and sold in market as a commodity. When the goods were not capable of being sold, then the test of marketability was not fulfilled. Thus, the Apex Court rejected the claim of the Department and held not excisable and no duty.

Transmission apparatus installed in mobile tower stations is immovable and not excisable *CCEx., Mumbai- IV v. Hutchison Max Telecom P. Ltd. 2008 (224) ELT 191 (Bom.)*

The respondent was engaged in providing mobile telecommunication services based on GSM. The question that arose in this case was whether, the transmission apparatus installed at site room was goods and secondly if even so, whether they were marketable.

HC observed that, firstly, whenever the site had to be relocated, all the equipments like BTS/BSC, microwave equipment, batteries, control panels, air-conditioners, UPS, tower antennae were required to be dismantled into individual components, then they were to be moved from the existing site and reassembled at new site. This involved damages to certain parts like cable trays, etc. which were embedded/fixed to the civil structure as also the BTS microwave equipment itself. Held no duty liable.

Completion of manufacture only when the goods are saleable in the market. Then only duty liability. *Sunco Rubbers Ltd. 2008 (228) ELT 27 (Mad.)*

a job worker, received raw materials required for the manufacture of strips tyres from the primary manufacturers for further processing and after undertaking the processing returned them to the suppliers. thereafter, the suppliers carried on the processes of deflashing, testing and inspection on those goods. Held manufacturing process complete only after testing and inspection. Hence there is no duty liability on Job worker.

Intermediate goods produced and used for captive consumption are **not liable to duty if not marketable**, even if they are specified in the Tariff Schedule. *White Machines (2008) 224*

Even if an article is mentioned in Tariff there is no liability of duty unless it is manufactured *Gurdaspur Distillery (2008) 224 ELT 337 (SC)*

Waste / scrap arising in course of repair activity cannot be held to be manufactured product and thus, not liable to excise duty. **Prism Cement Ltd. 2008** Waste arising from manufacturing process only is dutiable. **Banswara Syntex Ltd (2008) 221 ELT 360 (Raj.)**

Excisability: Excise duty is not concerned with ownership or sale. Liability under Excise Law is event based (manufacture) and irrespective of whether goods are sold or captively consumed. **Moriroku UT India P Ltd vs. State of UP 2008 (224) ELT 365 (SC)**

Mere transfer of a good by an assessee from its factory to its another unit for manufacture of final product does not show that the product was either marketed or was marketable. **CIPLA Ltd 2008 (225) ELT 403 (SC)**

Cess other acts is payable even goods is exempt from duty Indo Farm Tractors & Motors Ltd. v Union of India 2008 (222) ELT 184 (H.P)The assessee manufactured tractors. Such tractors were exempt from payment of whole of the all duties of excise. However held that on notional valuation cess under acts is payable as these cess do not refer to Finance Acts

Classification

Nameplate, emblems and logo of plastic are to be classifiable under Heading no.87.08 and 87.14 (**parts and accessories of motor vehicles**) and not under **Heading no.39.26 (articles of plastic)** as claimed by revenue –Held that **It will be** classified as parts and accessories of motor vehicles **M/s. Pragati Silicons (P) Ltd. – S.C- 2009.**

Exemption to parts is applicable even they cleared in SKd Condition Mewar bartan udyog 2008

There is an exemption to parts of machinery u/s 5A notification. Held that is applicable to parts of machinery even they cleared under SKD condition. It was also held that Classification rules for classifying parts of machinery as machinery under rule 2 is not applicable in availing the benefit of exemption notification

Processed cashew nuts, peanuts, almonds etc. manufactured by dry roasting, oil roasting, salting, and seasoning would be classifiable: Chapter 20 - Chapter 20 – Preparation of Vegetables, Fruit, Nuts or Other Parts of Plants” of the Central Excise Tariff and not under or Chapter 8 Edible Fruit and Nuts; Peel of Citrus Fruit or Melons” of the Central Excise Tariff and chargeable to nil rate of duty. of the Central Excise Tariff? CCus. & CEx. v. Phil Corporation Ltd. 2008 (223) ELT 9 (SC). The classification is to be done under Chapter 20 in view of view of HSN explanatory notes to Chapter 20.

Common Parlance test is one of the determinative tests for classification of a product whether medicament or cosmetic. A product being a tooth powder and there being no change in nature, character and uses of the said product, it has to be a cosmetic/toiletry preparation and not a medicament **Baidyanath Ayurved Bhawan Ltd. 2009 (SC)**

If Section and Chapter notes are clear: other rules of classification not relevant **Champdany Industries Ltd. (2009) 241 ELT 481 (SC)**

Marker ink classifiable only in the tariff entry relevant for Marker Pens. Marker inks are different from other writing inks (water based), which can be used for other products as well. **Camlin Ltd 2008 (230) ELT 193 (SC)**

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Hair-dye vs. Lotion: A hair dye may also be referred to as hair lotion, for purposes of taxing statute, its chemical composition and actual usage becomes relevant **Godrej Industries Ltd 2008 (228) ELT 321 (SC)**

Seating Capacity for Classification: The seating capacity relevant for classification is the capacity for which RC has been given and not the opinion of the manufacturer **Vinayaga Body Building Indus. Ltd. (2008) 224 ELT 3 (SC)**

Scrabble is classifiable under toys as it is toy game, and not under puzzle as contended by assessee. There is a difference between puzzle and game. **Pleasantime Products v. CCE 2009 (243) E.L.T. 641 (S.C.)**

Erroneous claim made by the assessee earlier did not preclude him from subsequently making a claim for correct classification. **Guljag Industries Ltd (2008) 224 ELT 38 (Raj.)**

The definition as per Internet sources like Wikipedia cannot be used for the purpose of interpreting a taxing statute or classification of a product. **Ponds India Ltd (2008) 227 ELT 497 (SC)**

When goods are classifiable under two chapter headings of Tariff simultaneously, the benefit should be given to the assessee. **Calcutta Springs Ltd. (2008) 229 ELT 161 (SC)**

Latex (rubber) based adhesive would be classified under tariff heading Chapter 40 on "rubber and articles thereof and not under 35.06 falling under Chapter 35 on "enzymes, modified starches, glues and albuminoidal substances **CCEx. v. Mannampalakkal Rubber Latex Works 2007 (217) ELT 161 (SC)**

Parts of compressor cleared as a 'stand alone item' should not be classified along with the compressor? CCEx. v. Frick India Ltd. 2007 (216) ELT 497(S.C.)

The assessee manufactured and cleared on payment of duty complete compressors, safety valves and filters under Heading 84.14, Heading 84.81 and Heading 84.21 respectively of the Central Excise Tariff. The assessee also supplied bought-out items like V belt, motor, pulley, belt guard, gauge etc. to their buyers, as a package. The Department contended that as per Rule 2(a) of the General Interpretative Rules for Classification, safety valves and filters should be classified along with the compressors as they were essential parts of the compressors. Consequently, the Department contended that the value of the safety valves and filters together with the value of bought-out items should be includible in the assessable value of the compressor

The Supreme Court observed that Rule 2(a) of the General Interpretative Rules for Classification could not be applied in this case as:

- (i) The compressors manufactured by assessee were removed as 'stand-alone' item and not in an unassembled or disassembled condition; and
- (ii) Section and Chapter notes in Tariff and the Interpretative Rules did not provide guidelines for valuation of excisable goods because they decided the classification as valuation is different from classification.

Thus, the Apex Court upheld the Tribunal's decision holding that parts/accessories could not be classified as 'compressors' under Heading 84.14.

However, the Apex Court remanded back the matter relating to valuation to the Commissioner for denovo consideration so as to examine the pricing aspect of entire package supplied by the assessee to its buyers.

Valuation

Printing and decoration etc. on bottles carried out in a premises different from that in which bottles were manufactured, the value, of the printing will not be includible while determining assessable value of excisable goods for computing the excise duty. Alembic Glass Industries Ltd. 2010 (259) ELT 0008 (S.C.)

Secondary packing normally not used in whole sale trade at the time of removal of goods from factory not includible in valuation. National Leather Cloth Mfg. Co. 2010 (256) ELT 0321 (S.C.)

Fabric manufactured by Assessee was sold by the Assessee to wholesalers at the factory gate only in polythene bags. Additional packing in nature of secondary packing was done for the purpose of convenience of up-country customers in transportation of goods manufactured by Assessee. Cost of secondary packing in hessian cloth cannot be included in value of the good.

Thus, the test laid down was that it is only the cost of packing ordinarily required for selling the goods in the course of wholesale trade to a wholesale buyer at the factory gate which would be includible in the value of the goods and not the cost of any additional or special packing

Repair and Maintenance Charges: Assessee are entitled to deductions for repair & maintenance and rental charges for PMX machine from the assessable value. Dhillon Kool Drinks & Beverages 2009 (238) ELT A26 (SC)

Inspection charges recovered by the assessee for any —third party inspection carried out at the instance of the buyer in addition to the normal inspection of the assessee **is includible** in the assessable value. **SOUTHERN STRUCTURALS LTD. – S.C- 2008**

Interest on Receivables – not deductible if not established: Assessee is not entitled to claim deduction of any “interest on receivables” from the sale price for determining Assessable Value if the assessee had failed to establish that price charged on goods sold to customers on credit basis contained an element of interest in-built therein as a precondition **Castrol India Ltd. 2009 (236) ELT A89 (SC)**

Inclusion of drawings, designs: The charges for drawings, designs etc. have to be added to the assessable value of the machines manufacture, based on use of such drawings, designs, jigs, fixtures, tooling etc. However, before adding the value of drawings etc, it has to be established that the consideration had a nexus with the negotiated price of the assessable **Mysore Kirloskar Ltd, (2008)226 E.L.T. 161 (S.C.)**

Transportation Charges for transport of goods from the factory to the site for erection and installation is not required to be included in the Assessable Value of the goods **Blue Star Ltd 2008 (225) ELT A129 (SC)**

Valuation of Physician’s Samples: Physician’s samples are not sold but cleared exclusively for free distribution for the purpose of advertisement. These should be valued as per Valuation Rule No 5 and not as per MRP Valuation Indian Drug Manufacturer’s Association (2008) 222 ELT 22 (Bom)

Trade discount to relative when there is no flowback of money- deductible. And lease rental paid by retailers to marketing Company not includible in valuation PEPSICO INDIA HOLDINGS LTD. SC 2009 234 ELT 0385

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The assessee manufactured SYRUP containing soft drinks concentrate and sugar and sold the same to their MARKETING SUBSIDIAITY COMPANY. A part of the syrup sold by the assessee to others also. The marketing company would sell the same to retailers after giving trade discount.

The marketing company used to leased out DISPENSING/ VENDING MACHINE (the machine was used for dilution and carbonation of the syrup for sale of soft drinks to consumers) Department contended that Since the assessee and the MARKETING SUBSIDIAITY COMPANY were related person, therefore the A.V. shall be sale price of the marketing company, without deducting discount allowed by MARKETING SUBSIDIAITY COMPANY to its buyers. Further, the lease rental paid by the retailers to the MARKETING SUBSIDIAITY COMPANY towards DISPENSING/ VENDING MACHINE was also included in A.V.

Held that

when trade discount indicated in the invoice at the time of sale and there is no flow back return of trade discount to **assessee seller** or its related person, the A.V. shall be computed after deducting such trade discount, even if, the valuation was sought to be made based on the sale price of the related person, **the deduction of discount cannot be denied.**

Vending machine stood installed by the holding company. Nonetheless, ownership of the vending machine vested in the marketing company. The machine charges were payable to the marketing company and not to the holding company. **Hence —machine usage charges or LEASE CHARGES were not includable in the A.V. of product**

Transport and insurance in case of FOB contracts not includible in valuation Accute Meter Limited (SC)2009

The assessee, a manufacture of electric meters, used to sale the meters to State Electricity Board (SEB). The SEBs used to call for tenders in which the value of the electric meters was to be fixed as at the factory gate. Freight and the insurance charges were to be charged on an average basis not on actual.

There were two separate contracts; one for sale of electric meters and other governing transportation of goods. The SEBs used to make inspection of the meters. After inspection, the assessee was bound to transport the goods from the factory gate to the place of the SEBs at the rates specified in the tender.

Department contended that since the meters were delivered to the SEBs at their premises and not at the factory gate the valuation had to done at the transaction value (inclusive of average freight charges) under rule 5 of the Central Excise Valuation Rules, 2000 and only the amount of actual freight was allowable as deduction there from. Held that sale was complete transport and insurance not includable in valuation.

Price increase on sugar not an additional consideration No duty on increased price, if no escalation clause in purchase order.. Triveni Engg. & Industries Ltd - (2009 (236) ELT A056 (S.C.)

The assessee cleared sugar manufactured by it at prices fixed by the Government and paid excise duty on such price. Subsequently, on appeal by the trade, the Supreme Court directed increase in the price with retrospective effect. The Government paid the difference between original price and increased price. Department issued SCN to pay duty on differential price.

Held that The price for assessment would be the price at which the goods were cleared, and not the price subsequently determined. Any alteration/revision in price subsequently to clearance of the goods cannot effect computation of duty especially when there is no escalation clause in the purchase order. Duty cannot be sought to be levied if and when any sum is received from the buyer SCN Quashed.

Escalation price received along with duty- Interest is payable – sec 11 for recovery of amount of duty will apply. SKF Ltd 2009 (SC)/ Lucas TVS Ltd-2009-TRI (Larger Branch)- International Auto Ltd. [2010] (SC):

Assessee removed the goods and paid duty on self assessment basis on the price. Subsequently there was upward revision of price of the goods due to increase in the cost of raw material and/ or other factors and consequently , the assessee issues supplementary invoice for realizing the differential price from the buyers and paying differential duty, SUCH PAYMENT OF DUTY WAS MADE WITHOUT PAYMENT OF INTEREST

Held that duty.transaction price means price paid or payable by buyer to seller before or after sale. Hence the increased price is for part of transaction value hence interest payable u/s 11 AB on the duty paid on increased price

Loading and handling charges incurred by seller for and on behalf by buyer is includible in the valuation of goods. However if they are not paid or borne by buyer , they are not includible in valuation. **SUPREME PETROCHEM LTD.- 2009 (Tri.-LB)**

Difference between parts and accessories, Delhi v. Insulation Electrical (P) Ltd. 2008 (224) ELT 512 (S.C.)

The assessee was engaged in the manufacture of Rail Assembly front seat (Omni), Adjuster Assembly slider seat, YF-2, Rear Back Lock Assembly(seat adjuster for convenience) and 1000 CC Rear Lock Assembly. The assessee was classifying it under Chapter Heading no. - 8708.00 - Parts and Accessories of Motor Vehicles - attracting 15% rate of duty. The Department, after physically examining above mentioned goods, contended that goods manufactured by the assessee were integral parts of seats and hence were classifiable under Chapter heading no. – 9401.00 – Seats - attracting 18% rate of duty.

Held that Rear Back Lock Assembly is an accessory without that seat will function. It is not form part of seat, hence to be classified under 8708.00 as - Parts and Accessories of Motor Vehicles

A part is an essential component of the whole without which the whole cannot function whereas accessory is supplementary or subordinate in nature and need not be essential for actual functioning of the product. Rail assembly, front seat adjuster/assembly slider and rear back lock assembly are not parts of seats but are accessories to motor vehicle. **Insulation Electrical (P) Ltd. 2008 (224) ELT 512 (SC)**

Carton Packages containing Individual Units: When products are packed in a carton keeping in view the quantity (weight) contained therein, the same cannot be said to be for retail sale. Hence, such carton cannot be considered as a multi-piece package for application of Section 4A. Therefore, carton boxes containing 500 Sachets of Shampoo cannot be considered as Multi Piece Package for retail sale. **Kraftech Products 2008 (224) ELT 504 (SC)**

Sale to Related Parties at market price: When the goods are sold to related parties at a price which is not influenced by the related party relationship, then the transaction value should be taken as the assessable value. **Bharti Telecom Ltd. (2008) 226 ELT 3 /** There is no case of under-valuation of goods when goods are sold to related parties at or about the same price at which they are sold to third parties. Company selling the gppds at price both railways and relative. **India Thermit Corporation Ltd. (2008) 226 ELT 164 (SC)**

The Department should establish that additional consideration had a connection with the negotiated price of assessable goods under clearance in order to tax the additional consideration. **Mysore Kirloskar Ltd. (2008)226 ELT 161 (SC)**

When Declaration of MRP is not required under law they are no assessable under MRP: in his case Individual toffees weighing 5.5 gms per piece as well as packs of 100 such do not attract assessment u/s 4A of CEA, 1944. Ex. Éclairs chocolate

Two parties cannot be deemed to be 'related persons' if the registered offices of both the parties are located in the same premises? CCEx. v. Damnet Chemicals Pvt. Ltd. 2007 (216) ELT 3 (SC)

The registered offices of the assessee and one of the bulk buyers of the assessee were located in the same premises. Further, the factory of the assessee was located in the industrial area owned by the bulk buyer of the assessee, for which the assessee used to pay a suitable rent. The assessee gave 40% discount to the said bulk buyer. The Department questioned this discount on the ground that the two parties were related persons

The Supreme Court observed that since there was no evidence of any mutuality of interest between the two parties, they would not be deemed to be related persons just because their registered offices were situated in same premises and manufacturing unit of the assessee was situated in industrial area owned by the buyer. There was no evidence that the assessee received anything extra from the bulk buyer other than the price charged. Also, there was no evidence that profit made by the bulk buyer had flown into the assessee company. Thus, the Apex Court held that there was nothing wrong in giving 40% discount to the bulk buyer

When the price includes local taxes- only effective rate of tax is only deductible in computing the assessable value. Turnover tax normal rate was 2% and when the goods sold to backward areas it is 0.5%. Held only 0.5% is deductible when goods sold to backward districts. **Modipon Fibre Company v. CCEx. 2007 (218) ELT 8 (SC)**

Refrigerator a pre-packed commodity for the purpose of valuation under section 4A Whirlpool of India Ltd. v. Union of India 2007 (218) ELT 167 (SC)

Apex Court elaborated that even if the package of refrigerator was required to be opened for testing, the refrigerator would still continue to be a pre-packed commodity and its sale would be a retail sale under Standards of Weights and Measures Act, 1976 and Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The Supreme Court observed that MRP would have to be printed on package and the plea that MRP would be different depending on the area of sale would not absolve the manufacturer from displaying the MRP.

To cover goods under MRP, goods should cover both under SWM Act and Sch III of CE act. CEO cannot question on the applicability of SWM Act and he cannot decide on his own whether MRP to be declared on package is or not. **Saf Yeast company (P) Ltd. 2009-TRI**

Cenvat Credit

Bansal Alloys & Metals Ltd. [2010] (Tri.)- No need to reversal of input service –when the inputs removed as such: assessee paid service tax on the inward transportation on the goods. These inputs were not used and removed as such. The assessee reversed the Cenvat credit on input. Held, reversal of input service not required

Cenvat credit when both the original and duplicate copy is lost. Credit can be availed on the certified invoice by jurisdictional superintendent of excise **KATARIA WIRES LTD.- 2009-(H.C)-**

Manufacturer (Cooldrink concentrate manufacture) incurred advertisement on behalf of buyer (bottler- who is also another manufacturer) paid for advertisement along with service tax. Held that bottler eligible to take Cenvat credit on input service on service tax paid to concentrate manufacturer. **COCA COLA INDIA PVT. LTD- Tri**

Duty paid but not borne by buyer – buyer eligible for Cenvat credit- Suntech glasses pvt ltd-H.C.-2010

The assessee purchased inputs from the manufacturer thereof. The assessee did not pay full duty stated in the invoice and a part of the excise duty was borne by the supplier. As per Rule 3(1) the only requirement for availment of CENVAT credit is that the duty must have been paid on inputs/capital goods; there is no requirement that the duty must have been borne by the assessee. Hence, even if a part of duty was borne by the supplier, the assessee was eligible to avail of whole of the credit of excise duty as stated in the invoice.

Export of goods under bond Rule 6(6) of CCR 2004- reversal not applicable Repro India Ltd. (2009)- (Bom.):

When Assessee not maintaining separate records for inputs used for dutiable and exempted goods and if he export goods under bond without payment of duty, payment of 5% on exempted goods not applicable. Rule 19 of the Central Excise Rules, 2002, uses the term 'excisable goods', therefore, both dutiable and exempted goods can be exported under the Bond.

Rule 6(6) of the CENVAT credit Rules, 2004 provides that the provisions of sub-rules (1) to (4) thereof shall not apply to —excisable goods removed without payment of duty, which are cleared for export under bond. Since Rule 6(6) uses the term 'excisable goods', which includes exempted goods as well, therefore in case of exempted goods exported under Bond, no payment @ 5% of the value of exempted goods can be required. Therefore, the demand by the department was unsustainable

Normal allowable handling losses /losses due to evaporation etc in transit is eligible for Cenvat credit BHUWALKA STEEL INDUSTRIES LTD.- (Tri. - LB) -2010

Asbestos sheets used for connecting equipments for passing of gas / steam are accessories to the plant, as their use is essential and adjunct to the main plant. Such accessories necessary for smooth running of the plant qualify as capital goods, even if such sheets are not covered under tariff chapters listed in definition of capital goods [Rule -2 (a) (i)]. GULJAG INDUSTRIES LTD. – H.C- 2008

Second part of definition of inputs used for exempted goods credit is available ?. GUJARAT STATE FERTILIZERS & CHEM. LTD. – S.C- 2008 Low Sulphur heavy stock (LSHS) used in the manufacture of steam which in turn was used for the manufacture of the final product, namely, fertilizer which was fully exempt from payment of excise duty. **Held that:**-inputs used to produce steam / electricity, which is used in manufacture of exempted fertilizers, are entitled to cenvat credit because the inputs used for generation of steam / electricity used for ANY OTHER PURPOSE are also inputs

Cement used in constructing foundation for machinery not qualify as an eligible input for the purpose of availing CENVAT

The High Court observed that cement used as building material for laying foundation could not be directly or indirectly said to be an integral part in connection with the manufacture of final product. Further, the High Court opined that foundation made of cement would not fall under the category of capital goods **Union of India v. Hindustan Zinc Ltd. 2007 (218) ELT 503 (Raj.)**

CENVAT credit be taken on the basis of private challans if they are genuine

The High Court placed reliance on its decision in the case of *CCE v. M/s. Auto Spark Industries CEC No. 34 of 2004 decided on 11.07.2006* wherein it was held that **once duty payment is not disputed** and it is found that **documents are genuine and not fraudulent** then the manufacturer would be entitled to MODVAT credit on duty paid on inputs

Thus, the High Court held that Cenvat credit could be taken on the strength of private challans as the same were not found to be fake and there was a proper certification that duty had been paid.

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Note: Though, the principle enunciated in the above judgment is with reference to erstwhile Central Excise Rules, 1944, the same may apply in respect of CENVAT Credit Rules, 2004.

Welding electrodes used in maintenance/ repair of capital goods are eligible as input . **Credit is available Hindustan Zinc Ltd. 2008 (225) ELT 183 (Raj.)**

Plastic crates used for inward transportation of material within factory from store to machine room and from one machine to other machine, Held that these crates are necessary to handle the material and they are accessories. Cenvat credit can be availed as an input or Capital goods. of **Banco Products (India) Ltd. Vadodara-I 2009 (235) (Tri-LB).**

Machinery Not Used for Production: Credit not available for gases, welding electrodes used for repairs of machinery which is not used in production. **SAIL Ltd 2008 (229) ELT A127 (SC)**

Capital Goods destroyed in fire: Such Capital Goods are neither cleared nor removed for sale, and, are being used for a number of years. Therefore, there need not be any reversal of credit availed on them. Biopack India Corporation Ltd 2008 (224) ELT 548 (CESTAT)– Ahm.)

Cenvat credit in case of freight FOR contract sale: Assessee engages in the manufacture of cement and clear goods on FOR basis to customers. As per FOR contract title of goods passed to buyer only on receipt of goods by buyer. Service tax paid on transportation up to the place of buyer is eligible for Cenvat credit. **Ambuja Cements Ltd. v. UOI 2009 (P & H). M-imp**

Bill of entry in case of import of goods eligible document to avail Cenvat credit on CVD **Marmagao Steel Ltd. [2008] 229 ELT 481 (SC):**

In case of conditional exemption , assessee can avail it for one factory and cannot avail for the other factory. Innovative Tech Pack Ltd. [2008] -(SC)

An exemption from excise duty was available on the condition that the manufacturer shall not avail CENVAT credit in respect of the exempted products or any other products manufactured in the same factory. Held that The said condition specifically provided that the manufacturer could not avail of Cenvat Credit in respect of all products manufactured in the same factory; such condition was not intended to apply to all factories of manufacturer. Therefore, the manufacturer had the option to not avail exemption in respect of another factory and avail CENAVT

Revise return on correcting depreciation claimed on duty portion in income tax- Cenvat credit eligible: **Jaya mills ltd-**

If assessee pays duty on each stage of process when intermediate products are used in the manufacturing, The assessee entitled Cenvat credit when duty payable on final stage. The assessee carrying out bleaching, dying, printed and mercerizing of textile fabric paid excise duty at each stage of manufacture – the assessee would be entitled to Cenvat credit if duty is paid at each stage of the manufacturing **TEXTILE CORPN. MARATHWADA LTD. – S.C- 2008**

_If the assessee had wrongly claimed depreciation on duty element of capital goods in its income tax return and subsequently rectified the same by adding back the depreciation claim on duty element of capital goods ,He is eligible for Cenvat credit

Cenvat credit taken but not utilized, no interest chargeable, as no loss to Revenue. Ind –swift Laboratories Ltd. 2009-(P&H) Whereas interest can be charged only the amount of cenvat credit wrongly availed AND wrongly utilised and that to only, from the date when such credit was utilized

However /Rule 12 of old CCR 2202 & Rule 14 New CCR 2004 clearly provides Credit taken or utilized, wrongly interest is payable. Circular No. 897/17/2009-CX Dated 3/9/2009 also provides the same.

100% EOU – Eligible for Input credit: 100% EOUs are entitled to take Cenvat credit of duty on inputs procured indigenously and when they were not in a position **ANZ International 2009 (240) ELT A16 (SC)**

Procedures:

Interest under sec 11 AB levied for the price and duty realized through supplementary invoice: International Auto Ltd 2010 (250) ELT 0003 (S.C.).

Assessee supplied auto parts to customers. According to assessee, prices indicated in purchase orders final and not liable to change at the time of removal of goods. Subsequently supplementary invoice raised and realized price and duty. Held that, when differential duty paid after the date of clearance, indicates short-payment/short-levy on date of removal, hence, interest which is for loss of revenue becomes leviable under Section 11AB of Act

Classification accepted by dept, later held as wrong extended period not applicable. Dabur India Ltd. -2009.

Assessee paid excise Duty as per classification approved by Department. Later on, classification upheld to be wrong and thus duty sought to be recovered from assessee. Department raised demand applying extended period of limitation **Held that-** where the classification was approved by the department, the classification was within the knowledge of the department. Therefore, **department can not**, subsequently alleged fraud / suppression by the assessee

Doctrine of unjust enrichment when the duty paid under protest: MITTAL PIPES MANUFACTURING CO. – S.C- 2008

In case of duty paid under protest, where the burden is borne by supplier, Doctrine of unjust enrichment not applicable in case of refund.

Omission to give correct information not a suppression of facts' Continental Foundation Joint Venture - 2007 (SC)

Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty .An incorrect statement cannot be equated with a willful mis- statement. Mis statement of fact must be willful, then only suppression of facts.

No Suppression of facts if Interpretation involved: There is no suppression of facts if interpretation of Tariff Entries involved or when conflicting court decisions exist. **Nestle India Ltd. – 2009 (237) ELT A102 (SC)**

Goods lost by theft or dacoity cannot be considered to be —goods lost or destroyed by natural causes or by unavoidable accident under rule 21 of the Central Excise Rules, 2002 hence not eligible for remission of duty. **Gupta Metal Sheets -2008 - (Tri.-LB).**

Refund claim for excess interest paid by the assessee can be filed under section 11B of the Central Excise Act, 1944 CCEx. v. Northern Minerals Ltd. 2007 (216) ELT 198 (P & H)- Even the wordings in sec 11 B talks about refund of duty

Loss of sugar due to spontaneous combustion is loss due to natural causes. Remission cannot be denied on the ground that the assessee should have taken preventive measure to avoid the loss, because question of preventive measure is applicable only in case of loss due to accident; not in case of loss due to natural causes. **Balarampur Chini Mills Ltd. [2008] 223 ELT 34 (All.):**

CESTAT cannot dismiss appeal without stating reason? *Nagreeka Foils Ltd. v. CCEx. & Cus. Vapi 2008 (227) ELT 348 (Bom)* Tribunal was not correct in dismissing the appeal (without assigning any reason) merely by stating that since the Commissioner (Appeals) had already granted substantial relief to the appellant, further reduction or setting aside of the penalty was not called for.

Excess debit to PLA by mistake. Cenvat credit cannot be availed. Only refund can be claimed u/s 11 B **BDH Industries Ltd. [2008] Tri. (LB)**

Penalty cannot be imposed simultaneously on both proprietor and his proprietorship firm *Anil Kumar Mahensaria v. CCus. 2008(228) ELT 166 (Del.)*

Since the proprietor was the appellant before us, the penalty amount was required to be paid by him and not by the proprietorship firm.

No discretion under section 11AC of the act to impose penalty less than the amount equal to duty evaded- the penalty under sec 11 AC of CE Act is fixed equal to duty evades, it is neither less nor more. ***Godavari Manar Sahakari Sakhar Karkhana Ltd. 2008 (228) ELT 172 (Bom.)***

A quantum of duty already accepted by jurisdictional officers of the supplier unit cannot be contested by the officers in charge of recipient unit *CCEx. & Cus. v. MDS Switchgear Ltd. 2008 (229) ELT 485 (S.C.)*

Manufacturer No 1 supplied material to manufacturer No 2 at an agreed value and paid duty. Manufacturer 2 can claim Cenvat on duty paid to M 1. Ms. Jurisdictional CEO cannot question the value of M1 which is accepted by his jurisdictional CEO

Non-filing of appeals in similar cases did not bars filing of appeal in other cases *C.K. Gagadharan v. CIT, Cochin 2008 (228) ELT 497 (S.C.)*

Merely because in some cases the Department had not preferred appeal that did not operate as a bar for the Department to prefer an appeal in another case where there was just cause for doing so or it was in public interest to do so or for a pronouncement

Order passed by CESTAT without considering case laws relied on by the party is not proper *Stanlek Engineering Pvt. Ltd. v. CCEx., Mumbai – II 2008 (229) ELT 61 (Bom.)*

The appellant had filed appeal before the CESTAT, Mumbai. While that appeal was pending, appellant filed written submissions claiming that the appeal of the appellant was covered by two decisions of the Tribunal. The Tribunal, relying upon a SC judgment and without referring to judgments of the Tribunal which were relied upon by the appellant, disposed of the appeal. The appellant, therefore, filed an application for rectification pointing this fact out. His application was also disposed of without referring to the said two judgments. the order was set aside and the appeal was remanded back to the Tribunal for de novo consideration and decision in accordance with the law.

Settlement Commission not empowered to grant the benefit under the proviso to section 11AC in cases of settlement *Ashwani Tobacco Co. Pvt. Ltd. v. UOI 2010 (251) E.L.T. 162 (Del.)*

Proviso provides that duty u/s 11 A and interest under Section 11AB, is paid within 30 days from the date of communication of the Order of the Central Excise Officer determining such duty, the

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amount of penalty liable to be paid by such person under this Section be 25 per cent of the duty so determined- Held SC cannot give immunity from these provision.

SSI

Printing of a design on the corrugated box/ visiting cards of 2 executives is not a brand name. SSI benefit is available. **Nirlex Spares Pvt. Ltd. v. CCEs. 2008 (222) ELT 3 (S.C)**

Apex Court ruled that the alleged monogram could not be said to be the brand name or trade name of company 'X' who itself disowned the said brand name. Therefore, the Supreme Court held that the printing of hexagonal design on packing of the goods of assessee, where such hexagonal design was not owned by company 'X' would not disentitle the assessee from the benefit of small scale exemption.

Clubbing of Clearances: Demand based on two units having common Directors and one person looking after affairs of both and second not having complete machinery to manufacture final product, cannot be a base for clubbing of clearances. Especially, if accounts of both units managed separately and capital, premises, machinery, labour and operations are separate for both the units **Superior Products (2008) 230 ELT 3 (SC)**

Even if there was commonality of use of office premises, telephone, staff etc. when there are separate management, separate financial control and financial funding the units shall be treated as independent. **Electro Mechanical Engg. Corpn. (2008) 229 ELT 321(SC)**

Apart from Logo of the Assessee, logo of the Marketing Firm was also affixed on the product. Therefore, clearance by the Assessee not entitled for SSI exemption under the notification. **Amit Engg. Works (2008) 223 ELT 166 (Bom.)**

Affixing the Stickers with words UTS and TSN on the excisable goods would be treated as affixing other person's brand name and so exemption for SSI not applicable. **Unison Electronics Pvt. Ltd. (2009) 235 ELT 206 (SC)**

1. Case Studies on Goods

Goods must be movable - They must be **movable** from one place to another place. An immovable property or property attached to earth is not 'goods' and hence duty cannot be levied on it - **Kailash Oil Cake Industries v. CCE - 1993 (CEGAT)**. - **National Radio v. CCE - 1995 (CEGAT)**.

Goods must be movable :the first aspect of goods is that they should be moveable. In **Union of India Vs. Delhi Cloth Mills (1977) ELT J-199** and in **South Bihar Sugar Mills Vs. Union of India (1978) ELT J-336**, the Supreme Court enunciated the principal that to be called goods, the articles must be such as are capable of being bought and sold in the market. The articles must be something, which can ordinarily come or can be brought to the market to be bought and sold.

Goods must be Marketable - The item must be such that it is **capable of being** bought or sold. This is the test of 'Marketability'. The goods must be known in the market. Unless this test of marketability ['Vendibility Test']. is satisfied, duty cannot be levied, as these will not be goods. **UOI v. Delhi Cloth Mills (SC)**.

Goods must be Marketable: It was held that the duty of excise is on the manufacture of goods and for an article to be "goods", it must be known in the market as such or must be capable of being sold in the market as goods. Actual sale is not necessary **C.C.EX Vs Ambalā Sarabhā Enterprises (1989) (43) ELT-214 (SC)**

Refined oil' got produced at intermediate stage that process of deodorization was not carried out on the 'refined oil'. In the market, the product is not known as 'refined oil' unless it is deodorized. Applying this 'marketability test', it was held that the 'refined oil', which is not 'deodorized', is not 'goods'. **Delhi Cloth Mills SC**

Actual sale is not necessary - Marketability is an essential ingredient in order to be dutiable. Marketability is a decisive test for dutiability. It only means 'saleable' or 'suitable for sale'. It need not in fact be marketed. The article should be capable of being sold to consumers, as it is - without any thing more. - **Indian Cable Co. Ltd. v. CCE - 1994 (SC)**

Mere mention in Tariff is not enough, Marketability is essential - Mere mention of an item in tariff is not enough. Simply because a certain article falls within the schedule (of Central Excise Tariff), it would not be dutiable if the article is not 'goods' known to the market. For example - crude PVC films (intermediate product) manufactured by the assessee for captive consumption, for further manufacture of leather cloth were not marketable in that stage and hence not dutiable. **Bhor Industries Ltd. v. CCE (SC)** - Similar view are also held in. - **Ion Exchange (India) Ltd. v. CCE (SC) s. & UOI v. Delhi Cloth and General. I**

It was held that where a product could neither be sold nor consumed in the market, nor was capable of being sold or consumed, it would not be liable to duty. **Madura Coats Ltd. Vs. Asstt. Collector of C.C.EX. (1990) (48) ELT-321, Madras HC**

Excise Case laws/Circulars trade notices on Basic Concepts and Classification

Every thing that is sold is not 'marketable' - 'Marketability' implies regular market for a product. Occasional, stray or distress sales do not mean that the product is 'marketable'.

Marketability to be decided on the basis of the state in which it is produced - The commodity which is sought to be made liable to excise duty must be a commodity that is marketable as it is, and not a commodity that may, by further processing, be made marketable - *UOI v. DCM SC 2429 (SC 3 member bench)* - same view in *Wochardt Ltd. v. CCE 1999 (CEGAT) * Eastern Coils v. CCE 2001 (CEGAT)*.

Conclusion from the above cases in order to levy excise duty goods should be movable marketable and excisable.

Goods 'excisable' even if exempt from duty - 'Excisable goods' do not become non-excisable goods merely because they are exempt from duty by an exemption notification - *Wallace Flour Mills Co. Ltd. v. CCE (1989) (SC)*.

If exemption is granted u/s 5A(1), goods do not cease to be excisable goods and levy of duty is not erased. - *CCE v. SmithKline Beecham Consumer Health Care Ltd. 2003(151) ELT 5 (SC)*.

If at the time of manufacture if there is no levy of Excise duty,(Non excisable goods) then the goods manufactured during the period cannot be levied excise duty, even subsequent to manufacture (at the time of removal) when goods brought in to duty . (Vazir sultan tobacco Co. Ltd.)

Example on Supreme Court Wallace flour mills case and Vazir Sultan Tobacco case

Excisable goods				
	Product A	Product B	Product C	Product D
Rate of duty On 28.02.2009	8%	10%	Nil	Exempt u/s 5 A
Rate of duty On 01.03.2009	12%	4%	14% (Brought to Duty)	11% (Exemption Withdrawn)
Duty Payable	12%	4%	14%	11%
Wallace flour Mills (SC)				

Excise Case laws/Circulars trade notices on Basic Concepts and Classification

Excisable goods				
	Product A	Product B	Product C	Product D
Rate of duty On 28.02.2009	8%	10%	Nil	Exempt
Rate of duty On 01.03.2009	12%	4%	14% (Brought to Duty)	11% (Exemption Withdrawn)
Date of removal	01.03.2009	15.03.2009	31.03.2009	21.04.2009
Rate of Duty on the date Of removal	12%	6%	12%	10%
Duty Payable	12%	6%	12%	10%
Wallace flour Mills (SC)				

Vazir Sultan Tobacco case

Non Excisable goods		
Product A		
Rate of duty On 28.02.2009	Not Applicable	Because non excisable goods. Not mentioned in tariff.
Rate of duty On 01.03.2009	14%	First time bringing to excise tariff as Dutiable goods.
Opening stock of FG On 28.02.2009	500 units	No duty payable on 500 units when they are removed on or after 01.03.2009
Manufactured Goods from 01.03.2009	All units	14% duty payable on removal
Vazir Sultan tobacco (SC)		

Goods not included in CETA are 'non-excisable goods' - Some goods like wheat, rice, cut flowers, horses, etc. are not mentioned in Central Excise Tariff *at all* and hence they are not 'excisable goods', though they may be 'goods'. These are 'non-excisable goods'. Similarly,

Excise Case laws/Circulars trade notices on Basic Concepts and Classification

'waste and scrap' will be 'excisable goods' only if specifically mentioned in CETA - *CCE v. Amol Decalite Ltd. 1999(CEGAT)*. In *Western India Ceramics P Ltd. v. CCE 1998 (CEGAT)*, it was held that broken glazed tiles are not excisable as there is no specific entry (in Tariff) for it.

Mere mention in CETA not enough - Mere mention in the Excise Tariff will not attract duty, unless these are 'goods' i.e. unless test of marketability is satisfied - *Bhor Industries Ltd. v. CCE 1989 (SC)* Further, the 'excisable goods' are liable to duty only if they are 'manufactured' or 'produced'.

Goods on which appropriate duty has been paid' - If an exemption notification uses the words 'on which appropriate duty has already been paid', it means that on which excise duty has, as a matter of fact, been paid and has been paid at 'appropriate' or correct rate. Thus, it cannot cover goods on which in fact, no duty has been paid. - *CCE v. Dhiren Chemical Industries 2002 SC*

Goods excisable even if duty is nil - If by virtue of an exemption notification, the rate of duty is reduced to NIL, the goods specified in the tariff would still be regarded as excisable goods on which NIL rate of duty was payable.

Goods removed under bond are not 'exempted goods' - Under Central Excise, the term 'exempted goods' has specific meaning. 'Exempted goods' means those exempted under notification issued u/s 5A of CEA. Goods removed under bond without payment of duty are neither goods 'exempt from duty' nor 'goods chargeable to nil rate of duty'. - *CBE&C circular No 278/112/96-CX dated 11.12.1996* -

Goods manufactured in SEZ are 'excluded excisable goods' - As per section 3(1) of CE Act, as made effective w.e.f. 15-8-2003, duty is leviable on all excisable goods (except goods manufactured or produced in Special Economic Zone). Thus, goods manufactured or produced in SEZ are 'excisable goods' but no duty is leviable, as charging section 3(1) excludes those goods. Thus, the goods manufactured in SEZ are not 'exempted goods'. They can be termed as 'excluded excisable goods'.

'Goods which have suffered duty' - In some cases, the wording used is 'goods which have suffered duty / tax'. In such case, it has been held that actual payment of tax / duty is necessary. Goods cannot be said to have 'suffered tax' when no tax is paid. - *State of MP v. Indore Iron & Steel Mills 1998 SC*.

What are "Goods" - Some examples will clarify the legal position.

Gas, Steam etc - As it is a tangible property marketable steam is 'goods' as it can be weighted, measured and marketed - *Ambalal Sarabhai Enterprises Ltd. v. UOI 1991 (Guj) HC*

Electricity: Electricity is movable property though it is not tangible. It is 'goods' *State of Andhra Pradesh v. National Thermal Power Corporation (NTPC) 2002 (SC)*.

Excise Case laws/Circulars trade notices on Basic Concepts and Classification

Drawing, designs Etc: Even if payment is made for technical advice or information technology, which is intangible asset. Knowledge in the form of drawing and design relating to machinery are 'goods' *Associated Cement Companies Ltd. v. CC 2001 (SC 3 member bench)*

Machinery Will be 'goods' if it is in marketable condition at the time of removal from factory of manufacture, even if *subsequently*, it is to be fastened to earth

Branded Software: Branded software like lotus, oracle can be bought off shelf hence they are goods **TCS(AP HC)**

Waste and Scrap- Waste, Scrap would be liable to duty, if it has an established market and mentioned in tariff- *Khandelwal Metal and Engg Works v. UOI - 1985 (SC) CCE v. Hindustan Lever 2003(151) ELT 10 (SC).*

Aluminum paint having shelf life of 8 to 10 hours is marketable and it found that similar products are available held as goods and duty is payable -**TNSTC LTD (2004)166ELT433**

Columns: Columns fabricated at a place and removed to another place for erection, are goods since they are movable at the time of removal. *Associated Cement Companies Ltd. v. CC 2001 151ELT3(SC)*

What are not "Goods" - Some cases where the product was held as not 'goods' are illustrated here.

Goods having very short life are not 'goods', if not marketable in that short period - Yeast having short shelf life is not 'goods' when there is no proof about its marketability, even if the product is specified in tariff. *CCE v. Jagjit Industries 2002 (SC).*./Famous Cine laboratory 66ELT91(SC)

Ropeway erected - Ropeway erected for carrying passenger in trolley system is not movable. Hence it is not goods.

Lift - Lift comes to existence only after it is installed with the building. There are after it becomes functional. It is immovable and hence not goods.-**Otis Elevators Co. India Limited 2003 151ELT499 (HC)**

Storage system Installed at a site: it is permanent fixture and cannot be removed from the place of installation. Hence it is not goods - **Nikhil Equipments Pvt. Limited (2004) 165ELT 487 (SC)**

Zinc scaling and Zinc Flux arising out of galvanizing of steel sheets are no doubt saleable, but mere salable market does not exist and hence not goods and no duty liability Tisco (2004) 165ELT386(SC)

Aluminum Cans and Torch Bodies: Aluminum Cans and Torch Bodies were made by extrusion process are intermediate form in crude form and cannot be marketable and hence not a goods - **Union carbide India Limited (1986) 24ELT214 (SC)**

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Waste and scrap arising out of breaking up of old and worn out machinery is not goods

Cannot be considered as goods and that the waste and scrap arisen out of the process of manufacture in terms of Sec. 2(f) of Central Excise Act, 1944. [*CCE, Visakhapatnam v. Sree Vijayarama Gajaphthi Co-operative Sugars Ltd. Hyderabad*] [2004 (117) ECR 753 (T)]

Excitability of plant & machinery assembled at site

CBEC Circular dated 15.01.2002 - The circular was issued based on judgment of *Triveni Engineering* case dated 8-8-2000; hence, the present legal provision is, as below

- (a) Duty cannot be levied on immovable property. Duty can be levied on parts and components leaving the factory according to condition they removed.
- (b) If plant is so embedded to earth that it is not possible to move it without dismantle, no duty can be levied.
- (c) If machinery is superficially attached to earth through foundation by way of nuts and bolts for operational efficiency, it is not an immovable property and can be easily removed without dismantling, duty is leviable
- (d) When the parts and Components are fixed and installed in such a way where the final article is comes into existence only in shape of immovable property no duty leviable.
- (e) Where the plates, Channels taken to site for fabrication, say for tank, is done at site and it is lifted and placed in a position permanently attached to earth, the tank come in existence as a goods. However if piece by piece attached to earth for the tank comes in existence, it would be immovable property.
- (f) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.

Plant and Machinery or structure assembled and erected at site cannot be treated as 'goods' for the purpose of Excise duty, if it is not marketable and movable.

It was held Goods erected and installed in the premises and embedded to earth cease to be goods and cannot be held to be excisable goods. - *Quality Steel Tubes (P.) Ltd. v. CCE - 1995 (SC)* - in this case, it was held that tube mill and welding head erected and installed in the premises and embedded in the earth for manufacture of steel tubes and pipes are not 'goods'.

Assembly at site is not manufacture, if immovable product emerges - In *Mittal Engg Works v. CCE - 1996 (SC)*, it was held that if an article has to be assembled, erected and attached to the earth at site and if it is not capable of being sold as it is, without any thing more, it is not 'goods'. Erection and installation of a plant is not excisable - followed in *CCE v. Hyderabad Race Club - 1996 (SC)*, where it was held that an article embedded in the earth was not 'goods' and hence excise duty is not leviable.

Dutiability of steel structures - In *Mahindra & Mahindra Ltd. v. CCE 2005 (190) ELT 301 (CESTAT)*, it has been held as follows -

Immovable iron and steel structures are not goods

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Structures and parts mentioned in parenthesis of 7308 like bridges, lock-gates, towers, trusses, columns frames etc., in their movable state will be subject to excise duty, even if latter they get permanently fixed in the structures

Plates, rods, angles, sections, tubes and the like, prepared for use in the structures will also be excisable goods subject to duty in their pre-assembled or disassembled state.

Examples of plant and machinery which are not excisable

Following are some examples where the article is not goods, and duty is not payable.

- Huge tanks, erected at site, stage by stage, which cannot be physically moved without dismantling.
- Lifts and escalators installed in building cannot be treated as excisable goods, even if that item is specified in Tariff. However, if lift and escalator is fabricated as a whole and is movable in nature, it will be dutiable even if temporarily installed at construction site or exhibition.
- Steel structure fabricated and erected at site
- Weigh Bridge assembled at site
- Refrigeration equipment fitted at site
- Aerial ropeway

2. Case studies in Intermediate Product Captive Consumption

Intermediate products manufactured and used within the factory for manufacture of final products are exempt from duty, even if CT-3 certificate is not issued and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules [earlier Chapter X] procedure is not followed, subject to the condition that documents/records are available with manufacturer that the intermediate goods have been used for export purpose only - **CBE&C circular No. 229/63/96-CX dated 8-7-1996, amended vide 303/19/97-CX dated 11-3-1997.**

Exemption to captive consumption if duty paid on final product: The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit *or* (b) Used for in or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. [**Notification No. 67/95 dated 16-3-1995**].

Once a new product comes into existence at intermediate stage, it is charged to duty if not exempted under any notification. **In *A S Processors v. CCE 1999(112) ELT 706 (CEGAT)***

Duty liability on intermediate product arises as soon as manufacture (of intermediate product for captive consumption) is complete as it is 'deemed to have been removed' under rule 9(1). **In *CCE v. Modern Mills 1999(113) ELT 822 (CEGAT)***

Duty payable even if intermediate product used in continuous process - Duty would be payable even if such intermediate product is used in same factory in a continuous process. As per *Explanation* to rule 9, excisable goods consumed as such or utilised for manufacture of any other

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commodity shall be deemed to be removed from the place just before such consumption or utilisation. *J K Spinning v. UOI - 1987 (32) ELT 234 (SC)*.

Movability, marketability and Excisability to satisfy to attract duty: *Bhor Industries Ltd. Vs. C.C.EX. (1989) (40) ELT-280* has held that an intermediate product would be excisable only if it is a complete product in the sense that it is capable of being sold to a consumer. Thus marketability is essential for charging an article to duty. Therefore where the intermediate product is not capable of being sold it is not dutiable even if it is included in the Tariff Entry. In other words intermediate goods will be chargeable to duty under law only if the test of marketability is met

It was held that mere theoretical possibility of marketability is not enough if the method is uneconomical and is hardly likely to be employed by the trade. *South Bihar Sugar Mills Ltd. v. UOI 2 ELT J 336 (SC)*

No sales tax on captive consumption - 'Consumption' does not mean 'sale' and hence sales tax is not attracted - *Bhopal Sugar Industries Ltd. v. D P Dube, STO (1963) 14 STC 406 (SC)*

Burden of proof of marketability of intermediate product is on department - Burden of proof of marketability of intermediate product is on the department. - *Cadila Laboratories v. CCE 152 ELT 262 (SC)*.

Duty on manufacture not on sale A duty of excise is a tax upon goods and not upon sales or proceeds of sale of goods. In terms of Entry 84, List I of Seventh Schedule to Constitution, taxable event in respect of excise is manufacture or production - *CCE v. Acer India Ltd. 172 ELT 289 (SC)*.

Duty leviable on captive consumption if goods are marketable: - Since excise is a duty on manufacture, duty is leviable even if goods are consumed within the factory and not sold. However, the goods must be marketable in the condition in which they are manufactured and further consumed within the factory. *Ambalal Sarabhai Enterprises v UOI*.

Movability marketability and excisable all the three conditions should be satisfied for levy of excise duty in case of captive consumption/intermediate product

The Tribunal, in *Hindustan Lever Ltd. Vs.C.C.EX. (1990) (30) ECR-180*, has held that intermediate goods which are not sold nor are marketable, are not excisable and that the burden of proof regarding marketability is on the Revenue.

It was held that once a new marketable intermediate product comes into existence, it is to be charged to duty if not exempted by a notification - *CCE v. Citric India 2001(127) ELT 539 (CEGAT)/ A S Processors v. CCE 1999(112) ELT 706 (CEGAT)*,

No duty is payable on intermediate product if final product is cleared for export under bond without payment of duty. Circular No. 10/75-CX 6 dated 3-4-1975, issued by Ministry of Finance confirms that goods exported under bond cannot be treated as exempt from duty or chargeable to nil rate of duty - *CBE&C circular No 278/112/96-CX dated 11.12.1996] & Orissa Synthetics Ltd. v. CCE 1995 (77) ELT 350 (CEGAT)*. Same view in *Indian Aluminium Co. Ltd. v. CCE 1995 (79) ELT 111 (CEGAT)*.

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Aluminium cans or torch bodies manufactured (for final manufacture of torches) are in elementary and unfinished condition and are not marketable. Hence, 'Aluminium cans' are not goods and no duty is payable on those intermediate products - *Union Carbide India Ltd. v. UOI* 24 ELT 169 (SC)

Where it was held that an intermediate product must be capable of being sold, if duty is to be levied. It should be a distinct article having identity in commercial world. *Porritts and Spencer (Asia) Ltd. v. CCE* -106 ELT 18 (SC),

Plastic body manufactured for Mosquito repellent captively consumed not marketable

The assessee was manufacturing Electro Mosquito Repellent). EMR was exempt from duty, but department demanded duty on plastic body manufactured which was captively consumed to manufacture EMR. It was held that plastic body of product (EMR) and used within the factory is not a standardized item and is not available in the market for being bought and sold. The design of plastic body is different from that of other manufacturers and it is not available in market as it is not a commercially known product. Hence, it is not 'goods' and not marketable. *UOI v. Sonic Electrochem* 45 ELT 274 (SC),

Agarbatti mix' (odoriferous compound) arising during course of manufacture of Agarbatti is trade secret of each manufacturer. It is used in continuous process and never sold. Hence, it is not excisable. - *CBE&C circular No. 495/61/99-CX.3 dated 22-11-1999.*

Assessee was manufacturing tyre bead wire rings, which were captively consumed. It was found that these are not marketable. Hence, it was held that no excise duty is payable. *CCE v. Metro Tyres* 2005 (179) ELT 493 (CESTAT)

The commodity which is sought to be made liable to excise duty must be a commodity that is marketable as it is, and not a commodity that may, by further processing, be made marketable - *UOI v. DCM* 92 ELT 315(SC) *Wochardt Ltd. v. CCE* 1999(105) ELT 573 (CEGAT)

3. Case Laws regarding Manufacture- on first part process incidental ancillary

Assembly of components of air conditioner in car does not amount to manufacture as the parts are fitted at various places and at no point of time a car air-conditioner as a separate and distinct commodity comes into existence. Similarly, fitting of air-conditioner kit in a car does not amount to manufacture - *CBE&C Circular No. 479/45/79-CX dated 17-8-1999.*

Manufacture as defined by Courts - Some important Court decisions are discussed here.

New substance having distinct name, character or use must emerge - In *Union of India v. Delhi Cloth Mills Co. Ltd.* (SC) 1990 has held that the manufacture means bringing into existence a new substance. (This is a very important and leading case regarding definition of 'Manufacture'). Manufacture is end result of one or more processes, through which original commodity passes. Thus, manufacture implies a change but every change is not manufacture. A new and different article must emerge having a *distinctive name, character or use.*

In the course of processing If a new and commercially different identifiable product does not result, there is no manufacture and hence excise duty liability does not arise. - *Hyderabad Industries Ltd. v. UOI* - 1995 (SC) 1995 (For example cutting of wood in small pieces or making small pieces of a long steel bars would not amount to manufacture as no new product emerges).

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Mere mention in tariff does not mean manufacture -It was held that even if an article is specified in tariff, there is no duty liability unless it is 'manufactured'. In *CCE v. Markfed Vanaspati* 2003(153) ELT 491 (SC)

Trade Parlance is important - It was held, the test is whether in the eyes of those dealing in the commodity or in commercial parlance, the processed commodity is regarded as distinct in character and identity from the original commodity - *Sterling Foods v. State of Karnataka* - 1986 (SC). Similar view held *Aditya Mills Ltd. v. UOI* (1989) (SC).

Mixing of spices in to compound is manufacture

Assessee is engaged in mixing of saffron, spices, menthol etc. to form a "Compound (Kimam)". The said compound cleared and it is diluted and used in manufacture of (branded chewing tobacco) the assessee claimed that the "Compound (Kimam)" is an intermediate item, not marketable is such and was, therefore, not excisable

It was held kimam intermediate product is marketable, as the same was manufacturing the other companies are marketing the same., the assessee aware the fact and hence 5 years time limit for demand apply *Dharampal Satyapal* 2005 SC

Scrap iron ingots Converting in to Rolled steel section :it was held it is a vital process were converted into rolled steel sections, it was held that the scrap iron lost its identity and became a new marketable product having a different use - *Devidas v. State of Punjab* (SC).

Curing: This is a process, which amounts to manufacture. Hence curers are liable to pay excise duty. Example Coffee curers liable to pay excise duty

Cutting of jumbo rolls of typewriter to make ribbon of standard length and Winding on spool is 'manufacture' - it was held that conversion of jumbo reels of ribbons into spool form to suit particular model and make of typewriting/telex machine is 'manufacture' as new and distinct product emerges - *Kores India v. CCE* (2004) 174 ELT 7 (SC).

Where pineapple fruit was canned involving a certain degree of processing namely that inedible portions were removed and edibles were sliced and sugar was added to preserve it, it was held that these series of changes did not take the commodity to the point where commercially the pineapple can be recognised as a new and distinctive article and hence there was no manufacture - *AIR 1980 (SC) 1227*.

When logs of wood were converted into different shapes and sizes by sawing them in the saw mill it was held that there was no intention to bring about a new article, the result of cutting them into different shapes and sizes being only to facilitate convenience of transport and storage - *Ganesh Trading v. State of Haryana* [AIR (1974) SC 1362].

On the other hand if logs were converted into planks, railway sleepers, etc., different items of specific goods was held to emerge - *State of Orissa v. Bharat Saw Mills* [(1981) ECR 93 D].

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-Combining steam engine turbine and alternator by fixing them on platform and aligning them in manufacture, as new product comes into existence which has a distinctive name and use different from its components. **Triveni Engineering v. CCE 2000 (120) ELT 273 SC.**

Cutting of Jumbo rolls of tissue paper in to standard size for table cloth, face cleaning and toilet purpose is not manufacture.

It was held that "the characteristics of table napkins, facial tissues and toilet rolls in terms of texture, moisture absorption capacity, feel etc. ARE THE SAME as the tissue paper in the jumbo rolls. The said jumbo rolls cannot be conveniently used for household or for sanitary purposes. Therefore, held the process is not a manufacture **SR Tissues Private Limited 2005 SC**

Plain glazed tile to decorated tiles is not manufacture - Processing of duty paid plain glazed tiles into decorated ceramic tiles does not amount to manufacture as no new distinct and commercial commodity comes into existence. - **Pan Pipes Resplendents Ltd. v. CCE 2000(119) ELT 603 (CEGAT)/ CCE v. Pan Pipes Resplendents Ltd. 2006 (193) ELT 129 (SC)**

Laminating/metallising film is not manufacture- laminating/metallising of duty paid film does not amount to manufacture as film remains a film and no new and distinct product comes into existence **In Metlex (I) P Ltd. v. CCE 2004 (163) ELT 129 (SC),**

Merely by adding water, perfume and colour to the liquid soap, it cannot be said that a manufacturing process was undertaken because by these additions what resulted merely a change in the original substance and not altogether a new and different substance with a distinct name, character or use came into existence - **Colgate Palmolive v. Union of India (1980 ELT 268).**

When pig bristles purchased from market were boiled, washed with soaps and chemicals and sorted out according to their size and colour, there is no manufacture of goods. There is no essential difference in identity between the original commodity and the processed commodity, notwithstanding application of labour through machinery - **C.S.T. v. Harbilas Rai [21 STC 17 (SC)].**

4. Case Laws regarding Deemed Manufacture

Deemed manufacture was tested and constitutionally it was upheld. **Empire Industries Vs UOI (SC) 198520ELT179**

Process may be mentioned in Tariff Entry also, but it must be specified that the process amount to 'manufacture'- The Tariff Entry read as 'Fixed Vegetable Oil, which has undergone process of treatment of alkali, bleaching or deodorization'. However, mere mention of process in Tariff Entry is not sufficient, it must be specifically stated that a particular process 'amounts to manufacture'. Since the Tariff Entry did not specify that the

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process 'amounts to manufacture', it cannot be held as 'deemed manufacture'. **Shyam Oil Cake v. CCE 2004 (174) ELT 145 (SC)**,

Deeming manufacture will not apply if there is no value addition: The purpose of deeming provision is only to tax high value additions. No manufacture if no value addition. - **Lakme Lever Ltd VS CCE (1999) 110ELT899(CEGAT)**

Mere putting the name of goods, name of consignor is not labeling: It was held painting the consignor name, name of goods is not labeling, as it has not containing any thing with regard to price, qty description of the product. **Texchem Vs CEC (2003) 151ELT610(CEGAT)**

Putting Stickers indicating MRP. Putting stickers on the imported medicines to provide information as per Drug and Cosmetics Act is amount to manufacture **CBEC Circular No 576/12/2001 dated 16.05.2001. However there is a contrary view held in**

1. Putting label name and address of manufacturer and MRP on imported chocolates is not a manufacture -**Lal International Vs CCE (2003) 154ELT520 CEGAT**
2. Putting label name and address of manufacturer as required under standard weights and measures act is not a manufacture. **CCE Vs Pancheseel Soap factory (2002) 145 ELT 527 CEGAT**

Re-packing of defected and damaged goods is not manufacture - Mere re-packing is not 'deemed manufacture'. If goods returned are re-packed, such re-packing is from one retail pack to another retail pack and hence cannot be termed as 'manufacture'. - - Similarly, if goods returned for rectification are re-packed, it is not 'any other treatment to render the product marketable', as the product was already marketable. **Ranbaxy laboraties VS CCE (2004) 168ELT 321 (CESTAT)**

Repacking from bulk to retail only cover: Obtaining Ammonia gas through tanker and filling in to cylinders is not manufacture- Obtaining gas in tanker is not amount to obtaining in bulk packet. **Ammonia Supply Co VS CCE (2001) 131ELT626(CEGAT).**

Test of Marketability will be applicable: Even it is deemed manufacture, if the process does not the makes the goods marketable, it is not a manufacture **Sri Ayyanna Vs CCE (2004) 165ELT425 (CESTAT)**

Case studies on Packing and Labeling

'When 'repacking and labeling' will amount to manufacture - In some cases, goods are bought in bulk and sold in retail. This will not amount to 'repacking'. Generally, the expression 'packing' is considered as a package containing pre-packed commodity and quantity of the product contained therein is also pre-determined. - - Activity of simply transferring material from one container to another may not come under the description 'repacking and labeling'. However, facts should be ascertained and decision should be taken based on all relevant facts- **CBE&C circular No 342/58/97-CX dated 8.10.1997.**

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Mere packing is not a manufacture; The products would have to be repacked from *bulk packs to retail packs* so as to make them marketable to the consumer for the activity to be termed as 'manufacture'. The Apex Court stated that the medicines were imported as ready to market retail packs which were then affixed with stickers containing certain information. In the opinion of the Supreme Court, there was no evidence of assessee indulging in any further activity which amounts manufacture. *CCEx., Mumbai v. Johnson & Johnson Ltd. 2005 (188) ELT 467 (SC)*

Process of printing of cotton bed sheets, pillow covers and bed covers be considered as an integral part of the manufacture of such bed sheets etc

There is exemption notification for manufacture of textile articles without aid of power. Assessee manufactured bed sheets, pillow covers and bed covers, however printing was used with colour mixing machine, Held printing colour is integral part of manufacture, hence benefit of notification will not apply. *Impression Prints v. CCEx., Delhi-I 2005 (187) ELT 170 (SC)*

Mere repacking is not deemed manufacture -Repacking has to be from bulk packs to retail packs so as to render product marketable directly to consumer. It was also held that if product is imported as ready to market retail packs, mere affixing the sticker containing information like names and addresses of importer, MRP etc. will not be 'deemed manufacture'. *CCE v. Johnson & Johnson 2005 (188) ELT 467 (SC)*,

Both repacking and labeling required for applicability of the provision

There was a view that in many 'deemed manufacture' provisions, the wording used is 'labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer'. Since the word used is 'and', mere labelling without re-packing is not 'deemed manufacture', as activities of labelling/re-labelling *and* re-packing in small packs are inter-dependent and not mutually exclusive.

All re-packing not covered

The words used in many 'deeming provisions' are 'repacking from bulk packs to small packs'. Thus, in such cases, mere re-packing is not 'deemed manufacture'. If goods returned are re-packed, such re-packing is from one retail pack to another retail pack and hence cannot be termed as 'manufacture'.-- Similarly, if goods returned for rectification are re-packed, it is not 'any other treatment to render the product marketable', as the product was already marketable.

Goods Removed without printing MRP Some times, a manufacturer of goods (which are covered under MRP provisions) clears goods from factory in bulk without putting MRP at the time of clearance. Duty is paid on basis of section 4. The goods are packed and labeled and MRP is put either by the buyer who buys the goods or in some godown or depot or C&F Agent of the manufacturer. Now, the process carried out by the buyer or by C&F Agent or at such depot or godown of manufacturer will be 'manufacture'. Such depot/buyer/C&F Agent/godown will have to be registered under Central Excise as 'manufacturer'.

Pouring of Chemicals from Big to Smaller container cannot be considered as manufacture

Chapter notes of CETA specify repacking for chemicals. Pouring from big to smaller containers cannot be considered as repacking hence not a manufacture. **MEENAKSHI & CO. - 2006- CESTAT**

5. Case studies on manufacturers

Raw material Supplier is not the manufacturer - It is common in Industry to supply raw material to a Job Worker or Processor and get the goods manufactured from him in his factory for example, Automobile Manufacturers very often get many parts manufactured from outside on 'Job Work' basis. In such cases, they will not be treated as 'Manufacturer' even if they supply the Raw Material and they retain right of rejection.

However in the following cases Raw material supplier is manufacturer

1. Relation between Manufacturer and raw material supplier is on agency basis- **Shree Agency Vs Bhattacharya gee 1ELT168 (SC)**
2. Person Employed by raw material supplier and goods return it to him -**Bajrang gopilal 1986 25ELT609 (SC)**
3. Labour doing work allotted to them under the supervision of Principal- **Interscape VsCCE (2001)135ELT942CEGAT**
4. Job worker function like a hire labour and there is no principal to principal basis- **Light Metal Extrusion Ltd., Vs CCE (1997) 89ELT581 (CEGAT)**
5. Job worker is not doing job on their own account and they are dummy and bogus units and arrangement made in such a way to evade duty- **B S Rajasekar Vs CCE (1993)63ELT369 CEGAT**

Brand Owner is not the Manufacturer - Some large units get their goods manufactured from others under their Brand Name, instead of manufacturing it themselves. Companies will not be treated as 'Manufacturer' even if they exercise quality control, or allow use of their brand name, or provide financial help to the small manufacturers, or even supply the raw material, if their relation with the manufacturer is '*Principal to Principal*' basis. Supreme Court in *Cibatul Ltd. v. UOI - 1978 (SC)* - have held that if the goods are produced with Customer's brand name under his quality control, it does not mean that the Customer is the Manufacturer. Same view was reaffirmed in it. *Secretary to Government of India v. Food Specialties Ltd. - 1985 (SC)*.

Brand name owner will not be manufacturer even if he supplies raw material. - **Philips India Ltd. v. UOI - 1980 (6) ELT 263 (All HC)** - same view followed in **Cheryl Laboratories v. CCE - 1993 (65) ELT 596 (CEGAT)**.

Person who gives machine on hire basis is not a manufacturer -**PSG Industrial Institute Vs CCE1999 (111) ELT528CEGAT**

Loan licensee (A person who has licence to produce the drug) under drug control act is not a manufacturer

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Sub-contractor is manufacturer if relation to the main contractor is on principal-to-principal basis, even when job work is done at site, if relationship between sub-contractor and main contractor is on principal-to-principal basis. - *Voltas Ltd. v. CCE 2002(CEGAT)*.

Manufacture at site of buyer - An independent contractor who assembles the parts in a factory would be the manufacturer and not the owner of factory- *Basti Sugar Mills v. CCE 2000 (CEGAT)* [In this case, contractor assembling the parts was independent contractor appointed by supplier of parts of crane. Obviously, he was not 'hired labour' of the factory owner.] - Same view in *Solid and Correct Engineering Works v. CCE 2002 (CEGAT)*. In this case, the marketing company assembled various parts at the site of buyer. It was held that the marketing company is the manufacturer.

Job Worker is a Manufacturer and A Contractor is a manufacturer. A person who engages hired labor is a manufacturer.

Persons who manufacture under franchise are a manufacturer- For example if Cola companies supply concentrates to bottlers and cool drinks manufactured by bottler, the Bottler is a manufacturer.

Person who transforms commodity in to another commodity having distinct name and character is manufacturer- *Pearl Soap Co Vs CCE (2001) 138ELT1317CEGAT*

6. Case studies on duty Liability

Duty Liability is on the Manufacturer: The liability to pay duty is on 'Manufacturer or producer'. Duty cannot be recovered from his purchaser *Mahindra & Mahindra Ltd. v. CCE - (1983) (CEGAT)* (though the manufacturer may recover the same from buyer). Hence, Excise demands, if any, are always raised on manufacturer and recovered from manufacturer. Hence, it is essential to decide who is to be termed as 'Manufacturer'.

It has been held that excise duty is on 'manufacture and production of goods' and liability to pay duty is not dependent upon whether the manufacturer is owner or not- *Ujagar Prints v. UOI - AIR 1989 (SC)*,

Ownership of raw material is not relevant for duty liability - Ownership of raw material is not relevant for duty liability - *Hindustan General Industries v. CCE 2003 (155) ELT 65 (CEGAT) * CCE v. Mahindra & Mahindra 2001(132) ELT 632 (CEGAT)..*

A duty of excise is a tax upon goods and not upon sales or proceeds of sale of goods. In terms of Entry 84, List I of Seventh Schedule to Constitution, taxable event in respect of excise is manufacture or production - *CCE v. Acer India Ltd. 172 ELT 289 (SC 3 member bench)*.

Duty incidence on manufacture it was observed that incidence of excise duty is directly relatable to manufacture, but its collection can be deferred to a later stage as a measure of convenience or expediency. *McDowell and Co. Ltd. v. CTO 59 STC 277 (SC)* Same view in *Mohan Breweries v. CTO 1997 AIR (SC)*

It was held that the procurer is not entitled to SSI exemption in respect of procurement of

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khandsari sugar. *CCE v. Dee wan Modern Breweries* 2001 128 ELT 390- same view in *CCE v. Dogra Distilleries* (2001) 137 ELT 887 (CEGAT).

Duty liability in case of job work - Even in case of job work, the duty liability is of actual manufacturer and not of the raw material supplier.- *CCE v. Globe Auto Agency* 2003 (157) ELT 202 (CESTAT) * *GTC Industries v. CCE* 2001(132) ELT 74 (CEGAT). However, a job worker manufacturing goods under notification No 214/86 is exempt from excise duty, as the raw material supplier undertakes that he will use these goods further to manufacture final product or clear for export or pay duty on such goods.

Duty payable even goods given free replacement given during warranty period - Since excise is a duty on manufacture, duty is payable whether or not goods are sold.

In it was held that duty is payable on spare parts even if those are supplied free during warranty period. *Bharat Heavy Electricals v. CCE* 2003(154) ELT 10 (SC) - followed in *ECE Industries v. CCE* 2004 (164) ELT 236 (SC).

Duty on free samples

It was held that excise duty is payable on Physician's samples given free *Jawa Pharmaceuticals v. CCE* 2003 (158) ELT 166 (CESTAT) *Crosslands Research Lab v. CCE* 2002(150) ELT 212 (CEGAT).

Duty cannot be Recovering from customer Buyer not liable to pay duty provision prohibiting recovery of tax from purchaser was upheld. *K M Mohamed Abdul Khader Firm v. State of Tamilnadu* (1985) 58 STC 12 (SC)

Duty can be levied on Government undertaking - As per Articles 285 and 289 of Constitution, tax cannot be levied by Central Government on income or property of State Government (and vice versa). It was held that this restriction applies only to taxes which directly affect income or property, and not to taxes which may indirectly affect income or property. Thus, excise duty can be levied on goods manufactured by State or Central Government undertakings - *Karya Palak Engineer v. Rajasthan Taxation Board* 2004 AIR (SC).

Duty payable even when not collected

An assessee is liable to pay sales tax and the question whether he has collected it from consumer or not is of no consequence. His liability is by virtue of being an assessee under the Act. - *American Remedies P Ltd. v. Govt of AP* 1999(113) (SC 3 member bench). The same is applicable for excise duty also

Remission of duty can be granted for handling losses

The CESTAT held that even though rule 21 of the Central Excise Rules, 2002 does not specifically mention handling, remission of duty would be permissible for handling losses as the reference in the rule to "unavoidable accident at any time before removal" would cover handling. *J.K. Sugar Ltd. v. CCEx., Meerut* 2005 (185) ELT 300 (Tri.-Del.)

Theft of goods is loss due to unavoidable accident. Hence, remission of duty is allowable. *CCE v. GTC Industries Ltd.* 1994 (71) E.L.T. 806 (T). *Sialkot Industrial Corporation v. UOI* 1979 (4) E.L.T. J329, the Delhi High Court However contrary decision in *CCE v.*

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International Woollen Mills 1987 (28) E.L.T. 310 (T).

Loss of molasses due to auto combustion is an unavoidable accident and remission is admissible. **Shankar Sugar Mills v. CCE 1994 (71) E.L.T. 753 (T)**

Remission of duty should be granted even if it could be argued that the loss could have been prevented. **Purna Sahakari Sakhar Kharkhana Ltd. Vs CCE 1998 (100) E.L.T. 513 (T)**

Remission of duty is grantable though the assessee has received compensation for fire accident **Sarada Plywood Industries Ltd. v. CCE 1987 (32) E.L.T. 116 (T)**

II- Case laws on Classification

RULES TO BE APPLIED SEQUENTIALLY - The Rules are to be applied sequentially. . Classification is to be first tested in light of Rule 1. Only when it is not possible to resolve the issue by applying this rule, recourse is taken to Rules 2, 3 and 4 and so on. - **Chapter 4 para 7 of CBEC manual 2001.**

Rule 1 gives primacy to the Section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges, then only one can resort to subsequent rules - **CCE v. Simplex Mills Co. Ltd. 2005 (181) ELT 345 = 140 STC 125 (SC 3 member bench).**

Section Notes and Chapter Notes have overriding effect

It was held that section notes and chapter notes, being statutory in nature, have precedence over functional test and commercial parlance for purposes of classification. **Fenner (India) Ltd. v. CCE - 1995(97) ELT 8 (SC),/ Saurashtra Chemicals, Porbunder v. CC - 1986 (CEGAT).& Tractors and Farm Equipments Ltd. v. CC - 1986 (CEGAT).**

Sub-assemblies of air conditioning machines removed in CKS/SKD packs will be classified as complete machine, if it contains essential elements of air conditioning machine. - - **CBEC circular No. 666/57/2002-CX dated 25-9-2002.**

A manual is supplied along-with software. The manual gives instructions as to how to use the software. Here the 'essential character' is 'software'. Hence, the goods will be classified according to 'essential character' as per rule 3(b). - **CBE&C circular No. 528/10 6/93-Cus (TU) dated 24-8-1993.**

Fan regulators cleared as such be classified: as parts/accessories of fan and not a as fans

Fan regulators which are not cleared with electric fan but are cleared as such would be classifiable as parts/accessories of fan and not under fans. The Supreme Court held that if regulators have to be classified under 'electric fans' whether sold with fan or separately, then no part or accessory would be covered under sub-heading. **North West Switchgear Ltd. v CCE., New Delhi 2006 (195) ELT 134 (SC)**

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Machinery independent even if it can be attached to another - Machinery can be independent even if it is connected to machinery. Mere fact that a machinery can be connected to another machinery does not change its character to accessory - ***Nirulas Corner House P Ltd. v. CC 1999(108) ELT 332 (SC)***.

Specific to be preferred to general as held in case of ***Plasmac Machinery Mfg Co. Ltd. v. CCE 1991 (51) E.L.T. 161 (S.C.)***

Condition at the time of import/clearance relevant - Condition of the material at the time of importing is a material factor for purpose of classification as to the head under which goods will be classified - ***Dunlop India Ltd. v. UOI - 1983 SC***.

Classification of standalone items

Assessee cleared compressors falling under tariff sub-heading 8414.10. They also cleared to its buyers separately "fly wheel" under separate tariff sub-heading 8483.00, "safety valve" under separate tariff sub-heading 8481.80 and "filter" under separate tariff sub-heading 8421.00. Department contend that the compressor removed in unassembled form and hence to be classified as compressor as per rule 2(a).

Held that "Compressors manufactured by assessee removed as a "stand-alone" item and not in an unassembled or disassembled condition, hence, no question of applying General interpretative Rule 2(a) arises. Clearance will be treated as clearance of 3 independent items. **FRICKS INDIA LTD (2007)(SC)216ELT497**

Fax machine - If fax machine components are imported in ckd condition, it can be classified as fax machine only. However exemption of duty applicable to fax machine will not applicable to imported components- if components are imported it does not mean fax machine was imported- **Modi Xerox Ltd Vs CCE 2001 SC**

Hard Disk was imported with preloaded software. The cost of hard disk was Rs 65,000 and software was worth Rs. 67 lakhs . It was held hard disk is only a container and essential character is software. Hence it should be classified as software only. -**RPG India Ltd Vs CCE (2000)116 ELT 6 (SC)**

Trade parlance theory applicable only when classification rule does not provide correct and conclusive answer **CCE v. Wood Polymers Ltd. 97 ELT 193 (SC)**,

Wording of tariff description is essential: Meaning of word used in exemption notification has to be gathered from tariff description - **Steel Authority of India Ltd. v. CCE 1997(91) ELT 529 (SC)**. Chapter notes of chapter of CETA referred to in the notification have to be read as part and parcel of exemption notification - **Gujarat State Fertilizers Co. v. CCE 91 ELT 3 = SC** .

Exemption notification cannot determine classification and it cannot change classification of goods from one entry to another - **Eskeyef v. CCE 49 ELT 649 (SC)**.

End Use relevant only in limited cases - Generally, a product can be used for various purposes and it is not correct to classify the goods on the basis of its final use. It was held

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that end use is irrelevant for interpretation, unless definition so requires. *Dunlop India v. UOI - 1983 (13) ELT 1566 (SC)*

Steel racks specially designed for truck Mobile work shop cannot be classified as furniture

it was held that steel tables and steel cup-boards specially designed and fabricated by assessee to be fitted on a special purpose truck (mobile workshop) are necessary adjuncts of machinery fitted on mobile workshop and hence cannot be classified as 'furniture'. *Elgi Equipments v. CCE 2002(143) ELT 242 (SC)*

It was held that if a part solely or primarily suitable for automobiles will be classified as automobile part (under heading 87.08) and not under general heading. *G S Auto International v. CCE 2003 (152) ELT 3 (SC)*,

Burden of proof Classification is on the department

the burden of proof that a product is classifiable under a particular tariff head is on the revenue and must be discharged by proving that it is so understood by the consumers of product in common parlance - *CCE v. Vicco Laboratories 2005 (179) ELT 17 (SC)* . *Hindustan Ferodo Ltd. v. CCE 1997 (89) E.L.T. 16 (SC)*.

Relevancy of ISI Specifications : ISI specifications not relevant as compared to circulars issued by trade associations and statutory control orders. - *Indian Aluminium Cables Ltd. v. U.O.I. 1985 (21) E.L.T. 3 (S.C.)* ISI specifications not ignorable in the absence of any material - *National Sales Corporation v. CCE 1995 (78) E.L.T. 653 (S.C.)*

In trade parlance theory Customer's identity with function - have held that identity of a product is associated in mind of consumer with its primary function. The consumer buys an article because it performs a specific function for him. This mental association with a product is highly important for classification. Supreme Court, *Atul Glass Industries (P.) Ltd. v. CCE 25 ELT 473 (SC)* , Same view reiterated in *CCE v. Fusebase Eltoto Ltd. - 67 ELT 30* .

The 'trade parlance' is relevant only when Statute does not define the words. If words are defined in the Statute, 'trade parlance' is not relevant. i.e. Statutory definition overrides Trade parlance theory-*Indo International Industrial v. CST, (SC)*.. Trade parlance theory applied only when classification rules does not provide conclusive answer. *CCE v. Wood Polymers Ltd. 1998 (97) E.L.T. 193 (SC)*

As per Trade parlance theory principle, a word in statute should be construed in its popular sense and not in the strict or technical sense. 'Popular sense' means that which people conversant with the subject matter with which the statute is dealing, would attribute to it. Supreme Court has confirmed this in various cases- *Dunlop India Ltd. v. UOI - (1976) (SC)*. *Kedia Agglomerated Marbles v. CCE 2003(SC)*. *CCE Vs Vicco Laboratories (2005) 179 ELT 17 (SC)*

Tea is not 'foodstuff'. It neither nourishes body nor sustains or promotes growth. It is not understood as food/foodstuff in common parlance or in dictionaries - *S Samuel v. UOI 2003 = 134 STC 610 (SC)*.

It was held that 'lip save' (a cream used to protect lips in high altitude areas by military personnel) will be classifiable as 'skin care cream' as per commercial parlance, and not as

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medicament, even if it has subsidiary curative value. *Alpine Industries v. CCE AIR 2003 SC 152 ELT 16 (SC)*,

Trade meaning would be applicable (only) of a particular product description occurs by itself in the tariff entry and there is no conflict between tariff entry and any other entry. - *CCE v. ITC Ltd. 2003 AIR SCW 831 = 152 ELT 241 (SC)*

It was held that even when bulky goods are cleared in stages, the clearance is still of whole article and not its parts. In this case, bulky crane was cleared in disassembled condition in two consignments. It was held that assessee cleared 'crane in parts' and not 'parts of crane'. *Shirke Construction Equipments P Ltd. v. CCE 1997(CEGAT)*,

Cycle removed in CKD condition is a 'cycle'. - *T I Cycles v. UOI 1983 (Mad HC)*.

'Essential character' -The, factors governing 'essential character' will vary as between different kinds of goods and may be determined by the nature of material or component, its bulk, quantity, weight or value or by the role of a constituent material in relation to use of the goods. - *Bharat Heavy Electricals v. CC 1987 (CEGAT)*,

A part' is a component whose absence will disable a machine or appliance. It must be regarded as an essential ingredient or part of that machine. *Electro steel Castings v. CCE 1989(43) ELT 305 (CEGAT)*,

Part of part is part of whole - A part of part is part of whole e.g. tyre is a part of cycle. 'Valve' is a part of the tyre. Hence, 'valve' will be treated as part of 'cycle'.

Exemption Notification/ Valuation principles cannot determine classification The Classification of a product is to be decided on basis of relevant heading and section and chapter notes. Classification cannot be decided on basis of exemption notification - *CCE v. Roha Dyechem (P.) Ltd. & CCE v. Gujarat State Fertilisers Co. Ltd. - (1996) (CEGAT)*.

Rejected Final Product should be classified as scrap and waste and not as part -**Durgapur Steel Plant Vs CCE**

Some Parts are manufactured and some part are bought out at site, the rule of ckd and skd is not applicable. It cannot be said machinery cleared in unassembled condition. **Ganapathy Rope way Ltd Vs CCE 1999112ELT395(CEGAT)**

Customs Tariff and Central Excise Tariff - Though both Central Excise Tariff and Customs Tariff are based on HSN, it was held that classification under Customs Tariff couldn't be applied under Central Excise Tariff Act. - *Tata Liebert Ltd. v. CCE 2000 (CEGAT)*

Kitchen sink is classifiable as sanitary ware, which is a specific description and not as 'household articles of iron and steel' which is a general description. -

If a set consists of drawing instruments (90.17), pencil (96.09) and pencil sharpener (82.14), put up in a leather case (4201.90); the set will be classifiable under 90.17 i.e. drawing instrument.

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Carbon paper cannot be classified as a paper. In popular sense, the word paper is understood which is used for writing, printing, drawing, decorating, and for packing.- **Kores India Ltd (SC)**

Lal Dhant Manjan (Red Tooth Powder) cannot be classified as a Medicine. A medicine is prescribed by doctor and can be used for limited period. Common man using it for cleaning teeth, i.e., in popular sense and as per trade parlance theory, it should understand as tooth powder. **Baidvanath Ayurved Vs CCE**

Mineral Water cannot classified as a beverages -**Casino Hotel Vs state of kerala**

Classification in case of exemption notification

In *Mangalore Chemicals & Fertilisers Ltd. Vs. DC 1991 (51) ELT 437*, the Supreme Court held that the Rules for interpretation of the statute are the same for the purpose of classification and exemption.

In *Eskayef Ltd. Vs. CCE 1990 (49) ELT- 649*, the Supreme Court held that the exemption from payment of a excise duty which has been granted under a Notification is confined to goods falling under a particular Tariff Heading. Merely because a product can be used for the purposes as specified in the exemption notification does not qualify it for exemption, unless it also falls under the Tariff Heading specified in the Notification because the exemption cannot transfer product from one Tariff entry to another.

In *Maestro Motors Ltd. 2004 (174) E.L.T. 289*, the Supreme Court has held that if a tariff heading is specifically mentioned in exemption notification, the Rules for Interpretation will apply to such exemption notification. However, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for purpose of classification, it may be something else.

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II-Case laws on Valuation

1-Case Studies on MRP Valuation:

Some of the situations where MRP cannot be printed are

Bulk supplies for personal as well as industrial use,

Bulk supplies against contract,

Supplies to canteen store depots of defence,

Item supplied free with another consumer item,

Items supplied free as marketing strategy or market response,

Items meant for export.

CBE&C circular No. 625/16/2002-CX dated 28-2-2002. - followed in *Bharti System v. CCE* 2002(145) ELT 626 (CEGAT).

Price Printed on the package is relevant and not price shown in Advertisement -**Kripal Drinks VS CCE (2004) 167ELT545(CESTAT)**

If the goods are give on free- MRP will not applicable when goods are given free along with other product. The assessee is manufacturing razors for a buyer who is distributing it free with is own product. Assessee was not printed MRP on the razor, It was held valuation was to be done on the basis of 4 and not 4A- **GSE Enterprises VS CCE (2004) 172ELT31 (CESTAT)**.

When the goods falling under sec 4A are supplied free of cost with other products and the packet of such goods doesn't bear any MRP, then such goods will be assessed under sec 4 and not under sec 4A. **Pepsi foods Ltd. (CESTAT)**.

Valuation on MRP even Product not really intends for resale: Telephone instruments were packed MRP Printed and supplied to DOT/MTNL. DOT/MTNL lent these phones to subscribers and retain the ownership. It was held that valuation is to be done on the basis of MRP since the goods were in packed condition. It was also observed that there is no condition under package commodity rules, the goods should be actually sold in retail. **ITEL Industries VS CCE (2004) 163ELT219(CESTAT) & BPL Telecom Vs CCE (2004) 168ELT251(CESTAT)**

Different MRP will be considered only in case of different packets. Not in case of same packets. **Mount Everest Mineral Water Vs CCE (2004) 166ELT 52 (CESTAT)**

Excise department cannot question, Challenge or investigate on the genuine of MRP printed on the product, they can only ensure, that MRP is printed- **ITC LTD Vs CCE (2004) 171ELT433**

Goods packed in bulk - If goods are packed in bulk, MRP provisions do not apply - Titan Industries v. CC (2007) 216 ELT 327 (CESTAT).

Same product partly sold in retail and partly in wholesale - CBE&C has further clarified in circular No. 737/53/2003-CX dated 19-8-2003 that when goods covered u/s 4A are supplied in bulk to large buyer (and not in retail), valuation is required to be done u/s 4.

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Provisions of Section 4A apply only where manufacturer is legally obliged to print MRP on the packages of goods. Thus, there can be instances where the same commodity would be partly assessed on basis of Section 4A and partly on basis of transaction value u/s 4 - view noted and approved in *Jayanti Food Processing v. CCE* (2007) 10 STT 375 = 215 ELT 327 (SC).

Some of the situations where MRP cannot be printed are - (1) bulk supplies for personal as well as industrial use, (2) Bulk supplies against contract, (3) Supplies to canteen store depots of defence, (4) Item supplied free with another consumer item, (5) Items supplied free as marketing strategy or market response, (6) Items meant for export. In case of doubt, a clarification may be obtained from Meteorology Department of State Government. - CBE&C circular No. 625/16/2002-CX dated 28-2-2002. - followed in *Bharti Systel v. CCE* 2002(145) ELT 626 (CEGAT).

Provision of MRP based valuation are applicable only when product is statutorily covered both under Weights and Measures Act and notification issued under CEA

Provision does not apply to ice cream sold in bulk - In *Monsanto Manufacturers v. CCE* 2006 (193) ELT 495 (CESTAT), it was held that if ice cream is sold in bulk to hotels and not intended for retail sale, valuation will be as per Section 4 and not on MRP basis - view confirmed in *Jayanti Food Processing v. CCE* (2007) 10 STT 375 = 215 ELT 327 (SC).

No MRP on free gifts/samples, hence valuation as per Section 4 - In *Jayanti Food Processing v. CCE* (2007)10 STT 375 = 215 ELT 327 (SC), assessee as selling Kitkat chocolates to Pepsi. These were distributed as free gift along with Pepsi bottle as a marketing strategy. It was held that even if product (chocolate) is covered under MRP provisions, since the product was not to be sold in retail, MRP is not required. Hence, valuation should be on basis of Section 4.

2. Case studies on Transaction Value

Cost of production not relevant

Central Excise Valuation can be below manufacturing Cost. If there is no allegation of flow-back of money from buyer to assessee, if price is the sole consideration and if dealings between assessee and buyer are at arm's length, Assessable Value will be decided on basis of selling price, even if it is below manufacturing cost. - *Guru Nanak Refrigeration Corpn. v. CCE* - (1996) 81ELT 290 (CEGAT 3 member bench).

Duty is chargeable at the rate and on the price prevailing on the date of actual removal of goods from the factory gate and subsequent reduction in the price even at the behest of the Govt. does not create a right in favor of the assessee for refund of duty on the reduction in the price.- **MRF Ltd. (SC)**

Where cum duty price is charged, then in arriving at the assessable value of the goods, the element of duty, which is payable, has to be excluded. Sale price realized by the assessee is to be regarded as the entire price inclusive of excise duty. **Maruti Udyog Ltd.**

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On inclusions

Discounts in the form of damage in transit/damages are not allowed as deduction. Discount in respect of defective tyres sold earlier is in the nature of benefit given to Consumer as a compensation for loss suffered and hence not allowed in deduction. **GOI Vs MRF Ltd (SC) 77ELT433./Hindustan Lever Ltd (2001)130**

Loading and handling charges within the factory

These are in by reason of sale and are includable - *Punjab Alkalies v. CCE* 2005 (179) ELT 341 (CESTAT). *Shree Rajasthan Syntex v. CCE* 2005 (186) ELT 239 (CESTAT)

Dharmada (Charity) includible

Sometimes, some amount is collected by seller in the invoice as 'Dharmada' (charity) and spent for charitable purposes such Dharmada (Charity) includible in assessable Value in central Excise **TISCO Ltd (2002) (SC) 146ELT3.CBE&C, vide circular No. 763/79/2003-CX dated 21-11-2003**

Joint Plan Committee Cess compulsorily payable by all assessee in case of modernization and development of steel plant. Held it is includible - **Panchamukhi Engineering works (2003)(SC) 154ELT 10**

The cost of bought out items viz. sockets, which are fitted to M S G I. pipes before their removal from the factory gate, is includible in the assessable value of the pipes **Siddhartha Tubes Ltd. v. CCEx., Indore (M.P.) 2006 (193) ELT 3 (SC)**

Regulators are parts of fans and held includible in valuation- **Khaitan Electrical (2004)SC165ELT134** Fan regulators which are not cleared with electric fan but are cleared as such would be classifiable as parts/accessories of fan under sub-heading 8414.99 of the Central Excise Tariff and not under sub-heading 8414.20 ibid covering fans **North West Switchgear Ltd. v CCEx., New Delhi 2006 (195) ELT 134 (SC)**

Advance license surrendered in favour of seller is additional consideration and includible

The seller had Advance License. It was surrendered to enable the supplier-manufacturer to get Advance Intermediate License, due to which, the seller agreed to sale the goods at prices much lower than the prices quoted earlier. **In CCE v. IFGL Refractories Ltd. 2005(186) ELT 529 (SC)**

Wooden crates used for packing of glass sheets is in the nature of durable and returnable packing hence not includible in valuation

The glass sheets are packed in the wooden crates and sold. The invoices/bills raised upon the customers/consumers contain a Clause which reads as follows:

"Packing charges recovered in respect of packing of durable and returnable nature subsequent to initial packing for facilitating safe transport will be refunded (@ Rs.140/- per crate) if the same are returned intact."

Held Wooden crates are durable and returnable packing; cost/value thereof is not to be includible in the value of glass sheets. **TRIVENI GLASS LTD. - 2005 - SC**

Royalty for Franchise Agreement is includible in the Valuation: Pepsi and cola Supplies concentrate to bottlers and bottler's manufactures the cool drinks. Bottlers pay royalty for

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using the brand name Pepsi and cola and for using the concentrate, Held Royalty for franchise agreement is includible in valuation as it is in connection with sale- **Pepsi Foods VS CCE (2003) (SC) 158ELT552**

Price increase after removal is not includible in valuation, since the price is relevant at the time and place of removal. However if there is escalation clause in the sale agreement and if any additional price is realized, such additional price is includible in valuation and excise duty is payable. **Hindustan Ship Yard Vs CCE (1997) 92ELT189(CEGAT)/India Tin Industries**

Free after Sales Service Warranty includible in valuation- they are includible whether they are optional or compulsory- **-CBEC Circular NO 354/81/2000 dated 30.06.2000.**

Wooden crates which are not returnable as per agreement is includible in valuation Since glass sheets were delicate/fragile in nature and could not be moved in wholesale trade without being packed in wooden crates, therefore the wooden were meant to make the glass sheets marketable and thus, the cost thereof was includible in the A.V. of glass sheets. **Hindustan Safety glass works Ltd.(CESTAT)**

Compensation paid for losses in transit: The amount paid as compensation to customers for breakages or losses sustained during transit is not deductible as cost of transportation. **Surya Roshni Ltd.**

The cost of material should be net of ex duty if CENVAT credit is availed in respect of such inputs. Duty paid on raw material which is allowed as CENVAT cr to be utilized towards payment of duty of excise **Dai itci Karkaria Ltd.**

Subsidy received from Buyer is includible in valuation and from Govt. Not includible

The assessee received 20% subsidy from the government and 10% subsidy from the buyer of its products as per the policy of the government. It was contended by the department that the value of these subsidies should be included in the assessable value of the final product

In the given case the subsidy of 20% from the government could not be said to be additional consideration as it was not received from the buyer either directly or indirectly. Therefore, that would not be includible in the price of the goods for the purposes of excise. However, the 10% subsidy received by the assessee from the buyer was additional consideration. The fact that it was received under a policy of the government did not detract from the above position **Mazagaon Dock Ltd SC**

On Exclusions

If any excise duty or other tax is paid or payable at concessional rate for a particular transaction, the amount of excise duty or tax actually paid at concessional rate shall only be allowed to be deducted from price. - *Chapter 3 Part III Para 2.5(v) of CBE&C's CE Manual, 2001.*

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Equalized deduction of taxes not permissible - Since each clearance is a separate transaction for assessment, that taxes are deductible only on actual basis and not on average basis. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002,**

Trade Discounts: Trade discount means discount usually expressed as a percentage deduction given to wholesale buyers. The valuation based on the 'transaction value', The 'transaction value' means price actually paid or payable for goods. Normally the transaction value arrived only after deducting the trade discount. Thus, 'trade discount' is allowable as deduction. The trade discount *need not be uniform*. Trade discount may be called by different names like cash discount, quality discount, turnover discount, etc. Such discount will be allowed on *actual basis*. There is no condition or provision that such discount should be known at the time of removal of goods from factory. Differential discount is also permissible. **Circular No. 354/81/2000-TRU dated 30-6-2000**

Cash discount - Department has confirmed that cash discount is allowable as deduction, if actually passed on to buyer, if transaction is on principal-to-principal basis. **CBE&C circular No. 643/34/2002-CX dated 1-7-2002**

Different discounts should be given to different buyers, discount given is deductible.

The assessee has four factories located at four different places. They have a practice of giving 20% discount to bulk buyers. However some of the bulk buyers i.e. 10% have been given a discount of only 8%. The assessee contends that it shall be allowed a deduction of discount @ 20%. Whereas the department is of the opinion that they should be given a deduction of 8% as the additional 12% is given to those bulk buyers who are related with the assessee.

Held that Discount of any description actually given to buyer shall be allowed as deduction. However it should be known at time of removal & if it is not known then intention of allowing such discount should be disclosed with department at time of removal of goods and make a request for provisional assessment.

Therefore, the discount given to majority of buyers shall be allowed as deduction

Discount can be given at any time - There is no provision that discount should be known or given at the time of removal of goods. For example year-end discount or turnover discount given on basis of turnover achieved during a prescribed period should be allowable as deduction. Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently e.g. year-end discount, the assessment for such transactions may be made on a provisional basis. However, the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment. *Same view is reiterated in Chapter 3 Part III Para 2.5(iv) of CBE&C's CE Manual, 2001.*

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Installation and Erection Expenses - Installation and erection expenses are incurred after the goods are removed from the factory. There may be an independent contract for erection or even a composite contract. The erection and commissioning charges should not be includible.

CLARIFICATION BY CBE&C - The Board has clarified with regard to erection and commissioning charges as follows

- (a) If final product is not excisable, question of including erection and commissioning charges does not arise.
- (b) If a machine is cleared from a factory on payment of appropriate duty and later taken to premises of the buyer for installation/erection and commissioning into an immovable property, no further duty will be payable
- (c) If parts/components are brought to site and the machine is erected/installed and commissioned, if the product (generator as per Board circular) is excisable commodity, cost of erection, installation and commissioning would be included in assessable value. In other words, if the expenditure on erection, installation and commissioning has been incurred to bring into existence any excisable goods, these charges would be included. If these costs are incurred to bring into existence some immovable property, they will not be included in the assessable value of such resultant property. -**CBE&C circular No. 643/34/2002-CX dated 1-7-2002.**

Interest on Receivables and on Delayed payment - The manufacturer may recover interest from buyer, if he does not make payment as per agreed terms and delay in payment of bill. Such interest should not be includible. Department has confirmed that delayed payment charges will not be includible, if shown or indicated separately in invoice and charged over and above the sale price. - **CBE&C circular No. 643/34/2002-CX dated 1-7-2002.** **Departmental circular No. 354/81/2000-TRU dated 30-6-2000 has clarified that interest on delayed payment shall not be regarded as part of the assessable value provided that:**

- (a) The interest charges are clearly distinguished from the price actually paid or payable for the goods;
- (b) The financing arrangement is made in writing; and
- (c) Where required, assessee demonstrates that such goods are actually sold at the price declared as the price actually paid or payable. **Chapter 3 Part III Para 2.5(iii) of CBE&C's CE Manual, 2001.**

Inspection charges / addition testing charges paid by buyer - Assessee carries out his own inspection and its cost is obviously included in his selling price. However, sometimes, customer carries out additional inspection either himself or through another inspection agency. Some times, expenses of such additional inspection / testing are borne by assessee while, in other case, the expenses may be borne by the buyer himself. This inspection is in addition to normal inspection and quality checks of the manufacturer himself. Considering the judgment given in **Emerson Net power Vs CCE (2004) 176ELT168(CESTAT)**, following points need considered for inclusion or exclusion as per CBEC Clarification.

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- 1 If the inspection charges are to be borne by assessee and goods can be sold only if approved by the inspection agency, the payment is in connection with sale and by reason of sale. It should be includible.
- 2 If such testing is a mandatory requirement, it should be includible whether borne by assessee or buyer. This is because there is no sale without such testing.
- 3 If assessee has agreed that buyer can reject the goods if not approved by the testing agency, the payment will be 'by reason of sale' and should be includible, whether paid by assessee or buyer.
- 4 If the inspection is done by buyer on his own only to satisfy himself about quality of the product, the cost should not be includible, as in such case, the payment made by buyer or expenditure incurred by buyer is not 'on behalf of assessee' but on his own.

Deduction of Local Taxes: In case of deduction of local taxes, effective taxes only deductible, taxes which are refundable/incentives are not allowed, In case of refundable taxes/ incentives collected by seller from buyer, which are not refunded to him is includible in valuation. Taxes paid on final products are only allowed as deduction. Taxes paid on inputs always includible in valuation **CBEC Circular-378/11/98**

Optional Extended warranty not included valuation- The assessee discharged duty liability by including cost of normal 2 years warranty in the value of manufactured goods. By way of separate agreement, the assessee offered extended warranty charges for 3rd and 4th Year which was optional in nature. Held **There is no direct or proximate connection between sale of car to the dealer and the purchase of extended warranty; hence extended warranty charges were not includible** **_MARUTI UDYOG LTD(2007) SC 212 ELT73**

Payment is in nature of a penalty for breach of contract is not includible in valuation: J.J. Confectionery (P) Ltd. entered into a contract with M/s Parry Confectionery Ltd for manufacture of confectionery. For not producing contract quantity, the assessee has been paid compensation. Held that, compensation has nothing to do with goods manufactured and cleared and can not be said to be by reason of, or in connection with, sale" and not includible in valuation **J J CONFECTIONERY (P) LTD. 2007 TRI210 ELT196**

Additional Quantity free supplied is nature of trade discount deductible: The assessee is giving one case free for every twelve cases and each case contains ten packets of coils. Held one case given free is a trade discount **VINAYAKA MOSQUITO COIL MFG CO.2005 - SC 181 ELT 183**

Area wise discount given by way of credit notes in addition to basic discount is deductible: Assessee was giving area-wise discount to its buyer apart from certain basic discount. The availability of discount is made known to the buyer at the time of receipt of sales order itself. However, the additional area-wise discount is given not at the invoice itself but by way of issuing credit notes. Assessee is clearing goods availing provisional assessment. Held area wise discount is deductible. **MAHAVIR SPINNING MILLS LTD - 2007 - SC 212 ELT 152**

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Freight and insurance from depot onwards -it was held that freight and insurance from depot to the customer is not includible. *Prabhat Zarda v. CCE 2002(146) ELT 497 (SC)*,

Rental charges of a Cylinder from buyer is not includible in valuation- *Grasim Industries Vs CCE (2004) 164ELT257 (CESTAT) / CCE v. Bisleri International P Ltd. 2005 (186) ELT 257 (SC)*,

Any Subsidy received from Government will not includible in valuation- *Nyveli lignite corporation.(2001)(SC)*

Discounts in the form of supplying additional quantity is similar to that of trade discount and allowed as deduction. *CCE Vs Hindustan Lever Ltd (2002) (SC) 142ELT513*

If any process is done by assessee after removal of goods, Process charges and value addition will not includible in valuation if such process does not amounting to manufacture- **CBEC Circular No 138/08/2000 dated 03.01.2001**

Bank charges incurred for collection of sale bill do not represent sale price of goods and hence not includible - *Hindustan Lever Ltd 2002(142) ELT513 (SC)*

Loading and unloading charges incurred by a distributor of the assessee are not includible in the A.V. of goods. Only those charges incurred for loading the finished goods within the factory of the assessee are includible. *Poona Bottling Co.Ltd.*

Commission paid to Selling Agent/Sales personnel is paid out of profit, where as discount is a deduction from sale bill. Where discount is deductible and Commission is not deductible

Value of Preloaded Operational software is not includible in the valuation of Computer, though computer cannot perform without operational software- *Acer India Ltd (2004) 172ELT289 (SC)*

Instrustuction manuals, leather cases supplied along with cameras charged separately is not a parts or components but they are only accessories and not includible in valuation. *Phil Corporation Ltd (2005) (SC) 180ELT311*

Monitors and Printers are not essential parts or components of a computer, which are bought out and supplied along with computer not includible in valuation- *CMS Computers (2005)(SC) 182ELT20*

Assessee was manufacturing soap for Hindustan Lever. He packed '*bindis*' with soap for free supply to buyers of soap, as per instructions of Hindustan Lever. It was held that supply of *bindis* has no connection with price of soap and price of *bindis* is not includible to arrive at assessable value. *Oswal Fats & Oils v. CCE 2003 (156) ELT 112 (Sc)*

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Advertisement expenses (that are born by the buyers) not to be included in the assessable value. Factual position showed that the transaction was on principal to principal basis. Expenditure was incurred by buyer on his own. Hence, the Supreme Court held that there was no scope for making any addition in the assessable value. There is no evidence the gradual transfer of expenditure of seller to buyer. *Alembic Glass Industries Ltd. v. CCEx. 2006 (201) ELT 161 (SC)*

Value of price support incentives received from the raw material supplier should be included in the assessable value of the final products

The assessee manufactured aerated waters and sold the same to the wholesale dealers. Further, it received price support incentive in the form of credit notes from the raw material supplier. The department contended that the assessee had undervalued the assessable value of the aerated water by excluding the rent on containers (ROC) and the value of price support incentive and thus, they should be included in the assessable value of the aerated water.

There was no evidence of any concession to any of the buyers or existence of any favored buyers. Thus, the Supreme Court held that the value of the price support incentives would not be includible in the assessable value of the aerated water. *CCEx., Meerut-I Bisleri International Pvt. Ltd. 2005 (186) ELT 257 (SC)*

Subsidy received from the buyer/Government as per the policy of the Government The assessee received 20% subsidy from the Government and 10% subsidy from the buyer of its products as per the policy of the Government. The Apex Court stated that the subsidy of 20% from the Government could not be said to be additional consideration as it was not received from the buyer either directly or indirectly. Therefore, that would not be includible in the price of the goods for the purposes of excise. However, the 10% subsidy received by the assessee from the buyer was additional consideration. *CCEx., Bangalore v. Mazagaon Dock Ltd. 2005 (187) ELT 3 (SC)*

Administrative charges collected from the buyer and paid to the Government are not to be included in the assessable value The assessee collected administrative charges from the buyer for selling the molasses as per the State Government Act. The amount collected was paid over to the Government. The Supreme Court held that such charges were in the nature of a tax and hence, would not be includible in the assessable value. *CCEx. Lucknow v. Chhata Sugar Co. Ltd. 2004 (165) ELT 369 (SC)*

Advertising expenses incurred by an agency of the bottlers (Third party) not includible in valuation.

The assessee manufactured concentrates of non-alcoholic beverages and sold it to various bottlers. The bottlers after processing the concentrate bottled the outcome and sold the same. Bottlers formed a company and advertising about the product. The Apex court held that Advertisement expenses not includible in valuation *CCEx., Mumbai-I v. Parle International Ltd. 2006 (198) ELT 486 (SC)*

cost of bought out items viz. sockets, which are fitted to m.s./g.i. pipes before their removal from the factory gate, is includible in the assessable value of the pipes The reason

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for the inclusion being the essentiality of the sockets for the functioning of the pipes as these sockets join the pipes to each other. *Siddhartha Tubes Ltd. v. CCEx., Indore (M.P.) 2006 (193) ELT 3 (SC)*

When the significant sales to unrelated persons and some sales to related person, the price to related and unrelated persons is same, there is no special consideration to related persons. Hence the price is the value *CCEx., Mumbai v. Universal Luggage Mfg. Co. Ltd. 2005 (190) ELT 3 (SC)*

Supplying 13 units of ex goods to a wholesaler at a price of only 12 units, is in the nature of trade discount by way of quantity discount. Further, in case of free supply there is no sale and thus, its value is not includible in the A.V. under sec 4A. *Vinayak Mosquito Coil Mfg. Co.(CESTAT)*

Pre-delivery inspection charges paid to dealers by customers and not to manufacturer will not be includible in valuation. *Maruthi Udyog Ltd (2004) 170ELT245(CEGAT)*

Engineering Charges/Design supplied by customer, since the design not made by manufacturer- *Bharat Forge Ltd (2000) 122ELT 169*

Excess collection of insurance charges on account of collection on average basis would not be taxable as value of goods. *[Rama Vision Ltd. v. CCEx., Meerut 2005 (185) ELT 296 (Tri. - Del.)]*

In cases where price is reduced due to non-completion of contract within contracted time, the assessable value would be computed according to the reduced rates as delivery is made in terms subsequently agreed upon. *[Jaiswal Equipments and Holdings Pvt. Ltd. v CCEx., Raipur 2005 (185) E.L. T. 306 (Tri. -Del.)]*

Subsidy / Rebate obtained by assessee - A general subsidy / rebate is obviously not be includible as it has no connection with individual clearances of goods.

Profit earned on post removal activity - Profit earned on post removal activity is not to be added unless there is any deliberate attempt to divert a part of the genuine price and show it as other charges - *Empire Industries Ltd. v. CCE 1997 (CEGAT)*. In *Baroda Electric Meters Ltd. v. CCE 1997 (SC)*, it was held that profit earned by manufacturer on transportation/insurance couldn't be included in Assessable Value. - *S R Jhunjhunwala v. CCE 1999(114) ELT 890 (CEGAT)* - *Sri Kaliswari Fireworks v. CCE 1998(98) ELT 93 (CEGAT)*

3. Case Laws on Valuation rules

Valuation of samples - CBE&C, vide circular No. 813/10/2005-CX dated 25-4-2005 has clarified that in case of samples distributed free, valuation should be done on basis of rule 4

Valuation in case of part of goods sold and part is captive consumption

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CBEC has clarified that if same goods are partly sold by assessee and partly consumed captively, goods sold have to be assessed on basis of transaction value and goods captively consumed should be assessed on basis of rule 8. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002**, the reason is, as per new section 4, transaction value has to be determined separately for each removal. In case of captive consumption, cost calculation should be as per CAS-4 issued by ICWAI

Free Samples along with main product: When free samples given as a addition to the product, no duty is payable on samples (In this it is biscuits), trade discount can be given in any form - **Surya Foods and Agro Ltd Vs CCE (2003)**. Same view was held in **Vinayaka Mosquito coil Vs CCE (2004)174ELT107(CESTAT)** (Here the assessee supplying one case of mosquito coil free for every 12 coils.

Full intrinsic value should be considered, ownership is irrelevant it was held that cost of material supplied free by buyer has to be added to arrive at full intrinsic value of goods. It was observed, *'The fact that the petitioners are not the owners of the end-product are irrelevant. Taxable event is manufacture - not ownership'*. - **Burn Standard Co. Ltd. v. UOI - SC,**

When free gifts are given in case of products covered under MRP, the free gift is only incidental benefit, the price will be sole consideration.- **Sony India Ltd Vs CCE 2004 (SC)**

Where there is a free supply of components to the assessee by the buyer whose brand name goods are to be manufactured then the A.V. shall be determined in accordance with rule 6 as price is not the sole consideration for sale. **Dugar Electronics**

Where the sale is made from the depot the freight and insurance charges up to the depot will be includible while the freight & Insurance. For delivery to the customer from the depot is not includible in A.V. **Prabhat Zarda Factory Ltd.**

Even if free gifts are offered by the manufacturer to the buyer on the sale of ex goods, the retail sale price charges from the buyer will be the sole consideration for sale. **Sony India Ltd.** Transportation charges collected in excess of that agreed upon would not be additional consideration if the contract for the same is separate. **[PSL Ltd. v. CCEx., Daman 2005 (185) ELT 59 (Tri. - Mumbai)]**

HPCL at bottling plant, gas is put into cylinders which are then delivered at dealers at a Company Billing Rate (CBR). The CBR price includes among other things, delivery charges from the Bottling Plants to the dealers' premises. CG had fixed the delivery charges at Rs. 10 per cylinder which is inbuilt in CBR. Held that CBR price which includes among other things such as delivery charges from the Bottling Plants to the dealers' premises not includible in valuation **HINDUSTAN PETROLEUM 2007 SC [213 ELT 116]**

Tribunal decision needs reconsideration. ISPAT INDUSTRIES LTD. - 2007 - TRIBUNAL, Mumbai LARGER BENCH 209ELT185

Assessee was selling goods manufactured by him to unrelated buyers. Part of production was also consumed by him in the other unit . Assessee valued the captively consumed goods at 110% of cost of production by applying Rule 8 of Central Excise Valuation Rules, 2000.

Excise Case laws Circulars Trade notices on Valuation

Department has insisted that shall Rule 8 be applicable for valuation of captively consumed goods only when entire production is captively consumed. Where part only of goods is captively consumed, then valuation shall be done in terms of Rule 11

Held that departments contention was right. *This is evident on a plain reading of Rule 8 of the valuation rules, which reads as under "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 110% of cost of production or manufacture of such goods"*

Notes: It is very clear to note that no where it is mentioned in the rule 8 the word "exclusively" to apply in a cases where entire production was captively consumed. And it is no where mentioned in goods should be consumed in the same factory of assessee and not in any other unit of assessee

It is very sad to note that the CBEC Circular. CBEC has clarified that if same goods are partly sold by assessee and partly consumed captively, goods sold have to be assessed on basis of transaction value and goods captively consumed should be assessed on basis of rule 8. CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002

The above circular was not given weightage and decision was given considering some other tribunal decisions

Related person

Relation as per interconnected undertaking is not relevant at all as the rule 10 of valuation rules discarded it. Asia Tyres Vs CCE (2003) 152ELT454 (CEGAT). Hence other three concepts such as the relative as a relative, relative cum distributor and persons having mutual interest in each other is only relevant

Sale to related person at a same price to unrelated person - If there were significant sales to unrelated buyers at same price at which goods were sold to related persons, that price could form basis of valuation - CCE v. Universal Luggage 2005 (190) ELT 3 (SC)

Mutual interest is relevant: Persons will be treated as relative only when interest of business of each other. If one person has interest with other and other does not interest, they are treated as unrelated persons only. UOI Vs kaira district Co-operative milk producers associations (sc) 146ELT502/CCE Vs Kersons Manufacturing Ltd 100ELT194 (CEGAT)/UOI Vs Atic Industries Ltd (SC)

Mutual interest is relevant: Mere rental payments and discounts does not make them relatives

Assessee was selling goods to a buyer who was reselling goods. Department contended that assessee and buyer are related person and value should be done on the basis of price of buyer to unrelated person be taken as AV. Department contend that

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Registered office of buyer and assessee-company was located in the same premises. Assessee Company pays factory rent to buyer. And 40% discount was offered by assessee to buyer.

Held: relative value will not applicable because buyer does not hold any shares in assessee-company nor the assessee-company owns any shares in buyer. Rent paid is also at market rate. The 40% discount was a normal trade practice. There is no evidence to suggest that the profit made by the buyer had flown into the assessee company **DAMNET CHEMICALS PVT LTD.2007 SC216 ELT3**

Companies with Common directors are not relatives: The fact that two public companies have common directors does not render both the companies as related person. **Alembic Glass Industries Ltd (SC)**

Mere holding shares in public Ltd company do not mean shareholder has interest in the public Company. No mutual interest even mutual share holding and common Directors/Common partners - **Alembic Glass Industries Vs CCE (2002) SC 143ELT244/Narendra Industries Vs CCE (2001) 132ELT141(CEGAT)/Besta Chemicals (SC) 2005**

Merely because the buyer is the holding co. and a person related to manufacturer does not by it show that the invoice price was influenced by such relationship, more so when the manufacturer is selling goods at same prices to other prices. **Acorn Engg. Ltd(CEGAT)**

A is a holding company B and C is a Subsidiary Companies. B is a manufacturer. B Sells 60% products A and 40% products to C. B Sales promotion expenses are met by A. Held AB and C are treated as related persons - **Flash Laboratories Ltd (2002) (SC)151ELT241**

Interconnected undertaking cannot be treated as relatives and valuation under rule 9 will not apply. Interconnected undertaking will be treated as relatives only when they are holding and subsidiary. Here the Cost Accountant also certified the value that there is no decrease in the price to relative. Held demand by way of SCN to be withdrawn. **Kirloskar Ferrous Industries Ltd. vs. CC&CE, Belgaum 2007(78) RLT 402 (CESTAT-Bang.)**

An Assessee, who is distributor but not a relative, cannot be treated as related person. Both the distributor and relative should be satisfied to treat them as related persons- **Bombay Tyre International tyres Vs UOI (SC)**

Federation and Member of federation are not relatives

Assessee was member of Federation known as 'Gujarat Cooperative Milk Marketing Federation Ltd'. Assessee was selling products to Federation. The Federation was charging commission for marketing the product. It was held that the commission charged by Federation is deductible, as even if assessee may have interest in the Federation, the Federation has no interest in the business of assessee. Hence, they cannot be treated as 'related person' **UOI v. Kaira Dist Coop Milk ProduceRs. Union 2002(146) ELT 502 (SC),**

Brand name owner is not related person -

Excise Case laws Circulars Trade notices on Valuation

Often, some companies get the goods manufactured under their brand name from some other Companies. However, such brand name owner cannot be termed as relative of the actual manufacturer, *only for this reason*. In such cases, duty payable will be on the basis of price charged by the actual manufacturer to the brand name owner - **Voltas Ltd. v. CCE 2005 (188) ELT 421 (CESTAT)**.

97% of sales were through marketing subsidiary and only 3% sales were to independent buyers It was held that valuation is required to be done on basis of price at which the related person (subsidiary in this case) makes further sale. Net price charged by related person to its buyers (exclusive of discount) should be assessable value. **In Pepsico India Holding v. CCE 2004 (163) ELT 478 (CESTAT)**,

.4. Cum Duty Price

When Cum Duty price is to be considered

- When the price is not sole consideration and if any Additional Consideration is added to arrive Assessable Value it should be treated, as cum duty price - CBEC D O Letter 334/1/2003 dated 28.02.2003
- If Assessee removes goods without payment of duty by mistake (treating dutiable goods as exempted goods), the price should be treated as cum duty price CCE Vs Maruthi Udyog Ltd (2002) (SC). If the goods are covered under MRP, abatement deduction will not available
- If the information is specific (in exam question) it should be cum duty price
- And calculation should be made backwards-

$A V = (\text{Cum duty price minus permissible deduction} \times 100 / 100 + \text{rate of duty including EC})$

If Additional Consideration is added, it should be treated, as cum duty price and calculation should be made backwards- **CBEC D O Letter 334/1/2003 dated 28.02.2003** (Cum duty price minus-permissible deduction/1+rate of duty)_

If Assessee removes goods without payment of duty by mistake (treating dutiable goods as exempted goods), the price should be treated as cum duty price and calculation should be made backwards- **CCE Vs Maruthi Udyog Ltd (2002) (SC)**. **If the goods are covered under MRP, abatement deduction will not available**

5. Job work

As the new rule for valuation Rule 10 A of Job work is effective from 01.04.2007, the old case laws regarding valuation of job work are not relevant.

6. Bought out accessories

Cost of Bought out Parts, Components, which are fitted and supplied along with the main product, will be includible in the valuation. **CCE Vs Multiplex Packaging (1999) 105ELT374 (CEGAT)/Diamond Manufacturing Co. Vs CCE (SC) 44 ELT 24**. Profit earned on Bought out Parts, Components and Consumable is not includible in the valuation -**Triveni Engineering Vs CCE (2002) 122ELT386 (CEGAT)**

III - Case studies on Cenvat Credit

"In the manufacture of goods"

The Cenvat scheme allows credit on inputs used in or in relation to the manufacture of final products. It was held that the expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods *J.K.Cotton Spinning and Weaving Mills Co. Ltd v. S.T.O.* 1997 (91) E.L.T. 34, (SC)

Raw material or component or part

It was held that anything that enters into and forms the part of the manufacturing process or is required to make the article marketable must be deemed to be a raw material or component part of the end product and must be deemed to have been used in completion or manufacture of the end product. In this specific case, wrapping paper was held to be a raw material and component of wrapped paper. *Monotype India Ltd. v. CCE* - (1996) 83 ELT 594 (CEGAT) * *Joy Foam Pvt. Ltd. v. CCE* - (1996) 83 ELT 72 (CEGAT 3 member bench order). *Collector v. East End Paper Industries Ltd* - 1989 (43) E.L.T. 201 Supreme Court

Inputs need not be contained in the final product

It Was held that sodium sulphate used for chemical reaction at pulp stage is treatable as raw material used in the manufacture of paper even though, sodium sulphate is burnt up and does not retain its identity in the end product. The Supreme Court specifically held that the test would be to see whether without the presence of the said raw material it would be possible to manufacture the end product. In *CCE v. Ballarpur Industries Ltd* - 1989 (43) E.L.T. 804, Supreme Court

The Cenvat scheme allows credit on inputs used in or in relation to the manufacture of final products. The Supreme Court in case of *J.K.Cotton Spinning and Weaving Mills Co. Ltd v. S.T.O.* 1997 (91) E.L.T. 34, has held that the expression "in the manufacture of goods" should normally encompass the entire process carried on by the Manufacturer of converting raw materials into finished goods

Waste and scrap is final product for Cenvat - As per Cenvat provisions, waste or scrap is treated as a final product within definition of rule 57AA(c) [Now new rule 2(h)] and its clearance is as if it is a final product. - MFDR TRU No. 345/2/2000-TRU dated 29-8-2000.

Direct despatch from manufacturer to final buyer, but sale is through dealer i.e. Transit sale - If whole consignment is despatched to buyer from manufacturer, Cenvat will be permissible, if name of the final buyer is shown as consignee. (Invoice will be in name of dealer). The consignee can avail Cenvat on the basis of duplicate copy of manufacturer issued under Rule 11 (*that time Rule 52A*). In such cases, the goods need not be brought to the premises of registered person. Invoice of Registered person (dealer) is not required for availing Cenvat by the consignee - **CBE&C Circular No. 96/7/95-CX dated 13-2-1995.**

Cenvat credit on capital goods used in manufacture of exempt intermediate product - It may happen that capital goods may be used in manufacture of an exempt intermediate product, but final product may be dutiable. In such case, Cenvat credit is available on such capital goods, if final product is chargeable to duty. - **CBE&C circular No. 665/56/2002-CX dated 25-9-2002.**

Circulars Notifications and Case laws on Cenvat Credit

As per notification No. 67/95-CE dated 16-3-1995, capital goods (as defined in Cenvat Credit Rules) manufactured in a factory and used within the factory of production are exempt from excise duty. Further, as per Explanation 2 to rule 2(g) of Cenvat Credit Rules, inputs include goods used in manufacture of capital goods, which are further used in the factory of manufacturer. Thus, if capital goods are manufactured and used within the factory, Cenvat credit can be availed of goods, which are used to manufacture such capital goods. Moreover, no duty will be payable on such capital goods.

Department has expressed an opinion that in view of specific definition of 'input' in new Cenvat Credit Rules, Cenvat credit will be available only if inputs/capital goods are used within the factory. - **CBE&C circular No. 637/28/2002-CX dated 8-5-2002.**

Cenvat Credit is to be reversed, if Final product was destroyed and remission of duty was granted -**CBEC Circular 800/33/2004-CX dated 01.10.2004 /Mafatlal Industries (2003) 154ELT543**

Allowability of Cenvat credit on Inputs

Examples of Inputs eligible for Cenvat Credit:

- Process losses and handling loss are allowable
- Loss of inputs during handling eligible
- Excessive loss also permissible
- All inputs necessary to make the goods marketable are eligible
- Inputs required for quality control tests are eligible
- Inputs used in effluent treatment plant eligible
- Repeated use is not a bar for availing Cenvat credit
- Defective final product is 'input' for purpose of availing Cenvat credit
- Inputs used even in trial production eligible
- Credit if goods lost/destroyed in process but no credit if inputs are lost or destroyed in store-room or pilfered
- Loss/shortage in transit during receipt of goods is not allowable
- Loss in transit due to natural causes allowable
- Excess use due to abnormal conditions eligible
- Capital goods not defined, as 'capital goods' will be eligible as 'inputs'
- Indirect use is permissible
- Inputs eligible for Cenvat credit even if intermediate product exempt

Assessee used LSHS and furnace oil for generation of electricity which is then used in manufacture of "final product". Certain part of electricity so generated is also used in residential colony of workers which is adjacent to the factory
LSHS and furnace oil used to generate electricity which is captively consumed for manufacture of final product (such as caustic soda, cement etc). - Without continuous supply

Circulars Notifications and Case laws on Cenvat Credit

of such electricity generated in the plant, manufacture of cement/caustic soda not possible Assessee entitled to Cenvat credit on LSHS in view of expression "used in relation to the manufacture - Even otherwise, goods used in generation of electricity which is used in or in relation to manufacture of final product are eligible as input in terms of inclusive part of definition of input.

However, credit is not admissible on that quantity of input which is in generating electricity which is consumed by residential colony of factory's workers' families, schools etc SOLARIS CHEMTECH LTD. - 2007 - SC

Spares used for rope way partly inside and partly outside the factory

Assessee, a cement manufacturer, used ropeway system for brining crushed limestone to the factory from mines located 4.2 km away from the factory. A part of ropeway system was installed in the factory and the system was controlled from the factory. Treating the spares for ropeway as capital goods,

The assessee took cenvat credit thereon. The department contended that spares for ropeways were not used in the factory of the manufacturer and thus, they could not be treated as "capital goods", therefore, cenvat credit on such spares was denied.

Held: *Cenvat credit available "the ropeways, in the instant case, are partly outside the factory and partly within the factory. The extension outside the factory is a part of a ropeway inside the factory. Thus, the use of spares is within the factory of assessee. That being so, credit thereon shall be admissible"* **BIRLA CORPORATION LTD. 2007SC 212 EL162**

All inputs necessary to make the goods marketable are eligible - It is settled law that use of any material to render the goods marketable can be taken to be used in relation to manufacture of the final product - *Monotype India Ltd. v. CCE - (1996) 83 ELT 594 (CEGAT)* * *Joy Foam Pvt. Ltd. v. CCE - (1996) 83 ELT 72 (CEGAT 3 member bench order).*

Tyres and Tubes are raw material for vehicle

In *Telco v. State of Bihar - 1994 (74) E.L.T. 193*, the Supreme Court held that the term raw material varies from industry to industry and decided that items like batteries, tyres and tubes, which, though are finished products in themselves, can be considered as raw materials for vehicles.

Name plate for fan is a rawmaterial

In *CCE v. Jay Engg. Works Ltd. - 1989 (39) E.L.T. 169*, the Supreme Court held that name plate fixed on a fan is an input eligible for set off under Notification 201/79 in view of the fact that without the said name plate the fans cannot be marketed.

Bowl and spoon supplied along sikakai powder are necessary items to avoid contamination. Cenvat Credit is allowed- **R K Herbals (2004)167ELT448**

Quality control is a process of manufacture; inputs used in quality control are eligible for cenvat Credit- **Biddle Sawer Limited (2004) 168ELT119**

Raw materials used for making cartons eligible for MODVAT (Now Cenvat Credit) - *Britannia Industries Ltd v. CCE 1993 (67) E.L.T. 980 (T-EZB) -*

Circulars Notifications and Case laws on Cenvat Credit

Oil paint used to mark under Rule 51 on packages eligible - *Sterlite Inds Ltd v. CCE* 1995 (75) E.L.T. 712 (T-WZB)

Duplex boards used for producing cartons which was used to pack torches is eligible for MODVAT - *Geep Indl Syndicate Ltd v. CCE* 1995 (76) E.L.T. 399 (T-NZB)

Cellophane tapes used for sealing cartons eligible - *Kashmir Vanaspati Ltd v. CCE* 1996 (85) E.L.T. 150 (T-NZB SM)

CENVAT ON DEFECTIVE GOODS RETURNED

In *CCE v. Tin Manufacturing Co* -2000 (119) E.L.T. 290 (T-LB) the Large Bench of the Tribunal held that so long as the defective goods were specified and were duty paid, they would become inputs since they would have to be remade. Now this concept has been brought in under rule 16 of Central Excise Rules, 2002 giving benefit of the Cenvat credit on the goods returned for repair, reprocessing, remaking or for any other purpose.

Some illustrations of inputs, which are not eligible.

- Ammonia paper used for preparation of drawings is basically a R&D exercise and is not eligible as input as **the process is not integrally connected with the manufacturing process.**
- Electric lamps used for lighting the manufacturing area are not eligible - *Kanoria Sugar v. CCE* 1996 (87) ELT 522 (CEGAT).
- Building material used for factory building, office equipment such as fans, coolers etc. not eligible - *J K Cotton Spinning and Weaving Mills v. STO, Kanpur - 1965* (91) ELT 34 (SC).

Inputs/intermediate products destroyed in the course of Processing No reversal of Credit, i.e. credit is allowed- because they used in the manufacturing **Asmaco Plastic industries/ - HEG Ltd (2001) 127ELT121**

Light diesel oil is not an input with effective from 1.03.2003. Credit lying in stock on 28.02.2003 need not to reverse. A right that has already accrued cannot be taken away/- **Eicher Motors(SC) 106 ELT 3/Grasim Industries 163ELT10**

Inputs, accessories pilfered and not used in manufacture not eligible for credit. - **Maruthi Udyog limited (2004) 115ELT433**

No Credit on inputs used in the mines, since miners are far away from factory- **J K Udayapur Udyog limited (2004) 171ELT 289 (SC)**

Credit cannot be taken on Inputs, which are used outside the factory. It was held by the Court that the inputs, which are not used in the factory, cannot be termed as Inputs for the purpose of section 2(g) . It is necessary inputs to be received to the factory to avail credit. CCE Jaipur Vs. J.K.Udaipur Udyog Limited

Job worker can utilise credit of own material used by him in job work - The job worker can use his own material while undertaking job work. He can avail Cenvat credit of duty paid on such material, even if he clears the final products after job work without payment of duty to person who had supplied the material - Sterlite Industries v. CCE (2005) 183 ELT 353 (CESTAT

Circulars Notifications and Case laws on Cenvat Credit

Supreme Court decision needs review

Explosives used in the limestone mines and not in the factory for manufacturing cement, held explosives as inputs eligible for cenvat credit. **Vikram Cements Ltd., SC 2005**

This decision is relating old modvat rule 57 etc Even in that There is express wording in cenvat credit rules that inputs received in to the factory and used in factory to avail credit. Here the explosives were used in mine for blasting instead of factory to manufacture cement. **This is a judgment given by the great honourable Supreme Court, without referring the law;** This decision needs re-consideration by the Hon'ble SC

Ropeway which connects the mines with factory whether entitled to Cenvat Credit Even if these are not used in the factory _It was held Credit shall be available. "as ropeway is proceeding from the factory" **MAN IKGARH CEMENT LTD.2005 - S.C.**

Inputs of packing material used in manufacture of exempted goods which were exported by executing LOUT, rule 6 for denial of credit will not apply assessee eligible for refund of duty on inputs as per rule 5. **Jobelle vs. CCE, Mumbai-I 2007(78) RLT 462 (CESTAT-Mum)**

Unutilised credit can be refunded in the event of closure of the factory

The assessee stopped production due to the closure of its factory and thus came out of the cenvat Credit scheme. The assessee filed a refund claim in respect of the unutilised Cenvat credit. The High Court allowed the refund claim on the premise that erstwhile rule 5 of the CENVAT Credit Rules, 2002 did not expressly prohibit refund of unutilised credit where there was no manufacture in the light of closure of the factory. **Union of India v. Slovak India Trading Co. Pvt. Ltd. 2006 (201) ELT 559 (Kar.)** The principle pronounced in this judgment may hold good in the new scheme of the CENVAT Credit Rules, 2004 as well.

Spares for ropeways used for bringing crushed limestone from the mines to the factory are Capital goods and are, thus eligible for cenvat credit. **Birla Corporation Ltd.**

If assessee not follows Cenvat procedures assuming that the product is exempt from duty. If, subsequently, a demand is raised on him for past period, he cannot obviously comply with the procedures prescribed in respect of past period. In such cases, Cenvat credit has to be allowed for past period even if prescribed records were not maintained and Cenvat credit was not claimed that time - **Chamundi Steel Re-rolling Mills v. CCE - 1996 (81) ELT 563 / Vivek Re-rolling Mills v. CCE - 1994 (73) ELT 660 (CEGAT)/ Jagraon Machine Tools v. CCE 1993 (65) ELT 300 (CEGAT).**

If input becomes waste and sold as scrap, it cannot be said that input is cleared 'as such' under. What is cleared is 'waste' and duty will be payable as if waste has been removed - **Tata Oil Mills Co. Ltd. v. CCE 1998 (102) ELT 479 (CEGAT) * Fluid Line v. CCE 2002(142) ELT 673 (CEGAT SMB).**

Full credit available even if price subsequently reduced - Full credit is available even if supplier subsequently gives price reduction. unless the duty liability of supplier was reduced. **CCE v. Trinetra Texturisers 2004 (166) ELT 384 (CESTAT)**

Circulars Notifications and Case laws on Cenvat Credit

Fuel used in the factory - Definition of 'input' covers fuel used in factory in or in relation to manufacture of final products or for *any other purpose*. Thus, 'fuel' will be eligible for Cenvat credit even if electricity/steam generated is utilized/sold outside the factory. As explained above, the words used are 'for any other purpose'.

If the input becomes scrap in storeroom itself, Cenvat credit will not be admissible - *CCE v. Ashok Leyland Ltd.* - (1996) 83 ELT 364 (CEGAT).

Loss due to leakage during process - Cenvat credit is available even if there is loss of input due to leakage in storage tank during process - *Doaba Alco Chemicals v. CCE 2005 (179) ELT 434 (CESTAT SMB)*.

Fire during process - If the goods are damaged during production, Cenvat will be available. *Asmaco Plastic Industries v. CCE 1998(100) ELT 129 (CEGAT)*, it was held that Cenvat credit is eligible if inputs are destroyed by fire during the process. - same view in *CCE v. HEG Ltd. 2001(127) ELT 121 (CEGAT SMB)* * *CCE v. Rajasthan Spg 2001(128) ELT 239 (CEGAT)* * *Samtel Colour v. CCE (2004) 171 ELT 101 (CESTAT)* * *CCE v. Indchem Electronics 2003(151) ELT 393 (CEGAT)*

It was held that loss of inputs is admissible even if the fire takes place at the premises of job worker. *Shreeram Capacitors v. CCE 2004 (166) ELT 262 (CESTAT)*

Remission of duty on inputs - It was held that if inputs are lost in fire, remission of duty can be granted [Rule 21 uses the words goods unfit for consumption or for marketing. The words 'finished goods' are not used]. *Asian Paints v. CCE 2004 (173) ELT 187 (CESTAT)*,

Damage by flood - It was held that Cenvat credit availed on inputs is eligible even if semi-finished goods and finished goods made out of inputs were washed away by flood water and lost. *CCE v. Colour Chemicals Ltd. 1999(113) ELT 132 (CEGAT)*, However if remission of duty granted, credit should be reversed

Shortages in stock of inputs - If inputs are found short in stock taking, they are not used in or in relation to manufacture of finished goods. Hence, Cenvat credit is not admissible - *K-Three Electronics (P.) Ltd. v. CCE 2004 (173) ELT 432 (CESTAT)*.

A demand of over Rupees 60 lakhs was confirmed when it was found that many inputs like tyres, stereos and air-conditioners were pilfered and actual cars produced were much less compared to the inputs received and issued to production. *Maruti Udyog Ltd. v. CCE 2000(115) ELT 433 (CEGAT)*,

Cenvat credit is available on capital goods used in manufacture of exempt intermediate product, if final product is dutiable. - *CBE&C circular No. 665/56/2002-CX dated 25-9-2002* - quoted and followed in *Bharat Forge v. CCE 2004 (165) ELT 339 (CESTAT)*.

Circulars Notifications and Case laws on Cenvat Credit

Building material - Building material used for factory building, office equipment such as fans, coolers etc. not eligible - *J K Cotton Spinning and Weaving Mills v. STO, Kanpur*, (91) ELT 34 (SC).

Inputs used in R&D In this case, it was held that ammonia paper used for preparation of drawings is basically a R&D exercise and is not eligible as input as the process is not integrally connected with the manufacturing process. *CCE v. English Electric Company 1997(93) ELT 293 (CEGAT)*

Inkjet Printer used to print the date of manufacture is considered as capital goods and Cenvat Credit can be Claimed-- *Surat Beverages Ltd VS CCE (2004)165ELT313(CESTAT)*

One to one Correlation is not required

There is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. - *CCE v. Dai Ichi Karkaria Ltd. 1999 (112) ELT 353 (SC)*.

CBE&C has, vide para 2(viii) of circular No. 33/33/94-CX dated 4-5-1994 has confirmed that there is no 1:1 correlation between input and final product under the Cenvat scheme for utilization of credit.

Installation of capital goods is not a pre requisite before availing Cenvat Credit

Installation/use of capital goods is not a pre-requisite for taking Cenvat credit. First 50% of Cenvat credit taken in respect of capital goods before their installation or use cannot be denied - *Goyal MG Gases v. CCE (2004) 168 ELT 369 (CESTAT)*.

Capital goods in factory to manufacture exempted final product.

Capital goods used exclusively for manufacture of exempted goods or providing exempt service are not eligible [rule 6(4)]. Thus, partial use of capital goods for manufacture of exempted goods or provision of exempt output services is permissible, i.e. in such case, Cenvat credit on capital goods will be allowed.

Input used in by-product is also input used in main product

In *Hindustan Copper Ltd. v. CCE 2006 (201) ELT 295 (CESTAT)*, it was held the by-product is not 'final product'. It is not result of deliberate manufacture. It does not enter into equation between input and final product. In this case, it was held that reversal of Cenvat credit or payment of 10% 'amount' is not necessary if part of input goes into a by-product- relying on *Swadeshi Polytex Ltd. v. CCE 1988(38) 794 (SC)*, where it was held that all inputs are used in manufacture of final product, even if part goes in by-product.

Process losses and handling loss are allowable

There will be some loss of inputs during manufacturing process. Cenvat is available on entire quantity of input even if part of input goes in process loss, since all inputs are 'used' in the manufacture of final product, even if it is not reflected in final product - *Multimetals Ltd. v. ACCE 57 ELT 209 (SC)* .

Circulars Notifications and Case laws on Cenvat Credit

Inputs getting used up or consumed eligible - In *Eastern Electro Chemical Industries v. CCE 2005 (181) ELT 295 (SC 3 member bench)*, assessee was using MS casings in manufacture of Calcium Carbide. These got melted during process and got mixed up with other molten materials. It was held that it is 'input'.

Repeated use is not a bar for availing Cenvat credit

Cenvat credit cannot be denied merely because an input is capable of repeated use. Just because it is capable of repeated use, the same cannot be taken to be falling in category of 'appliances' or 'machinery', which are excluded items for definition of inputs - *CCE v. Halol Leather Cloth Mfg. Co. Ltd.* - 1994 (74) ELT 322 (CEGAT).

No credit on short received inputs

If inputs are short received and there is loss during transit, the goods short received cannot be termed as 'used in or in relation to manufacture'. Hence, Cenvat credit on such short received inputs is not available - *Asea Brown Boveri Ltd. v. CCE 1994(74) ELT 897 (CEGAT)* - same view in *Bombay Dyeing v. CCE 1999(113) ELT 331 (CEGAT)* * *Sterlite Industries v. CCE (2007) 212 ELT 193 (CESTAT)*.

Cenvat on Paints

Paints used in factory are eligible. As explained above, the extended definition of input says that paints can be used 'for any purpose'. Thus, all paints used in the factory are eligible, for whatever purpose they are used. Paints used to protect plant are eligible as input - *Ruchi Health Foods v. CCE (2007) 218 ELT 716 (CESTAT)*.

Service tax on Mobile phones eligible for Cenvat Credit

Earlier Service Tax Rules required 'installation' of telephones in the business premises. Hence, CBE&C had clarified vide circular No. 59/8/2003-ST dated 20-6-2003 that Cenvat credit will not be available in case of mobile phones. Now there is no such requirement. Hence, service tax paid on mobile phones will be eligible for Cenvat credit w.e.f. 10-9-2004, so long as these are used for 'activity relating to business'

Ownership of capital goods is not essential to avail Cenvat on capital goods

In *Sharda Motors v. CCE (2002) 51 RLT 33 (CEGAT)*, it was held that person receiving jigs and fixtures on leave and license basis from clients can avail Cenvat credit of duty paid on jigs and moulds supplied by the client. Ownership is not relevant - followed in *HIS Automotives Ltd. v. CCE 2004 (163) ELT 116 (CESTAT SMB)*.

Manufacture of branded goods under job work

Availment of Cenvat Credit on capital goods (FP exempt at time of receipt and subsequently becoming dutiable)

The assessee is manufacturing socks and were exempted from payment of duty prior to the 2003 Budget. The goods became dutiable only w.e.f. 1-4-2003. Certain capital goods were received by the assessee during June 2002 and September 2002 and installed in March 2003 and some of the capital goods were used in April 2003. Cenvat credit on the goods has been denied on the ground that final products (socks) were exempt at the time of receipt of capital goods. The assessee contended that, capital goods were used at the time of dutiability of goods. And eligibility of 50% credit

Held that: Credit eligibility to be determined with reference to the dutiability of the final product on the date of receipt of capital goods SPENTA INTERNATIONAL LTD.. - 2007 - TRI (Larger Bench) 216 ELT 133

IV- Case studies on Excise Procedure

Registration factory

It was held that such cancellation could be done only in respect of violation of rules regarding registration. In respect of violation of any other rule, penalty can be imposed, but registration cannot be cancelled. - In *Maheshwary Iron & Steel Supply Co. v. CCE* 1997(91) ELT 667 (CEGAT SMB),/ *CCE v. Goel Industries* 1999(106) ELT 481 (CEGAT),

'Factory' under Central Excise Precincts means area enclosed by compound wall. A Canteen, a recreation club, a shed located in side the compound wall will be a factory.

It was held that 'premises' is not restricted to buildings, but it covers open land also. *Superintending Engineer v. CCE* 1992(59) ELT 610 (CEGAT),

It was held that 'any premises including precincts thereof' covers all buildings with its surroundings, which form part of the unit. *Bongaigaon Refinery and Petro Chemical Ltd. v. CCE - 1992 (57)* ELT 383 (Cal HC). In *Grauer Weil (I) Ltd. v. CCE - (1995) 1 SCC 77*

Whole premises will be 'factory' if in any of its part, excisable goods are manufactured or manufacturing process connected with production is carried out. - *Bongaigaon Refinery and Petro Chemical Ltd. v. CCE - 1992 (57)* ELT 383 (Cal HC).

Even cycle stand could be included as 'factory', *if it is part of the premises*, although no manufacturing or storage activity takes place there. - *Shriram Pistons v. CCE* 1990(48) ELT 405 (CEGAT). In *DCM v. GOI* 1978(2) ELT (J121) (Del HC)

Mine situated at a distance from factory cannot be considered as part of factory merely because it is connected with a ropeway, *CCE v. J K Udaipur Udyog Ltd. (2004) 171 ELT 289 (SC)*

Daily stock Account

Goods can be confiscated and penalty can be imposed if DSA is not maintained upto date and there is overwriting and cutting in the accounts - *Hawkins Cookers Ltd. v. CCE* 1997(12) ELT 255 (CEGAT).

In *Sunder Silk Mills v. CCE* 2003(153) ELT 176 (CEGAT), it was held that mere non-accountal of goods in daily stock account (that time RG-1) will not render and cause for confiscation and penalty.

Samples manufactured which are fully finished should also be entered in daily stock account (that time RG-1). - *Star Paper Mills v. CCE* 1999(109) ELT 567 (CEGAT SMB).

V-Case laws on Assessments

1 Case laws on provisional Assessment

Department cannot order provisional assessment. If Central Excise Officer finds that self-assessment is not in order, he can ask assessee to produce additional documents, records and other information and then issue a demand notice. Where assessee fails to provide records or information and department is unable to issue demand, 'best judgment' method may be used to raise demand on collateral evidence. Burden to provide information for re-determination of duty is on assessee. - (*Chapter 3 Part IV Para 3.1 of CBE&C's CE Manual, 2001*).

Assessment is not treatable as provisional in absence of express order of provisional assessment, as required under [rule 7(3)] - *J K Cotton Spg & Wvg Mills Co. Ltd. v. CCE 99 ELT 8 (SC)*.

Provisional assessment cannot be presumed. It can be done only as per provisions of rule 7]. Hence, order of Assistant/Deputy Commissioner directing provisional assessment is essential *Khardah Company v. UOI - 1983 (14) ELT 2159 (Cal HC)*.

Show cause notice before finalising provisional assessment - Issue of SCN is necessary before finalising provisional assessment - *CCE v. ITC Ltd. - 1994(71) ELT 324 (SC)* In contrary judgment, in *Serai Kella Glass Works P Ltd. v. CCE 91 ELT 497 (SC)*, it was held that show cause notice is not necessary before finalising a provisional assessment

No demand unless provisional assessment finalised -, duty cannot be demanded when initial duty itself is provisional. Duty demand can be raised only when assessment is finalized. *CCE v. Transformers & Electricals Kerala Ltd. 1998(103) ELT 575 (CEGAT)*

Pending finalization of provisional assessment, proceedings in terms of Sec 11-A for raising demand cannot be initiated against the assessee *ITC Ltd. 2006- SC*

When assessment is provisional on any ground, the whole assessment is provisional and time limit for demand/refund will start only when the assessment is finalised. *Art Plywood Industries Ltd. v. CCE - 1991 (56) ELT 496 (CEGAT)/Ravi Mardia v. CCE 2000(118) ELT 627 (CEGAT)*

No Suppression of facts/ penalty if provisional assessment was permitted -, it was held that when provisional assessment is permitted, there can be no question of suppression of facts and demand of penalty is not sustainable. *Godrej Foods Ltd. v. CCE 2000(115) ELT 403 (CEGAT)*- same view in *S Patnaik v. CC 2000(118) ELT 502 (CEGAT)*

However, in *Duncan Industries v. CCE 2001(130) ELT 279 (CEGAT)*, it was held that if charge of evasion of duty by fraudulent means is found to be correct, penalty is impossible even in case of provisional assessment.

Order for classifying goods is not provisional It was observed that to establish clearances on provisional basis, order under rule 9B and clearances on provisional basis is essential. Order classifying goods cannot be treated as provisional merely because appeal against said order is

Excise Case laws Circulars on Assessments demands, refunds, recovery

pending. Clearances during pendency of appeal/revision cannot be treated as provisional **Metal Forgings v. UOI 2002 146 ELT 241 (SC)**,

If Provisional assessment cannot be finalised within 6 months, the cases must be submitted to Commissioner with request letter of assessee, through AC/DC indicating reasons for non-finalisation and amount of differential duty for future clearances before the expiry of period of 6 months. Commissioner can either extend the period or direct the method to be adopted for finalisation of assessment. If period is likely to be further extended, application should be sent to Chief Commissioner. - **Chapter 3 Part IV Para 2.5 of CBE&C's CE Manual, 2001.**

2. Best judgment assessment

Where assessee fails to provide records or information and department is unable to issue demand, 'best judgment' method may be used to raise demand on collateral evidence. Burden to provide information for re-determination of duty is on assessee. - **Chapter 3 Part IV Para 3.1 of CBE&C's CE Manual, 2001.**

It has been held that though best judgment assessment is an estimate and involves guess work, the estimate must relate to some evidence or material and it must be something more than mere suspicion - **Raghubar Mandal v. State of Bihar - (SC) Dhakeswari Cotton Mills v. CIT 26 ITR 775 (SC)**,

3. Show cause notice

Time limit applicable even if Act amended retrospectively - The time limit of section 11A [parallel section 28 of Customs Act] is mandatory and applies even in cases where Act is amended with retrospective effect - **J K Cotton Spinning Mills v. UOI (1988) 68 STC 421 (SC)** also held in **CCE v. Vapi Paper Mills Ltd. 1998(104) ELT 780 (CEGAT) * Bajaj Auto Ltd. v. UOI 2003(151) ELT 23 (Bom HC DB)**..

No demand from purchaser in open market - Goods purchased from open market are presumed to be duty paid. Purchaser does not have to prove duty paid character of such goods. It is not possible for the purchaser to prove the same - **Calcutta Paper Mills Mfg Co. v. CEGAT - 1986 (25) 9 (Cal HC) Vapson Products v. UOI - 1987 (Bom HC)**.

Any demand without issue of show cause notice is violation of a statutory provision - Principles of natural justice fully apply to SCN e.g. all evidence on which department wants to reply should be disclosed. Following are the requirements of SCN and if these are not followed, the SCN is vitiated and may not stand scrutiny of law. **Gokak Patel v. Volkart Ltd. (SC)**.

Wrong mention of rule and notification will not vitiate Notice or order - Non- mentioning or wrong mentioning of rule or section *will not* vitiate the SCN if all essential ingredients of statute are mentioned and substance of notice is clear, **State of Karnataka v. Muniyalla SC 470 * N B Sanjana v. Elphinstone Spinning and Wvg Mills Co. Ltd. -(SC)**.

Effect of notice for period beyond one-year/five years - if a show causes notice is issued pertaining to period beyond five years; the whole notice does not become invalid. The only effect is that the department will not be entitled to collect duty beyond a period of five years from date of show cause notice. - **UOI v. Maheshwari Woollen Mills - SC** Same

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principle applies if show cause notice is issued for a period beyond one year (i.e. when fraud etc. is not alleged). In such case, notice will be considered valid and enforceable for a period of one year.

Assessee can waive his right -, Sec 11 provided for issue of show cause notice before confirming any demand of duty. It was held that though issue of show cause notice is a mandatory requirement, assessee could waive it as the provision deals with individual's right. It is a notice to the person concerned and not a public notice and right to receive show cause notice can be waived. *CC v. Virgo Steels 2002 (SC)*

Time limit even when stay order issued by Court -, it has been held that limitation for issue of show cause notice is applicable even if some interim order was issued by High Court. Mere issue of some interim order does not refrain authorities from issuing show cause notice for demand of duty, unless there is specific injunction/stay order restraining them for issuing show cause notice- *Metal Forgings v. UOI (2003) 146 ELT 241 (SC)*

Simple letter asking to pay duty is not a notice -letters either in the form of suggestion or advice cannot be taken as show cause notice. This is because law requires that show cause notice to be issued under a specific provision of law *Metal Forgings v. UOI (2003) 146 ELT 241 (SC)*,

Demand/penalty unless SCN is issued - Demand of duty or penalty on a person (like director, partner etc.) cannot be confirmed unless a show cause notice is issued to him - *Metal Fittings P Ltd. v. CCE 1997 71 ECR 607 (CEGAT)*. Penalty cannot be imposed if show cause notice does not contain proposal of penalty. - *Prabhat Forging v. CCE 2002(139) ELT 720 (CEGAT)*.

Department can issue revised show cause notice?

If a subsequent notice is issued clarifying earlier notice or correcting a mistake, it will be a corrigendum. However, if new notice is on entirely different ground, it will be treated as a new show cause notice and period of limitation will be counted from date of fresh notice and not the earlier notice.

Penalty is not imposable on an employee who was neither issued a show cause notice nor had waived the notice. - *Pfizer Ltd. v. CC 2001(131) ELT 251 (CEGAT)*.

Allegations must be mentioned - A show cause notice has to state clearly the allegations made against a noticee (i.e. person to whom notice is issued). Where the allegations are absent or not substantiated, that defect cannot be cured at subsequent stages and certainly not at the stage of second appeal - *CCE v. Bhikhilal Dwarkadas 1998(99) ELT 438 (CEGAT)*.

It was held that section 11A only requires issue of SCN. Demand can come later after notice is adjudicated. Serving of notice is required, serving of demand is not required within one year/5 years - followed in *Atul Glass Industries v. CCE 1999(114) ELT 597 (CEGAT)/ Swadeshi Polytext v. ACCE 1986(26) ELT 701 (All)*,

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Proviso to Sec. 11A does not require that notice should be issued within 6 months of knowledge of Department. Notice can be issued anytime within 5 years of relevant date. - *Nizam Sugar Factory v. CCE* 1999 (114) E.L.T. 429 (T-LB).

Wrong mention of rule and notification will not vitiate Notice or order - Non- mentioning or wrong mentioning of rule or section *will not* vitiate the SCN if all essential ingredients of statute are mentioned and substance of notice is clear, and no prejudice is caused, and when the power is available - *State of Karnataka v. Muniyalla* AIR 1985 SC 470 * *N B Sanjana v. Elphinstone Spinning and Wvg Mills Co. Ltd.* 1978 (2) ELT J399 (SC). * *CCE v. Pradyumna Steel Ltd.* - (1996) 82 ELT 441 (SC) * *R K Verma v. CCE* (2001) 138 ELT 1026 (CEGAT).

Demand even if department had approved, accepted or assessed rate or value - A demand can be raised for previous period of one year/5 years even if department had approved, accepted or assessed value or rate of duty - section 11A(1) of CEA [however, no amendment is made in corresponding section 28(1) of Customs Act]

Demand against approved classification list only prospective - *CCE v. Cotspun Ltd.* 1999 (113) E.L.T. 353 (SC -LB).

Approval of Show cause notice Show cause notice should be approved and signed by officer empowered to adjudicate the case. The authority to adjudicate the case are - * AC/DC-up to 5 lakhs , JC between 5 to 20 lakhs* Additional Commissioner between Rs 20 lakhs and Rs 50 lakhs * Commissioner - without any limit. [Thus, now, Superintendent cannot issue show cause notice].
[CBE&C circular No. 752/68/2003-CX dated 1-10-2003]

Notice has to be 'served' - The SCN has to be *served* on the person concerned and mere *issue* is not enough. If the notice was issued and posted by registered post before last date but received after the last date, the demand notice is not sustainable as it was not 'served' in time - *Sewing Systems (P.) Ltd. v. CC* - 1992 (62) ELT 725 (CEGAT) (Affirmed by SC as revenue appeal dismissed - 89 ELT A36) - noted and followed in *Corvine Chem v. CCE* (2004) 170 ELT 181 (CESTAT) * *Rashtriya Audyogic Sansthan v. CCE* (2001) 135 ELT 353 (CEGAT).

Demand based on statements to other authorities

Demand based on affidavits given to Director of Industries indicating value of clearances, without any corroborative evidence is not sustainable - *Punjab Oil and Syndicate Mills v. CCE* - 1993 (65) ELT 268 = 47 ECR 246 (CEGAT) * *Rishab Refractories P Ltd. v. CCE* - 1996(87) ELT 93 (CEGAT) * *Elmech Engineers v. CCE* 2001(129) ELT 634 (CEGAT)

Demand based on inflated stock statement given to Bank is not sustainable when there is no other evidence of clandestine removal - *Kishan Chand and Co. v. CCE* - 1996 (82) ELT 210 (CEGAT)

Income Tax cannot be demanded on basis of inflated statement to Bank to obtain enhanced credit facility, in absence of other evidence. - *CIT v. Relaxo Footwear* (2002) 123 Taxman 322 (Raj HC DB).

No penalty if demand itself is time barred - If demand itself is time barred, penalty cannot be imposed. - *Eveready Industries v. CCE* (2001) 138 ELT 1287 (CEGAT).

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Demand can be issued on basis of audit objection - In *Swastik Tin Works v. CCE* 1986(25) ELT 798 (CEGAT), it was held that demand notice cannot be issued on the basis of audit objection. However, as rightly held by *Usha Rectifier Corporation v. CCE* 2001(130) ELT 485 (CEGAT), these observations were based on peculiar facts of the case and demand can indeed be issued on the basis of audit objection.

Demand if assessee did not fulfill post clearance conditions of exemption time limit not apply it was held that notice u/s 28 is only for duty not levied or short levied, erroneously refunded etc. If goods are cleared under an exemption notification subject to conditions and the conditions are not satisfied, the demand of duty is not u/s 28 of Customs Act [as there was no short levy when goods were cleared]. Hence, time limit of 1/5 years for raising of demand is not applicable. *CC v. C T Scan Research* 2003(155) ELT 3 (SC)

Time Limit of 5 years/ Suppression of facts/fraud/collusion

- Notice can be served for a period of five years in case of fraud, collusion, suppression of facts, wilful misstatement etc.
- extend period from one year to 5 years are exceptional powers and hence have to be construed strictly. It was held that fraud; collusion etc. and intention to evade duty must concur. *J K Cotton Spg & Wvg Mills Co. Ltd. v. CCE* 1998 (SC) *ONGC v. CCE - 1995* (CEGAT)

Decisions with regard to interpretation/ meaning of Fraud/Collusion/Suppression of facts/Intention to evade duty

Extended period of 5 years will **apply only when two ingredients** - wilful suppression, mis-declaration, and the intention to evade duty. *Rainbow Industries v. CCE - 1994* (74) ELT 3 (SC)-. Same view was also held in *Tamil Nadu Housing Board v. CCE - 1994* (SC)

Intention to evade duty - Intention to evade payment of duty is not mere failure to pay duty. It must be something more, i.e. that **assessee must be aware that duty was leviable and he must deliberately avoid payment of duty**. 'Evade' means defeating the provision of law of paying duty. It is made more stringent by the use of word 'intent'. In other words, the assessee must deliberately avoid payment of duty payable under the law. Where there was scope of doubt whether duty was payable or not, it is not 'intention to evade duty'. - *Tamilnadu Housing Board v. CCE - 1994* (SC)

Fraud - 'Fraud' means deceit, trickery or misrepresentation. Intention to evade duty is built into the words 'fraud' and 'collusion' - *Cosmic Dye Chemical v. CCE* (SC) It was observed that 'defraud' includes an element of deceit. However, mere silence is not fraud, unless it is the duty of the person to speak or silence itself is equivalent to speech.

Misstatement - A false statement becomes 'willful' if it is deliberate or intentional. It is not willful if the statement is accidental or inadvertent. A statement will not be misstatement only because full facts were not disclosed. 'Willful' means 'with intent to evade duty' - *Cosmic Dye Chemical v. CCE - (1994)* (SC)

Excise Case laws Circulars on Assessments demands, refunds, recovery

Deliberate withholding information is suppression of facts

No suppression of facts if department aware of facts-**Pushpam Pharmaceutical (SC)**

No suppression of the facts when the assessee has bona fide belief that no legal duty was payable **Surat Textile Mills (2004) 167ELT379(SC)**

Mere omission is not suppression. Suppression must be deliberate- **MM Kotecha (2005) 179ELT261(SC)**

Wrongful understanding of law does not constitute suppression - *Vinod Paper Mills Ltd. v. CCE* 1997 (91) E.L.T. 245 (SC).

Mere failure to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with intent to evade payment of duty ... *when the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression.* **CONTINENTAL FOUNDATION 2007(SC) 216 ELT177**

Mere visits of offices does not mean there was no suppression of facts - 'No suppression' cannot be pleaded on the ground that excise officers visited their factory number of times, unless there is something on record to show that they pointed out some fact to Revenue and even after the discovery of that fact, Revenue has not taken any action. - *Agrico Engineering Works v. CCE 2000*

Mere inaction is not Suppression of Facts - Suppression means intentional, Conscious or deliberate attempt to withholding or not providing information. It was held that mere inaction or failure on part of manufacturer will not amount to suppression of facts. *Collector v. Chemphar Drugs 1989 (SC) Lubri-Chem Industries Ltd. v. Collector - 1994 (SC)]. Padmini Products v. CCE 1989 (43) E.L.T. 195(SC).*

Non Applicability of extended period of 5 years

Extended period cannot be invoked where classification list is approved. - *Nat Steel Equipment v. CCE 1988(34) E.L.T. 8; Prabhu Steel Industries v. CCE 1997 (95) E.L.T. 164 (SC).*

Extended period not invocable when bonafide belief arises out of court judgements - *Cosmic Dye Chemicals v. CCE 1995 (75) E.L.T. 72(SC).*

Extended period not invocable when there are conflicting decisions prevailing and non-requirement under law to do something.- *Pushpam Pharmaceuticals Co.v. CCE 1995 (78) E.L.T. 401 (SC).*

Mere change in opinion regarding classification not sufficient to invoke extended period - *Prabhu Steel Industries Ltd. v. CCE 1997 (95) E.L.T. 164 (SC).*

Excise Case laws Circulars on Assessments demands, refunds, recovery

Information not required to be supplied under law when not supplied does not amount to suppression - *Apex Electricals Pvt.Ltd. v. UOI* 1992 (61) E.L.T. 413 (Guj).

Department cannot sleep over the matter for years and accuse the assessee of suppression - *Mutual Industries Ltd v. CCE* 2000 (117) E.L.T. 578 (T-LB).

When the earlier SCN raising on similar issue on identical amount was dropped, subsequent SCN cannot allege suppression of fact or material. Hence extended period of limitation of 5 years will not be available. **Hyderabad Polymers Ltd (2004)166ELT151(SC)**

When there was disagreement Between experts (CAS, CWAs) and Department on the Cost of Production, extended period of 5 years is not applicable -**MRF Ltd (2004)169ELT125 (CESTAT)**

Generator sets assembled from bought out parts at factory amounting to goods only, When the position is not clear and not reporting to department, amounting to suppression of facts and hence the time of 5 years will be applicable -**Mallur Siddheswara Spinning mills Ltd (2004)166ELT154 (SC)**

Aluminum paint was manufactured, neither accounts of product maintained nor duty paid and hence suppression of facts time of 5 years will be applicable- **TNSTC Ltd Madurai (2004)166 ELT433 (SC)**

4. Interest

Interest payable during period of stay - It may be noted that interest is payable if finally assessee loses in appeal, even if demand was stayed by Court/Tribunal pending hearing of appeal. The interest will be payable right from the original demand, and not from the date when appeal is decided. Supreme Court in *Haji Lal Mohd v. State of UP (SC)*, had, in a sales tax case, held that running of interest is not prevented because of operation of any stay order. However, penalty cannot be levied during period of stay, as assessee is not in default during that period.

It was held that no interest u/s 11AB will be payable if duty is paid before receipt of show cause notice. Mandatory penalty u/s 11AC is also not payable - **In EID Parry v. CCE 2003 (156) ELT 753 (CESTAT), same view in Ashok Leyland v. CCE 2003 (156) ELT 995 (CEGAT) * EID Parry v. CCE 2003 (157) ELT 193 (CESTAT).**

NO interest for earlier period if fresh demand issued - assessee filed appeal against assessment. On appeal, order was made for re-computation, and fresh notice of demand was issued of reduced tax. It was held that earlier assessment order ceases to exist and liability of interest starts only from date of fresh demand notice Philips **India Ltd. v. ACCT (2004) 136 STC 636 (SC)**

Excise Case laws Circulars on Assessments demands, refunds, recovery

No interest or penalty if I voluntarily pay duty before Show Cause Notice

In *EID Parry v. CCE* 2003 (156) ELT 753 (CESTAT), it was held that no interest u/s 11AB will be payable if duty is paid before receipt of show cause notice. Mandatory penalty u/s 11AC is also not payable - same view in *Ashok Leyland v. CCE* 2003 (156) ELT 995 (CEGAT) * *EID Parry v. CCE* 2003 (157) ELT 193 (CESTAT).

Interest be payable by the Revenue to the assessee when interest payment on delayed payment of refund is also delayed

Compensation by way of interest on interest wrongfully withheld, irrespective of absence of any statutory provisions granting the same. In this case the interest due to the assessee was withheld by the department for 17 long years. In this case the interest due to the assessee was withheld by the department for 17 long years. *Sandvik Asia Ltd. v. CIT* 2006 (196) ELT 257 (SC) Note: Though this judgment has been rendered in respect of income-tax laws, the principle enunciated in this judgment may also squarely apply in central excise and customs cases.

Department cannot withhold a refund on the ground that it has filed an appeal against the order giving the refund, in a case where it has not obtained a stay order?

The amount of pre-deposit was not refunded to the assessee when its appeal was allowed by the Commissioner (Appeals). Subsequently, when the Revenue filed an appeal before the Tribunal against such order of Commissioner (Appeals), no stay was granted.

The High Court observed that the officers of the Revenue had been informed by the Board that no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order giving the relief, unless stay order has been obtained. Thus, the High Court directed that the amount of pre-deposit should be refunded to the petitioner with interest within a fortnight. *Atul Limited v. CCEx., Surat-II* 2005 (188) ELT 21 (Guj).

5.Recovery of Duty

Central excise department will get preference to recover money over secured creditors

While recovering the dues, the central excise department would have precedence over the secured creditors. Apex Court in *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.* (2000) 5 SCC 694, *CCEx., / Pondicherry v. Indian Bank* 2006 (198) ELT 334 (Mad. HC)

Liability of partner - Since liability of partners is unlimited; recovery can be made from partner. If public notice of dissolution is given, then partner is liable only for dues upto date of dissolution. However, dues recoverable from an individual partner (in his individual capacity) cannot be recovered from the partnership firm and goods belonging to a firm cannot be attached for recovery of dues from an individual partner. It was held that tax arrears of partnership firm when assessee was partner could be recovered from erstwhile partner, even after he retires. *ITO v. Arungr Chettiar* - AIR 1996 SC 2160,

Excise Case laws Circulars on Assessments demands, refunds, recovery

When Partnership firm—Dissolved Partner continue to remain liable for excise duty liability incurred before dissolution of firm **GOPAL INDUSTRIES LTD. - 2007-TRIBUNAL (LB) 214 ELT 19**

Liability of legal heir/representatives - High Courts have held that recovery can be made from legal representatives or heir from the movable or immovable property inherited by the legal heirs.

Goods pledged cannot be attached - If the goods have been pledged (usually with Bank), they do not 'belong' to the defaulter and hence are not liable for attachment or detention.

Recovery from Successor: if predecessor fails to pay duty it can be recovered from successor property and goods after obtaining written permission from CCE.

Stay of Recovery - Orders of demand are appealable and appeal can be filed against the order for demand of duty/penalty. Under Central Excise as well as Customs law, appeal can be filed only after the amount demanded is paid. However, appellate authorities can grant stay for recovery pending final decision on appeal. The stay may be unconditional or conditional subject to conditions like part payment, bank guarantee, surety etc. If such stay is obtained, recovery proceedings will be stayed. However, mere filing of appeal does not amount to stay order. A separate application has to be made for stay order from appellate authorities.

It was held that if pre-deposit is refundable to assessee, the amount can be adjusted against any demand pending against the assessee, unless a stay has been obtained. Thus, instead of refunding pre-deposit, excise department can adjust it against any other demand, which may be pending against the party. *Bajaj Auto Ltd. v. CCE 2003 (158) ELT 217 (CESTAT)*,

6. Duty paid under protest

Letter of protest is not a claim of refund - Even if letter of protest was filed, it does not constitute a claim of refund. - *Chapter 13 Part III Para 4.3 of CBE&C's CE Manual, 2001*. Thus, separate refund application is required after the issue is settled.

Letter of Protest is essential - Protest must be registered before or at the time of making payment. Thus, letter-giving reasons of protest is essential. TR-6 challan or on debit entry to PLA should be marked as "duty is being paid under protest".

Doctrine of unjust enrichment applicable to refund even duty paid under protest - Even if duty is paid under protest, doctrine of unjust enrichment will still apply to refund. The manufacturer should charge only the excise duty to which he is agreeable as per his interpretation and balance should be borne by him. *CCE v. Allied Photographics 2004 (166) ELT 3 (SC)*

7. Refunds

Refund due must be sanctioned within three months from date of application. If not so paid, Government will pay interest to the assessee under section 11BB. The rate prescribed is 6% w.e.f. 12-9-2003 [Notification Nos. 67/2003-CE(NT) dated 12-9-2003 and 75/2003-Cus(NT) dated 12-9-2003]

Unjust Enrichment - Validity of Section 11B - Legal validity of provisions of section 11B of CEA (parallel section 27 of Customs Act) has been upheld by a nine member bench of Supreme Court in *Mafatlal Industries Ltd. v. UOI - 1996 (SC)* .

Doctrine of Unjust enrichment. No person can seek to collect the duty from both ends. He cannot collect duty from his purchaser in one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. This would not be economic justice. Manufacturers cannot get unearned and unjustifiable windfall. *Mafatlal Industries Ltd. v. UOI - (1997) 89 ELT 247 (SC)*

Unjust enrichment applies to Capital goods captively consumed - In *SRF Ltd. v. CC 2006 (193) ELT 186 (CESTAT 3 member bench)* it has been held that doctrine of unjust enrichment applies to capital goods captively consumed

Unjust Enrichment applicable to captive consumption of Inputs, - it has been held that provisions in respect of unjust enrichment are applicable in respect of raw material captively consumed also. In case of captive consumption, even if it is difficult to prove that incidence of duty has not been passed to purchase of final product, refund will not be granted if manufacturer is not able to show and prove that incidence has not been passed on to some body else *UOI v. Solar Pesticides P Ltd. 116 ELT 401(SC),- followed in CCE v. Usha Beltron Ltd. 2000(119) ELT 3 = 2000 AIR SCW 4658 (SC 3 member bench) **

Refund when bank guarantees encashed; in case of a disputed claim, a bank guarantee is normally furnished as security for disputed liability; and if the revenue encashes bank guarantee, it does not amount to payment of duty. In such cases, provision of refund as well as doctrine of 'unjust enrichment' will not apply and the amount will have to be refunded, if the case is finally decided in favour of the assessee. - *Oswal Agro Mills Ltd. v. ACCE 1994 (70) ELT 48 (SC).* - followed in *Grasim Industries v. CCE 2001(127) ELT 57 (CEGAT)*

Doctrine of unjust enrichment" shall be applicable to refund of duty paid which is held to be illegal when the burden passes on to buyer. **PANIHATI RUBBER LTD. -2006-SC**

Doctrine of unjust enrichment" shall be applicable to refund of duty paid in case where duty paid under protest if the burden passes on to buyer. **Commissioner of Central Excise, Jaipur vs. Birla Corporation Limited [2007 (208) ELT 481 (S.C.)]**

Cum duty Price Doctrine of unjust enrichment will not apply

PRICE INCLUSIVE OF ALL TAXES AND PRICE REDUCED SUBSEQUENTLY - BSNL had issued order on provisional basis. The price was inclusive of all duties. Subsequently, the price was reduced while finalising order. It was held that assessee is entitled to refund. It was held that since price is all-inclusive, duty amount that appellants could claim from buyer also gets reduced

VI Case laws in Small Scale Industries

Simultaneous availment of Cenvat and SSI exemption not permissible -

CBE&C has issued instructions that if a manufacturer manufactures various products, he has to avail Cenvat for all items or opt for exemption from Cenvat for all products. It is not permissible to avail Cenvat for some items and avail SSI exemption for other products. - CBE&C Circular F. No. 22/46/86-TRU dated 8-9-1986 - reiterated in Circular Nos. 9/93-CX.8 dated 24-8-1993 and 361/77/97-CX dated 3-12-1997.

Turnover of Manufactured goods and Trading goods cannot be clubbed for calculating Limits
Assessee who is manufacturing CPU and key board and Apart from that, he is also trading (purchasing and thereafter, selling as such) of Monitors and Printers. His aggregated clearances of CPU & Key Board (the FPs manufactured by him) during the FY 2004-05 is Rs 350 lacs. The turnover of Monitor and Printers for the same period is Rs 250 lacs. Held that the value, therefore, necessarily has to be in respect of clearances of goods manufactured by the assessee hence he is eligible for SSI Benefit. **C.M.S. COMPUTERS (P.) LTD. 2005 S.C**

Total value of excisable goods shall exclude amounts of excise duty, sales tax and other taxes, ie valuation as per sec 4 or valuation rules **Mahavir Metal Mart v. UOI 1997 (90) E.L.T. 20 (SC).**

More than one manufacturer in one shed - Numerous small units for manufacturing purposes hire one large shed and each small manufacturer uses a small portion of it. In such case, clubbing provisions will apply.

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

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

No Clubbing provisions if two factories belong to different owners/ two units are independent and no financial flow back -

Clubbing provisions do not apply if two or more units are genuinely independent units. if there are more than one factories and various combinations of ownership are:

- (a) Factors such as common location of factories, common expenses, common partners, common trade mark, sharing of machinery usage, mutual financial transaction **without interest** not enough to club clearances. **Jagjivandas & Co. v. CCE 1985 (19) E.L.T.441 (T) affirmed by Supreme Court in 1989 (44) E.L.T. A24.** This is a landmark judgment often used by assessee
- (b) One belonging to a Proprietor and other to a partnership firm, where proprietor is one of the partners **AC v. Jayanthilal Balubhai & Ors. 1978 (2) E.L.T. J317(SC)**

Central excise Case laws circulars Notifications on SSI

- (c) One belongs to a partnership firm and other also to another partnership firm, where some partners are common and some are close relatives in the absence of flow back of money *Renu Tandon v. UOI 1993 (66) E.L.T. 375 (Raj)*
- (d) One to partnership firm and other to limited Company, where relatives of some partners of the firm are directors in the limited Company.
- (e) one belongs to HUF and other to firm where Karta of HUF is a partner - *Shakti Engg Works v. CCE - 1989 (40) ELT 95 (CEGAT)*.
- (f) Two belong to limited companies with some common directors - *Cosmos (India) Rubber Works (P.) Ltd. v. UOI - 1988 (36) ELT 102 (Bom HC) * ITEC (P.) Ltd. v. CCE - 1992 (57) ELT 639 (CEGAT)*
- (g) When two units are functioning in the same Commissionerate and have been granted separate registrations and facility of job work turnover not clubbable. *Nikhildeep Cables P. Ltd. v. CCE 1994 (70) E.L.T. 273 (T)*
- (h) Units separately incorporated with separate plant not clubbable because of few common directors or grant of interest free loans *Alpha Toyo Ltd. v. CCE 1994 (71) E.L.T.689 (T)*
- (i) Two companies with related directors and common product *Padma Packages P Ltd. v. CCE No Clubbing*
- (j) Manufacture of same products in factory as well as job workers factory not clubbable unless common control shown. *CCE v. MM Khambatwala 1996 (84) E.L.T.161 (SC)*
- (k) SSI units - Registration of SSI units under Director of Industries - Clubbing of units/undertakings for computing investment in plant and machinery of common partners/Directors is not applicable in case of clubbing of SSI under Excise *Kemtrode Pvt. Ltd. v. Joint Director (SSI), Govt. of Karnataka 1999 (108) E.L.T. 616 (Kar.)*

SSI can avail exemption for part of Invoice

If one invoice may contain part of goods under one slab (exempted slab) and other part in taxable slab. In such case, only the excess value will be leviable at applicable rate. - *Sri Venkateswara Textile Engg Ltd. v. CCE - (1996) (CEGAT)*.

SSI and Brand Name

In the instant following cases associated with brand name SSI Benefit available

(a) Such ancillary units used to mark their goods with the name of the large unit and refer to a code number or product number. The Madras High Court in *BHEL Ancillary Association v. CCE 1990 (49) E.L.T. 33* had held that this code number or product number would not constitute a brand name.

(b) When the goods bear a brand name of Khadi and Village Industries Commission or a State Khadi and Village Industry Board or National Small Industries Corporation or a State Small Industries Development Corporation or a State Small Industrial Corporation. .

(c) The Supreme Court has held in *Astra Pharmaceuticals P Ltd. v. CCE 1995 (75) E.L.T. 214* that in respect of medicinal preparations the mark made by the manufacturers would be called a "house mark" and would not be the brand name. Therefore, the monograph which identifies a manufacturer's name would not be a brand name.

(d) In the case of *CCE v. ESBI Transmission Private Ltd.* 1997 (91) E.L.T. 292, the Division Bench of the Calcutta High Court held that if the brand name belonged to the foreign company but the Indian company was given the exclusive right to use the same being the owner through assignment, then the benefits of the notification cannot be denied. The Tribunal decisions have also held that assignment of brand name is valid for availing the benefit of SSI exemption in the following cases:

(i) *Opus India v. CCE* 1992 (62) E.L.T. 447 (T)

(ii) *Vikshara Trading and Investment P.Ltd. v. CCE* 1996 (87) E.L.T. 499 (T)

(iii) *CCE v. Bigen Industries* 1999 (107) E.L.T. 213 (T)

(e) In *Namtech Systems Ltd. v. CCE* 2000 (115) E.L.T. 238, the Larger Bench of the Tribunal held that when the goods are affixed with the brand name or trade name of a foreign person whether manufacturer or trader, the benefit of the exemption notification cannot be taken. It must however be noted that this decision will not apply to cases where the brand name is assigned as the Calcutta High Court decision in (d) above holds good.

Exemption Based on Value of Clearances (SSI)

(f) Raw materials received by manufacturers which may bear a brand name are entitled to benefit of Notification, see CBEC Circular 509/5/2000-CX., dated 18-1-2000, (115) E.L.T. T 58 extracting Supreme Court order.

(g) When the goods bear the brand name of any person, if such goods are manufactured in a rural area. Rural area means the area comprised in a village as defined in the land revenue records, excluding -

(i) the area under any Municipal Committee, Municipal Corporation, Town Area Committee, Cantonment Board or Notified Area Committee

(ii) any area that may be notified as an urban area by the Central Government or a State Government.

(h) The Larger Bench of the Tribunal in *Intertec v. CCE* 2001 (127) E.L.T. 609 (T-LB) has held that if the goods manufactured by the SSI unit fall outside paragraph 1 consequent to their being branded goods, payment of duty on such branded goods will not disentitle the other products from getting the benefits of the Notification.

Using the name of the company is trade name similar to brand name SSI benefit not available

A Company manufacturing the cement on the bags of cement they used words "Manufactured by Dharani Cements Ltd. A Subsidiary of Grasim Industries Ltd." Dharani Ltd were using a trade name of some other company with the purpose of indicating a connection in the course of trade between the product and that person. Thus, they are therefore clearly **not entitled to the benefit of the Notification.** **GRASIM INDUSTRIES LTD. 2005 -S.C.**

Goods bearing foreign brand name not eligible - Use of foreign brand name would disentitle the manufacturer of the SSI concession - *India Reprographic Systems (P.) Ltd. v. CCE* 1995 CEGAT - Similar view was also held in *Sonoma Aromatics (P.) Ltd. v. CCE* 1995

Note: All the problems are worked based on the provisions of Finance Act 2010 and notifications up to 31.12.2010

Every care is taken to avoid mistakes and Errors, if any may crept it is unintentional.

Errors/ Mistakes if any please brought to notice by mail to rajdhost@yahoo.com

Excise Valuation

Note: Consider Appropriate Education Cess in all the Calculations:

Problem No 1

How would you arrive at the assessable value for the purposes of levy of excise duty from the following particulars-cum-duty selling price exclusive of sales-tax Rs. 10,000 - Rate of excise duty applicable to the product: 15% - Trade discount allowed - Rs. 1,200 - Freight Rs. 750.

Solution

Cum Duty Price		10000
Less: Permissible deductions		
Trade discount	1200	
Freight	750	1950
		8050
Assessable Value		
$8050 \times 100 / 115.45$		6973
Excise duty including Education Cess		
$8050 \times 15.45 / 115.45$		1077
Excise duty 15% on AV		1046
Education Cess- 2%		21
Higher Education Cess-1%		10

It is assumed that cum duty price is give before trade discount and freight

Problem No 2

1,500 pieces of a product 'A' were manufactured during 2010-11. Its list price (i.e. retail price) is Rs. 250 per piece, exclusive of taxes. The manufacturer offers 20% discount to wholesalers on the list price. During the year, 840 pieces were sold in wholesale, 510 pieces were sold in retail, and 35 pieces were distributed as free samples. Balance quantity of 115 pieces was in stock at the end of the year. The rate of duty is 15%. What is the total duty payable during the year 09-10 Assume that the manufacture is not eligible for SSI concession

Solution

Calculation of Sales Value			
Particulars	Qty in units	Rate Rs.	Value Rs.
Whole sale	840	200	168000
Retail	510	250	127500

Samples	35	200	7000
Total Assessable value			302500
Excise duty @ 15%			45375
Education Cess 2%			908
Secondary Higher Education Cess 1%			454
Total Excise duty payable			46736

Note

Samples are to be valued at a identical goods price nearest place of removal. Since it is not given, they are valued at price at highest quantity is sold

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Problem No 3

A manufacturer has appointed brokers for obtaining orders from wholesalers. The brokers procure orders for which they get brokerage of 5% on selling price. Manufacturer sells goods to buyers at Rs. 250 per piece. The price is inclusive of sales tax and Central excise duty. Sales tax rate is 6% and excise duty rate is 20%. What is the AV, and what is duty payable per piece?

Solution

Let the Assessable value		Rs. X
Add: Excise duty @20.6% (incl ec)		0.206 X
Assessable value including E D		1.206 X
Add Sales tax @ 6% on above		0.072 X
Assessable value including E D & Sales tax		1.278 X
It is given AV including ED and ST is Rs. 250		
$1.278 X = 250$		Rs
$X = 250/1.278$		195.62
Excise duty 20%		39.12
Education Cess 2%		0.78
Higher Secondary Education Cess 1%		0.39
Total Duty payable		40.30

Note: Sales man Commission is includible and not deductible

Problem No 4

A manufacturer has to supply a machinery on following terms and conditions: (a) Price of machinery: 3,40,000 (net of taxes and duties) (b) Machinery erection expenses: 26,000 (c) Packing (normally done by him for all machinery) : 4,000 (d) Design and drawing charges relating to manufacture of machinery : 30,000 (Net of taxes and duties) (e) Central Sales Tax @ 2% (f) Central Excise Duty @ 20% (g) Cash discount of Rs. 5,000 will be offered if full payment is received before despatch of goods. (h) The machine will be supplied along with bought out accessories @ Rs. 8,500. The accessories were optional. You are informed that (a) the buyer made all payment before delivery. (b) The manufacturer incurred cost of Rs. 1,200 in loading the machinery in the truck in his factory. These are not charged separately to buyer. - Find the 'Assessable Value' and the duty payable

Solution

Calculation of Assessable Value

Price of Machinery		340000
Add: Inclusions		
Packing Charges	4000	
Design and drawing	30000	34000
		374000
Less Cash Discount		5000
Assessable Value		369000
Excise Duty @20%		73800
Education Cess 2%		1476
Higher Secondary Education Cess 1%		738
Total Duty Payable		76014

Note

1. Erection expenses, bought out accessories and CST not includible in valuation
2. Loading for truck in machinery Rs. 1200 is includible in valuation. However it is specified that they are not charged separately, hence it is assumed that it is included in the price of machinery.

Problem No 5

Find Assessable Value and duty payable - Maximum Retail Trade Price: Rs. 1,100/- per unit. - Sales Tax, Surcharge, Octroi and other Local Taxes: 10% - Cash Discount: 2% - Trade Discount: 8% - Primary and Secondary packing cost included in the above MRP: Rs. 100 - Excise duty rate: 8% advalorem. Abatement 40%. What will be your answer if the product not covered under MRP Provisions?

Solution

Maximum Retail Price		1,100
Less: Abatement 40%		440
Assessable Value		660
Excise Duty @8%		52.80
Education Cess 2%		1.06
Higher Secondary Education Cess 1%		0.53
Total Duty Payable		54

When the product covered under MRP except abatement no other deduction Will be available.

If the Product Not covered under MRP Provisions

Maximum Retail Price(CDP)		1100
Less: Trade Discount 8%	88	
Cash discount 2%	22	110
		990
Let the Assessable value		Rs. X
Add: Excise duty @8.24% (incl. ec)		0.0824 X

Assessable value including E D	1.0824 X
Add Sales tax and other @ 10% on above	0.01824 X
Assessable value including E D & Sales tax	1.10064 X
2.10 X = 990	
X = 990/1.10064	899.48
Excise Duty @8%	71.96
Education Cess 2%	1.44
Higher Secondary Education Cess 1%	0.72
Total Duty Payable	74,12.

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Problem No 6

B Ltd. manufactures two products namely, skin Ointment and Eye Ointment. Skin Ointment is a specified product under section 4A (MRP Valuation) of Central Excise Act, 1944. Where Eye product is chargeable under advalorem (Transaction Value) valuation. The sales prices of both the products are at Rs. 43/unit and Rs.33/unit respectively. The sales price of both products included 16% excise duty. Additional information is as follows: Units cleared: Eye Ointment: 1,00,000 units Skin Ointment: 1,50,000 units, Deduction permissible under section 4A(Abatement) 40%. Calculate the total excise duty liability of B Ltd., on both the products. What will be your answer if the price of the two products is inclusive of basic excise duty 16%,special excise duty 8% and CST 2%..

Solution

Skin Ointment	
MRP of one unit of Skin Ointment	43.00
Less: Abatement 40%	17.20
Assessable Value	25.80
Eye Ointment	
Cum duty price per Unit	33.00
Assessable Value	
(33 x 100/116.48)	28.33
Calculation of total Excise duty Liability	
Sale Value	
Skin Ointment 150000 units @ Rs. 25.80	3870000
Eye Ointment 100000 Units @ Rs. 28.33	2833000
Total Assessable Value	6703000
Excise Duty @16%	1072480
Education Cess 2%	21450
Higher Secondary Education Cess 1%	10725
Total Duty Payable	1104654

Assessable value including E D	1.0824 X
Add Sales tax and other @ 10% on above	0.01824 X
Assessable value including E D & Sales tax	2.10 X
2.10 X = 990	
X = 990/2.10	471.43
Excise Duty @8%	37.71
Education Cess 2%	0.75
Higher Secondary Education Cess 1%	0.38
Total Duty Payable	39

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Problem No 6

B Ltd. manufactures two products namely, skin Ointment and Eye Ointment. Skin Ointment is a specified product under section 4A (MRP Valuation) of Central Excise Act, 1944. Where Eye product is chargeable under advo term (Transaction Value) valuation. The sales prices of both the products are at Rs. 43/unit and Rs.33/unit respectively. The sales price of both products included 16% excise duty. Additional information is as follows: Units cleared: Eye Ointment: 1,00,000 units Skin Ointment: 1,50,000 units, Deduction permissible under section 4A(Abatement) 40%. Calculate the total excise duty liability of B Ltd., on both the products

What will be your answer if the price of the two products is inclusive of basic excise duty 16%,special excise duty 8% and CST 2%..

Solution

Skin Ointment	
MRP of one unit of Skin Ointment	43.00
Less: Abatement 40%	17.20
Assessable Value	25.80
Eye Ointment	
Cum duty price per Unit	33.00
Assessable Value	
(33 × 100/116.48)	28.33
Calculation of total Excise duty Liability	
Sale Value	
Skin Ointment 150000 units @ Rs. 25.80	3870000
Eye Ointment 100000 Units @ Rs. 28.33	2833000
Total Assessable Value	6703000
Excise Duty @16%	1072480
Education Cess 2%	21450
Higher Secondary Education Cess 1%	10725
Total Duty Payable	1104654

Problem No. 7

X Ltd. is engaged in the manufacture of 'paracetamol' tablets that has an MRP of Rs.49 per strip. The Company cleared 1,00,000 tablets and distributed as physician's samples. The goods are not covered by MRP, but the MRP includes 16% Excise Duty and 3% CST. If the cost of production of the tablet is Rs. 3 Per tablet, The whole sale price is Rs. 4.00 per tablet. determine the total duty payable

When tables is given as samples M RP Provision not applicable samples are to b Valued price of identical goods at the nearest place price of removal, It is assumed that Whole sale price per tablet of is the nearest place price of removal

AV is $100000 \times 4 = 4,00,000$

Alternatively, MRP can also be assumed as nearest place of removal including duty and taxes, in that Assume X is Av and can be solved as below

Solution

Let the Assessable value per Strip	Rs. X
Add: Excise duty @16.48% (incl ec)	0.1648 X
Assessable value including E D	1.1648 X
Add CST 3% on above	0.035 X
Assessable value including E D & CST	1.1998 X
It is given $1.1998 X = \text{Rs. } 49.00$	
$X = 49/1.1998$ (A V per Strip) =	40.84
Total Assessable Value - 10000 @ Rs. 40.84	4,08,400

Problem

No. 8

M/s. Philips & Co., Chennai sold 3000 emergency lamps at a uniform *duty* price of Rs. 1000 per piece for delivery at any place in Tamil Nadu. The details of sales are as follows: -1000 lamps were sold at the Chennai factory gate and hence no transport charges were incurred on them. 1000 lamps were delivered to a buyer at Madurai by incurring freight charges of Rs.14,000 and 1000 to a buyer at Trichy at a freight cost of Rs.10,000. What is the assessable value per emergency lamp?

Solution

Calculation of Equalized freight per lamp		
Equalized freight = Total freight/ total no of units sold		
$(0+14000+10000/1000+1000+1000)=$	24000/3000	Rs. 8 per lamp
A V per lamp = Rs 1000-Rs. 8	992	
Note: Value as per Valuation Rule 5 (F O R Contract)		

Problem No 9

Product 'P' is sold by the Company at uniform price of Rs. 15,000 per Ton at various depots of Company in different States. The price is inclusive of excise duty. Local sales tax is charged extra. During the year, 3,000 Tons of 'P' was sold in Haryana, Delhi and Rajasthan as per following details:

State	Qty. sold	Freight Charge paid (Rs.)
Haryana	1,100	9,50,000
Delhi	1,400	11,30,000

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Rajasthan	500	7,40,000
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The 'freight charge' is from factory to the depot. Excise duty rate is 16.00%. What is the 'Value' under section 4 of Central Excise and total excise duty payable?

Solution

Price per ton is given depot price. No deduction for freight

Since the price is inclusive of excise duty 16% the Assessable value will be calculated using backwards = 15000×100

/116.48

12877.75

Calculation of Total Assessable Value			
Depot	Qty in tons	Av per ton	Assessable
		Rs	Value Rs
Haryana	1100	12877.75	1,41,65,525
Delhi	1400	12877.75	1,80,28,850
Rajasthan	500	12877.75	64,38,875
	3000		3,86,33,250
Excise Duty @16%			61,81,320
Education Cess 2%			1,23,626
Higher Secondary Education Cess 1%			61,813
Total Duty Payable			63,66,760

Problem No 10

Depot price of a company are –

Place of removal	Price at depot on 1.1.2011	Price at depot on 31.12.2010	Actual sale price at depot on 01.02.2011
Amritsar Depot	Rs 100 per unit	Rs 105 per unit	Rs 115 per unit
Bhopal Depot	Rs 120 per unit	Rs 115 per unit	Rs 125 per unit
Cuttack depot	Rs 130 per unit	Rs 125 per unit	Rs 135 per unit

Additional information: i) Quantity cleared to Amritsar Depot - 100 units ii) Quantity cleared to Bhopal Depot - 200 units iii) Quantity cleared to Cuttack Depot - 200 units iv) The goods were cleared to respective depots on 01/01/2011 and actually sold at the depots on 01/02/2011 Determine Assessable Value .

Solution			
Calculation of Total Assessable Value			
Depot	Qty in Units	Av per ton	Assessable
		Rs	Value Rs
Amritsar	100	100	10,000
Bhopal	200	120	24,000
Cuttack	200	130	26,000

	500		60,000
Note			
As per valuation Rule No 7, In case of depot sale Price of depot			
on the date of removal from factory is the value,			

Problem No 11

A trader is owner of a brand name 'J-17'. He supplies materials to a job-worker. The job worker manufactures goods with brand name 'J-17' and supplies the goods to the trader. Cost of inputs is Rs. 360 per piece, inclusive of transport cost up to the factory of job worker. Job worker charges Rs. 130 per piece to manufacture the product. The trader sells the goods in market at Rs. 630 per piece. The rate of duty is 16%. Find the Assessable Value. What is the duty payable per piece?

Solution

Assessable value will be Rs. 630 Per piece, As per New Valuation rule 10 A price at which the Principal manufacturer sells the goods is the value Cost of raw material and Job worker charges are not relevant

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Problem No 12

M/s. Ashok Leyland, Chennai sent their chassis (value Rs. 5,00,000) to M/s. T.V. Sundaram Iyengar & Sons, Chennai for bus body building. The latter built the body and sent the bus to the former with their bill for Rs.5,00,000. Who will pay E.D. on the bus? . Ashok Leyland will sell the bus for Rs.15,00,000/- What is the assessable value? Work out the total E.D. payable assuming Cenvat @ 16% and taking the values given above.

M/S T V sundaram Iyengar has to pay excise duty, because the body building of vehicle is deemed manufacture as per section/ chapter Notes of CETA. Valuation can be done using job work valuation rule 10 A. Assessable value will be the price at which Ashok Leyland sells bus ie Rs. 15 lakhs

Total Duty payable	
Assessable value	15,00,000
Excise Duty @16%	2,40,000
Education Cess 2%	4,800
Higher Secondary Education Cess 1%	2,400
Total Duty Payable	2,47,200

Alternatively Ashok Leyland can also pay duty if TVS claim exemption from duty of job work under notification no 214/86. TVS can also claim exemption from duty if it receive material under cenvat provisions.

Problem No.

13

Asha Ltd. supplies raw material to a job worker Kareena Ltd. After completing the job-work, the finished product of 5,000 packets are returned to Asha Ltd. putting the retail sale price as Rs. 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 Rs. 30,000/- * Job worker's charges including profit Rs. 10,000/- * Transportation charges for sending the raw material to the job worker Rs. 3,000/- * Transportation charges for returning the finished packets to Asha Ltd. Rs. 3,000/

Solution

Where goods covered under M R P Provisions value will be done as per M R P Provisions only

M R P per packet	20.00
Less Abatement 40%	8.00
Assessable Value per packet	12.00
Total Assessable for 5000 packets @ Rs. 12	60,000

Note: The details given regarding Job work not relevant

Problem No 14

A manufacturer manufactured some furniture within the factory for his own use. He purchased material of Rs. 27,500 for this purpose. Cost of the operations carried out by him, as certified by a Cost Accountant, as per CAS-4, is Rs. 12,200. The furniture is liable for duty @ 16%. The manufacturer generally earns profit of 18% on his total cost. Sales tax on furniture is 10%. Find the excise duty and sales tax payable.

Solution

Note: When Furniture is captively consumed duty payable as per Valuation rule No 8 at Cost plus 10%

Calculation of cost of Production

Cost of Raw material	27500
Cost of Operations	12200
	39700
Add 10%	3970
Assessable Value	43670
Excise Duty @16%	6987
Education Cess 2%	140
Higher Secondary Education Cess 1%	70
Total Duty Payable	7197

Note: Since furniture is not sold sales tax not payable. Profit margin on cost is not relevant for Excise valuation

Problem No 15

Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation (DPE) Rules, 2000 - Direct material – Rs 11,600, Direct Wages & Salaries – Rs 8,400, Works Overheads – Rs 6,200, Quality Control Costs – Rs 3,500, Research and Development Costs – Rs 2,400, Administrative Overheads – Rs 4,100, Selling and Distribution Costs – Rs 1,600, Realisable Value of Scrap – Rs 1,200. Administrative overheads are in relation to production activities. Material cost includes Excise duty Rs. 1,600.

Solution

Calculation of cost of Production

Direct material	10000
Direct wages	8400
Works overheads	6200
Quality control costs	3500
Research and development cost	2400

Administrative overheads	4100
	34600
Less Realizable value of scrap	1200
Cost of Production	33400
Add 10%	3340
Assessable Value	36740

Note: selling and distribution costs are not includible in cost of production

It is assumed that Research and development costs are relating to production

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Problem No 16

Determine the value on which Excise duty is payable in the following instances. Quote the relevant section / rules of Central Excise Law. (a) A. Ltd. sold goods to B Ltd., at a value of Rs. 100 per unit, In turn; B Ltd. sold the same to C Ltd. at a value of Rs. 110 per unit. A Ltd. and B Ltd. are related, whereas B Ltd. and C Ltd. are unrelated. (b) A Ltd. and B. Ltd. are inter-connected undertakings, under section 2(g) of MRTP Act. A Ltd. sells goods to B Ltd. at a value of Rs. 100 per unit and to C Ltd. at Rs. 110 per unit, who is an independent buyer. c) A Ltd. sells goods to B Ltd. at a value of Rs.

100 per unit. The said goods are captively consumed by B Ltd. in its factory. A Ltd. and B Ltd. are unrelated. The cost of production of the goods to A Ltd. is Rs. 120 per unit. (d) A Ltd. sells motor spirit to B Ltd. at a value of Rs. 31 per litre. But motor spirit has administered price of Rs. 30 per litre, fixed by the Central Government. (e) A Ltd. sells to B Ltd. at a value of Rs. 100 per unit. B Ltd. sells the goods in retail market at a value of Rs. 120 per unit. The sale price of Rs. 100 per unit is wholesale price of A Ltd. Also, A Ltd. and B Ltd. are related.

Solution

Particulars of transaction	Assessable Value Per Unit	Reasons/remarks
(a)	110	A ltd and B Ltd are relative persons Price of B Ltd to C Ltd is the value
(b),	110	A ltd and B Ltd are relative persons as IC U. It is assumed as A Ltd and B ltd are Holding and Subsidiary companies. Hence the Price of B ltd to C ltd is the value
(c),	100	A ltd and B Ltd are un relative persons. The Price of A ltd to B ltd is the value Cost of production, captive consumption are not relevant
(d)	30	When Administered price is declared it can be considered as tariff value. Hence it is value
(e)	100	The whole sale price of A ltd is also Rs. 100/. The goods are sold to relative at same price. Hence whole sale price of A ltd can be taken for value

Problem No 17

X Ltd. manufactures three health drinks viz. Slim, Trim, Prim. Slim was sold only to Y Ltd., a subsidiary company of X Ltd. Trim was sold to Z Ltd., where the Managing Director of X Ltd. is a Manager. Prim is sold to P Ltd. who is sole distributor of X Ltd., and was coming under the same management of X Ltd. Determine the assessable value/transaction value of the three products in the hands of X Ltd. on the basis of the following information:

Price of X Ltd. to Y Ltd.	Rs	100
Price of X Ltd. to Z Ltd.	Rs	50
Price of X Ltd. to P Ltd.	Rs	20
Price of Y Ltd. to consumer	Rs	120
Price of Z Ltd. to consumer	Rs	60
Price of P Ltd. to consumer	Rs	30

Solution

Note: X Ltd and Y Ltd are relatives because holding and subsidiary companies are relatives (X Ltd and Z Ltd were not relatives (Mere ICU are not relatives Common director, managers are not relatives as per Rule 10)
X Ltd and P Ltd were not relatives (Mere distributor is not relative)

Assessable Value will be in this case

Slim Rs. 120 (X Ltd and Y Ltd are relatives, Price of Y Ltd., to Consumer is the value
Trim Rs. 50 (X Ltd and Z Limited are not relatives. Price of X Ltd to Z Ltd is the value.. Price of Z Ltd to Consumer is not relevant
Prim Rs. 20 (X Ltd and P Ltd are not relatives Price of X Ltd to P Ltd is the value.. Price of P Ltd to Consumer is not relevant

Problem No 18

The selling price of a product inclusive of excise duty and sales tax is Rs. 3,500 per dozen. Sales tax is 4%. The excise duty payable is 16%. Work out the assessable value and total duty payable per dozen.

Solution

Let the Assessable Value will be		Rs X
Excise duty @ 16.48%		0.1648 X
A V including E D		1.1648 X
Sales tax @ 4% on above		0.0466 X
A V including E D and Sales tax		1.2114 X
It is given Selling price including ED and Sales tax is Rs.3500		
Hence $1.2114 X = 3500$		
$X = 3500/1.2114$		2889
Assessable value		2889
Excise duty @ 16%		462.28
Education Cess 2%		9.25
Higher and Secondary education cess 1%		4.62
Total Duty Payable		476

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Problem No 19

An assessee was under impression that his product is exempt from excise duty and hence sold the goods @ Rs 100 per piece without charging excise duty. Later, it was found that actually, the product was dutiable @ 16%. Department claimed that since goods were removed without duty, assessable value should be Rs 100 and duty is payable accordingly. Assessee contended that price of Rs 100 should be taken as cum-duty price and actual duty payable should be calculated by back calculations. Determine the correct duty payable per piece.

Solution

As per CBEC Circular when dutiable goods are removed under impression they are exempted Goods. The Price at which goods are removed should be taken as Cumduty price. In case of

Cum duty price, Assessable value should be calculated using back wards as below Assessable Value = (Cum duty price- permissible deductions) x 100/100+ rate of duty Hence the contention of the department was wrong. The contention of assessee was valid

AV = 100 x 100/116.48 =	85.85
Duty payable per piece	13.74
Education Cess 2%	0.27
Higher and Secondary education cess 1%	0.14
Total Duty Payable	14.15

Problem No 20

How would you arrive at the assessable value for the purpose of levy of excise duty from the following particulars: * Cum-duty selling price exclusive of sales tax Rs 20,000 * Rate of excise duty applicable to the product 16% * Trade discount allowed Rs. 2,400 * Freight Rs. 1,500

Solution

Cum Duty selling price		20,000
Less Permissible deductions		
Trade discount	2400	
Freight	1500	3,900
		16,100
Assessable Value = 16100 X 100/116.48		13,822.12
Excise duty @ 16%		2,211.54
Education Cess 2%		44.23
Higher and Secondary education cess 1%		22.12
Total Duty Payable		2278

Problem No 21

A manufacturer has agreed to supply a machine on following terms: - (i) Price of the machine at Rs. 4,50,000 (Exclusive of taxes and duties) (ii) Packing for transportation of the machine Rs. 15,000 (iii) Transport charges of machinery Rs. 25,000 (iv) Development and tooling charges Rs. 40,000 (exclusive of taxes and duties), (v) C.S.T. @ 3% (vi) Octroi paid on machine supplied Rs. 2,000 (not recovered from party separately) (vii) Excise duty @ 16%, (viii) Interest will be charged @ 16% on delayed payment beyond 30 days, (ix) Special discount of Rs. 5,000. if advance of Rs. 2,00,000 is paid with order. Work out the excise duty liability based on following additional information - (i) Actual transportation cost is Rs. 26,000 (ii) Interest of Rs. 5,000 was charged as party has failed to make payment within 30 days, (iii) The buyer paid advance with the order.

Solution

Price of Machinery		4,50,000
Add Inclusions		
Packing for transport	15,000	
Development and tooling	40,000	55,000
		5,05,000
Less: Octroi		2,000
Assessable Value		5,03,000

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Excise duty @ 16%		80,480
Education Cess 2%		1,610
Higher and Secondary education cess 1%		805
Total Duty Payable		82,894

Transport charges not includible in valuation, Actual transport not relevant CST, Interest for delayed payment not includible in valuation. Octroi not includible in valuation, hence it is not charged separately is assumed it is included in price and hence it is deducted. Special discount RS. 5000 was not deductible, as it is condition for advance Payment, as the price is not sole consideration

Problem No 22

Having regard to provisions of section 4 of the Central Excise Act, 1944, compute the assessable value of excisable goods and the duty amount, given the following information - (i) cum-duty wholesale price (inclusive of sales tax Rs 3,000) - Rs 16,000 (ii) Normal secondary packing cost - Rs 1,000 (iii) Cost of special secondary packing - Rs 2,000 (iv) Cost of durable and returnable package - Rs 1,000 (v) Freight (outward) - Rs 750 (vi) Insurance on freight - Rs 300 (vii) Trade discount (as per normal practice) - Rs 900. (viii) The rate of central excise duty as per the central excise tariff is 16%.)

Cum Duty selling price		13,000
Less Permissible deductions		
Durable and returnable packing	1000	
Trade discount	900	
Freight and insurance	1050	2950
		10050
Assessable value = $10050 \times 100/116.48$		8628.10
Excise duty @ 16%		1380.50
Education Cess 2%		27.61
Higher and Secondary education cess 1%		13.80
Total Duty Payable		1422

Problem No 23

Having regard to the provisions of Section 4 of the Central Excises Act, 1944, compute/derive the assessable value of excisable goods, for levy of duty of excise, given the following information: * Cum-duty wholesale price (including sales tax of Rs. 2,000) - Rs 15,000 * Normal secondary packing cost - Rs 1,000 * Cost of special secondary packing - Rs 1,500 * Cost of durable and returnable packing - Rs 1,500 * Freight - Rs 750 * Insurance on freight - Rs 200 * Trade discount (normal practice) - Rs 1,000 * Rate of C.E. duty as per C.E. Tariff - 16% Adv. State in the footnote to your answer, reasons for the admissibility or otherwise of the deductions.

Solution: same as above with minor changes in figures

Problem No 24

Cost of production of a product 'X' calculated as per CAS-4 standard is Rs 350 per piece. 500 pieces of a product were manufactured. 120 pieces were sold at Rs. 700 per piece to Industrial Consumers, 70 pieces were sold to a Central Government department @ Rs. 690 per piece; 210 pieces were sold to wholesalers at Rs. 720 per piece; 70 pieces were sold in retail @ Rs. 800 per piece and 20 pieces were given as free samples. Out of the 70 pieces sold to Government department, 25 pieces were rejected, which were subsequently sold to other customers @ Rs. 300 per piece, without bringing them in the factory. Balance pieces were in stock, out of which 25 pieces were so damaged that they became unsaleable. [Note that all the prices are exclusive of excise and sales tax. The rate of duty on the product is 16%. What is total duty payable? Advise Management about steps to be taken in respect of 25 pieces,

which have been damaged in storage.

Solution

Particulars	Qty	Rate	Value
Sale to Industrial Consumers	120	700	84000
Sale to Central Government	70	690	48300
Sale to Wholesalers	210	720	151200
Sale in Retail	70	800	56000
Removed as Samples	20	720	14400
			353900
Excise duty @ 16%			56624.00
Education Cess 2%			1132.48
Higher and Secondary education cess 1%			566.24
Total Duty Payable			58323

Note

Samples are to be valued at price of identical goods sold at nearest place of removal. Since it is not given Samples are valued at a price highest quantity sold Subsequent sale of rejected piece of central government is not relevant. As per section 4 price at the time of removal is value any subsequent reduction is not relevant.

An application to AC/DC of excise is to be made for remission of excise duty on damaged pieces, Remission will be granted by CEO after he is being satisfied

Problem No 25

A trader supplies fabrics to independent processor. Cost of fabrics is Rs. 1,150. The processor charges Rs. 450, which includes Rs. 350 as processing charges and Rs. 100 as his profit. After processing goods are sent back to the trader, who sells them at Rs. 1,800. Transport charges for receiving goods at the premises of the processor is Rs. 50 and the transport charges for sending goods after processing is Rs. 60. Please determine the assessable value of the goods under Section 4 of the Central Excise Act.

Solution

As per new Valuation Rule 10 A for Job work value will Rs. 1800
Cost of material, Job worker charges and transport not relevant.

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Problem No 26

An assessee manufactures certain goods on job-work basis. The trader supplies the raw material to job-worker and sells the manufactured product under his brand name. Find the assessable value for the purpose of levy of excise duty from the following particulars - (i) Cost of raw material supplied by trader – Rs. 10,000. (ii) Cost of bringing raw material to factory – Rs. 500. (iii) Value of job work done – Rs. 2,500. (iv) Job worker’s profit – Rs. 400. (v) Transportation charges incurred for returning the manufactured product to the trader – Rs. 600. (vi) Trader’s sales price of finished product – Rs. 15,000

Solution

As per new Valuation Rule 10 A for Job work value will Rs. 15000
Cost of material, Jobworker charges and transport not relevant.

Problem No 27

Calculate the cost of production for the purpose of captive consumption based upon the following details: Materials purchased (includes excise duty Rs. 2,000) - Rs. 22,000 Realisable value of scrap – Rs. 2,000. Wages – Rs. 12,000. Manufacturing expenses – 8,000. Administrative expenses – 8,500. Selling and Distribution expenses – Rs. 3,400. Expenses of quality inspection department – Rs 4,000. Expenses of research and development department – Rs 6,000.

Solution

Calculation of Cost of Production	
Particulars	Amount

Material (Exclusive of ED)	20,000
Wages	12,000
Manufacturing expenses	8,000
Quality inspection department exp	4,000
Expenses of Research and development	6,000
	50,000
Less: realization of Scrap	2,000
Cost of Production	48,000

Note

It is assumed admin expenses are not relating to production It is assumed research expenses are t relating to production Selling and distribution expenses not includible in cost of production.

Problem No 28

A manufacturer having a factory at Jaipur has uniform price of Rs. 1,000 per unit (excluding taxes) for sale anywhere in India. During the financial year 2008-09, he made the following sales: (i) Sale at factory gate in Jaipur: 1,000 units – no transport charges. (ii) Sale to buyers in Delhi: 500 pieces – actual transport charges incurred Rs. 12,000. (iii) Sale to buyers in Chennai: 600 pieces – actual transport charges incurred Rs. 48,000. (iv) Sale to buyers in Mumbai: 900 pieces – actual transport charges incurred Rs. 30,000. Find assessable value per unit under the central excise.

Solution

Calculation of Equalized freight per unit

$$0 + 12000 + 48000 + 30000 / 1000 + 500 + 600 + 900 = 90000 / 3000 = 30$$

$$\text{Assessable value} = \text{FOR Price} - \text{freight} = 1000 - 30 = 970$$

Problem No 29

M/s Jani Manufacturing Co. Ltd., Delhi are despatching 100 'Mixing Machines' to their dealer in U.P. The dealer in U.P is not registered under Central Sales Tax Act. Sales Tax on 'mixing machine' in State of Delhi is 6%. The retail price of the machine is Rs. 800 (exclusive of sales tax and excise). Dealers get discount of 15% on this price. Excise duty is 16% plus education cess @ 2%. Packing cost is Rs 50 per piece. Manufacturer normally sales the goods with the packing. Transport charges are Rs. 1,500 extra. What will be total value of Invoice? Prepare an Invoice showing copy, which will be useful for transport purposes.

Solution

Invoice		
Particulars	Rs	Rs
100 Mixing machines @ Rs. 800	80000	
Less Discount 15%	12000	
		68,000.00
Packing Cost @ Rs. 50 per piece		5,000.00
		73,000.00
Add: excise Duty 16%	11680	
Education Cess 2%	233.60	
H S ec 1%	116.80	12,030.40
		85,030.40
Add: CST - 6%		5,101.82
		90,132.22
Add. Transport Charges		1500.00

Total Invoice Value		91,632.22
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Particulars as per rule 11 should be indicated in invoice such as name add, ecc no etc.,

Problem No 30

Shiva and Co., an assessee, transferred a consignment of 10 tons paper to the depot from Delhi to Chandigarh on 10th March, 2011 for value of Rs. 12,500 per ton. The transport cost was Rs. 500 per ton. The same variety and quality of paper normally being sold at Chandigarh depot on 10th March, 2011 was at a transaction value of Rs. 15,000 per ton to unrelated buyers. (i) Which transaction value should be considered for assessment to excise duty? (ii) In case there were no sales of that variety and quality of paper on 10th March, 2011, but sales were effected on 1st March, 2011 previously for Rs. 14,000 per ton, what would be your answer?

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(i) A V Rs. 15000/- (ii) A V Rs.14,000/- adjustment for price if any for increase/decrease between 10th and 15th

Problem No 31

Determine the transaction value and the Excise duty payable from the following information: i) Total Invoice Price Rs. 18,000 ii) The Invoice Price includes the following:

a) Sales-tax	Rs. 1000
b) Surcharge on ST	Rs. 100
c) Octroi	Rs. 100
d) Insurance from Factory to depot	Rs. 100
e) Freight from factory to depot	Rs. 700
f) Rate of Basic Excise duty	16% ad valorem
g) Rate of Special Excise duty	24% ad valorem

Solution

Total Invoice price		18,000
Less: Exclusions		
Sales tax	1000	
Surcharge on Sales tax	100	
Octroi	100	1200
		16800
Assessable Value-16800 x 100/141.2		11898.02
Excise duty		
Basic - 16%	1903.68	
Special- 24%	2855.52	
Total	4759.21	
Ec 2%	95.18	
HS Ec 1%	47.59	
Total Duty Payable		4901.98

It is assumed the price is given is depot price

No deduction for freight and insurance from factory to Depot

Problem No 32

A large manufacturing unit undertook following job work: (a) Machining of raw materials supplied by the

buyer. The material was sent under Cenvat challan. Job work charges were Rs. 30,000. Cost of raw material was Rs. 3,50,000. These were returned after job work. The principle manufacture sell the product at Rs.4,00,000 (b) Processing of inputs sent by a buyer under his own (buyer's) challan. Processing charges were Rs. 10,000 and cost on inputs was Rs. 2,00,000. (c) Repairs of a component. Original cost of component was Rs. 25,000 and repairs charges were Rs. 3,000. The component was sent by customer under cover of his letter. In all these cases, raw material was sent by customer. Excise duty payable is 16% plus education cess of 3%. You are required to (a) Find total duty payable, (b) Procedure to be followed by manufacturer for dispatch in each case after carrying out job work)

Solution

Answer: Duty payable in each case is as follows:

(A) Job work is exempt from duty if input is received under Cenvat. Hence, duty is not payable in this case. The customer has to file a declaration before Assistant Commissioner having jurisdiction over factory of manufacturer (job worker) that excise duty liability on final product will be borne by him. A V Rs. 4 Lakhs

(B) Excise duty is payable by the principal manufacturer on the price at which he is removing from the factory, since the price is not given duty not calculated. The material cost and Jobworker charges are not relevant. Goods should be cleared under serially numbered and pre-authenticated Invoice. This invoice should indicate the Assessable value on which duty has been paid. (Rule 11)

(C) Repair does not amount to 'manufacture' as no new product emerges. Hence, there is no liability of Central Excise. The goods should be cleared under manufacturer's own Delivery Note with full details of operations carried out. If repair process is manufacture duty payable on Rs.,28,000

Problem No 33

M/s OTV Ltd. manufactures T.V. sets. They had sent the T.V. sets from their plant to their depot at Jammu. The depot sold the same at Rs. 12,000 on 1.8.2008 and at Rs. 12,500 per set on 10.8.2008. Please mention what would be the value of the T.V. sets removed from the factory on 3.8.2008 and 10.8.2008(

Solution

Jammu depot price on 03.08.2008 and 10.08.2008 will be taken as value. The price of depot on 03.08.2008 is not given. And Hence the price of Depot on 01.08.2008 Rs.12,000 subject to change the price any between 01.08.2008 and 03.08.2008 should be considered.

In the second case Depot price on 10.08.2008 Rs. 12,500 is the Assessable value

Problem No 34

Thunder TV Ltd. is engaged in the manufacture of colour television sets having its factories at Bangalore and Pune. At Bangalore the company manufactures picture tubes which are stock transferred to Pune factory where it is consumed to produce television sets. Determine the Excise duty liability of captively consumed picture tubes from the following information: - * Direct material cost (per unit) Rs. 600 * Indirect Materials Rs. 50 * Direct Labour Rs. 100 * Indirect Labour Rs. 50 * Direct Expenses Rs. 100 * Indirect Expenses Rs. 50 * Administrative Overheads Rs. 50 * Selling and Distribution Overheads Rs. 100. Additional Information: - (1) Profit Margin as per the Annual Report of the company for 1999-2000 was 15% before Income Tax. (2) Material Cost includes Excise Duty paid Rs. 100 (3) Excise Duty Rate applicable is 16%.

Solution

Calculation of Cost of Production

Calculation of Cost of Production

Particulars	Amount
Direct Material	500
Indirect material	50
Direct labour	100
Indirect labour	50

	700
Add 10% on Cost	70
Assessable Value	770
Excise duty @ 16%	123.20
Education Cess 2%	2.46
Higher and Secondary education cess 1%	1.23
Total Duty Payable	127

Note

It is assumed admin expenses/indirect expenses are not relating to production Profit margin is not relevant for excise valuation
Selling and distribution expenses not includible in cost of production.

Problem No 35

Sigma Ltd. asked for a quotation from Omega Ltd. for the supply of 100 complete computer systems. Omega Ltd. furnished the following quotation: (A) - Components - CPU - 20,000, Monitor - 10,000, Keyboard 5,000. Sub-Total - Rs 35,000 (B) Labour & Overheads - Rs 10,000 (C) Profit - Rs 5,000. Total price per unit (A+B+C) = Rs 50,000. Advance of Rs 20,000 was payable along with order. Delivery period was one month from date of receipt of firm order and advance. - . - Sigma Ltd. accepts the quotation subject to the following alterations which are agreed to by Omega Ltd. : i) Keyboard would be supplied free of cost by Sigma Ltd. to Omega Ltd. since Sigma Ltd. is able to purchase the keyboard for Rs. 3,000 per unit. ii) Profit charged by Omega Ltd. is to be reduced to Rs. 4000 since Sigma Ltd. would make an advance of Rs 20,000. However, no interest is payable on the advance. - . - Determine the assessable value under section 4 of the Central Excise Act, 1944, and the Excise Duty liability @ 15% advalorem.

Solution

Particulars	Rupees
CPU	20000
Monitor	10,000,
Keyboard	3,000
Labour & Overheads -	10,000
Profit -	5000
Assessable value	48000

Note:

Since key board is supplying free, which is not sold value is be done as per Rule 4, at price nearest place of removal. It is assumed Rs. 3000 price where sigma Ltd is able to purchase is the nearest place of removal price

Reduction in profit margin is includible in value as the price is not sole consideration, since the interest free advance received by Omega Ltd.

Problem No 36

Lalit Fans Ltd. is selling fans at a price of Rs. 1,200 at the factory gate at Chandigarh, Rs. 1,275 from their depot at New Delhi and Rs. 1,250 from Calcutta. 200 fans were dispatched on 1st March, 2009, to their depot at New Delhi which reached the depot on 20th March, 2009. 100 fans were dispatched on 3rd March, 2009, to Calcutta which reached on 15th March 2009. - . - Lalit Fans Ltd. revised the price of fans on 15th March, 2009 as follows: Ex-factory price Rs. 1,300 Ex-Delhi Depot Rs 1,375. Ex-depot Calcutta Rs. 1,350 - . - The goods were actually sold from Delhi depot at Rs. 1,375 per fan on 8th April, 2009 The Calcutta depot sold 90 fans @ Rs. 1,250 and 10 fans @ Rs. 1,350 per fan. Calculate the total duty payable, if the rate of Excise Duty is 10%. Prices given above are exclusive of taxed and duties.

Solution

Price of depot on the date of removal from factory is the value Rule 7

Depot	AV
New Delhi	1275
Calcutta	1250
Calculation of Assessable Value	
New Delhi -200 fans @ Rs. 1275	255000
Calcutta -100 fans @ Rs. 1250	125000
Assessable Value	380000
Excise duty @ 10%	38000
Education Cess 2%	760
Higher and Secondary education cess 1%	380
Total Duty Payable	39140

Note: Revision of price from 15th march is not relevant as all the fans removed from factory before 15th march

Price at which goods sold to consumer at depot is not relevant

Problem No 37

200 cycles were sold by ABC Ltd. to a related person M/s XYZ at Rs. 1,500 per cycle. M/s XYZ sold these cycles to independent buyers at Rs. 1,850 per cycle (prices exclusive of all taxes). The rate of Excise Duty is 10%. i) Determine the assessable value and the total duty payable. ii) What would be the position if 50 cycles are sold by ABC Ltd. to M/s. XYZ @ Rs. 1,500 per cycle and 50 cycles are sold directly to an independent buyer @ Rs. 1,700 per cycle ?

Solution

Av including duty Will be Rs. 1850. The price of relative person to independent buyer is the value
 (ii) Av including duty Rs. 1700.since the price of 50 cycles of relative and independent buyer is same.

Calculation of AV.	
Price inclusive of duty	1,850.00
AV =1850 x 100/110.3	1,677.24
Total duty payable	
Excise duty @ 16%	167.72
Education Cess 2%	3.35
Higher and Secondary education cess 1%	1.68
Total Duty Payable	172.76
(ii)	
Price inclusive of duty	1,700.00
AV =1850 x 100/110.3	1,541.25
Total duty payable	
Excise duty @ 16%	154.13
Education Cess 2%	3.08
Higher and Secondary education cess 1%	1.54
Total Duty Payable	158.75

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Problem No 38

Bansen & Co., a retail trader, supplies raw material (grey fabrics) of Rs 1,400 to Nagpal, a processor of cloth. *Nagpal processes the grey cloth and, after bleaching, dyeing, printing etc. supplies the finished product to Bansen & Co. *Nagpal charges Rs 400 which includes Rs 300 as expenses and Rs

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100 as profit. The transport cost from the place of trader to the place of job worker is Rs 50 and transport cost from the place of job worker to the place of trader is Rs 60. Bansen & Co. sells the finished goods at Rs 2,400. Given the rate of duty at 10%, compute the Assessable Value (AV) and the duty payable.

Solution

As per new Valuation Rule 10 A for Job work value will Rs. 2400

Cost of material, Job worker charges and transport not relevant.

Av	2,400.00
Excise duty @ 10%	240.00
Education Cess 2%	4.80
Higher and Secondary education cess 1%	2.40
Total Duty Payable	247

Problem No 39

A manufacturing unit undertook the following two jobs

Machining of raw material supplied by the customer:

The material was sent under Cenvat challan. Job work charges were Rs. 30,000. Cost of the raw material was Rs. 3,50,000. These were returned after job work. The Principal manufacturer will sell the product for Rs. 450,000.

Repairs of a component:

Original cost of component was Rs. 25,000 Repair charges were Rs. 3,000. The component was sent by customer under cover of his letter. After repair, the principal manufacturer will return the component. If excise duty is payable @ 16%, in both the cases find out total duty payable and procedure to be followed by manufacturer for dispatch in each case after carrying out the work.

Solution

Duty payable in each case is as follows:

(A) Job work is exempt from duty if input is received under Cenvat. Hence, duty is not payable in this case. The customer has to file a declaration before Assistant Commissioner having jurisdiction over factory of manufacturer (job worker) that excise duty liability on final product will be borne by him.

(B) Excise duty is payable by the principal manufacturer on the price at which he is removing from the factory, ie Rs. 450,000. The duty payable is Rs. 450,000 x 16.48% = Rs 74,160, the material cost and Jobworker charges are not relevant. Goods should be cleared under serially numbered and pre-authenticated Invoice. This invoice should indicate the Assessable value on which duty has been paid. (Rule 11)

(C) Repair does not amount to 'manufacture' as no new product emerges. Hence, there is no liability of Central Excise. The goods should be cleared under manufacturer's own Delivery Note with full details of operations carried out. If the repairing process is a manufacture duty is payable.

Problem No 40

B, a trader, buys art silk yarn and gives it to C, a job work contractor for further processing. The cost of the art silk yarn supplied to C is Rs. 12,000. C bills B at Rs. 3,000 which comprises of process charges Rs. 2,500 and profit Rs. 500. Cost of carriage for moving goods to C's place is Rs. 100 and for moving these back to B, after processing, is Rs. 90. B sells the final product for Rs. 16,200. What is the assessable value of the goods under section 4 of the CE Act

Solution

As per new Valuation Rule 10 A for Job work value will Rs. 16,200

Cost of material, Job worker charges and transport not relevant.

Problem No 41

An assessee sold certain goods for Rs.4,35,000 and did not charge any excise duty in his invoice on the understanding that the product was exempt from excise duty. Subsequently, it was found that such goods were not exempted from excise duty, but were liable to pay duty @ 16%. Calculate the amount of excise duty payable thereon, stating reasons for your calculation.

Solution

As per CBEC Circular when dutiable goods are removed under impression they are exempted Goods. The Price at which goods are removed should be taken as Cumduty price. In case of Cumduty price, Assessable value should be calculated using back wards as below

Assessable Value = (Cum duty price- permissible deductions) x 100/100+ rate of duty

AV = 435000 x 100/116.48 =	3,73,454.67
Duty payable per piece	59,752.75
Education Cess 2%	1,195.05
Higher and Secondary education cess 1%	597.53
Total Duty Payable	61,545.00

Problem No 42

A product which is covered under Section 4A provisions has MRP of Rs. 25 printed on the carton. It is cancelled by drawing two lines across the price, but the price is easily readable. Below that price, MRP price of Rs. 21 is shown to indicate the saving which will be made by buyer. The abatement available is 40% on MRP Excise duty rate is 16%. Calculate the excise duty payable.

Solution

As per Sec 4A Av will be Rs. 21, even scoring of Rs. 25 is visible

MRP	21.00
Less Abatement- 40%	8.40
Assessable Value	12.60
Excise Duty -16%	2.02
Education Cess 2%	0.04
Higher and Secondary education cess 1%	0.02
Total Duty Payable	2.08

Problem No 43

A product which is covered under Section 4A provisions has MRP of Rs. 25 printed on the carton. It is cancelled by drawing two lines across the price, but the price is easily readable. Below that price, MRP price of Rs. 21 is shown to indicate the saving which will be made by buyer. The abatement available is 40% on MRP Excise duty rate is 16%. Calculate the excise duty payable.

Solution

As per Sec 4A Av will be Rs. 21, even scoring of Rs. 25 is visible

MRP	21.00
Less Abatement- 40%	8.40
Assessable Value	12.60

Excise Duty -16%	2.02
Education Cess 2%	0.04
Higher and Secondary education cess	0.02
1%	
Total Duty Payable	2.08

Problem No 44

Determine the total amount of excise duty payable under Section 4 of the Central Excise Act, 1944 from the following information: (I) Price of machinery excluding taxes and duties – Rs 5,50,000 (II) Installation and erection expenses – Rs 21,000 (III) Packing Charges (primary and secondary) – Rs 11,500 (IV) Design and engineering charges – Rs 2,000 (v) Cost of material supplied by buyer free of charge – Rs 8,500 (VI) Pre-delivery inspection charges – Rs 500. Other information: (a) Cash discount @2% on price of machinery was allowed as per terms of Contract since full payment was received before dispatch of machinery. (b) Bought out accessories supplied along with machinery valued at Rs. 6,000. (c) Central Excise duty rate 16% and educational cess as applicable @3%. Make suitable assumptions as are required and provide brief reasons (CA Final November 2009 New syllabus).

Answer – Installation charges, pre-delivery inspection charges and bought out accessories are not addible. Cash discount of Rs 11,000 (2% of cost of machinery) is allowable as deduction. It is assumed that design charges pertain to machinery and hence are addible.

Pre-delivery charges are not includible only if these were incurred by dealer out of his commission. Otherwise addible.

Calculation of duty is as follows (in Rs)

Price of machinery	5,50,000
Packing Charges	11,500
Design and Engineering	2,000
Free material supplied	8,500
Pre-Delivery Inspection	500
Total	5,72,500
Less Cash Discount	11,000
Assessable Value	5,61,500
Excise duty @ 16%	89,840.00
Education Cess 1% of Ex. Duty	898.40
SAH Education cess 2% of duty	1,796.80
Total duty including cess	92,535.20

Problem No 45

An excisable product is covered under the provisions of the Standards of Weights and Measures Act, 1976 and falls in the category of 'specified goods' subject to excise duty on the basis of retail sale price. Following particulars are made available: MRP printed on the package is Rs.10,894 per unit. The price is inclusive of excise duty of 10% and education and secondary and higher education cess at the currently applicable rates as per the Finance Act, 2008. Compute the assessable value, excise duty and cess payable if it is eligible for an abatement of 38% (CS Professional December 2009)

Answer – Assessable value is Rs 6,754.28 (62% of Rs 10,894). Duty payable @ 10% is Rs 675.43, Education Cess 2% - Rs 13.51 and SAHE cess 1% - Rs 6.75

Problem No 46

P. Ltd. manufactures 'A' product. The 'A' is a specified product under Section 4A of the Central Excise Act, 1944. The sale price is Rs. 50 per unit. The sale price includes 14% basic excise duty plus 2% education cess and 1% secondary and higher education cess. Central Sales tax @ 3% is also included. 1,00,000 units were removed from the factory for sale. Calculate the total excise duty liability of P Ltd. assuming that 40% abatement is permissible under section 4A on product A (CA Final November 2008 old syllabus) .

Ans

AV of A is Rs 30. On these, excise duty is to be calculated @ 14.42% and multiply by 1,00,000.

Problem No 47

Janak Electricals Ltd., manufactures product M. The sale prices of M are Rs. 45 per unit. The above includes 10% basic excise duty, as increased by 3% education cess and secondary higher education cess, also 2% CST. 10,000 units of each product were removed from the factory to sales depots. You are required to compute the excise duty liability (ICWA Final Old Syllabus June 2009)

Answer –

If X is assessable value, amount including excise duty @ 10.3% is 1.103. Add CST @ 2%. Then total price is 1.12506 X. Now, 1.12506 X = Rs 45. Hence, X i.e. assessable value is Rs 40.00. Hence, value for 10,000 pieces is Rs 4,00,000. Duty @ 10% is Rs 40,000. Education cess @ 2% - Rs 800. SAHE cess @ 1% - Rs 400.

Problem No 48

Determine the total amount of Excise duty payable on a machine using the details given below : (i) Sale price of the machine excluding taxes and duties 2,00,000 (ii) Sales tax 20,000 (iii) Cost of durable and returnable packing included in the sale price given at (i) above – Rs 5,000 (iv) Design and Development charges paid by buyer on behalf of seller to a third party Rs 20,000 (v) Warranty charges charged separately by the seller 5,000. Rate of Excise duty 10%. Education cess 3%. Calculations should be supported by notes wherever, required (CA Final New Syllabus June 2009)

Answer –

Design charges of Rs 20,000 includible. Deduction of cost of durable and returnable packing of Rs 5,000 is allowable. Warranty charges are presumed to be optional post sales charges and hence not includible. Sales tax is not addible in assessable value and it is presumed that it has been charged separately. Hence, assessable value is Rs 2,15,000 (2,00,000 + 20,000 – 5,000). Excise duty @ 10% is Rs 21,500. Education cess @ 2% - 430. SAHE cess @ 1% - Rs 215.

Problem No 49

Vasudha Electronics Ltd. having its factory at Delhi, furnishes the following information. (i) 3000 Units sold at factory gate (ii) 6000 Units sold to dealers in Nagpur. Actual transport expenses Rs. 30,000 charged. (iii) 1000 Units sold to dealers in Lucknow, actual transport expenses Rs. 10,000, but charged to dealers at Rs. 12,000. (iv) Invoice price for the above is Rs. 10,000 per unit, excluding transport charges and all items

below: (1) Sales tax shown separately Rs. 40,000 (2) Octroi shown separately Rs. 18,000. (3) Dharmada shown separately collected from dealers Rs. 12,000. The basic rate of excise duty is 16%. Determine the total excise duty payable, assuming that the dealer is not entitled to any exemption (ICWA Inter Old Syllabus December 2007)

Answer

Reasonable profit on outward transportation is not includible in assessable value. Sales tax and octroi is not includible but dharmada is includible. Hence, assessable value is 10,00,12,000 (10,000 x 10,000 + 12,000). Excise duty @ 16% is Rs 1,60,01,920. Education cess @ 2% - Rs 3,20,038.40 and SAHE cess @ 1% Rs 1,60,019.20.

Problem No 50

How will the assessable value under the subject transaction be determined under section 4 of the Central Excise Act, 1944? Give reasons with suitable assumptions where necessary. Contracted sale price for delivery at buyer's premises - Rs. 9,00,000. The contracted sale price includes the following elements of cost - (i) Cost of drawings and designs Rs. 4,000 (ii) Cost of primary packing Rs. 3,000 (iii) Cost of packing at buyer's request for safety during transport Rs. 7,000 (iv) Excise duty Rs.1,11,200 (v) VAT (Sales tax) Rs. 37,000 (vi) Octroi Rs. 9,500 (vii) Freight and insurance charges paid from factory to 'place of removal' Rs. 20,000 (viii) Actual freight and insurance from 'place of removal' to buyer's premises Rs. 42,300 (CA Final New Syllabus November, 2008)

Answer –

Following deductions are allowable – Vat – 37,000, Excise duty 1,11,200 (presumed to be on final product and not on inputs), Octroi 9,500, Freight after place of removal – Rs 42,300. Total deduction – Rs 2,00,000. Hence, assessable value – Rs 7,00,000 (9,00,000 – 1,63,000)

Problem No 51

Compute the assessable value and amount of excise duty payable under the Central Excise Act, 1944 and rules made there under from the following information (i) Goods transferred from factory to depot on 8th February - 1,000 Nos. On that day, price at factory was Rs 200 per unit and price at depot was Rs 220 per unit. Rate of duty was 10% *ad valorem* (ii) Goods actually sold at depot on 18th February -750 Nos. On that day, price at factory was Rs 225 per unit and price at depot was Rs 250 per unit. Rate of duty was 8% *ad valorem* (CA Final may 2010, New Syllabus)

Answer

The price relevant is Rs 220 per unit and rate relevant is 10%. Total value is Rs 2,20,000. It is assumed that this is inclusive of excise duty of 10.30% (duty 10%, education cess 2% and SAHE cess 1%). Hence, assessable value is Rs 1,99,456.02. Excise duty @ 10% is Rs 19,945.60. Education cess @ 2% is Rs 398.92 and SAHE cess @ 1% is Rs 199.46 (Total Rs 2,20,000).

Problem No 52

Price of 'X' is Rs 100 if sold from the factory at Ahmedabad, Rs 120 ex-depot Mumbai and Rs 130 ex-godown of consignment agent at Chennai. M/s ABC Co. Ltd. sold 200 pieces from factory at Ahmedabad on 30-10-2001. On the same day, 30 pieces were cleared for Mumbai depot and 70 pieces were cleared for

Chennai godown of consignment agent. The prices are exclusive of all taxes. What is the assessable value in each case.

Answer – Assessable value will be Rs 100, 120 and Rs 130 respectively.

Problem No 53

What will be the position, if the goods were sold from Mumbai in November 2001 at Rs 135 per piece and goods from Chennai were sold at Rs 125 per piece.

Answer

Price change after removal of goods from factory does not have any effect on the assessable value. Thus, no differential duty is payable if goods are sold from depot later at higher prices. Similarly, no refund is permissible, even if goods are actually sold from depot later at lower prices.

Problem No 54

Price of 'Z' is Rs 1,000 if sold from the factory at Varanasi; Rs 1,150 if sold from his depot at Kolkata and Rs 1,100 if sold from ex-depot Kanpur. On 30th October 2007, assessee despatched 100 pieces of 'Z' to his depot at Kolkata. The goods reached Kolkata depot on 16th November 2007. The assessee increased his selling prices on 1st November, 2007. As per increased prices, the ex-factory price was Rs 1,050 and ex-Kolkata depot price was Rs 1,200. The goods were actually sold from Kolkata at Rs 1,200 on 9th December, 2007. What is the duty payable? Rate of excise duty is 16% plus education cess of 2%. (All aforesaid prices are exclusive of taxes and duties).

What will be the position if 90 pieces are sold from Kolkata @ Rs 1,200, four pieces are sold @ Rs 1,150 and six pieces were transferred to another depot from which they were sold later @ Rs 1,400 per piece.

Answer

In this case, duty payable is on the basis of price ruling ex-depot Kolkata on date of removal from the factory, i.e. as on 30th October, 2007. Thus, duty payable is Rs 184 per piece (16% of Rs 1,150), plus education cess of Rs 3.68 plus SAH education cess of Rs 1.84 Total duty payable on 100 pieces will be Rs 18,400 plus education cess of Rs 368 and SAH education cess of Rs 184. Any subsequent change in prices has no effect on the duty payable.

Problem No 55

M/s XYZ Ltd. sold machinery to Mr. K at a price of Rs. 5 lakhs on 15th June, 2008 and the same was removed from the factory at Kolkata. The rate of excise duty applicable is 10.3% 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 Rs. 6 lakhs with effect from 16th June, 2008. The machinery as refused by Mr. K. has been sold on 20th June 2008 to Mr. L at the revised price of Rs. 6 lakhs. The excise duty including education cess is 12.36% applicable with effect from 10th June, 2008. Explain the following with reasons: (i) What is the value to be taken as assessable value? (ii) What is the rate of excise duty applicable and duty payable on above transaction? (iii) The Central Excise Officer is demanding duty on the price of Rs. 6 lakhs at the time of sale to Mr. L. Is he right in his approach? (iv) Does cost of production have any bearing on the assessable value? (ICWAI Final New Syllabus December 2009)

Answer –

(i) to (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 (iv) Cost of production is not relevant for assessable value. However, if sales are below cost, doubt about genuineness of price can be raised by excise officer.

Problem No 56

Determine the value of a product and excise duty payable on the basis of following data (i) Goods sold at Depot Price 20,000, Fright from factory to Depot 500, Insurance 500, Octroi 1200, State VAT 800, CE 10%, Education Cess 2% SAH Cess 1% (ii) Compute assessable value if the aforesaid goods are used for captive consumption. Assume cost of production is 80% of the invoice price in above Problem No. (ICWA Inter New Syllabus December 2008)

Answer –

(i) No deduction is available of freight, octroi and insurance upto depot. Deduction of State Vat is available. Hence, Assessable value is Rs 20,000 less 800 i.e. Rs 19,200. Excise duty is 1,920. Education cess Rs 38.40 and SAHE cess Rs 19.20 (ii) Assessable value – Rs 16,000

Problem No. 57

Thilagam Turbines Ltd. manufactured a steam turbine for Mr. Prem, who supplied special steel purchased by him from wholesale market (Cost Rs. 10,00,000 plus Central Excise Rs. 1,33,000). The normal price of such material is Rs. 12,00,000 plus Central Excise Rs. 1,48,320. Mr. Prem is eligible to claim Cenvat Credit. Thilagam Turbines Ltd. incurred manufacturing cost of Rs. 23,00,000. What is assessable value of the turbine? Briefly touch upon the issues involved (ICWA Final New Syllabus June 2009)

Answer

Cost of special steel Rs 10,00,000 is includible as it is actual purchase price. Excise duty of Rs 1,33,000 is not includible in assessable value as its Cenvat credit is available. Manufacturing cost of turbine is not relevant. Since profit percentage is not given, sales price cannot be calculated. Hence assessable value cannot be calculated. However, cost of steel should be added to sale price to arrive at assessable value for excise.

Problem No 58

A trader supplies raw material of Rs. 1,150 to processor. Processor processes the raw material and supplies finished product to the trader. The processor charges Rs. 450, which include Rs. 350 as processing expenses and Rs. 100 as his (processor's) profit. Transport cost for sending the raw material to the factory of processor is Rs. 50. Transport charges for returning the finished product to the trader from the premises of the processor is Rs. 60. The finished product is sold by the trader at Rs. 2,100 from his premises. He charges Vat separately in his invoice at applicable rates. The rate of duty is 16% plus education cess as applicable. What is the A V, and what is total duty payable? (ICWA Final Old Syllabus June 2010)

Answer – AV Rs. 2100.

Problem No 59

A company manufacturing consumer durables has factory in Tamilnadu. It has a depot in Maharashtra. Its product 'A' is dispatched to its depots in Maharashtra and sold from the depot to its dealers in Maharashtra. The depot administration expenses are Rs eight lakhs per annum. These do not include

transport charges from Tamilnadu to Maharashtra. The dealers in Maharashtra are registered under CST Act. The present price for sale from Maharashtra Depot is Rs 22,500, inclusive of transport charges from Tamilnadu to Maharashtra. Actual transportation charges from Tamilnadu to Maharashtra are Rs 1,000 per piece. The depot price is inclusive of applicable excise duty @ 16% plus education cess of 2% and SAH education cess of 1%, but exclusive of Maharashtra sales tax. Sale from Maharashtra depot of product A are 2,000 pieces per annum. As an economy measure, it is proposed to close the depot in Maharashtra and make direct sale from Tamilnadu to dealers in Maharashtra. Marketing department has stated that if goods are sold from Tamilnadu, total amount payable by dealers in Maharashtra should remain unaltered. Otherwise, sales will be badly affected. Taxation department argues that this will reduce the profitability of the product, as the CST payable will have to be borne by the company. Finance department is of the view that this extra tax burden will get offset by reduction in depot expenses and slight reduction in excise duty quantum. Evaluate the financial implications to decide whether it will be economical to close the depot in Maharashtra and advise Management about desirability or otherwise of closing the depot. Ignore effect of Maharashtra Vat, if any [ICWA Final June 2004 adopted].

Answer

Presently, goods are sold from depot. If the sale is from depot, excise duty is payable on the depot price of Rs 22,500. No deduction of transport cost from Tamilnadu to Maharashtra is allowable. Since the price is inclusive of excise duty @ 16.48% (16% plus 2% education cess plus 1% SAH education cess), the duty payable is Rs 3,183.38 and Assessable Value is Rs. 19,316.62 After deducting freight expenses of Rs 1,000, present net realisation is 18,316.62 per piece is Rs per piece.

If goods are sold directly from Tamilnadu, CST @ 4% will be payable. The price chargeable to dealers is required to remain unchanged to Rs 22,500 per piece. If we assume that net sale price from Tamilnadu is 'x', then, total invoice value to dealers in Maharashtra will be as follows –

Net Price of Product A	x
Add – Excise Duty @ 16.48%	0.1648x
Add – CST @ 4% on 1.1648 x	0.046592 x
Total price	1.211392 x
Add – Transport charges	Rs 1,000
Total Invoice Value	1.211392 x + 1000

Note – Excise duty and CST are not payable on transport charges, if charged separately in invoice, if sale is from factory.

Now, $1.211392 x + 1000 = 22,500$

Hence, $x = \text{Rs } 17,748.18$

Thus, the realisation per piece has reduced from Rs 18,316.62 to Rs 17,748.18 per piece. This results in loss of Rs 568.44 per piece. Since sale is 2,000 pieces per annum, total loss per year will be Rs 11,36,880. If depot is closed, there will be saving of Rs 8,00,000 per annum. Thus, there will be net loss of Rs 3,36,880 if the depot is closed and sales are effected directly from Tamilnadu. Hence, it is not advisable to close the depot.

Problem No 60

A manufacturer in Gujarat has a depot in Bangalore. His factory gate price is Rs 9,000. Transport charges from Gujarat to Bangalore are Rs 500 per piece. The manufacturer's Karnataka depot price is Rs 10,000

exclusive of excise duty and Karnataka Sales Tax. Karnataka Sales Tax on the goods is 10%. As per Karnataka Sales Tax Law, sales tax is payable on selling price plus excise duty. The manufacturer is planning to make direct sale to Bangalore buyers from his Gujarat factory, instead of selling from depot. Bangalore dealers want that their present cum-duty invoice price (excluding Karnataka Sales Tax) should remain unaffected even if goods are sold from Gujarat. The reason they are giving is that if goods are directly sold to them from Gujarat, they will have to pay Karnataka Sales Tax. The Bangalore dealers are registered under CST Act and are in a position to issue C form for their purchases. The manufacturer has agreed to the request of dealers. You are required to calculate the assessable value and excise duty and CST payable if goods are sold directly from Gujarat, assuming that dealers' request is accepted. The product is leviable to excise duty @ 14% plus education cess of 2% plus SAH education cess of 1%. If the product is sold in Gujarat State, the State Vat rate is 4%. [ICWA Final December 2004].

Answer - Present selling price of the manufacturer from his depot is as follows –

Net Price	Rs 10,000
Add Excise Duty @ 14.42%	Rs 1,442
Total Sales price (excluding Karnataka Sales Tax)	Rs 11,442

It is desired that the price to dealer should remain unchanged. If C form is issued, CST rate will be 3%.

Assume that Assessable Value if goods are sold from Gujarat is 'X'. Excise duty @ 14.42% will be 0.1442x. CST @ 3% on 1.1442x is equal to 0.034326. Invoice price will be Rs 1.178526 x. Transport charges of Rs 500 can be charged extra.

1.178526x + Rs 500	=	Rs 11,442
1.178526x	=	Rs 10,942
X	=	Rs 10.942/1.178526
X	=	Rs 9,284.48

Check this as follows –

Assessable Value	Rs 9,284.48
Add – Excise duty @ 14.42%	Rs 1,338.82
Add – CST @ 3% on Rs 10,623.30	Rs 318.70
Add – Freight	Rs 500.00
Total Invoice Price	Rs 11,442.00

Hence, the selling price from Gujarat will be Rs 9,284.48.

Problem No 61

Compute the assessable value under the Central Excise Act, 1944 in the following case : (i) Production : 2,000 units on 1.1.2010 (ii) Quantity sold : 450 units @ Rs. 200 per unit, 650 units @ Rs. 190 per unit,

Samples clearances 50 units (iii) Balance in Stock - 850 units (at the end of factory day for 1.1.2010). Assume that the rate per unit is exclusive of Central Excise duty (CA Final May 2010 old Syllabus).

Answer

Valuation of samples should be done on the basis of value of such goods sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments. In the example, time of clearance of 450 units and 650 units is not given and both have been cleared on the same day. In such case, rule 11 states that value shall be determined using reasonable means consistent with the principles and general provisions of the Excise Valuation Rules and section 4 of Central Excise Act. This is best judgment assessment. We can take recourse to rule 7 and 9 where principle of 'normal transaction value' is accepted, when prices are varying. As per rule 2(b) of Valuation Rules, 'normal transaction value' means the transaction value at which the greatest aggregate quantity of goods are sold.

Since the greatest aggregate quantity (i.e. 650 pieces) is sold at Rs 190, same value can be taken for valuation of free samples. Hence, assessable value = 450 units x Rs 200 plus 700 units x Rs 190 = Rs 2,23,000.

Problem No 62

Determine the total amount of Excise duty payable on a machine using the details given below : (i) Sale price of the machine excluding taxes and duties 2,00,000 (ii) Sales tax 20,000 (iii) Cost of durable and returnable packing included in the sale price given at (i) above – Rs 5,000 (iv) Design and Development charges paid by buyer on behalf of seller to a third party Rs 20,000 (v) Warranty charges charged separately by the seller 5,000. Rate of Excise duty 16%. Education cess 3%. Calculations should be supported by notes wherever required (CA Final New Syllabus, June 2009)

Answer

Sale price of machine excluding taxes and duties	2,00,000
Less: Cost of durable and returnable packing	(5,000)
	5,000
Add: Warranty charges charged separately by the seller	20,000
Add: Design and development charges paid by buyer on behalf of seller to a third party	
Assessable Value	2,20,000
EXCISE DUTY PAYABLE (Rs 2,20,000 * 16.48%)	Rs 36,256

Note – Entire cost of durable and returnable packing is not includible. Only amortised cost is includible. In absence of details, it is presumed that the cost is already included in selling price of the machine.

Problem No 63

ABC Ltd. manufactures two products A and B. The product A is specified under section 4A of the Central Excise Act, 1944. The deduction (abatment) permissible under section 4A is 40%. The MRP of the product is Rs. 40 per unit. The sale price takes into account 16% BED and education cess @ 3%. Sale price also

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includes CST @ 2%. The company has cleared 3,00,000 units of this product. The company had cleared 2,00,000 pieces of product B which is sold at Rs. 50 per piece inclusive of excise duty @ 16% (plus cess @ 3%) and CST @ 2%. Calculate the excise duty liability of the company (ICWAI Inter June 2010 Old Syllabus)

Answer

Product A – Assessable Value – Rs 24 (60% of Rs 40). Basic excise Duty payable = $3,00,000 \times 24 \times 0.16 = \text{Rs } 11,52,000$. Education cess (2%) – Rs 23,040. SAHE cess (1%) – Rs 11,520 (Note – once abatement is allowed on MRP, no other deduction is allowable).

Product B – If 'X' is assessable value, amount including excise duty would be $1.1648 X$. CST @ 2% of $1.1648 X$ would be $0.023296 X$. Hence, selling price inclusive of excise duty and CST would be $1.188096 X$. Now, $1.188096 X = \text{Rs } 50$. Hence, X i.e. assessable value = Rs 42.08. Basic Excise duty on 2,00,000 pieces would be $2,00,000 \times 42.08 \times 0.16 = \text{Rs } 13,46,560$. Education cess @ 2% would be Rs 26,931.20 and SAHE cess @ 1% would be Rs 13465.60.

Problem No 64

An assessee clears certain goods from his factory on 21st August, 2000 to his depot at Faridabad. On that day, his net selling price (excluding excise duty) is Rs 1,000 for sale from factory gate and Rs 1,100 if sale is from depot. The goods reach Faridabad on 29th August 2000.

(a) The assessee increases his selling prices on 1st September 2000 as follows - Rs 1,050 for sale at factory gate and Rs 1,150 if sale is from depot. Goods are actually sold from Faridabad depot on 5th September, 2000 at Rs 1,150. What is the Assessable Value?

(b) The assessee reduced the prices and goods are actually sold from Faridabad at Rs 900. What is the Assessable Value? If assessee had paid duty at higher rate, can he get refund ?.

Answer –

The Assessable Value is Rs 1,100 in both the cases. Once goods are removed from factory, it does not matter whether subsequently they are sold at higher prices or lower prices from depot. Assessee is not entitled to refund even if goods are sold at lower price from depot at a later date.

Problem No 65

- An assessee sales certain goods to a buyer who is a 'related person' for net price (excluding excise duty) of Rs 1,400. The buyer does not sale the goods but uses it himself as intermediate product. The cost of production of the goods is Rs 1,000. What is the assessable value? What will be the assessable value if the goods were sold to unrelated person at net price of Rs 1,400, who does not sale it, but uses it as intermediate product?

Answer

If goods were sold to related person, the assessable value is Rs 1,100. [In case of captive consumption by related person, valuation is cost of production plus 10%]. If goods were sold to unrelated buyer, the assessable value will be Rs 1,400.

Problem No 66

Ram & Co. are dealers in engineering goods. They obtained an order for an engineering item 'A'. They quoted a price of Rs 5,000 per piece for 'A'. Ram & Co. then approached Laxman & Co. who was manufacturer of engineering items. It was agreed that Ram & Co. will supply raw material required for manufacture of 'A' to Laxman & Co. free of cost. Laxman & Co. will manufacture product 'A' and supply it to Ram & Co. It was agreed that Laxman & Co. will charge Rs 1,500 as their job charges per piece. Other information is as follows – (i) Raw material supplied by Ram & Co. to Laxman & Co. was purchased by Ram & Co. from the manufacturer 'Z'. The breakup of the invoice of 'Z' was as follows – Net Price per Kg of raw material – Rs 40. Excise duty – Rs 6.40. Education Cess Rs 0.13 SAH cess - 0.06 Sales Tax – Rs 1.86.. Ram & Co. generally sales goods after adding 10% to their purchase price (ii) Product A requires 50 Kg of raw material per piece, including normal wastage of 5%. (iii) Transport charges incurred by Ram & Co. for delivering raw material to factory of Laxman & Co – Rs 100 per piece (iv) Transport charges for returning the finished product to the Ram & Co – Rs 130 per piece. These are paid by Laxman & Co. and recovered from Ram & Co. by issuing a separate debit note. - - The rate of duty is 14% plus education cess of 2% plus SAH education cess of 1% on excise duty. Who is liable for payment of excise duty ? What will be the assessable value ? [ICWA Inter June 2004 adopted].

Answer - The manufacturer is Laxman & Co. It will be his liability to pay duty. Laxman & Co. is liable to pay duty on the selling price of Ram & Co. which is Rs 5,000 per piece (as per rule 10A effective from 1-4-2007). This is to be taken as cum-duty price.

Hence, making back calculations, is Assessable Value 4,369.86 and duty @ 14.42% will be Rs 630.14.
Practical Examples on 'Related Person'

Problem No 67

An assessee sold certain goods to PQR Company Limited for Rs. 20,000 on 09.09.2009. The buyer is a related person as defined under Section 4(3)(b) of the Central Excise Act, 1944. The buyer did not sale 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 unrelated person for Rs. 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 (CA Final Old Syllabus November 2009)

Answer – Assessable value is Rs 17,600 (Rs 16,000 plus 10%). If goods were sold to unrelated buyer, assessable value would be Rs 20,000.

Problem No 68

An assessee sales goods to ABC Co Ltd. The buyer is a 'related person' as defined u/s 4(3)(b) of Central Excise Act for Rs 10,000 on 15th December, 2000. On that date, the net price (excluding excise duty) of related person to an unrelated buyer was Rs 12,000. What will be the 'Assessable Value' in each of the following cases -

(a) The related person sales the goods to an unrelated buyer on 5th February, 2001 at Rs 12,500, exclusive of excise duty.

(b) The related person sales the goods to unrelated buyer on 10th February, 2001 at Rs 11,000, exclusive of excise duty.

(c) The buyer is treated as 'related person' as it is an 'inter connected undertaking' in relation to manufacturer (assessee). However, the buyer is not a holding or subsidiary of assessee. Buyer and seller do not have interest in each other.

Answer - In case (a) and (b) the Assessable Value' will be Rs 12,000. In case (c), the assessable value will be Rs 10,000. [Note that since buyer is a limited company, it cannot be relative of assessee. An artificial person cannot be 'relative' of other. Hence, buyer cannot fall in any other definition of 'relative']

Problems on Cenvat Credit Note:

Consider Appropriate education cess in all Problems

Problem No 1

M/s AJ imported some inputs and paid Basic Customs duty Rs. 5 lakhs, surcharge on customs duty Rs. 50,000 and CVD Rs. 1 lakh. Calculate the amount that he can claim as Cenvat credit. Would it make any difference, if the assessee is not a manufacturer, but a service provider **CA Final May 2006**

Solution

Cenvat Credit available on CVD Rs. 1 lakh. No Cenvat Credit Basic customs duty Rs. 5 lakh. If assessee is a service provider Credit can be taken on CVD Rs. 1 lakh if the Imported material used in providing Output service

Problem No 2

Based on the following information, determine the CENVAT Credit available for use in the current year under the CENVAT Credit Rules, 2004 [Amount after each item indicates Central Excise duty paid at the time of Purchase of goods (Rs.) – (a) Pollution control equipments – Rs 25,000 (b) Spares for pollution control equipments – Rs 5,000 (c) Equipments used in office – Rs 12,000 (d) Storage Tank – Rs 10,000 (e) Paints used for painting machinery used – Rs 6,000 (f) Packing material – Rs 4,000 (g) Lubricating oils – Rs 8,000 (h) High Speed diesel oil – Rs 7,000 **CA Final Nov 2002**

Solution

Particulars of goods	Nature of Goods	Duty paid	Education Cess	Cenvat Credit		Reason Remarks
				Eligible in Current year		
				Duty	E C	
Pollution Control Equipments	Capital goods	25000	750	12500	375	Capital goods current year Credit available to extent of 50%
Spares for Pollution control Equipment	Capital goods	5000	150	2500	75	Capital goods current year Credit available to extent of 50%
Equipment used in office	Not a Capital goods	12000	360	Nil	Nil	
Storage Tank	Capital goods	10000	300	5000	150	" "
Paints used for painting Machinery	Inputs	6000	180	6000	180	Inputs full credit available
Packing Material	Inputs	4000	120	4000	120	Inputs full credit available
Lubricating Oils	Inputs	8000	240	8000	240	Inputs full credit available
High speed diesel	Not a Input	7000	210	nil		

Total Credit available in Current year	38000	1140	
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Problem No 3

Discuss about the eligibility of Cenvat Credit in each of the following situations - (i) 1000 kgs of raw materials were purchased on which duty paid was Rs. 16,000. Whilst in the production yard, they were destroyed by accidental fire (ii) 1000 kgs of raw materials on which duty paid was Rs. 10,000 was used in manufacture of a final product for which the duty payable is Rs. 8000 (iii) The original invoice for 1,000 units of inputs purchased were missing; however 'Duplicate for transport' copy of invoice is available, which shows that duty of Rs. 10,000 had been paid on inputs

Solution

1. Credit is available when inputs are destroyed during the course of process. If they are Destroyed before issue for production. No credit is available
2. Credit can be utilised to the extent of Rs. 8000 and balance Rs. 2000 can be carry forward
3. Credit is available only based on original copy of invoice will all prescribed particulars under rule 9
However credit cannot denied for minor irregularities. In this credit can be availed with the permission of AC/DC of excise.

Problem No 4

H Ltd. purchased a Boring-Drilling machine at a cum-duty price of Rs. 32,14,476. The Excise duty rate charged on the said machine was @ 16%. The machine was purchased on 01.04.2008 and disposed of on 30.09.2009 for a price of Rs. 12 lakhs. The company was claiming depreciation @ 25% following Straight Line Method. Using the said information, answer the following questions: (i) what is the Excise duty paid on the machine? (ii) What is the Cenvat credit allowable under Cenvat Rules? (iii) What is the amount of Cenvat credit reversible or duty payable at the time of clearance of the said machinery

Solution

Calculation of Excise duty paid on the Machine		
Cum duty price		32,14,476
Assessable Value = $3214476 \times 100/116.48$		27,59,681
Excise duty including EC 3%		4,54,795
Availability of Cenvat credit		
In the year 07-08 -50% Of Rs. 454795		2,27,398
In the year 08-09 -50% Of Rs. 454795		2,27,397
Credit of EC available only on payment of EC		
If manufactures claim depreciation under sec 32 of Income tax Act		
on machinery including duty amount Cenvat credit not available		
Cenvat credit reversible at the time of clearance		
Cenvat Credit availed in year 07-08	227398	
Less : 2.5% per quarter for 6 quarters-15%	34410	1,93,288
Cenvat Credit availed in year 08-09	227397	
Less : 2.5% per quarter for 2 quarters	11371	2,16,027
Total amount payable at the time of clearance		4,09,315

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Problem No 5

A manufacturer under CENVAT purchased inputs of value at Rs. 60,000 on which duty of Rs. 9,000 was paid @ 15% on 25th January 2008. After two months, due to change in production schedule, he found that he does not need the material. He sold the inputs lying in stock @ Rs. 70,000 on 17th July 2008. However, due to budget change announced earlier, duty on those inputs was increased to 20%. (a) Does the manufacturer have to pay excise duty? If so, how much? (b) If, instead of increase of duty to 20%, the inputs were exempted from duty in the budget, what would have been your answer?

Solution

When inputs cleared as such (without using) an amount equal to cenvat credit availed is payable Rs. 9000 Note: Increase in rate of duty, exemption from duty and sale at higher value is not relevant

Problem No 6

A manufacturer manufactures 3,500 Nos. of a product 'P'. Its Assessable Value is Rs. 650 per piece. Duty payable is 10%. He bought inputs for the same, on which duty paid was Rs. 90,000. The manufacturer sells 2,000 pieces in India and 1,500 pieces are exported. What is CENVAT available and what is the duty payable through PLA?

Solution

Duty payable on units Cleared for Home consumption

A V = 2000 @ Rs. 650 Per Piece	1300000	
	Duty	E C 3%
Duty payable 10%	130000	3900
Less Cenvat credit on Inputs	90000	2700
Duty payable through P L A	40000	1200

Problem No 7

U & V Ltd. manufactures 10,000 units of Product W, assessable value of which is Rs. 400 per unit. Duty payable is 16%. Duty paid on raw material is Rs. 3,00,000. U&V Ltd. sells 2,000 units in India and 8,000 units are exported through a merchant exporter. What is CENVAT credit available and what is the duty payable through personal ledger account (PLA)? Can U&V Ltd. gets any refund of CENVAT credit?

Solution

Duty payable on units Cleared for Home consumption

A V = 2000 @ Rs. 400 Per Piece	800000	
	Duty	E C 3%
Duty payable 16%	128000	3840
Less Cenvat credit on Inputs	128000	3840
Duty payable through P L A	Nil	Nil

Balance Credit Rs. 172000 and ec3% can be carrying forward and can be Adjusted in subsequent clearing for home consumption. If such Adjustment is not possible refund can be claimed.

Problem No 8

M/s Tips and Toes Ld., manufactures four types of "Nail Polishes", namely Sweety, Pretty, Beauty, Tweety. The company has availed CENVAT credit of Rs. 4,00,000 on the common inputs used in the manufacture of 'Nail Polishes'. During the financial year 2009-10 the company manufactured 1000 litres of each type of 'Nail Polishes". The CENVAT availed input was used in equal proportion in all the four types of the products. Examine the availability of Cenvat Credit and duty payable

Product	Nature of Sale	Sale Price excluding Sales Tax & other local taxes
Sweety	Sale to Home Consumption	Rs. 30 per 20 ml bottle
Pretty	Sold to a 100% EOU	Rs. 40 per 20 ml bottle
Beauty	Fully exported	Rs. 50 per 20 ml bottle
Tweety	Supplied to Defence Canteen under exemption	Rs. 60 per 20 ml bottle

Solution

As per Cenvat credit Rule No 5 Credit on duty paid on inputs used in pretty and beauty can be availed duty payable on Sweety cleared for home consumption

With regard to credit on duty paid on inputs used in Tweety cleared to defence under exemption Assesse has three options

Option 1

If separate books are maintained for inputs used in tweety and pretty, beauty and sweety .No credit on duty paid on inputs used in tweety. And credit can be availed on Sweety, Pretty and Beauty

Option 2

If No separate books are maintained for inputs used in tweety and pretty, beauty and sweety Credit can be availed and amount at 10% on the A V of tweety is payable Since rate of duty on sweety is not given calculations were not made

Option 3

When no separate records With intimation to AC, assessee can avail prorate credit on the common inputs based on the mathematic formula.

Problem No 9

From the following data, determine the CENVAT allowable if the goods are produced or manufactured in a FTZ or by a 100% EOU and used in any other place in India. Assessable value: Rs. 770 per unit, Quantity cleared 77,770 units, BCD – 30%, CVD – 16%

Solution

Cenvat can be available based on the formula

$$\text{Cenvat can be available} = X \times 1 + (\text{BCD})/200 + \text{CVD}/100$$

Where X is A V, BCD is basic customs duty and CVD is countervailing duty

From the given details

A V = 77770 x 770 =	5,98,82900
Given B C D = 30% and CVD = 16%	
Cenvat crédit available =	
$5,98,82,900 \times 1 + (30/200) \times 16.48/100$	
$= 5,98,82,900 \times (1 + 0.15) \times 0.1648$	
$= 1.13,49,007$	
Duty amount	1,10,18,454
Education amount 3%	3,30,554

Indirect taxes Problems and Solutions /May -June/ Nov- Dec 2011 Exam

Problem No 10

An assessee cleared his manufactured final Product during the month of January 2010. The duty payable on the final product for the month is Basic excise duty Rs. 48,000, NCCD Rs.2000 and applicable education cess. During the month he has received various inputs total duty paid on the inputs was as follows. Basic Excise duty Rs. 40000, Special excise duty 4000, Service tax paid on inputs Rs. 8000, for all duties applicable education cess was paid. How much duty is payable through account current

Solution

Duty payable on Final Product

	Duty	EC 3%	Duty	E C 3%
Basic Excise duty			48000	1440
N C C D			2000	60
Total payable (A)			50000	1500
Cenvat credit available				
Basic Excise duty	40000	1200		
Special excise duty	4000	120		
Service tax	6000	180		
(to the extent of Rs. 6000)				
Total Cenvat credit available	50000	1500		
Less: Cenvat Credit			50000	1500
Duty payable through P L A			0	0

Note: balance credit of Rs. 2000 service tax can be carry forward

Problem No 11

An assessee cleared his manufactured final Product during the month of March 2010. The duty payable on the final product for the month is Basic excise duty Rs. 200000, Special excise duty Rs. 1,00,000) and applicable education cess. During the month he has received various inputs total duty paid on the inputs was as follows. Basic Excise duty Rs. 50000, Additional excise duty (GSI) Rs. 5000 . Excise duty paid on capital goods received during the month was Rs. 12000 Service tax paid on inputs Rs. 1000, for all duties and service tax applicable education cess was paid. How much duty is payable through account current

Solution

Duty payable on Final Product

	Duty	EC 3%	Duty	E C 3%
Basic Excise duty			200000	6000
Special excise duty			100000	3000
Total payable (A)			300000	9000
Cenvat credit available				
Basic Excise duty	50000	1500		
Excise duty on C G 50%	6000	180		
Service tax	1000	30		
Total Cenvat credit available	57000	1710		
Less: Cenvat Credit			57000	1710

Indirect taxes Problems and Solutions /May -June/ Nov- Dec 2011 Exam

Duty payable through P L A			243000	7290
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Note: Credit of Addl. ED on G S I available only for payment of addl. Ed on G S I

Problem No 12

Prepare a Cenvat account in the books of A Ltd., and determine the balance as on 30-09-2010 from the following data: -

- Opening balance as on 01-04-2010 Rs. 47,000.
- Inputs received on 04-04-2010 involving excise duty paid Rs. 14,747
- Purchased a lathe for Rs. 1,16,000 -cum duty price @ excise duty rate of 16% on 05-04-2010 and received the lathe into the factory on 05-12-2010.
- On 06-04-2010 paid excise duty on final products @ 16% through Cenvat A/c (cum duty price of the goods Rs. 2,32,000).
- Inputs cleared as such to a job worker on 01-04-2010 not returned in 180 days, quantity 1,000 Kgs; Assessable value Rs. 2 lacs; ED @ 16% of the above, 50 % of the inputs were received on 01-10-2010.
- Common inputs were used in a product, which was exempted from payment of duty cleared at a price of Rs. 100/unit, which included taxes of Rs. 20/unit; quantity cleared 1,000 units.
- On 07-04-2010 duty paid on inputs amounting to Rs. 17,867 was taken credit for in the Cenvat A/c as Rs. 17,687

Solution

Cenvat Account on 30/09/2010							
Particulars		Cenvat Available (Dr)		Cenvat Utilised (Cr)		Balance	
		Duty	EC 3%	Duty	EC 3%	Duty	EC 3%
Date							
01/04/2010	Opening balance	47000	1410			47000	1410
04/04/2010	Inputs purchase	14747	442			61747	1852
04/04/2010	Removals			32000	960	29747	892
07/04/2010	original entry	17687	531			47434	1423
	Rectification	180	5			47614	1428
	(17867-17687)						
	Payment of amount						
	on common inputs						
	(1000 x80 x5%)			4000	-----	43614	1428
28/09/2010	Inputs sent for			32000	960	11614	468
	Job work						

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Note

- Credit on lathe is available only on 05/12/2010
- No eC payable on the amount paid on 5% of AV of Exempted products
- Reversal of credit is required on expiry of 180 days when inputs sent for job work not returned
50% of credit can be availed on 01/10/2010

Problem No 13

Following transactions took place in a month:

- The manufacturer received inputs with Invoice evidencing payment of duty of Rs. 42,800 on 2nd. the invoice was marked 'ORIGINAL FOR BUYER'.

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- (b) 400 pieces of Final products were dispatched under Invoice on 6th. Assessable value was Rs. 80 per piece and excise duty rate was 16%.
- (c) 1,000 pieces of input 'I' was sent outside for job work on 10th. When the inputs were received, credit of duty of Rs. 15,000 was taken on those inputs.
- (d) Some inputs were purchased from a manufacturer in Chennai in March, these were directly despatched from factory of the supplier to factory of job worker. Duty paid on the inputs is Rs. 40,000. Out of those inputs, 45% on inputs were received after carrying out the job work. On 18th.
- (e) An imported consignment of raw materials was received on 19th. The materials were not imported directly, but were purchased from an importer. The invoice of importer showed that customs duty paid was Rs. 26,000, special duty of Rs 3,000, additional customs duty paid was Rs. 13,200 and special additional customs duty paid was Rs 5,400. The importer was registered with Central Excise authorities.
- (f) Goods worth Rs 2,00,000 were despatched on 24th. Rate of duty was 16%.

There was no opening balance in PLA or Cenvat credit account at the beginning of the month. Calculate the amount of duty payable

Solution

Particulars		Cenvat Available (Dr)		Cenvat Utilised (Cr)		Balance	
		Duty	EC 3%	Duty	EC 3%	Duty	EC 3%
Date							
2nd	Inputs	42800	1284			42800	1284
6th	Removals			5120	154	37680	1130
18th	inputs from J W						
	45% of 40000	18000	540			55680	1670
19 th	Imports	13200	396			68880	2066
24th	Removals			32000	960	36880	1066

Note

- 1 no reversal of Credit when material send for job work
- 2 when inputs send to Jobworker directly credit can be taken only when inputs received to factory
3. In respect of imports credit will be available only on CVD (addl customs duty) U/s 3(3), It assumed that manufacturer intends to claim refund of Special additional customs duty and does not want to avail Cenvat Credit

Problem No 14

X availed Cenvat credit of Rs. 42,000 for manufacture of an item chargeable to duty. These goods were lying in his factory till 28-02-2011, from 1.3.2011; the final product was made exempt from duty. Now, when the final goods are cleared, should the Cenvat credit of Rs. 42,000 availed earlier be reversed (Ans Yes)

Solution

As per Cenvat Credit Rule 11(3) when dutiable goods becomes exempt, Cenvat credit availed on inputs, work-in process and finished goods should be reversed. Hence X has to reverse an amount of Rs. 42000/- of credit availed

Problem No 15

A manufacturer purchased machinery falling under chapter heading 84 from supplier 'X Co'. The invoice was for Rs 23,200, comprising of price of goods as Rs 20,000 and Rs 3,200 as excise duty and education cess. Pass journal entry in accounts book to record the purchase transaction. Explain how the balance will appear in Balance Sheet.

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Solution

Capital Goods A/c Dr	20000	
Cenvat credit Receivable (Capital goods)	1600	
Cenvat credit Receivable (Capital goods) deferred A/c	1600	
To Sundry Creditors- X & Co		23200

In the Balance sheet Deferred account will be shown under loans and advances

Problem No 16

An assessee had procured machinery in April 2008 for Rs 10 lakhs. Duty paid on machinery was Rs 1,60,000. It was commissioned in June 2008 Assessee had availed 50% Cenvat credit of Rs 80,000 in 2008-09, and Rs 80,000 (balance 50% credit) in 2009-10. Including education cess. He sold the capital goods after use, in May 2010 as second hand goods for Rs 3,00,000. How much excise duty or 'amount' is payable while clearing the machinery?

Solution

Cenvat Credit availed in year 08-09	80,000		
Less : 2.5% per quarter for 9 quarters -22.5%	18,000		62000
Cenvat Credit availed in year 09-10	80,000		
Less : 2.5% per quarter for 5 quarters- 12.5%	10,000		70000
Total amount payable at the time of clearance			132000

Problem No 17

Closing balance of Cenvat Credit in of a manufacturer on 3rd July 2010 was Rs. 11,500. On 4th July 2010, following transactions took place: (i) The manufacturer received inputs under Invoice No. 253 dated 5th June 2010, evidencing payment of duty of Rs. 74,000; (ii) 90 pieces of Final products were despatched under Invoice No. 768. Assessable value was Rs. 1,200 per piece and excise duty rate was 16%; (iii) Some inputs on which cenvat was taken earlier were sold for Rs. 1,20,000 as they were found in excess. When the inputs were received duty rate on inputs was 15%, and Cenvat credit taken was Rs. 21,000. However on 4th July 2010 the excise rate applicable on inputs was 20%; (iv) Some inputs (10,000 pieces) were sent outside on 1st July 2010 for job work). Duty of Rs. 5,000 was paid while purchasing these inputs on 4th July 2010, 6000 pieces (out of 10,000 pieces) were returned to the factory after job work. - . - Prepare Cenvat credit account

Solution

Particulars		Cenvat Available (Dr)		Cenvat Utilised (Cr)		Balance	
		Duty	EC 3%	Duty	EC 3%	Duty	EC 3%
Date							
Opening Balance		11500	345			11500	345
inv 253	Inputs	74000	2220			85500	2565
inv 768	Removals			17280	518	68220	2047
04.07.2010	Inputs removed as such			21000	630	47220	1417

Problem No 18

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A manufacturer received certain inputs. The cost of inputs was Rs. 2,00,000 and duty paid @ 16% was Rs. 32,000. After receipt of the inputs, the cenvat credit was availed of by the manufacturer. He further carried out some processes on the inputs. The cost of processing was Rs. 50,000. The semi-processed material was sent to a small-scale unit for a job work. –Is there any duty payable at the time of removal of inputs for the job work ? The material sent was not returned by the small- scale unit after the job work within 180 days. What will be the duty payable on such goods not returned after being sent out for the job work?

(Ans; No duty payable at the time of removal to job work, When inputs does not receive within 180 days amount payable Rs.32000)

Solution

No duty payable when goods send for job work and there is no need to reverse the credit vailed when material send for job work

If the material sent for job work not returned with in 180 days, an amount equal to to cenvat credit availed is to be paid. Ie Rs. 32000.

If finished goods are directly cleared from job worker place, duty is payable based on AV and prescribed procedure is to be followed.

Problem No 19

Machinotech Ltd. purchased a lathe machine at a price of Rs. 1,00,000 on which 16% Excise Duty was paid and the company availed of the Cenvat credit on the said capital goods. The lathe machine was purchased on 27-01-2010 and it was disposed of on 29-04-2010. Can the assessee enjoy the Cenvat credit ? Is it necessary to reverse the cenvat credit on disposal of the machine ? If your answer is yes, quantify the amount.

Solution

Cenvat credit reversible at the time of clearance		
Cenvat Credit availed in year 08-09 and 09-10	16480	
Less : 2.5% per quarter for one quarter- or part there of 27.01.2010 to 26.04.2010 and 27.04.2010 to 29.04.2010	824	
Total 5%		
Total amount payable at the time of clearance incl ec 3%		15,656

Problem No 20

Surya Ltd. purchased certain inputs for Rs. 50,00,000 and also paid Excise Duty @ 16% ad valorem. The company also purchased a drilling machine for Rs. 5,00,000 and paid Excise Duty @ 16% ad valorem. The company availed of the Cenvat credit on the inputs and on the capital good in April, 2010, on the same day. On 10-05-2010, the company cleared the finished goods to Tara Ltd., the cum-duty price of which worked out to Rs. 70,80,000. The final product (finished goods) sold attracted Excise Duty @ 16% ad valorem. The company also deposited Rs. 6,00,000 through TR-6 Challan on 10-05-2010, itself. It may be noted that the inputs were purchased from Usha Ltd. and the drilling machine from Probha Ltd., on credit in both cases. Pass the necessary journal entries in the books of Surya Ltd

Solution

Purchase of Raw materials	Dr.	5000000	
Cenvat Credit Receivable account	Dr	800000	
Cenvat Credit Receivable (Education Cess) account	Dr	24000	
To Sundry Creditors (Being purchase inputs)	Cr		5824000

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Purchase of Capital goods	Dr.	500000	
Cenvat Credit Receivable account	Dr	40000	
Cenvat Credit Receivable (Education Cess) account	Dr	1200	
Cenvat Credit Receivable deferred account	Dr	40000	
Cenvat Credit Receivable deferred (Education Cess) account	Dr	1200	
To Sundry Creditors	Cr		582400
(Being purchase of machine)			
Excise duty on final product 7080000 x 16/116.48	Dr	972527	
Education cess on excise duty 7080000x 0.48/116.48	Dr	29176	
To Bank (582524 + ec Rs.17476)			600000
To Cenvat Credit Receivable account (utilised)	Cr		390003
Cenvat Credit Receivable (Education Cess) account (utilization) 29176-17476	Cr		11700

It is assumed Rs. 6 lakhs paid though GAR 7 is inclusive of EC 3% Rs.17476

Cenvat credit Balance

Particulars	Available		Utilised		Balance	
	Duty	EC	Duty	EC	Duty	EC
Inputs	800000	24000	390003	11700	409997	12300
Capital goods	40000	1200	nil	nil	40000	1200
Capital deferred account credit available Next year Rs. 40000 and Ec Rs.1200						

Problem No 21

A manufacturer brings some inputs valued at Rs 25,000 on which duty of Rs. 5,000 has been paid @ 20%. And ec 3% subsequently the manufacturer sold the input as such, which goods he sold for Rs. 30,000. What is the duty payable by the manufacturer if - i) rate of duty on the date of clearance on inputs was 25% ii) rate of duty on the date of clearance on input was 10% ? CWA Inter Dec 1998

Solution

When inputs cleared as such (without using) an amount equal to cenvat credit availed is payable Rs. 5000/-

Note: Increase in rate of duty, decrease in rate of duty and sale at higher value is not relevant

Problem No 22

FO on 15th March, 2011 at 9.00 a.m., following was the position of Camac Corporation, Calcutta - 1) opening balance of PLA Rs. 50750, 2) opening balance cenvat credit register. 21200. The following materials were received up to 3 p.m. on the same day. - i) A machine was received vide invoice No. 1075 dated 3rd March, 2011 marked 'duplicate for transport', indicating that duty paid was Rs. 25,000. The same is not yet installed. ii) Some inputs were sent for job work, cenvat credit availed

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on this inputs were Rs. 20,000. Out of these inputs, 60% were received with in 180 days. iii) Raw materials purchased from a dealer were received. The dealer was registered with the Central Excise. The dealer's invoice No. 1052 dated 10th March, 2011, has certified that the duty paid by the manufacturer Rs. 22,700. The invoice was marked as 'first stage dealer' and 'duplicate for transport'. iv) Some raw materials were received vide invoice No. 758 dated 20th February 2011

Duty paid was Rs. 50,750. The invoice was marked 'duplicate for transport'. At 4 p.m., an urgent dispatch order was received to dispatch the maximum possible quantity of the finished product X to Chennai. The Assessable Value of X is Rs. 500 per kg. and duty is payable at 10%. Adequate stock of X is lying with Camac Corporation. What is the maximum quantity of X which can be dispatched on 15th March,2011

Solution							
Date	Particulars	Cenvat Available (Dr)		Cenvat Utilised (Cr)		Balance	
		Duty	EC 3%	Duty	EC 3%	Duty	EC 3%
	Opening Balance	21200	636			21200	636
	Machine	12500	375			33700	1011
	Reversal of credit						
	40% of 20000			8000	240	25700	771
04.07.	Inputs received	22700	681			48400	1452
	Inputs received (FSD Invoice	50750	1523			99150	2975

Balance available in Cenvat credit Register = 99150
 Less: Opening Balance of PLA (duty payable = 50750
 Net Cenvat Available =48400

Balance available in cenvat register Rs. 48400

Assessable equal vent to duty of Rs.48400 @ 10% = 48400 x 10 =

4,84,000

Maximum quantity can be cleared = 484000/500

968 Units

Note:

Credit can be availed even machinery is not installed, receipt of machinery to factory is a precondition to avail credit

Problem No 23

An assessee was availing SSI exemption from 1-4-2010. He crossed turnover Rs. 150 lakhs on 15-11-2010 and started payment of excise duty. He had received machinery on 10-11-2010 one which excise duty paid was Rs. 3,20,000. He intends to avail Cenvat credit of this duty. Can he do so?

Solution

Assessee can avail cenvat credit on Capital goods full in the first year itself immediately after receiving machinery in to factory on 10.11.2010. The credit can be utilized after crossing the limit of Rs. 150 lakhs on 15.11.2010

Problem No 24

500 pieces of inputs were received. Duty paid on these goods was Rs. 2,500. These were issued to production. While on production line, a fire broke out and 200 pieces of inputs lying on the shop floor were destroyed. 1000 litres were received on which duty paid was Rs. 18,000. These were issued to production. Out of these, 940 litres of final products were manufactured. 60 litres of inputs were lost in process

Discuss eligibility of Cenvat credit in the above cases

Solution

Credit can be availed on duty paid on inputs destroyed during the process

Credit can be availed on duty paid on inputs lost during the process credit is available on 1000 ltrs duty paid amount. Rs.18000)

Hence in the both cases credit can be availed.

Problem No 25

Examine the validity of the following statements:

- (i) Purchased a plant for Rs. 1,16,480 cum-duty price. Excise duty rate 16.48% on 12.12.2008 and received the plant into the factory on 5.4.2009 Cenvat allowed will be only Rs. 8,240 for the year ended on 31.3.2009.
- (ii) An assessee purchased inputs weighting 400 tons. The duty paid on inputs was Rs. 4,000. During transit, 20 tons of the inputs were destroyed. The destroyed quantity of inputs does not qualify to be 'inputs' within the meaning of Cenvat Credit Rules, 2004.

Solution

Assessee can avail cenvat credit on Capital goods 50% in the Current year. And balance 50% in subsequent year. The capital goods not received in the year 2008-09 and received only on 05.04.2009 Hence credit can be availed 50% Rs. 8240 in the year 2009-10 and 50% Rs.8240 in the year 2010-11

Credit can be availed on duty paid on inputs lost during the process

Problem No 26

A Small Scale Industrial unit (SSI) is required to pay the following central excise duties by January 15, 2009 for clearances effected from its factory in respect of final products manufactured during the month of December, 2008:

Basic Excise Duty (B.E.D.): Rs.36,000

Special Excise Duty (S.E.D.): Rs.18,000

National Calamity Contingent Duty (N.C.C.D.): Rs.1,000

Education Cess (E.C.): 3 % of B.E.D. + S.E.D. + N.C.C.D.

Balances available as credit at the beginning of the month i.e. December, 2008 were as follows:

B.E.D. Rs.24,000, N.C.C.D. Rs.2,000, E.C. Rs.790.

No inputs were received during the month. However, certain inputs were received on January 1, 2009 on which total duty paid by the suppliers of inputs was as follows :

B.E.D. Rs.16000, E.C. Rs.480

Excise duty paid on capital goods received during the month was as follows:

B.E.D. Rs.40,000, E.C. Rs.1200

For the month of December, 2008 you are required to determine : (i)

the credit available for utilization;

(ii) the permissible extent to which such available credit may be utilised against payment of B.E.D.,

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S.E.D., N.C.C.D., and E.C.; and

(iii) The B.E.D., S.E.D., and E.C. payable through account current (P.L.A.).

Solution

Duty payable on Final Product				
	Duty	EC 3%	Duty	E C 3%
Basic Excise duty			36000	1080
Special excise duty			18000	540
N C C D			1000	30
Total payable (A)			55000	1650
Cenvat credit available				
Basic Excise duty	24000	720		
NCCD	1000	30		
BED on Capital goods (50%)	20000	600		
Out of Rs.40000 to the extent of 20000				
Total Cenvat credit available (B)	45000	1350		
Less: Cenvat Credit			45000	1350
Duty payable through P L A(A-B)			10000	300
Balance of Credit of duties				
NCCD	1000			
B E D and SED	Nil			
When duty payable for the month of Dec 2008 Credit is available only up to inputs/ Capital goods Received up to the month end.				
Credit of NCCD can utilised only for payment of NCCD				

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Problem No 27

An assessee purchased various inputs and credit of duty on inputs was taken up instantly. Later on, some inputs were pilfered from the store room of the assessee. The proper officer raised a demand under section 11A of the Central Excise Act, 1944, and as per CENVAT Credit Rules, 2004, for recovery of CENVAT credit wrongly taken on inputs lost from store room. The assessee has claimed that one to one co-relation is not required for CENVAT credit and as he has suffered duty, CENVAT credit is available to him. Examine the case in the light of central excise provisions

Solution

As per Cenvat credit rules credit on inputs available only when inputs used in or in relation to manufacture of final product.

No credit when inputs pilfered before issue for production. Credit can be availed if inputs Destroyed during the process.

Hence the contention of Assessee is not tenable; CEO is justified in rising demand for cenvat availed.

Problem No 28

An assessee cleared various manufactured final products during June 2009. The duty payable for June 2009 on his final products was as follows – Basic – Rs. 2,00,000 Education Cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows – Basic duty – Rs. 50,000, Education Cess – Rs. 1,000, SAH education Cess Rs. 500. Excise duty paid on capital goods received during the month was as follows – Basic duty – Rs.

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12,000. Education Cess - Rs. 240. SAH education cess - Rs. 120. Service tax paid on input services was as follows – Service Tax – Rs. 10,000. Education cess – Rs. 200 SAH Education Cess - Rs. 100. How much duty the assessee will be required to pay by GAR-7 challan for the month of June 2009, if assessee had no opening balance in his PLA account? What is last date for payment?

Ans

	Basic Duty Rs	Education Cess Rs	SAH Education Cess
(A) Duty payable	2,00,000	4,000	2,000
(B) Cenvat Credit	66,000	1,320	660
Net amount payable (A-B)	1,34,000	2,680	1,340

Last date for payment is 5th July, 2009

Problem No 29

Explain eligibility of Cenvat Credit in each of the following transactions occurred in a month.

- a. A tempo containing raw materials was received. The raw materials were purchased through dealer. The dealer was registered with Central Excise. The dealer's Invoice has certified in the invoice that the duty paid by manufacturer was Rs. 13,200/-. The invoice was marked as 'First Stage Dealer'. The Invoice was marked 'ORIGINAL FOR BUYER'.
- b. A truck containing machinery falling under chapter heading 84 was received. Accompanying invoice marked 'DUPLICATE FOR TRANSPORT' indicated that duty paid was Rs. 7,600.
- c. Some inputs were directly sent on 1st of the month for job work to the factory of job worker, from place of the input supplier, without bringing them in factory. As per the invoice of supplier of inputs, duty paid on inputs was Rs. 5,000. Out of these inputs, 85% were received on 14th of the month, after carrying out job work.
- d. Some spare parts of machinery falling under chapter 84 were received. The invoice indicated that the duty paid was Rs. 1,600/-. The Invoice was marked 'DUPLICATE FOR TRANSPORT'.
- e. Some raw materials were received. Accompanying Invoice indicated that the duty paid was Rs. 4,500/-. The Invoice was marked 'DUPLICATE FOR TRANSPORT'. The Invoice did not contain time of removal from the factory.
- f. Some raw material was received. The Invoice was in the name of dealer from whom the goods were purchased. However, name of user-manufacturer was indicated as 'Consignee'. The invoice No. 543 dated 7th September 2005 was marked 'ORIGINAL FOR BUYER' and excise duty paid was Rs. 15,000.
- g. An imported consignment of raw materials was received vide Bill of Entry showing payment of following duties - Basic customs duty - Rs. 1,000, CVD - Rs. 1,760, Education Cess of Excise - Rs. 35.20, SAH Education Cess of excise - Rs. 17.60, Education Cess of Customs - 56.26, SAH education cess of customs - Rs. 28.13. Special CVD @ 4% - Rs. 515.89.
- h. A consignment of 1,000 Kg of inputs was received. The excise duty paid was per invoice was Rs. 10,000. While the inputs were being unloaded, 50 Kgs were damaged and it was found that these were not usable.
- i. Some inputs for final product were received. These were accompanied by a certified Xerox copy of Invoice No. 286 dated 15th January, 2006 indicating that excise duty of Rs. 6,400 has been paid on the inputs. The original or duplicate copy of Invoice was not traceable.
- j. 500 pieces of inputs were received. Duty paid on these goods was Rs. 2,500. These were issued to production. While on production line, a fire broke out and 200 pieces of inputs lying on shop floor were destroyed.
- k. 1000 litres of inputs were received on which duty paid was Rs. 10,000. Out of these, 950 litres of final products were manufactured. 50 litres of inputs were lost in process
- l. Some inputs were received on which duty paid was Rs. 20,000. Assessee used 60% of the inputs but balance 40% could not be used due to change in design. He made provision for 'obsolete goods written off' in his books of account. However, the inputs were still in his store room.
- m. Cenvat credit of Rs. 10,000 was taken on some inputs. These became obsolete and were sold

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as scrap for Rs. 15,000. Excise duty payable on scrap is 16.48%.

- n. 1,000 pieces of input 'I' were sent outside for job work on 10th. When the inputs were received, credit of duty of Rs. 15,000 was taken on those inputs.

Answers

- a. Cenvat credit of Rs. 13,200 is available.
- b. Cenvat credit of Rs. 3,800 (50%) is available.
- c. Credit can be taken on the Quantity received, if the qty received is along with duty paying document
- d. Cenvat credit of Rs. 800 is available (since spare parts are 'capital goods')
- e. If there is any defect in invoice, Cenvat credit can be availed only with permission of Assistant/ Deputy Commissioner. Hence, application should be made.
- f. Cenvat credit of Rs. 15,000 is available
- g. Credit available - CVD - Rs. 1,760, Education Cess of Excise - Rs. 35.20, SAH Education Cess of excise - Rs. 17.60, Special CVD @ 4% - Rs. 515.89
- h. Inputs lost before issuing to production cannot be termed as 'used in or in relation to manufacture'. Cenvat credit of Rs. 9,500 can be availed. Rs.500 No Credit
- i. Cenvat credit cannot be taken on basis of certified Xerox copy. If assessee can procure triplicate copy (available with supplier), he can avail Cenvat credit.
- j. If inputs are lost during manufacturing process, it is 'used in or in relation to manufacture'. Hence a ny reversal of Cenvat credit is not required. Full credit is available on Rs.2500
- k. Same as j
- l. He will have to reverse the Cenvat credit of Rs.8,000. If at a later date, he decides to use the material, he can take credit again.
- m. Assessee will have to reverse Cenvat credit of Rs. 10,000.
- n. No duty or amount is payable when inputs are sent outside for job work.

Problem No 30

A manufacturer 'M' brings some inputs 'I' of value at Rs. 1 lakh on which duty of Rs. 16,000 has been paid @ 16%. As soon as he receives the inputs, he availed CENVAT credit. Subsequently, since he did not require the input, he sold the goods @ Rs. 1,20,000. What is the duty payable by 'M' if (a) On the date of clearance, duty rate on 'I' was 20% (b) On the date of clearance, duty rate on 'I' was 10%.

Answer : No 'duty' is payable. However, in case (a) as well as (b), an 'amount' of Rs. 16,000 is payable. Buyer can avail Cenvat credit of the 'amount'.

Problem No 31

An assessee had procured some inputs in May 2009 for Rs. 20 lakhs. Duty paid on the inputs was Rs. 3,20,000 (@ 16%) plus education cess of Rs. 6,400. He was unable to use the inputs in view of change in market conditions. He sold the inputs in March 2010 for Rs. 16,00,000. How much 'duty' or 'amount' is payable while clearing the inputs? (ICWA Inter June 2004).

Answer - As per Cenvat Credit Rule 3(5), an 'amount' equal to Cenvat credit availed is payable if inputs are removed 'as such'. Hence, the assessee is required to pay an 'amount' of Rs. 3,26,400 while clearing the inputs 'as such'.

Problem No 32

A manufacturer manufactures 1,000 Nos. of product 'P', Assessable Value of which is Rs. 2,000 per piece. Duty payable is 20%. Duty paid on raw materials is Rs. 2,00,000. The manufacturer sells 700 pieces in India and 300 pieces are exported. What is CENVAT available and what is the duty payable through PLA ?

Answer : The duty payable is Rs. 400 per piece and hence, duty payable on 700 pieces is Rs. 2,80,000. The manufacturer can avail CENVAT credit of Rs. 2,00,000 and will have to pay duty

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of Rs. 80,000 by cash through PLA.

Problems in SSI Units

Problem No 1

The value of excisable goods viz. Iron and Steel articles manufactured by M/s. Alpha Ltd., was Rs. 170 lakhs during the financial year 2009-10. The goods attract 16% ad valorem duty. Determine the excise duty liability when the assessee opts for 'CENVAT Credit' and 'opts for not to avail CENVAT Credit' under SSI exemption notifications respectively.

Solution		
When Opts for Cenvat Credit		
Full duty payable on whole turnover		
Excise duty @16% on 170 lakhs		27,20,000
Education Cess 2%		54,400
Higher and Secondary education cess 1%		27,200
Total Duty payable		28,01,600
When not Opts for Cenvat credit		
No duty on first 150 lakhs and balance 20 lakhs normal duty		
Excise duty on 20 laks @ 16%		3,20,000
Education Cess 2%		6,400
Higher and Secondary education cess 1%		3,200
Total Duty payable		3,29,600

Problem No2

Briefly explain whether the following units are eligible for the benefits under Notification No. 8/2003-CE dated 1.3.2003 during the financial year 2006-07 as Small Scale Industry:

(i) ABC Ltd. had registered a turnover for the purposes of the above Notification of Rs. 3.2 crores in the financial year 2007-2008. Due to recession in the industry, they anticipate a fall in turnover of 20% in 2008-09, when compared to the year 2007-08

(ii) XYZ Ltd. has started its manufacturing operations in the year 2006-07 with an investment of Rs. 3.5 crores in plant and machinery and hope to achieve a sales turnover of Rs. 2 crores in 2007-08.

Solution

in both the cases previous turnover is less than 400 lakhs

hence ssl benefit is available in the current year

Problem No 3

A SSI unit has effected clearances of goods of the value of Rs. 475 lacs during the Financial Year 2009-10. The said clearances include the following: (i) Clearance of excisable goods without payment of excise duty to a 100% EOU unit. Rs. 120 lacs (ii) Job work in terms of notification no : 214/86 CE, which is exempt from duty – Rs. 75 lacs (iii) Export to Nepal and Bhutan – Rs. 50 lacs (iv) Goods manufactured in rural area with the brand name of the others – Rs. 90 lacs. Examine with reference to the notification governing SSI, under the Central Excise Act whether the benefit of exemption would be available to the unit.

Solution

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Total Value of Clearance		475	lacs
Less: Exclusions			
Clearances to 100% E O U	120		
Job Work 214/86	75	195	lacs
Clearances for SSI benefit		280	lacs

Turnover is previous year 2009-10 is less than 400 lacs hence SSI benefit was available

Note: The following are includable in turnover limits

1. Exports to Nepal and Bhutan's
2. Goods manufactured in rural are under brand name of others (however no duty payable)

Problem No 4

M/s. RPL has three units situated in Bangalore, Delhi and Pune. The total clearances from all these Small Scale units of excisable goods were Rs.450 lakhs during the financial year, 2009-10. However, the value of individual clearances of excisable goods from each of the said units was : Bangalore Unit Rs.250 lakhs; Delhi Unit Rs.100 lakhs; and Pune Unit Rs.100 lakhs. Discuss briefly with reference to the Notifications governing small scale industrial undertakings under the Central Excise Act, 1944 whether the benefit of exemption would be available to M/s. RPL for the financial year, 2009-2010.

Solution

Value of the units of R P L Limited is to be clubbed ie
 $250+100+100=450$ lakhs. The Turnover is exceeding 400 lakhs
 hence ssi benefit not available to RPL Limited

Problem No 5

Turnover of SSI for the financial year 2009-10 was as follows. (a)

- Clearance made under the own brand name Rs. 110 lakhs
 - (b) Clearance made under the other brand name on payment of full duty Rs. 180 lakhs
 - (c) Waste and Scrap Rs. 10 lakhs
 - (d) Goods exempt from duty Rs. 225 lakhs
 - (e) Job work under notification No 214/86 Job Worker Charges Rs. 30 lakhs, Cost of material Rs. 120 lakhs
 - (f) Exports Rs. 90 lakhs
- Can unit avail SSI Benefit

Solution

Calculation of turnover limit for SSI Benefit		
Clearance under own brand name	110	lacs
Waste and scrap	10	lacs
Turnover for SSI Limit	120	lacs

Note:

It is assumed exports are other than to Nepal and Bhutan
 Job work, goods exempt from duty and Clearance made on payment of duty under brand name of others not includible

Problem No 6

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ABC and Co. is manufacturing the products specified below from excise duty paid high-density polyethylene granules. Part of the goods is captive consumed and other part of the goods cleared for home consumption in India and for export to Bhutan and United Kingdom.

The effective rate of duty is Product 'A' - 25%. Product 'B' - 25%. Product 'C' (waste & scrap) - Exempt from duty. The value of clearances during the preceding year 2009-10 and the current period 2010-11 are as follows -

Value of clearances in 2009-10 Rs in lakhs

S No	Particulars of Turnover	Product A	Product B	Product C
1	Clearance for home consumption	130	80	40
2	Clearance for captive Consumption in the manufacture of excisable goods	135	Nil	20
3	Export to Bhutan	35	50	Nil
4	Export to UK under bond	100	200	Nil

Value of clearances in 2010-11 Rs in lakhs

S No	Particulars of Turnover	Product A	Product B	Product C
1	Clearance for home consumption	50	80	50
2	Clearance for captive Consumption in the manufacture of excisable goods	40	Nil	Nil
3	Export to Bhutan	Nil	50	Nil
4	Export to UK under bond	50	100	Nil

Examine Whether SSI benefit available for the year 08-09 and 09-10

Solution

Calculation of turnover limit for SSI Benefit				Rs in lakhs	2009-10
S No	Particulars	Product A	Product B	Product C	Total
1	Clearance for Home Consumption	130	80	---	210
2	Clearance for Captive Consumption	---	---	20	20
3	Export to Bhutan	35	50	---	85
4	Export to UK under Bond	---	---	---	---
	Total	165	130	20	315

				Rs in lakhs	2010-11
S No	Particulars	Product A	Product B	Product C	Total
1	Clearance for Home Consumption	50	80	---	130
2	Clearance for Captive Consumption	---	---	---	---
3	Export to Bhutan	---	50	---	50
4	Export to UK under Bond	---	---	---	---
	Total	50	130	0	180

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Since the turnover for the both the years is less than 400 lakhs SSI benefit is availab
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Problem No 7

ALtd. is a small-scale industrial unit manufacturing a product X. The Annual report for the year 2008-09 of the unit shows a gross sale turnover of Rs. 2,41,40,000. The product attracted an excise duty rate of 16% as BED and Sales Tax 10%. Determine the duty liability under Notification Nos. 8/2003 meant for SSI units what will be your answer if Turnover includes Central Excise and Sales tax

Solution

Gross Turnover		2,41,40,000
First 150 lakhs no duty balance		
91.40 lakhs Excise duty @ 16%		14,62,400
Education Cess 2%		29,248
Higher and Secondary education cess 1%		14,624
Total Duty payable		15,06,272

If the turnover includes Excise and Sales tax 10% the duty payable will be

Let the A V will be	(A)	X
Excise duty @ 16.48% on (X-15000000)		
.1648(X-15000000)	(B)	.1648 X -24,72,000
AV including Excise duty will be		
(x + 0.1648 x -2472000	(A + B) =C	1.1648x -24,72,000
Sales tax at 10% on the above		
0.1*(1.1648*-2472000)	10% on C= D	.11648x -2,47,200
Total AV including ED and ST	(C + D)	1.28128 X -27,19,200
1.28128 x -2719200 =24140000		
1.28128 x = 26859200		
x = 26859200/1.28128 = 20962787		
Assessable Value=		2,09,62,787
Excise duty on 150 lakhs nil on balance Rs. 5962787-16%		9,54,046
Education Cess 2%		19,081
Higher and Secondary education cess 1%		9,540
Total Duty payable		9,82,667

Problem No 8

A small scale manufacturer having a SSI Unit has achieved turnover of Rs. 2.02 crores during the year ended 31.03.2011. Normal duty payable on the product is 16%. Find the total excise duty payable by the manufacturer during the year: (i) if the unit has availed CENVAT Credit (ii) if the unit has not availed CENVAT Credit (The turnover mentioned above is without taxes and duties)

Solution

When Opts for Cenvat Credit		
Full duty payable on whole turnover		
Excise duty @16% on 202 lakhs		32,32,000
Education Cess 2%		64,640

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Higher and Secondary education cess 1%		32,320
Total Duty payable		33,28,960

When not Opts for Cenvat credit		
No duty on first 150 lakhs and balance 52 lakhs normal duty		
Excise duty on 20 laks @ 16%		8,32,000
Education Cess 2%		16,640
Higher and Secondary education cess 1%		8,320
Total Duty payable		8,56,960

Problem No 9

Viswas your old class mate is manufacturing a product in two units', turnover of unit I and Unit II is Rs. 245 lakhs and 280 lakhs during 2010-11. Advice whether SSI benefit available (**Ans No**)

Solution

Value of the unit I and II is to be clubbed ie
 145+185=325 lakhs. The Turnover is not exceeding 400 lakhs
 hence ssi benefit is available to Viswas

Problem No 10

The clearances of Akash Electric Co. Ltd. were Rs.450 lakh during the financial year 2010-11. The following are included in the said clearances:

Rs.

(i) Exports to Nepal and Bhutan	20,00,000
(ii) Exports to countries other than Nepal and Bhutan	1,00,00,000
(iii) Job work exempted from duty under Notification No.214/86	90,00,000
(iv) Sales to 100% EOU against Form CT-3	50,00,000

The company is of the view that it is not liable to pay any duty on its clearances in the financial year 2009-10 as per Notification No.8/2003 dated 1st March, 2003. Do you agree with the company? Give reasons for your answer. CS final June 2006

Solution

Total Value of Clearance		450	lacs
Less: Exclusions			
Export to other Countries	100		
Clearances to 100% E O U	50		
Job Work 214/86	90	240	lacs
Clearances for SSI benefit		210	lacs

Problem No 11

An SSI unit, which is a partnership firm, has achieved turnover of Rs. 140 lakhs in 2010-11 It is receiving good orders and its turnover may cross Rs. 150 lakhs in current year. It is planning to start another unit so that SSI exemption can be availed for both the units. The firm approaches you for advice. Advise them the legal position with reference to clubbing provisions of the SSI Central Excise Act

Answer:

In case of SSI Clubbing provisions will not be applicable in case as firms having common partners. However if there is substantial funding between two firms the turnover of the both the firms will be clubbed. Clubbing of turnover will also applicable, the other unit is only a dummy or bogus unit.

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In the given case if two firms are independent and firms have separate registration with regard to excise, income tax. Sales tax, the turnover of two firms will not be clubbed for duty payment purpose.

Problem No 12

A small scale manufacturer having a SSI Unit has achieved turnover of Rs. 2.02 crores during the year ended 31.03.2011. Normal duty payable on the product is 16%. Find the total excise duty payable by the manufacturer during the year: (i) if the unit has availed CENVAT Credit (ii) if the unit has not availed CENVAT Credit (The turnover mentioned above is without taxes and duties)

Solution

When Opts for Cenvat Credit		
Full duty payable on whole turnover		
Excise duty @16% on 202 lakhs		32,32,000
Education Cess 2%		64,640
Higher and Secondary education cess 1%		32,320
Total Duty payable		33,28,960

When not Opts for Cenvat credit		
No duty on first 150 lakhs and balance 52 lakhs normal duty		
Excise duty on 20 laks @ 16%		8,32,000
Education Cess 2%		16,640
Higher and Secondary education cess 1%		8,320
Total Duty payable		8,56,960

Problem No 13

Viswas your old class mate is manufacturing a product in two units', turnover of unit I and Unit II is Rs. 245 lakhs and 280 lakhs during 2010-11. Advice whether SSI benefit available **(Ans No)**

Solution

Value of the unit I and II is to be clubbed ie

$145+185=325$ lakhs. The Turnover is not exceeding 400 lakhs

hence ssi benefit is available to Viswas

Problem No 14

The clearances of Akash Electric Co. Ltd. were Rs.450 lakh during the financial year 2010-11. The following are included in the said clearances:

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Rs.

(i) Exports to Nepal and Bhutan	20,00,000
(ii) Exports to countries other than Nepal and Bhutan	1,00,00,000
(iii) Job work exempted from duty	
under Notification No.214/86	90,00,000
(iv) Sales to 100% EOU against Form CT-3	50,00,000

The company is of the view that it is not liable to pay any duty on its clearances in the financial year 2008-09 as per Notification No.8/2003 dated 1st March, 2003. Do you agree with the company? Give reasons for your answer. CS final June 2006

Solution

Total Value of Clearance		450	lacs
Less: Exclusions			
Export to other Countries	100		
Clearances to 100% E O U	50		
Job Work 214/86	90	240	lacs
Clearances for SSI benefit		210	lacs

Problem No 15

X Ltd. is having a manufacturing unit at Faridabad. In the financial year 2008-09 the value of total clearances from the unit was Rs. 850 lakhs as per the following details: (i) Exports to USA : Rs. 100 lakhs; to Nepal: Rs. 50 Lakhs (ii) Clearances to a 100% export oriented unit : Rs. 75 lakhs (iii) Clearances as loan licensee of goods carrying the brand name of another upon full payment of duty: Rs. 200 lakhs (iv) Clearances exempted *vide* Notification No. 214/86-C.E. dated 25-3-86 : Rs. 125 lakhs. (v) Balance clearances of goods in the normal course: Rs. 300 lakhs. You are required to state with reasons whether the unit is entitled to the benefit of exemption under Notification No.8/2003-C.E.dated 1-3-2003 as amended for the financial year 2009-10 (CA Final New Syllabus November 2010)

Answer – Following is includible for calculating limit of Rs 400 lakhs – (i) Exports to Nepal – Rs 50 lakhs (ii) Normal clearances Rs 300 lakhs. Total Rs 350 lakhs. Since the turnover is less than Rs 400 lakhs, X Ltd. is entitled to SSI concession in 2009-10.

Problem No16

- Y & Co. is a Small Scale unit located in a rural area and is availing the benefit of Small Scale exemption under Notification No. 8/2003-C.E. in the year 2007-08. Determine the value of the first clearance and duty liability on the basis of data given below: (1) Total value of clearances of goods with own brand name – Rs 75,00,000 (2) Total value of clearances of goods with brand name of other parties – Rs 90,00,000 (3) Clearances of goods which are totally exempt under another notification (other than an exemption based

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on quantity or value of clearances) – Rs 35,00,000. Normal rate of Excise duty—16%. Education cess @ 3% of Excise duty. Calculations should be supported with appropriate notes. It may be assumed that the unit is eligible for exemption under Notification No. 8/2003 (CA Final New Syllabus, June 2009).

Answer

While calculating SSI exemption limit of Rs 150 lakhs, goods cleared under brand name in rural area are to be included, since goods manufactured in rural area with brand name of others are entitled for SSI exemption. However, goods which are exempted from duty under notification other than exemption based on quantity or value of clearances is not required to be considered. Thus, for purpose of SSI exemption, his value of turnover is Rs 165 lakhs. His first turnover of Rs 150 lakhs is exempt. Thus, he is liable to pay service tax on Rs 15 lakhs. This will be inclusive of excise duty @ 16.48%.

Hence, assessable value is $15,00,000 \times 100/116.48$ i.e. Rs 12,87,774.73. Excise duty @ 16.48% is Rs 2,12,225.27 [check that total is Rs 15 lakhs].

[Note – Current excise duty rate is 10.3%. However, duty is calculated @ 16.48% as per the rate given in the Problem No.].

Problem No 17

- S & Co., a small scale unit, had cleared goods of the value of Rs. 750 lakhs during the financial year 2007-08. Records show that the following clearances were included in the total turnover of Rs. 750 lakhs : (i) Total exports during the year – 200 lakhs (30% of total exports were to Nepal). (ii) Job-work in terms of Notification No. 214/86 – 50 lakhs (iii) Job-work in terms of Notification No.83/94-E – 50 lakhs (iv) Clearances of excisable goods without payment of duty to a 100% E.O.U.- 20 lakhs (v) Goods manufactured in rural area with others brand - 100 lakhs. Find out whether the unit is eligible to avail concession for the year 2008-09, under Notification No. 8/2003-CE dated 1st March, 2003, giving reasons for your answer (CA Final June 2009).

Answer – Turnover not to be considered for Rs 400 lakhs – (i) Rs 140 lakhs (ii) Rs 50 lakhs (iii) Rs 50 lakhs (iv) Rs 20 lakhs. Excluding this turnover, his turnover during 2007-08 was Rs 490 lakhs. Since it is more than Rs 400 lakhs, he is not eligible for SSI exemption in 2008-09.

Problem No. 18

A Small Scale Unit (SSI) has effected clearances of goods of the value of Rs. 460 lakhs during the financial year 2010-11. The said clearances include the following: (i) Clearance of excisable goods without payment of Excise duty to a 100% EOU unit : Rs. 40 lakhs. (ii) Export to Nepal and Bhutan : Rs. 50 lakhs. (iii) Job-work in terms of Notification No. 214/86 C.E., which is exempt from duty : Rs. 60 lakhs. (iv) Goods manufactured in rural area with the brand name of others: Rs. 70 lakhs. Write a brief note with reference to the Notifications governing SSI under the Central Excise Act whether the benefit of exemption would be available to the unit for the financial year 2007-08 (CA Final May 2004 adopted)

An SSI unit will be entitled to SSI exemption in 2007-08 only if its turnover in 2006-07 was less than 400 lakhs. While calculating the turnover of Rs 400 lakhs, following are not required to be considered –

- (a) Deemed exports i.e. supplies to EOU

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- (b) Job work that amounts to 'manufacture' done under notifications No. 214/86-CE, 83/94-CE and 84/94-CE.

Exports to Nepal and Bhutan cannot be excluded, i.e. export turnover to Nepal and Bhutan will have to be added while calculating limit of Rs 150 and 400 lakhs. It will be treated as 'clearance for home consumption', even if actually it is 'export'. The export to Nepal and Bhutan will be includible *even if* such export is against free foreign exchange.

If goods are manufactured in rural area with other's brand name, these are exempt upto Rs 150 lakhs. In such case, that turnover which is cleared without payment of duty will have to be ***included*** for calculating exemption limit of Rs 400 lakhs.

Thus, turnover in respect of sale to EOU (Rs 40 lakhs) and job work under notification No. 214/86-CE (Rs 60 lakhs) is required to be excluded for purpose of SSI exemption limit of Rs 400 lakhs. Turnover of SSI excluding these sales is Rs 360 lakhs (460-40-60 lakhs). Hence, the SSI unit will be entitled to exemption in 2007-08 upto first turnover of Rs 150 lakhs.

Chapter – II Customs

As amended by FA 2010 and included notifications and circulars
up to 31.12.2010

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Indirect taxes Customs Simplified

Chapter 2 Customs

Customs Basics

- Customs duty is an indirect tax and it is levied on import into India and export out of India, as per entry list No. 83 List I of Indian Constitution.

Customs is governed by

- Customs Act
- Customs Tariff Act
- Customs Rules
- Customs Notifications and Circulars and
- Customs Manual.

Purpose of Customs Act, 1962 is

- to Regulate imports and exports
- to Protect Indian industry from dumping
- To collect revenue of customs duty.

Customs Tariff Act, 1975

- Consists of Two schedules
- Schedule 1 gives classification and rate of duties for imports,
- Schedule 2 gives classification and rates of duties for exports.
- In addition, the CTA makes certain provisions for levy of duties like additional duty (CVD), preferential duty, anti-dumping duty, protective duties etc.

Rules under Customs Act –

- Section 156 of Customs Act, 1962 provides C.G has been empowered to make rules, consistent with provisions of the Act, to carry out the purposes of the Act.

Major rules among those are

- Customs Valuation Rules, 1988:
- Customs and Central Excise Duties Drawback Rules, 1995:
- Baggage Rules, 1998:
- Regulations under Customs Act –
- Section 157 of Customs Act, 1962, provides Board (CBE&C) has been empowered to make regulations,

Major Regulations among these are:

- Project Import Regulations, 1986:
- Customs House Agents Licensing Regulations, 1984:
- Import export thorough courier regulations

Customs Manual, 2001

- The Manual gives an overview of Customs Law and Procedures.
- Instructions in Manual should be followed.

Public Notices

- Commissioners of Customs issue Public Notices.
- Public notices for local requirements are also issued.

Notifications under Customs Act

Central Government has got power to issue notifications. Example

- Section 25(1) to grant partial or full exemption from duty
- Section 11 to prohibit import or export of goods.

Board Circulars–

- CBE&C is empowered u/s 151A of customs Act to issue circulars, CBE&C issues circulars giving various instructions / prescribing various procedures etc.
- These instructions should be followed.

Similarities in excise and customs

- Both are central Acts, Derive from the constitution

Indirect taxes Customs Simplified

- Both are performed under C B E C
- Organizational hierarchy is same from top to AC/DC
- Both tariffs are based on HSN and Classification rules are same.
- Principle of determining Assessable value (Transaction value) are same
- Provisions of Refunds, demand, exemption from duty, search, confiscation, authority for advance ruling, settlement commission, Appeals are same

Important Definitions

Export: section 2(18),

- Taking out of India to a place outside India.

Import: section 2(23)

- Bringing into India from a place outside India.

India: Section 2(27)

- 'India' as inclusive of territorial waters.

Territorial Waters of India

- A portion of sea, which is adjacent to the shores of a country, 12 nautical miles from the base line. (1 nautical mile = 1.853 Kms)
- 'Import' is complete as soon as goods enter territorial water. Similarly, export is complete only when goods cross territorial waters.

Indian Customs Waters

- Area beyond 12 nautical miles and up to 24 nautical miles from base line of India'.
- The C G has got powers to take measures in this area for security of India and immigration,

Significance and importance of 'Indian Customs Waters'

- Customs officer has power to arrest a person in India or within Indian customs waters.
- To stop and search any vessel in India or within the Indian Customs waters.
- If such vessel does not stop, it can be/confiscated/ fired upon.

Exclusive economic zone'

- Area extends to 200 nautical miles from the base line.
- In this zone, the coastal State has exclusive rights to exploit it for economic purposes like constructing artificial islands (for oil exploration, power generation etc.),
- fishing, mineral resources and scientific research
- Beyond 200 nautical miles, the area is 'High Seas', where all countries have equal rights.
- These high seas are reserved for peaceful purposes.

Goods' Sec 2(22)

'Goods' includes

- vessels,
- aircrafts
- vehicles
- Stores,
- baggage,
- currency
- negotiable instruments and
- Any other kind of movable property.
- The duty is payable on goods belonging to government also

Imported Goods - Section 2(25)

- any goods brought in India from a place outside India,
- And does not include goods which have been cleared for home consumption.

Export Goods –Sec 2(19)

- Any goods, which are to be taken out of India to a place outside India. &
- Goods brought near customs area for export purpose.

Dutiable Goods - Section 2(14)

Indirect taxes Customs Simplified

- Any goods which are chargeable to duty and on which duty has not been paid.
- Goods continue to be 'dutiabale' till they are not cleared from the port.
- Once goods are assessed at 'Nil' rate of duty, they no more remain 'dutiabale goods'.

Foreign-going vessel or aircraft

- Vessel/Aircraft engaged in the carriage of goods or passengers between any port or airport in India and outside India, whether touching any intermediate port or airport in India or not, and includes—
- Any naval vessel of a foreign Government taking part in any naval exercises;
- Any vessel engaged in fishing/ other operations outside the territorial waters of India;
- Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

Nature of Customs Duty and taxable event

Charging section, Sec.12

- Duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', on goods imported into, or exported from, India.
Thus Goods become liable to import duty or export duty when there is 'import into, or export from India'.

Taxable event for imports

- Import is completed only when goods cross the customs barrier.
- The taxable event is the day of crossing of customs barrier
- The date when goods landed in India or had entered territorial waters is not relevant for taxability
- The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed.
- This view was held in Kiran Spinning Mills v. CC 1999 (SC) / Garden Silk Mills Ltd. v. UOI 1999 (SC)

Taxable event for exports

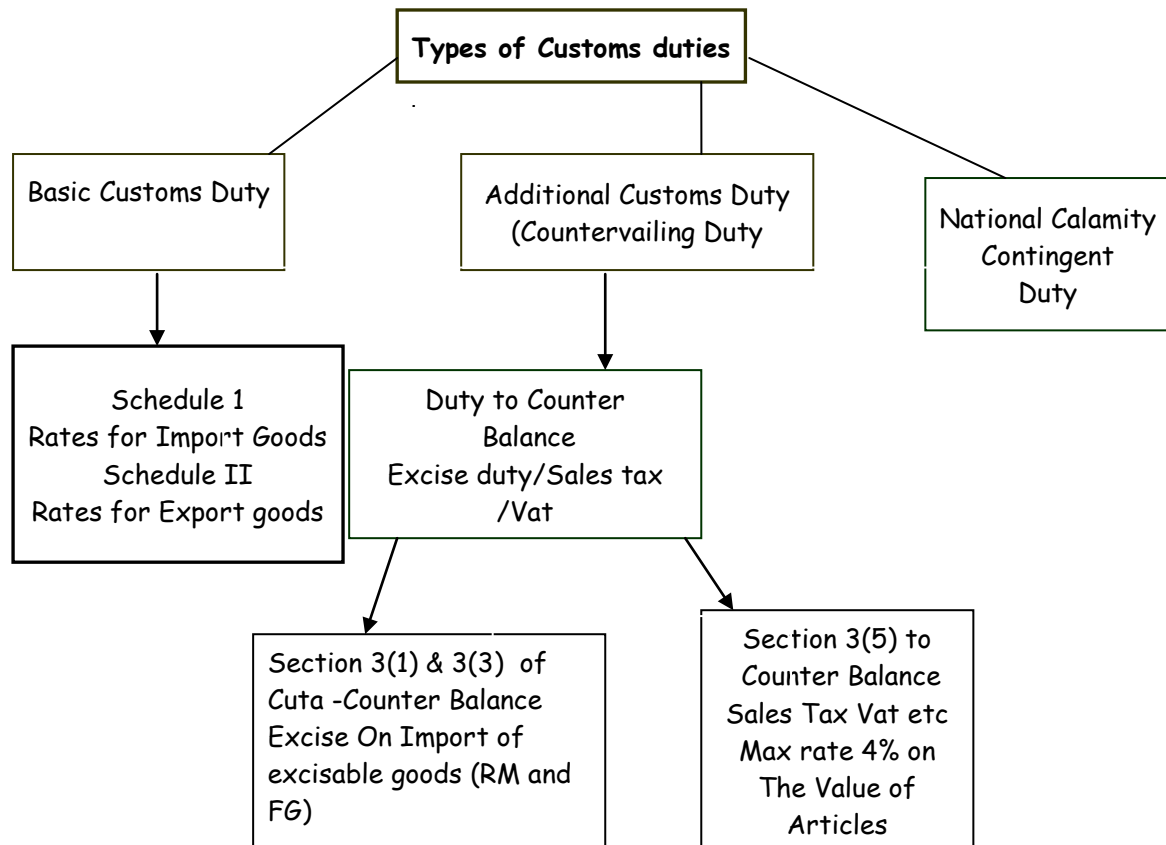
- export commences when goods cross customs barrier,
- export is completed only when it crosses territorial waters
- Taxable event' occurs only when goods cross territorial waters.

Taxable event in case of ware house goods

- In case of warehoused goods, the goods continue to be in customs bond.
- 'Import' takes place only when goods are cleared from the warehouse.
- Where it was held that taxable event occurs when goods cross customs barrier and not when goods land in India or enter territorial waters.

Indirect taxes Customs Simplified

Types of Customs Duty



Basic Customs Duty

Levied under section 12 of Customs Act

- Levied as a percentage of Value as determined under section 14(1).
- The rates vary for different items ex 5%, 12.5% 15%, 25% and 30%
- Normal rate (peak rate) 10%

Additional Customs Duty (CVD) Sec 3(1)

- Also Called 'Countervailing Duty' (CVD).
- Duty is equal to excise duty levied on a like product manufactured or produced in India.
- If like article is not produced or manufactured in India, the excise duty that would be leviable on that article had it been produced in India is the base.
- If the product is leviable with different rates, then highest rate among those rates is to be considered.
- In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value. Finance Act 2009 (Effective from 19.08.2009)
- The duty is leviable on Value of goods plus basic customs duty and NCCD payable.
- CVD Payable at effective rate of Excise duty
- CVD payable even if similar goods not produced in India

Additional Customs duty u/s 3(3) C V D

- To counter Balance excise duty on raw material, components etc
- After extension of cenvat on inputs there is no need to counter balance duty on inputs

Calculation of CVD

- ❖ CVD is payable on Av+Basic Customs Duty+NCCD
- ❖ Av will be as per Customs Act/rules

Indirect taxes Customs Simplified

- ❖ In case of Where Excise payable on MRP Av will be MRP less abatement
- ❖ When goods are subject to different excise duties CVD is also payable for all the corresponding duties.

Example on Calculation of CVD and Education Cess

• Mode of calculation of education cess has been illustrated in Ministry of Finance letter No. D.O.F. 34/3/2004-TRU dated 8-7-2004, as follows -

• Assuming that value of an item is Rs. 1000, customs duty is 20% and excise duty (CVD) is 16%, the calculation will be as follows - The duty will be worked out as under:

(A) Assessable Value	Rs. 1,000.00
(B) Customs Duty @20%	Rs. 200.00
(C) Sub-Total for calculating CVD (A+B)	Rs. 1,200.00
(D) CVD @16.48 % of Rs 1,200 (16%+3% E.Cess)	Rs. 197.76
(E) Sub-Total for calculating Cess (B+D)	Rs. 397.76
(F) Education Cess @ 3% of Rs 397.76	Rs 11.94

However, while calculating CVD, following duties are not to be considered - * Special Additional Duty payable u/s 3A of Customs Tariff Act * Safeguard duty u/ss 8B and 8C of Customs Tariff Act * Countervailing duty, if any, u/s 9 of Customs Tariff Act * Anti-dumping duty payable u/s 9A of Customs Tariff Act * CVD itself which is payable u/s 3(1). [Section 3(2) of Customs Tariff Act].

Where the Central Government has notified Tariff Value for similar products manufactured in India, the same value shall be considered for imported goods for computation of ACD. (Sec.3 of CETA)

Countervailing duty u/s 3(5) of Customs tariff Act

- It is duty levied on imports to counter balance sales tax and vat in India
- Maximum rate leviable is 4% on the total value of article
- Total value includes CIF price plus all customs duty excluding duties to protect Indian Industry.

NCCD of customs

- Duty imposed vide section 129 of Finance Act, 2001
- This duty is imposed on pan masala, chewing tobacco and cigarettes. Polyester yarn
- It varies from 1% to 45%. –

Examples

- 1% was imposed on PFY, motor cars, multi utility vehicles and two wheelers
- Rs 50 per ton on domestic crude oil,

Export duty –

Levied only on few products

At present, Export Duty is levied only on

- hides, skins and leather,
- Snake skins hides, and fur lamb skins.

There is no export duty on any other product.

Education Cess

2% education cess and 1% higher secondary education cess total 3% on all duties will be levied by government and should be payable.

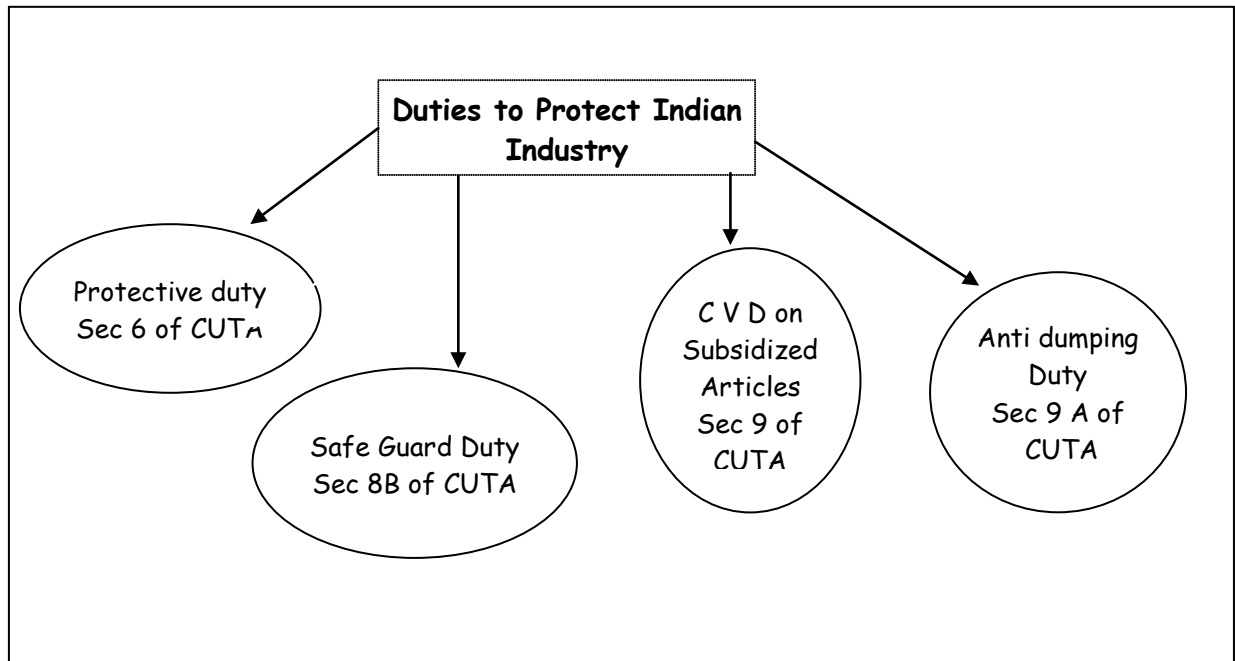
A secondary and higher education cess @ 1% has been imposed on imported goods. The Proceeds from this cess will be utilized to finance secondary and higher education. It shall be chargeable on the aggregate duties of customs. However, following duties shall be excluded for computing this cess:–

- (a) The additional duty leviable under section 3(5) of the Customs Tariff Act, 1975;

Indirect taxes Customs Simplified

- (b) The safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975;
(c) The countervailing duty & anti-dumping duty leviable under section 9 & 9 A of the Customs Tariff Act, 1975;

Import duties to protect Indian Industry



Protective Duties Section 6 CUTA

If C G is satisfied that immediate action is necessary to protect interests of Indian industry;

- Rate of duty is as per recommendation of Tariff Commission
- Notification for levy should be introduced in Parliament
- If Parliament not in session, introduced in next session by way of a Bill.
- Notification should Pass in parliament with in 6 months,
- If not passed the notification ceases to have force, but action already taken remains valid.
- The protective duty will be valid till the date prescribed in the notification.
- The protective duty can be rescinded, reduced or increased by a notification.
- Such notification should also be placed before Parliament for approval in next session.

Safeguard duty Section 8 B of CUTA

Circumstances to Impose

- When the goods are being imported in large quantities
- That they are causing or threatening to cause serious injury to domestic industry.

Procedure for Levy

- CG is empowered to impose 'safeguard duty' on specified imported goods
- Such duty is permissible under WTO agreement.
- Government has to conduct an enquiry and then issue a notification.
- In case of imports from developing countries, such safeguard duty can be imposed only if import of that article from that country is more than 3% of total imports of that article in India. so long as the aggregate of the imports from "developing countries each with less than 3% import share" taken together does not exceed 9% of the total imports of that article into India.

Indirect taxes Customs Simplified

- Central Government can impose provisional safeguard duty, pending final determination up to 200 days.
- The duty is in addition to any other customs duty being imposed on the goods. .
- The duty, once imposed, is valid for four years, unless revoked earlier.
- This can be extended by Central Government,
- Total period of 'safeguard duty' cannot be more than ten years.
- No safe guard duty in case of EOU/SEZ unless specified in notification
- Special provision for imports from China in similar lines above provided in section 8 C

C V D on subsidized goods Sec 9 of CUTA

If a country pays any subsidy (directly or indirectly) to its exporters for exporting goods to India,

- CG can impose Countervailing duty up to the amount equal to such subsidy
- If the amount of subsidy cannot be ascertained, provisional duty can be levied
- After final determination, difference may be refunded.
- Such imposition should be by way of a notification.

Anti dumping duty Sec 9 A of CUTA

Circumstances to impose

- When large manufacturer from abroad may export goods to India at very low prices compared to prices in his domestic market.
- Such dumping may be with intention to cripple domestic industry or to dispose of their excess stock.
- In order to avoid such dumping, C G can impose, anti-dumping duty up to margin of dumping on such articles,

Procedure

- This duty is permissible as per WTO agreement
- Duty can be levied only when there is an Indian industry producing 'like articles'.
- If it is a pending in determination of margin of dumping, duty can be imposed on provisional basis.
- After dumping duty is finally determined, C G can reduce such duty and refund duty extra collected than that finally calculated
- Margin of dumping' means the difference between normal value and export price
- 'Normal Value' means comparable price in the exporting country
- Margin of dumping is determined on basis of *records concerning normal value and export value maintained and informed by the exporter or producer (WEF FA 2009)*
- Export Price' means the price at which goods are exported.

Quantum of dumping duty

- The anti-dumping duty will be dumping margin or injury margin, *whichever is lower.*

Injury margin' means

- Difference between fair selling price of domestic industry and landed cost of imported product.

Applicability of rules and Regulations to duties under Customs tariff Act (FA 2009)

The rules regulations made under customs Act with regard to, demand, refund, assessment, interest, penalty, Offences and Appeals will also applicable to duties levied under Customs tariff Act such as safe guard duty, protective duty, duty on subsidized articles and antidumping duty (Amended by Finance Act 2009 retrospectively)

Prohibition of Importation/ exportation of goods sec 11

- The C G has powers to prohibit
- either absolutely or
- subject to such conditions (to be fulfilled before or after clearance)
- the import or export of goods

Indirect taxes Customs Simplified

- Of any specified description.
- Official gazette should notify the prohibitions.

Purposes where prohibition should be made.

The maintenance of public order and standards of decency or morality;

- The prevention of smuggling/ Shortage of goods;
- The conservation of foreign exchange and the safeguarding of balance of payments;
- The prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- The prevention of surplus of any agricultural product or the product of fisheries;
- The maintenance of standards for the classification, grading or marketing of goods in international trade;
- The establishment of any industry;
- The prevention of serious injury to domestic production of goods of any description
- The protection of human, animal or plant life or health;
- The protection of national treasures of artistic, historic or archaeological value ;
- The conservation of exhaustible natural resources;
- The protection of patents, trademarks and copyrights;
- The prevention of deceptive practices;
- The fulfillment of obligations under the Charter of the United Nations for the maintenance of international peace and security;
- The implementation of any treaty, agreement or convention with any country
- The compliance of imported goods with any laws, which are applicable to similar goods produced or manufactured in India;
- The prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;
- The prevention of the contravention of any law for the time being in force; and
- Any other purpose conducive to the interests of the general public.

Duties of Person possessing specified goods

Duties of Person who owns, possesses or controls, specified goods, the value exceeds Rs.15000

- Inform the proper officer about the particulars of the place where such goods are kept.
- Before acquires intimate to the proper officer containing goods where such goods are to be stored after such acquisition:
- In case of shift, intimate the place to which such goods are proposed to be shifted.
- No person shall, after the expiry of seven days from the specified date, keep or store any specified goods at any place other than the intimated place.

Other Points

- Shifting and transport of specified goods should be covered by voucher
- Persons possessing specified goods to maintain accounts with regard to acquisition usage and balance.
- Difference between record and physical stock. if any unless proved contrary deemed illegally exported
- Person selling or transferring any specified goods For cash exceeding Rs. 2500/per day - should mention full address of buyer

Customs Classification

Similar to that of excise except Customs Tariff contains only two schedules and tariff contains two rates of duty viz., standard rate and preferential rate. If no rate is mentioned in the column 'Rate for Preferential Area', then Standard rate is applicable.

Indirect taxes Customs Simplified

Customs Valuation

- Customs duty is payable as a percentage of 'Value' called 'Assessable Value'
- The Value may be either
- Transaction Value' as per Section 14 (1) or
- Tariff value prescribed as per 14 (2).

Tariff Value Sec 14 (2)

- Tariff Value can be fixed by CBE&C (Board)
- Government should consider trend of value of such or like goods
- Once T V fixed, duty is payable as percentage of this value.
- The percentage applicable is as per Customs Tariff Act
- Example for tariff value fixed were crude palm oil; RBD Palmolein and palm oil

Transaction value as per section 14 (1)

Transaction value Requirements

- The price actually paid or payable for the goods
- The price shall be for delivery at the time and place of importation or exportation,
- the seller and the buyer are not related
- price is the sole consideration for the sale e:

Price should be for delivery at the place of importation/exportation

In case of import

- All expenses up to the destination port, including freight, transit insurance, unloading and handling charges are to be included.
- In case of export all expense up to Indian port/airport to be included

Price should be for delivery at the time of importation –

- Time of importation means price ruling when the goods were imported is relevant.
- price prevalent on date of contract not relevant

● Buyer or Seller should be treated as relatives in the following circumstances

- They are officers or directors of one another's businesses;
- they are legally recognized partners in business;
- they are employer and employee;
- any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- They are members of the same family.

● Person includes legal person

- Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Price must be the sole consideration

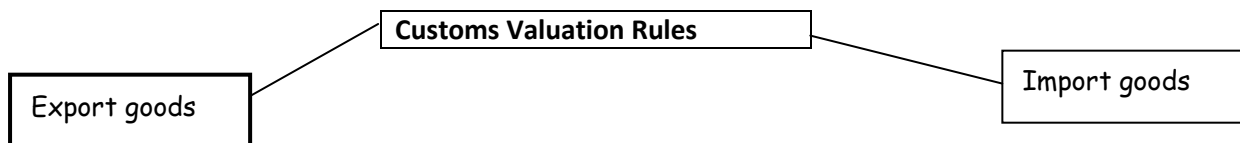
- Price should be sole consideration for sale.
- If there is other consideration, it should be added to the transaction value.

For import goods price also include

- commissions and brokerage,
- engineering, design work,

Indirect taxes Customs Simplified

- royalties and licence fees,
- costs of transportation to the place of importation,
- Insurance
- loading, unloading and handling charges
- The price of goods for valuation shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented in case of imported goods and as a shipping bill or bill of export,
- The rate of exchange is notified by CBEC is to be considered for valuation.
- The valuation rules provide to determine the value if the above conditions are not satisfied. For Example if there is no sale, buyer and seller are relatives and when price is not sole consideration.



Export goods valuation Rules (new rules comes to effect from 10.10.2007)

Transaction value Rule 3

The values will transaction value as per sec 14. The transaction value will be accepted even buyer and seller are relatives, if the price is not influenced

Determination of export value by comparison. Rule 4

If the value cannot be determined as per rule 3 value can be determined as per Rule 4 as below.

- The value of the export goods shall be based on the transaction value of goods of like kind and quality goods
- The price of such goods should be at the same time and same country and same manufacturer.

If the above are not fulfilled the value to be determined by proper officer as it appears reasonable by adjusting with respect to

- Difference in the dates of exportation,
- Difference in commercial levels and quantity levels,
- Difference in composition, quality and design between the goods to be assessed and the goods, with which they are being compared,
- Difference in domestic freight and insurance charges depending on the place of exportation.

Computed value method Rule 5

If the value cannot be determined as per rule 4 the value will be determined as per rule 5 by computed value method which include following

- cost of production , manufacture or processing of export goods;
- charges, if any, for the design or brand;
- an amount towards profit.

Residual method Rule 6

Where the value of the export goods cannot be determined as per rule 4 and 5, the value shall be determined with respect to general provisions of these rules. The local market of export goods not only the basis and other factors will be considered,

Declaration of value by exporter Rule 7

The exporter shall furnish a declaration relating to the value of export goods in the specified manner.

Rejection of declared value Rule 8

Indirect taxes Customs Simplified

- When the proper officer has reason to doubt the truth or accuracy of the value declared for export goods, he may ask the exporter to furnish information, documents or other evidence,
- After receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value, it is deemed that transaction value not determined properly.
- At the request of an exporter, the proper officer should inform in writing and should give reasonable opportunity to exporter, before taking final decision.

Explanation to rule 8

- This rule by itself does not provide a method for determination of value.
- This rule provide mechanism and procedure for rejection of declared value in the case of doubt on truth and accuracy
- Where the value transaction value rejected under this rule, value will be determined sequentially following Rule 4 to 6
- Declared value shall be accepted where the proper officer is satisfied about the truth or accuracy after the said enquiry in consultation with the exporter.

Reasons where Proper officer will get doubt about truth and accuracy

- the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
- The significantly higher value compared to the market value of goods of like kind and quality at the time of export.
- The misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

Import goods valuation Rules (new rules comes to effect from 10.10.2007)

Determination of the method of valuation. Rule 3

The value of the imported goods is the transaction value as per sec 14 adjusted with the cost and services as per rule 10

The transaction value will be accepted under the following conditions

- there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
 - (i) are imposed or required by law or by the public authorities in India; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
- no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
- the buyer and seller are not related,

Inclusions of costs and services in transaction value Rule 10

The following will be included if the following are not included in the price

Indirect taxes Customs Simplified

- Commission and Brokerage paid to local agent in India
- Service charges paid to canalizing agency: when canalizing agency makes imports, goods are sold to Indian buyer on 'high sea sale' basis. Indian buyer clears the imported goods. In such cases, 'service charges' payable to the canalizing agency to be included
- Packing cost labour and material
- Cost of containers
- Value of Goods supplied by buyer at free/concessional rate

Cost of tooling:

- If purchased the cost of tooling, if manufactured production cost
- If previously used the tooling, its original cost less depreciation.
- Apportioning of Cost of Tools to the value - apportioned over the quantity produced.
- Such apportionment should be made on basis of documentation provided by importer.
- engineering, development, art work, design work, and plans and sketches undertaken work undertaken outside India necessary for the production of the imported goods;
- materials, components, parts and similar items incorporated in the imported goods;
- The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Royalty and license fees

- Royalties and license fees related to imported goods that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods are not included in the price

The following types of royalty not includable

- Royalty payment to collaborators un-connected with imported goods
- charges for the right to reproduce the goods in India
- payments made by buyer (importer) for right to distribute or resale the imported goods
- Charges for reproduction of software in India

Other inclusions in Valuations

- Freight Actual, if actual data not available 20% of FOB
- In case of Air. actual freight or 20% of FOB w e l
- Insurance actual, If actual data not given 1.125% of FOB
- Handling/Landing Charges 1% on CIF

Exclusions from Customs valuation

- ❖ Charges of purchasing agent abroad
- ❖ Cost of durable and re-usable containers, if importer agrees to execute a bond to re-export the containers within six months.
- ❖ Charges for construction, erection, maintenance, installation etc, after importation of machinery, equipment
- ❖ Transport insurance after import (transport from port/airport to factory)
- ❖ Local taxes in India
- ❖ Demurrage charges for later clearance of goods.
- ❖ Bank charges paid to banker for services rendered by them

Valuation when import from relative

Where the buyer and seller are related, the transaction value shall be accepted when

- That the relationship did not influence the price.
- the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time—
- the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

Indirect taxes Customs Simplified

- the deductive value for identical goods or similar goods;
- the computed value for identical goods or similar goods
- in applying the values used for comparison, Rule 10 additions of costs to be considered

Transaction value of identical goods Rule 4

If transaction value of same goods not available because of

- ❖ abnormal discount, unconditional sale,
- ❖ sale not in competitive conditions,
- ❖ No sale because lease, hire, gift and sample
- ❖ In such cases transaction value of identical goods will be considered

Meaning of identical goods

Goods should be the same in all respects, including physical characteristics, quality and reputation; except for minor differences in appearance

When applying the value of identical goods the following should be considered

- Goods have been produced in the same country
- They should be produced by same manufacturer, if same manufacturer not available price of goods produced by another manufacturer in the same country. However brand reputation and quality of other manufacturer should be comparable.
- Imported at or around about same time
- Adjustment for distances and transport costs if any required to be considered
- Costs and services as per rule 10 are required to add.
- If more than one value of identical goods is available, lowest of such value should be taken.

Transaction value of similar goods Rule 5

- If Transaction value of identical goods cannot be used, valuation is to be done based on Transaction value of similar goods
- Similar goods are same as with identical goods additional requirement is that performing same function and commercially inter-changeable
- When applying the value of similar goods consideration should be governed will be the same as identical goods
- Value adopted under provisional assessment cannot be considered for valuing under rule 4 and rule 5

Value When value cannot be determined under Rule 3 4 and 5

Rule 6

When Value cannot be determined under Rule 3, 4 and 5, the value can be determined under deductive value method (rule 7) or computed value method (rule 8.)

Deductive Value method

Rule 7.

- If T V of identical & similar goods is not available then deductive value method is used.
- When same, identical or similar imported goods are sold in India and price in India is available and the sale should be in the same condition as they are imported.
- Assessable Value is calculated by reducing post-importation costs and expenses from this selling price.

Deductions

- Selling Expenses (commission etc,) and selling profits
- Direct and indirect cost of marketing the goods in India.
- Transport, insurance and associated costs within India
- Customs duties, sales tax and other taxes levied in India.

The price will be Unit price sold in greatest numbers of quantity to be considered for valuation

Indirect taxes Customs Simplified

If the imported goods, identical similar imported goods are not sold at or about the same time of importation of the goods being valued, the valuation will be unit price at the earliest date after importation but before the expiry of ninety days after such importation.

If the imported goods, identical similar imported goods are not sold, but goods sold after processing, adjustments should be made for processing cost if any

Computed Value Rule 8

- If valuation is not possible by deductive method, computing the value can be used.
- This method can be used before deductive value method if Customs Officer approves

In this method, value is the sum of

- Cost of value of materials, labour and processing charges for producing the imported goods
- amount General expenses and profit
- The cost or value of all other expenses under rule 10 transport, insurance, loading, unloading and handling charges.

Residual Method Rule 9

- ❖ similar to 'best judgment method'
- ❖ This method can be considered if valuation is not possible by rule 3 to 8
- ❖ Mix of the all other rules and general provisions of all rules.
- ❖ Assessment will be done based on with available data in India.

Residual value cannot be determined on the basis of

- the selling price in India of the goods produced in India;
- a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- the price of the goods on the domestic market of the country of exportation;
- the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- the price of the goods for the export to a country other than India;
- minimum customs values; or
- Arbitrary or fictitious values.

Declaration by the importer. Rule 11

The importer or his agent shall furnish -

- a declaration disclosing full and accurate details relating to the value of imported goods; and
- any other statement, information or document including an invoice necessary for determining the value of imported goods
- proper officer of customs can ask any document to verify the truth and accuracy of value of imported goods

If the importer furnishes wrong declaration, submit wrong information, the provisions of Customs Act with regard to confiscation and penalty will apply.

Rejection of declared value. Rule 12

- When the proper officer has reason to doubt the truth or accuracy of the value declared for imported goods, he may ask the exporter to furnish information, documents or other evidence,
- After receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value, it is deemed that transaction value not determined properly.

Indirect taxes Customs Simplified

- At the request of an exporter, the proper officer should inform in writing and should give reasonable opportunity to importer, before taking final decision.

Explanation to rule 12

- This rule by itself does not provide a method for determination of value.
- This rule provide mechanism and procedure for rejection of declared value in the case of doubt on truth and accuracy
- Where the value transaction value rejected under this rule, value will be determined sequentially following Rule 4 to 9
- Declared value shall be accepted where the proper officer is satisfied about the truth or accuracy after the said enquiry in consultation with the importer.

Reasons where Proper officer will get doubt about truth and accuracy

- the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- the sale involves special discounts limited to exclusive agents;
- the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- the non declaration of parameters such as brand, grade, specifications that have relevance to value;
- The fraudulent or manipulated documents.

Valuation of old machinery/cars

- The concept of transaction value is applicable to second hand machinery also,
- When exactly comparable imports can be found or exist.
- Invoice value of second hand machine supported by Chartered Engineer's certificate is acceptable
- Depreciation will be allowed on value of old machinery on following scale:
 - for every quarter in 1st year: 4%
 - for every quarter in 2nd year: 3%
 - for every quarter in 3rd year 2.5%
 - for every quarter in 4th and
 - Subsequent year : 2%
- Maximum: 70% [Vadodara Commissionerate No. Cus/t/93 dated 15-6-1993].
- Same depreciation rate applied for old cars also.

Customs Valuation Format for solving numerical problems (Imported Goods)

FOB (Free on board) Value	XXXXXXXXXX
Add: Freight – Actual freight ,If actual is not given 20% of F O B Note; In case of air, 20% of F O B or actual air freight which ever is less has to consider	XXXXXXXXXX
Add: Insurance- Actual insurance, if actual is not given 1.125% of FOB	XXXXXXXXXX
Add: Inclusions in valuation if not included in price (rule 10)	XXXXXXXXXX
Less: deductions if any not includable (if included in price)	XXXXXXXXXX
C I F(Cost insurance and freight) value	XXXXXXXXXX
Convert the C I F value in to Indian rupees as per rate of exchange announced by CBEC/Central government Note: Do not consider rate announced by R B I, Banks, FEDAI	XXXXXXXXXX

Indirect taxes Customs Simplified

Add: 1% towards handling charges	XXXXXXXXXXXX
Total C I F Value (Assessable value for the purpose of duty payment)	XXXXXXXXXXXX

Import and Export Procedures

Customs Import procedures

- Goods are imported in India or exported from India through sea, air or land.
- Goods can come through post parcel or as baggage with passengers.
- Procedures naturally vary depending on mode of import or export.

This topic covers import procedure through sea, air or land,

Important Definitions

Entry: Section 2(16)

- 'Entry' in relation to goods means an entry made in a Bill of Entry, Shipping Bill or Bill of Export and includes
 - label or declaration accompanying the goods which contains description, quantity and value of the goods, in case of postal articles or
 - Entry to be made in case of goods to be exported
 - Entry in respect of goods imported which are not accompanied by label or declaration made as per provisions of section 84. .

Customs stations/Customs areas

Section 7 of Customs Act provides CBEC (Board) to appoint by notification

Customs ports

Customs airports

Places for inland container depots

Coastal ports. - Where the goods can be transported

Section 8 authorizes Commissioner of Customs

- Approve proper places in any customs port,
- Customs airport or coastal port for unloading and loading of goods and specify the limits of customs area.
- Place (city / town / village etc.) is approved by CBEC,
- While exact location within that city / town / village is approved by Commissioner.

Person in charge means

- In case of vessel - its master
- In case of aircraft - its commander or pilot-in-charge
- In case of train - its conductor or guard and
- In case of vehicle or other conveyance - its driver or other person in charge

Duties and responsibilities of Person in charge

- He is responsible for submitting Import Manifest and Export Manifest
- He is responsible to ensure that the conveyance comes through approved route and lands at approved place only.
- He has to ensure that goods are unloaded after written order, at proper place. Loading also has to be only after permission.
- He has to ensure that conveyance does not leave without written order of Customs authorities.

He can be penalized for

- (a) Giving false declaration and statement
- (b) shortages or non-accounting of goods in conveyance

Procedure to be followed by the Carrier in case of import

1. Arrival at Vessel/aircraft at customs port/airport only Sec 29

- Person-in-charge entering India shall call or land at customs port or customs airport only.

Indirect taxes Customs Simplified

- While arriving by land route, the vehicle should come by approved route to 'land customs station' only.
- It can land at other place only if compelled by accident, stress of weather or other unavoidable cause.
- In such case, he should report to nearest police station or Customs Officer.
- Person in charge without the consent of officer permits any goods to be unloaded from, or any of the crew or passengers to depart from the vicinity.
- Where the departure or removal is necessary for reasons of health, safety or the preservation of life or property it can be carried on.

2. Delivery of Import Manifest / Report- Section 30

- Person-in-charge has to submit IMF /import report prior to arrival of a vessel or aircraft.
- Import report (in case of vehicle) has to be submitted within 12 hours of arrival at the customs station.
- If the report / manifest could not be submitted within prescribed time, person-in-charge liable to penalty up to Rs 50,000
- Such penalty will not be imposed if the Proper officer is satisfied that there was sufficient cause for the delay. .

Procedure to be followed by Importer

1. filing of Bill of entry
2. Filing of other documents for assessment

1. Filing of Bill of Entry by importer Section 46

The Bill of Entry should be in prescribed form, in quadruplicate

- Original and duplicate for customs,
- triplicate for the importer
- Fourth copy is meant for bank for making remittances.
- Importer to present bill of entry up to 30 days before expected date of arrival of vessel/aircraft

Types of Bill of Entry

Bill of Entry for Home Consumption

- This form is used is used when the imported goods are to be cleared on payment of full duty. It is white color
- Home consumption means use within India.

Bill of Entry for warehousing –

- It is also called 'Into Bond Bill of Entry' as bond is executed for transfer of goods in warehouse without payment of duty.
- If the imported goods are not required immediately, He can store to store the goods in a warehouse without payment of duty under a bond
- This Bill of Entry is printed on yellow paper

Bill of Entry for ex-bond clearance

- This is used for clearance from the warehouse on payment of duty
- It is printed on green paper.
- The goods are classified and value is assessed at the time of clearance from customs port.
- Value and classification is not required to be determined in this bill of entry.
- Declaration by importer is not required as the goods are already assessed.

Noting of Bill of Entry –

- Bill of Entry submitted by importer or Customs House Agent is cross-checked with 'Import Manifest' submitted by person in charge of vessel / carrier
- It is noted if the description tallies. '
- Noting' really means taking on record by customs officer. This date is relevant for determining rate of customs duty.

Indirect taxes Customs Simplified

- Thoka number (serial number) is given in the import section. Otherwise, it is returned for clarifications.
- In case of EDI system, noting is done by the system itself, which also generates bill of entry number.

2. Documents to be submitted by Importer

Documents is required for purpose of to check the goods and for

- Decide value and classification of goods and
- To ensure that the import is legally permitted.

The documents that are essentially required are:

- Invoice, Packing List , Bill of Lading , Delivery Order
- GATT declaration form duly filled in by Importers /
- CHAs declaration duly signed
- Import License or attested photocopy when clearance is under licence
- Letter of Credit / Bank Draft wherever necessary
- Insurance memo or insurance policy
- Industrial License if required
- Certificate of country of origin, if preferential rate is claimed.
- Technical literature of product & Test report in case of chemicals
- Advance License / DEPB in original, where applicable
- Split up of value of spares, components and machinery
- No commission declaration. – A declaration in prescribed form about correctness of information should be submitted.

Amendment to documents Section 149

BoE, IMF, EGM can be amended by person who files with the permission of Customs authorities

- Amendment may be due to change in classification, clerical mistake in document, change in unloading / loading plan of vessel etc.
- Such permission can be given if there are no fraudulent intentions.
- In case of bill of entry, shipping bill or bill of export, it can be amended after clearance only on the basis of documentary evidence, which was in existence at the time the goods were cleared, warehoused or exported, and not on basis of any subsequent document.

Grant of Entry Inwards by Customs Officer

Imported goods not to be unloaded from vessel until entry inwards granted. Sec 31:

- Goods to be unloaded only at the place specified in IMF/report.
- Unloading only with the supervision of the proper officer:
- Board may; by notification relax these conditions or any class of goods. (Section 34)
- No unloading on any Sunday or on any holiday or after working hours
- Person in charge has to give notice and has to pay the prescribed fees, if he wants to unloading at Sundays/holidays (Section 36)

■

Carrier responsible for shortages during unloading

- If the goods are short landed, the carrier is liable to pay penalty up to twice the amount of duty payable on such short landed goods.

Restrictions on custody and removal of imported goods. Section 45

All imported goods unloaded in a customs area shall remain in the custody of Port/airport authorities until they are cleared

- The person having custody of any imported goods in a customs area, shall keep a record of such goods and send a copy thereof to the proper officer;
- Shall not permit such goods to be removed from the customs area without written permission of the proper officer.

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- If any imported goods are pilfered after unloading thereof in a customs area port authorities are liable to pay duty.

Storage of imported goods in warehouse pending clearance. Sec 49

Any imported goods, whether dutiable or not, entered for home consumption, the AC/DC is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a warehouse, but such goods shall not be deemed to be warehoused goods. This is also known as warehouse without warehousing.

Disposal if goods are not cleared within 30 days section 48

- Goods must be cleared within 30 days after unloading.
- Customs Officer can grant extension.
- If not cleared goods can be sold after giving notice to importer.
- Animals, perishable goods and hazardous goods no time limit
- Arms & ammunition can be sold only with permission of CG.

Rate of duty and tariff valuation sec 15

- If the goods are entered for home consumption, Rate on the date on which bill of entry is presented or rate on the date of entry inward grants whichever is later
- In case of warehoused goods, rate on date of clearance from warehouse and
- In other cases, date of payment of duty.

Assessment of Customs duty sec.17

- Assessment of goods will be made after Bill of Entry is filed.
- Date stamp of receipt is put on the 'Bill of Entry' and then it is sent to appraising department.
- Various Appraising groups for different Chapter headings. Each group is under an AC/DC

Appraiser has to

- correctly classify the goods
- decide the Value for purpose of Customs duty
- find out rate of duty applicable as per any exemption notification and
- Verify that goods are not imported in violation of any law.
- He can call for any further documents that may be required for assessment .

Types of Assessment

- Two types
- First Appraisal system/First check procedure sec 17(2)
- Second Appraisal system/Second check procedure sec 17(4)

First appraisal system" or 'first check procedure

- When the appraiser is not able to make assessment on the basis of documents submitted and deems that inspection is necessary.
- Goods are examined first and then these are assessed.
- The importer himself may also request 'first check procedure',
- Request at the time of filing of Bill of entry
- Request can be made only if he cannot give all required details regarding description / value of goods.
- He has to give reason for seeking first appraisal.
- The examination order is recorded on Bill of Entry and then returned to importer

First appraisal is generally carried out in following cases –

- If complete documents are not submitted
- Goods are to be tested for correct classification*
- Goods are re-imported
- Goods are damaged or deteriorated and abatement is claimed
- Goods are abandoned and remission of duty is applied for

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- When goods are provisionally assessed
- When importer himself requests for examination of goods before payment of duty.

Examination of Goods

- Examiners carry out physical examination and quantitative checking like weighing, measuring etc.
- Selected packages are opened and examined on sample basis in 'Customs Examination Yard'. The examiner prepares examination report.

Second Appraisal/Second Check/ Risk Assessment

- In second Appraisal Assessment is done on basis of documents submitted by importer and then goods are examined.
- Such examination is not mandatory.
- It is done on selective basis on the basis of 'risk assessment' or specific information
- Initially assessment is done on basis of documents,
- Re-assessment can be done after examination or testing of goods or otherwise, if it is found any information supplied is not true

Speaking Order in case of Assessment Contrary to claim of importer/Exporter sec 17(5)

It is mandatory for issuance of separate assessment order in case the assessment done by Customs Office is contrary to what is claimed by the importer in Bill of Entry or Shipping Bill. Such an order shall be passed within 15 days of filing of Bill of Entry or Shipping Bill. It shall be a speaking order (i.e., shall give the reasons on which findings in the orders are based.)

Payment of Customs Duty

- Regular importers and Custom House Agents through current account with Customs department. or
- Duty can be paid in cash/DD through GAR 7 challan in designated banks.
- After payment of duty, delivery of goods can be taken from custodians (port trust) after paying their dues.
- Interest @15% p .a. if duty was not paid within 5 working days after B O E returned for payment

Provisional Assessment Sec 18

Provisional assessment can be done in following cases

- When Customs Officer is satisfied that importer or exporter is unable to produce document or furnish information required for assessment
- It is deemed necessary to carry out chemical or other tests of goods
- When importer/exporter has produced all documents, but Customs Officer still deems it necessary to make further enquiry.
- The importer/exporter has to furnish bond/ guarantee/security for payment of difference if any.
- Goods can be cleared after payment of duty provisionally assessed and after providing the security.
- After final assessment, difference is to be paid/refunded.
- In case of goods were warehoused bond to execute for twice the difference in duty,

Interest in case of provisional Assessment

- Recovery of interest from importer/exporter @ 13% p.a. in cases where finally assessed duty is more than the provisionally assessed duty. The interest is payable from the first day of the month which duty was provisionally assessed till the date of payment.
- Payment of interest to importer/exporter @ 6% p.a. to assessee in cases where finally assessed duty is less than the provisionally assessed duty. The interest is payable if the refund is not sanctioned within 3 months from the date of final

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assessment of duty till the date of payment of duty. For refund of duty provisions of doctrine of unjust enrichment will apply.

Export Procedure

Procedure to be followed by 'person in charge

✓ Person in charge should file Export Manifest/Export Report in prescribed form before departure.

✓ Person in charge should declare that contents in EMF are true

Procedures to be followed by Exporter

- Exporter should obtain IEC CODE from DGFT. It is a PAN based number
- Exporter should Open current account with designated bank for credit of duty drawback claims
- Register licenses / advance license / DEPBB etc. at the customs station is required, if exports are under Export Promotion Schemes
- Exporter has to submit 'shipping bill' for export by sea or air and 'bill of export' for export by road. (Sec 50)s
- Shipping bill should be submitted in quadruplicate. If drawback claim is to be made, 5 copies

Types of Shipping Bill

for export of goods under claim for duty drawback - Green color

- for export of dutiable goods -yellow color
- for export of duty free goods -white color
- for export of duty free goods ex-bond - i.e. from bonded store room - pink color
- For export under DEPBB scheme - Blue color.

Customs authorities give serial number (called '*Thoka Number*') to shipping bill, when it is presented

- After shipping bill is passed by export department, Goods are presented to shed appraiser (exports) in dock for examination.
- Goods will be examined by examiner.

Inspection of goods is necessary

- to ensure that prohibited goods are not exported
- goods tally with description and invoice
- duty drawback, where applicable, is correctly claimed

Let Export Order Sec 51, the customs officer will

- will verify the contents
- to Satisfy that goods are not prohibited for exports
- Ensure applicable duty if any is paid,
- Will permit clearance by giving 'let ship' or 'let export' order.

Entry Outward – Sec 39

the vessel should be granted 'Entry Outward'.

- Loading can start only after entry outward is granted.
- Loading should be done with permission of proper officer
- Export goods can be loaded only after Shipping Bill or Bill of Export, duly passed
- Shipping bill is handover by Exporter to the person-in-charge of conveyance.
- In case of baggage and mailbags, shipping bill is not necessary, but permission of Customs Officer is required (section 40).

.Conveyance to leave on written order section 42 –

- The vessel or aircraft, which has brought imported goods ,which carry export goods cannot leave that customs station unless Customs Officer gives a written order
- Such order is given only after export manifest is submitted

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- Shipping bills or bills of export, bills of transshipment etc. are submitted
- Duties on stores consumed are paid or payment of the same is secured
- No penalty is leviable, export duty, if applicable, is paid. –
- Such permission is not required if the conveyance is carrying only luggage of occupants

Re-importation of goods. Sec 20

■ If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, which goods of the like kind and value are liable or subject, on the importation thereof. -Tata tea (SC)/Super cassettes (SC)

Re-import within 3 years: If the same goods which are exported earlier were re-imported by same person within 3 years, No customs duty and No CVD payable. At the time export if any drawback amount is claimed, it is payable. The exemption of duty not applicable to EOUs Notification No 94/1996 dated 16.12.1996

Imported for repair/Rectification etc: No duty payable if re-export within 6 months. Bond to be executed. Notification No 158/1995 dated 15.11.1995

Imported goods re-exported for repairs and importing after repairs: duty payable on the values of repairs charges + freight and insurance on both ways. Notification No 94/1996 dated 16.12.1996

Rate of duty and tariff valuation in case of export goods Sec 16

- in the case of goods entered for export under section 50, on the date of let export order
- In the case of any other goods, on the date of payment of duty.
- The provisions of this section shall not apply to baggage and goods exported by post.

Customs Other Procedures

Boat Notes/ Restrictions on goods being water-borne. Section 35

- If the vessel has to unload only a small cargo, it may not spend time in having berth in the port.
- If the small cargo is to be sent to shore, it may be loaded in a small boat and sent to shore.
- As per section 35, such small boat must be accompanied by a 'Boat Note'.
- Boat Notes Regulations provide that Customs Officer will issue such Boat Notes.
- It will be maintained in duplicate and should be serially numbered.
- Boat Note should be in prescribed form.
- Loading in to small boat from ship should be done only when such small boat accompany boat note
- Unloading from small boat to ship for export should not require boat note, when small boat carrying shipping bill. Otherwise boat note is required
- Board may, by notification relax these conditions to any class of goods,
- Boat Note is also required for transshipment of cargo, i.e. transfer from one ship to another or for re-shipment.

Transit and transshipment of goods Sec 53 & Sec 54

Transit Goods - Section 53

■ Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of customs duty, to any place out of India or any customs station. All these goods must be mentioned in import manifest or import report. Such goods should not be 'prohibited goods' under section 11 of Customs Act. The conveyance may be vehicle, ship or aircraft after transit, the goods may go to another customs station.

Transshipment of goods sec 54

- Transshipment means transfer from one conveyance to another.
- Goods imported in any customs station can be transshipped without payment of duty,

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- The conveyance may be vehicle, ship or aircraft
- Such transshipment may be to any major port or airport in India
- The goods can be transshipped to any other customs station in India if customs officer is satisfied that the goods are *Bonafide* intended for transshipment to any customs station.
- The facility is available at all customs ports and Inland Container Depots (ICDs)..
- Goods to be transshipped must be specified in Import Manifest
- Bill of Transshipment' should be submitted to Customs Officer.
- Such goods should not be 'prohibited goods' under section 11 of Customs Act
- If so Customs officer should seal the goods during transshipment.
- A bond has to be executed for the purpose.
- After execution of bond, a certificate from customs officer has to be submitted within one month that goods have been properly transferred..

Distinction between Transit and Transshipment –

- In 'transit' goods continue to be on same vessel, while in transshipment, goods are transferred to another vessel / vehicle. Hence, procedures are also different.

Liability of duty on goods transited under transit and transshipment section 55.

- Where any goods are allowed to be transited or transshipped to any customs station, On their arrival at such station, goods shall be liable to duty as if first import,.

Coastal goods Section 91 to 99

- Coastal goods means goods transported from one port in India to another port in India,
- Coastal goods do not include imported goods.
- No export or import is involved, but Control is necessary to ensure that coastal goods are not illegally diverted for export. Coastal goods can leave only after obtaining written order from Customs Officer

Loading of Coastal goods –

- The Consignor should submit bill of coastal goods to Customs Officer (section 93).
- Form of the bill has been prescribed.
- Master of vessel only will load these after 'bill of coastal goods' is passed (section 93).
- Master of Vessel will carry an 'Advice Book' where Customs Officer will make entries.
- This 'Advice Book' has to be presented for inspection of Customs Officers, if called for after loading, the vessel

No coasting vessel to leave without written order.

- The master of a vessel which carrying coastal goods shall not to depart from such port until a written order to that effect has been given by the proper officer.

No such order shall be given until—

- The master of the vessel has answered the questions put to him under section 38;
- All charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by guarantee
- The master of the vessel has satisfied the proper officer that no penalty is leviable or the payment of any penalty has been secured by guarantee or deposit of such amount as the proper officer may direct;

Unloading of coastal goods –

- Unloading of coastal goods should be done only at Customs Port or coastal port appointed by CBEC under section 7 of Customs Act.
- On arrival, all bills relating to goods which are to be unloaded will be delivered to Customs Officer
- Unloading can be done only after obtaining permission from Customs Officer.
- Customs Officer can inspect goods and ask for questions and documents relating to goods.
- Goods will be unloaded at approved place under supervision of Customs Officer.

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Determination of duty where goods consist of articles liable to different rates of duty sec 19

- Where goods consist of a set of articles, duty shall be calculated as follows: —
- Articles liable to duty with reference to quantity shall be chargeable to that duty;
- Articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
 - Articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):

Provided that, —

- Accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- If the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Warehousing

section 57 to 73

- After the goods are imported, the importer can keep the goods in warehouse without payment of customs duty.
- He can pay customs duty and clear imported goods from the warehouse as and when needed.
- This facility is available to exporters/manufacturers as well as direct importers.

Appointing of public warehouses. Section 57A

- At any warehousing station, the AC/DC may appoint public warehouses where in dutiable goods may be deposited.

Licensing of private warehouses. Sec 58

- Warehouses can be public or private
- At any warehousing station, where which facilities for deposit in a public warehouse are not available, AC/DC may license private warehouses wherein dutiable imported goods are stored.

The AC/DC of Customs may cancel a license

- (a) By giving one month's notice in writing to the licensee; or
- (b) If the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the license:
- Before any license is cancelled, the licensee shall be given a reasonable opportunity of being heard. License can also suspended, pending enquiry

Warehousing bond. Sec 59

- The importer of in respect of warehoused goods and assessed to duty shall execute a bond in a sum equal to twice the amount of the duty—
- To observe all the provisions of this Act and the rules and regulations in respect of such goods;
- To pay on or before a date specified in a notice of demand, —
- All duties, and interest, penalties for violation of act or rules ;
- Rent and other with interest
- The AC/DC may permit an importer submit a general bond for specified amount for specified period.
- Where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee

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Period for which goods may remain warehoused. Sec 61

In case of 100% E O U

- (a) Capital goods till the expiry of 5 years from the date of deposit
- (b) Other goods till the expiry of 3 years from the date of deposit
- In case of other persons till the expiry of one year,

The above period may be extended by Commissioner in case of goods which are not in the nature of deteriorate

- In case of E O U the period a may think fit
- In case of other persons a period of 6 months
- In case of goods, which are likely to deteriorate, the period of one year may be reduced
- When the license for any private warehouse is cancelled, the owner of goods shall transfer to another warehouse within seven days or within such extended period as the proper officer may allow,

Interest payable beyond warehousing period

- In case of EOU, beyond 3 years /5 years
- In case of other than EO U beyond 90 days
- Rate of Interest 15%
- Interest should be payable up to *and including* the date of payment of duty. –
- Board may, if it considers it necessary so to do in the public interest, waive whole or part of interest.

Control over warehoused goods. Sec 62

- All warehoused goods shall be subject to the control of the proper officer.
- No person shall enter a warehouse or remove any goods there from without the permission of the proper officer.
- The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.
- The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

Payment of rent and warehouse charges. Sec 63

- The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges.
- If any rent or warehouse charges are not paid within ten days from the date when they became due,
- The warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer caused to be sold

Owner's right to deal with warehoused goods. Section 64

With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same—

- Inspect the goods;
- Separate damaged or deteriorated goods from the rest;
- Sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;
- Deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- Show the goods for sale; or
- Take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

Manufacture and other operations in relation to goods in a warehouse Section 65

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- With the sanction of the AC/DC and subject to such conditions, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse.
- Prescribed conditions may include bond, fees for supervision, maintaining accounts, order of special audit by cost accountant etc.,

Duty liability on imported goods present in the waste/Final product:

- If waste generated when the waste was exported/or waste destroyed no duty payable
- If the waste cleared for Home consumption import duty payable on the waste as if the waste was imported
- If final product is exported no duty payable
- If final product cleared for home consumption, duty is payable on the imported material present the final product

Exemption from excess duty Sec 66:

- If any imported materials are used manufacturing operations in warehouse
- And the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, t
- CG if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette,
- Exempt the imported materials from the whole or part of the excess rate of duty.

Clearance of goods from bonded warehouse

Clearance from warehouse can be any of the following

- Transfer to other bonded warehouse Sec 67
- Clearance to Home consumption sec 68
- Clearance for export- sec 69

Transfer to other bonded warehouse

- Transit bond for customs duty involved backed by bank guarantee / security should be furnished
- In the case of EOU, bank guarantee for transfer of goods is not required. –

Removal for home consumption –

- Importer has to submit bill of entry in prescribed form.
- Duty, penalties, rent and interest is payable as per rules.
- Goods are then allowed to be cleared by Customs Officer.
- Rate of duty as prevalent on date of presentation of Bill of Entry for clearance from warehouse. –

Clearance for export –

- Warehoused goods can be exported without payment of duty,
- A shipping bill has to be presented.
- Export duty, penalties, rent, interest etc. is payable as applicable
- And then goods are allowed to be exported.
- There is no assessment at warehouse
- Assessment will be done at the time of filing of bill of entry for warehousing

Allowance in case of volatile goods. Sec 70

- Any warehoused goods at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss,
- The AC/DC may remit the duty on such deficiency.

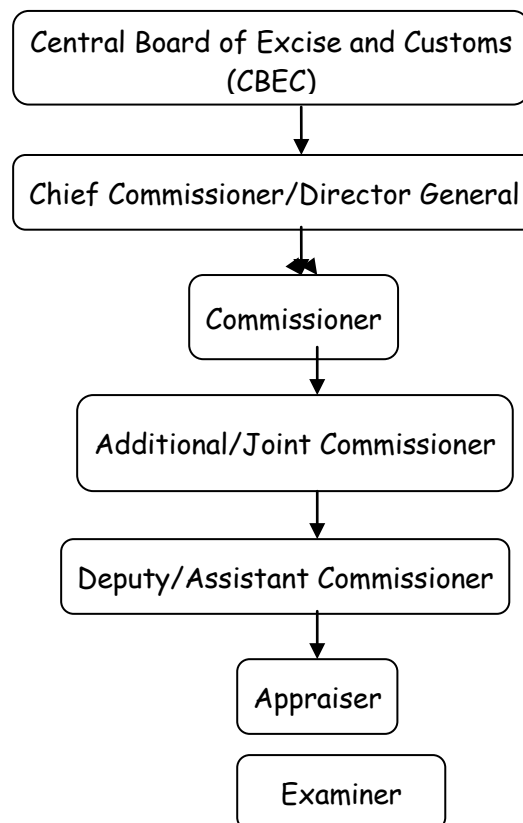
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Warehouse without warehousing/ Storage without warehousing

- Warehouse goods means goods assessed for duty and stored in ware house
- When assessment was not made at the time of import because of want of some clarification/reports –
- If assessment is likely to be delayed, section 49 allows that goods can be stored in public warehouse.
- However, such goods are not to be treated as ‘warehoused goods’ for purposes of Customs Act as the goods are not assessed. Hence, it is called ‘storage without
- The goods are cleared from the warehouse after duty is assessed and paid.

Hierarchy of Customs

Organization hierarchy of Customs department



Power of Customs Officers

Power of Customs Officers to inspect sec 106 A

- Customs officers have powers to inspect the storage premises notified/specified goods the inspection can be at any reasonable time, with or without notice.
- The officers can check the records and inspect the goods.
- The person in charge of premises is required to produce accounts records

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Power to stop and inspect conveyance sec 106

- Customs Officer is empowered to stop any aircraft, vessel, vehicle to examine and search the aircraft, vehicle or vessel.
- He can break open any lock of door or package, if key is withheld.
- If the vessel, aircraft etc. does not stop or land after giving signals, it may be chased
- If it refuses to stop after firing a signal, the vehicle may be fired upon. s

Power to search other persons sec 101

- An Officer of Customs empowered by special order of Commissioner of Customs can search any person (anywhere in India),
- If he has reason to believe that such person is carrying gold, diamonds, manufacture of gold and diamonds or watches, *which are liable to confiscation*.

Search of premises -section 105

- AC, who has reasons to believe that any goods liable to confiscation or
- Any document or thing are secreted in any place,
- Can authorize any Customs Officer he may himself search for such goods, documents or things.
- Search should be as per provisions of Criminal Procedure Code,
- Report of search is to be submitted to Commissioner of Customs.

Vexatious search/arrest by Customs Officer - Section 136

Vexatious search means

- Searching a person or place/arresting a person without any 'reason to believe'
- Officer is punishable with imprisonment up to six months or fine up to Rs. 1,000 or both.
- This punishment can be imposed only by Court of Law.

Seizure by Customs Officers – Sec 110

- During search, some goods are found, Customs Officers can seize if he reason to believe the goods are liable for confiscation,
- If the goods are bulky, they can be kept in possession of the owner himself
- A notice is served on him that he should not remove or in any way deal with the goods. s

Immediate sale of seized goods section 110(1A),

- If the goods are perishable or hazardous or if storage space is not adequate or if the goods depreciate fast., Customs Officers can dispose of such goods immediately

Before disposing them of, full inventory will be taken and application will be made by Customs Officer to Magistrate to

- Certify correctness of inventory
- Certify photographs of goods
- Take samples and certify its correctness.

The goods covered under this section are:

- Liquor, photographic films, medicines, wrist watches, electronic goods, Gold, Silver, dangerous drugs, vehicles, etc.
- If the goods are not confiscated or if the confiscation is set side by appellate authority, sale proceeds must be refunded to owner of goods.

Return of seized goods within 6 months if no SCN

- If seized goods are felt to be liable for confiscation, a show cause notice has to be served giving him grounds for confiscation,
- Asking his representation and giving him opportunity of personal hearing as per section 124 of Customs Act.
- If no show cause notice is issued within six months of seizure,

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- the goods shall be returned to person from whose possession they were seized

Seizure of documents [section 110(4)].

- Documents relevant to proceedings under the Customs Act can also be seized.
- The person from whom the documents are seized is entitled to take copies in presence of Customs Officer

Power of Customs Officers to X ray bodies Sec 103

- If Customs Officer has reasons to believe That any person coming to India or leaving from India or Any person in customs area has secreted inside his body any goods liable to confiscation,
- He can detain and take him to nearest magistrate.
- If the Magistrate is satisfied that reasonable grounds exist, he can order that body of such person may be X-rayed.
- A qualified radiologist will take the X-rays and his report may be given to Magistrate. If the report indicates that goods are secreted inside, he may direct that suitable action may be taken to take out goods as per advice of qualified doctor.
- Magistrate can order that the person may be kept in custody.
- If the person himself admits that the goods are secreted inside his body and voluntarily submit for action to bringing out the goods, X-ray etc. may not be taken.

Power to call for documents and examine a person - section 107,

- An officer of Customs, empowered by Commissioner, During enquiry in connection with smuggled goods,
- May require any person to produce relevant document or examine any person acquainted with the facts of the case.

Power to summons Sec 108

- All Gazetted Officers of customs to issue summons to any person for inquiry in connection with any provisions under customs Act.
- He can require a person to produce any document relevant to enquiry and examine a person.

Power to arrest Sec 104-

An officer of customs who has been empowered by Commissioner of Customs by general or special order,

- Can arrest a person whom they have 'reason to believe' indulge for evasion of duty or importing prohibited goods or dealing in goods liable to confiscation
- The officer can arrest him and inform him ground of arrest.
- The person arrested has to be forwarded to the Magistrate.
- He must be produced before a magistrate within 24 hours.
- The magistrate may grant the bail on bond or refuse the bail and remand him to custody. .

Powers of adjudication of customs officers

Competent Authority	Powers of Adjudication	
	Cases involving suppression of facts	Other Cases
Inspector	No power	No power
Superintendent	No power	No Power
Asst. / Dy. Commissioner	Value of goods up to Rs.2 Lakhs	Value of goods up to Rs.2 Lakhs
Addl. Commissioner/ Joint	Duty amount involved up to Rs.50 Lakhs	Value of goods upto Rs.50 Lakhs
Commissioner	Without limit	Without limit

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Import and export through Courier

- Import/Export through courier is permitted only through Mumbai, Delhi, Calcutta, Chennai, Bangalore, Hyderabad, Ahmedabad, Jaipur, Trivandrum and land customs station
- Courier Agency should register with Commissioner of customs and should financially viable.
- Courier Agency should execute bond/security if any
- Registration can be cancelled for misconduct or failure to comply with regulations.
- Agency should advise the client about rule and regulations
- Agency should disclose all the information to assessing officer
- It is not necessary the goods should carry by courier agency itself. Person in charge can carry the goods
- Some goods like animals, pets, maps perishables, chemicals, depicting boundaries etc should not be imported./exported
- Weight of each pocket in courier should not exceed 70 kgs.
- All goods should be classified in to documents, free gifts, samples and dutiable goods
- Authorized Courier also has to file 'Courier Bill of Entry'/Courier Shipping bill in prescribed form.
- The courier bags should be kept separately and shall be dealt with only as per directions of Commissioner of Customs.
- Dutiable goods should be packed separately with appropriate labels.
- These goods must be accompanied by a declaration by sender in respect of contents of the package and its value.
- Free gifts and samples up to Rs. 10,000 (exclusive of freight and insurance) can be imported per consignment in case of Exports free gifts 25000/ samples Rs. 50000
- Import/export of jewellery /diamond, each consignment does not exceed Rs. 25 lakhs.
- Authorized Courier has to submit declaration in prescribed form.
- If imported goods are not cleared within 30 days, these will be disposed of.
- Goods brought in customs area must be exported within 7 days
- If not exported within 7 days, these will be disposed of. The period can be extended by Assistant Commissioner in deserving cases

Import and export through post

- Separate provisions for import/export through post
- Label and declaration is the Entry for purpose of postal articles Sec 82
- Filing of separate Bill of Entry or Shipping Bill is not necessary for import/export

Regulations for import / export by Post - Section 84

- Board makes regulations for procedures for examination and assessment of duty and transit/transshipment of goods imported by post.

Accordingly, CBEC have made rules as below

The parcel bill/letter mail bill will show details like

- Serial number assigned by office of posting, Name of office of posting
 - Destination, weight, local number, Contents as ascertained by Customs
 - Declared value in foreign currency, Rupee Value, Rate of duty, Amount of duty and Remarks.
 - Postal parcels will be allowed to pass from port/airport to Foreign Parcel Department of Post Offices without payment of customs duty.
 - Postmaster will hand over packets to Principal Appraiser;
 - The mailbag will be opened and scrutinized by Postmaster under supervision of Principal Postal Appraiser of Customs
- Customs Appraiser will mark the parcels which are required to be detained as
- Necessary particulars are not available or

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- Mis-declaration or under-valuation is suspected or
- Goods are prohibited for import.
- Other parcels will be assessed without opening, on the basis of details given in parcel bill or despatch notes.
- The duty will be assessed and will be entered on parcel bill.
- These will be audited and returned to Postmaster.
- Postmaster will hand over parcel to addressee only after collecting the customs duty.
- Customs duty collected by postal department will be periodical credited to Customs department

Rate of duty tariff value for post

➤ A. In Case of Imports

1	In Case of Goods arrived by air/ road	The rate of duty and valuation as on date on which postal authorities submit the list to Customs Officer
2	In Case of Goods arrived by Vessel	The rate of duty and valuation as on date on which postal authorities submit the list to Customs Officer or date of arrival of vessel which ever is latter.

B. In Case of Exports: *The rate and tariff valuation as applicable on date on which exporter handed over goods to postal authorities for verification will be considered.*

Exemptions to post parcels

- Post Parcel where customs duty payable is less than Rs. 100 are fully exempt from duty
- Gifts from abroad up to Rs. 10,000 of goods, are duty free if sent by post or through courier
- If the value exceeds Rs 10,000, customs duty is payable on whole value even if gift was received unsolicited.

Export by post

- Export must be declared in exchange control form PP.
- Indian and foreign currency, bank drafts, cheque, NSC are not allowed unless accompanied by permit issued by RBI,
- Goods up to Rs 25,000 can be exported as gifts.
- Export of purchases made by foreign tourists is permitted on submission of proof that payment was received in foreign exchange.

Provisions relating to Stores (Sec 85 to 90)

Meaning of Stores: Sec 2(38)

- Goods for use in a vessel or aircraft and include diesel and spare parts and other articles of equipment, whether or not they are required for immediate fitting.

Examples

- Food, Beverages, crockery cutlery, fuel
- Consumables, Tools, Equipments, Spare parts

Provisions relating to Stores (Sec 85 to 90)

- Imported stores on board a vessel or aircraft can be consumed as stores without payment of customs duty, as long as the vessel or aircraft is a foreign going vessel or aircraft.
- The stores can be removed from warehouse without payment of duty to be taken back on foreign going vessel. A 'shipping bill' has to be submitted
- Warehouse rent and other penalties etc. if applicable, are payable before removal of stores.
- Imported stores can be kept in warehouse without assessment/without payment of duty for supply to ships / aircrafts. –
- Stores can remain on Board of vessel or aircraft while in India.
- Imported can be transferred to another vessel or aircraft with permission of Customs officer, without payment of duty, if the vessel is a foreign going vessel. –

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- If stores are to be removed for home consumption, Bill of Entry has to be filed duty, penalties, rent and interest as may be payable.
- Imported duty paid stores can be supplied as 'stores' to foreign going vessel. Drawback can be claimed
- Stores manufactured or produced in India may be exported without payment of export duty, as stores on any foreign going vessel with permission of Customs Officer,
- Customs Officer will determine the requirement based on size of vessel or aircraft, length of journey etc.- Since the supply is treated as 'export' it will be eligible for duty drawback.
- The provisions with regard to stores regarding supply to foreign going vessel drawback provisions will also apply to stores supplied to for Indian Navy Vessel

Baggage

Meaning of baggage

- Baggage means all dutiable articles, imported by passenger or a member of a crew in his baggage
- Un-accompanied baggage, if dispatched previously or subsequently within prescribed period is also covered
- Baggage does not include motor vehicles, alcoholic drinks and goods imported through courier, articles imported under an import license for his own use or on behalf of others.

Declaration of Baggage

- The owner has to make Declaration about the contents of baggage- Sec 77 -
- Rate of duty and tariff valuation in case of baggage shall be the rate and valuation in force on the date of declaration. (Sec 78)
- Bona fide Baggage Exempt from duty as per baggage rules. Sec 79

Clearance procedure of baggage

Green Channel

- Passenger who has nothing to declare can simply walk through green channel with baggage on basis of oral declaration
- Declaration should be made on their disembarkation cards at time of incoming
- Customs Officer can also stop and check
- Any passenger found walking through green channel with dutiable or prohibited goods is liable to strict penal action of seizure and confiscation.
- He can even be arrest / prosecuted.

Red Channel –

- Person carrying dutiable goods should pass through red channel and should submit declaration.
- The declaration of goods and value as given by passenger in disembarkation card is generally accepted, but customs officer can inspect baggage.

Exemptions/Remissions of duty

Exemptions of Customs duty by Notification Sec 25 – This provision is similar to sec 5A for exemption of Central Excise

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Demands and Refunds

Demand of Customs Duty

➤ When duty is not levied or short levied or erroneously refunded, Customs officer can raise a show cause notice [section 28].

Time limit for issue SCN

- Within six months from relevant date.
- In Case of import for personal used, or import by hospitals, Govt., Charitable inst one year from relevant date
- 5 years in case of due to collusion, willful mis-statement, and suppression of facts or fraud

Relevant Date

- If duty or interest was not levied, date of order of clearance of goods
- if the duty was provisionally assessed, then date when it was adjusted after final assessment
- if duty or interest was erroneously refunded - date of refund
- If duty was paid or interest levied - date of payment of duty or interest.
- In case of Tribunal/ court order – date of order.

Refund of Duty

- Importer/buyer CHA with POA can apply for refund
 - Time Limit 6 months from the date of payment of duty
 - In case of personal use, or import by hospitals, Govt., Charitable inst. one year
 - If duty was paid on provisional basis, period of 6 months / one year will be calculated from the date of adjustment of duty after final assessment
 - If duty was paid under protest, time limit of 6 months / one year is not applicable.
 - The Provisions of doctrine of unjust enrichment will apply for refund of duty
- Refund of customs duty/interest can be made to importer/buyer only in following cases:**
- If importer/buyer not passed on incidence to customer
 - If importer/buyer used goods for personal purpose
 - In case of Refund of export duty,/duty drawback if any

Section 26A of Customs Act 1962 – Refund of duty for defective goods Inserted by Finance Act 2009

Where on importation of goods, any duty has been paid on clearance of such goods for Home consumption such duty shall be refunded to the person by whom it was paid if (a) the goods are found to be defective or not in conformity with the specifications agreed upon between the importer and supplier of the goods

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with specifications.

(b) the goods are satisfied to the satisfaction of the AC or DC as the goods which were imported.

(c) the importer does not claim drawback and the goods are exported or importer relinquishes his title to the goods and abandons them to the customs or such goods are destroyed or rendered commercially valueless in the presence of the proper officer. in such manner as may be prescribed, within a period of 30 days from the date on which order for Home consumption was made. The period of 30 days may be extended by Commissioner for a period not exceeding 3 months.

(d) No refund shall not be allowed if any offence has been committed.

(e) An application for refund shall be made before the expiry of 6 months from the relevant date as below

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If goods are exported out of India	Date on which proper officer makes an order permitting clearance and loading of goods for exportation
Title to goods is relinquished	Date of relinquishment
If goods are destroyed or rendered commercially valueless	The date of such destruction or rendering of goods valueless

(f) No refund shall be allowed in respect of perishable goods or goods which have exceed their shelf life.

(g) CBEC may specify any other conditions subject to which refund shall be allowed.

Exemption of Duty on pilfered goods. Sec 13

- If any imported goods are pilfered after the unloading
- Before the proper officer has made an order for clearance for home consumption or deposit in a warehouse,
- The importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.
- There is no remedy if goods are pilfered after the order for clearance is made but before the goods are actually cleared.

Duty on pilfered goods is payable by port/Airport authorities

- They are in position of 'bailee'
- The customs duty is payable by port trust authorities or airport authorities under whose custody the goods were lying [section 45(3)].

Remission of duty on lost destroyed or abandoned goods. Sec 23

- If AC/DC satisfied that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed,
- At any time before clearance for home consumption, remission will be granted

Relinquishment of title of goods by Importer

- Importer can relinquish title of goods before an order for clearance of the goods for home consumption or to deposit in to warehouse.
- Even if goods are warehoused, the owner of warehoused goods can relinquish the title of goods any time before order for home clearance is made.

Reasons for relinquishment –

- The goods are in much deteriorated condition and it is not worthwhile to pay duty
- The assessment of duty is done on much higher side than expected
- If the importer decides to abandon the goods, he shall not be liable to pay any duty [section 23 (2) of Customs Act]
- In case of relinquishment of ware house goods he will be required to pay rent, interest, other charges and penalties that may be payable, but duty will not be payable

Abatement of duty on damaged goods - Sec 22

Reduction in duty will be allowed, if goods are damaged or deteriorated in any of the following cases

- Damaged before or during unloading in India
- Damaged by accident after unloading but before examination of goods for assessment by Customs Officer –
- Damaged by accident in warehouse before clearance of goods –
- The accident is not due to willful act, negligence or default of importer, his employee or agent
- The customs duty chargeable will be in proportion to the value of damaged good to value of goods before damage or deterioration
- AC may decide the value of damaged goods, or if the owner agrees, the damaged goods may be sold by auction and gross sale proceeds of the auction will be deemed to be the value of goods.

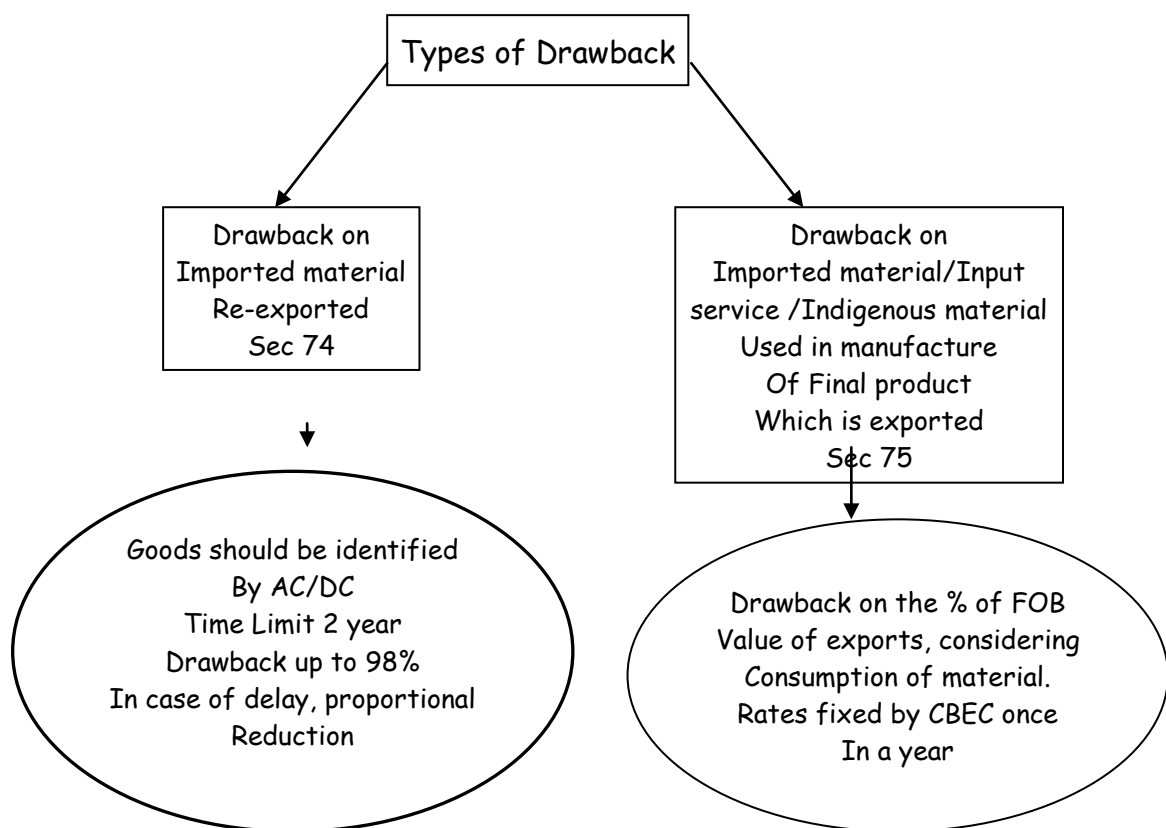
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Import for repairs, reconditioning etc

- Goods can be imported for repairs, reconditioning or re-engineering.
- These have to be re-exported within three years of imports.
- After imports, the repairs, reconditioning or re-engineering has to be in a bonded warehouse under customs bond.
- It is not necessary that goods must have been manufactured in India

Duty Drawback Sec 74 and Sec 75

- Drawback means refund of excise duty and customs duty paid on inputs to the exporter.
- Drawback provisions covered in section 74 & 75 of Customs Act.



- Sec 74 is applicable when imported goods are re-exported as it is an article is easily identifiable.
- Where section 75 is deals with when imported materials & indigenous material/ Input service are used in the manufacture of goods, which are then exported,
- Duty Drawback is equal to (a) customs duty paid on imported inputs and excise duty paid on indigenous inputs. And (c) Service tax paid on input services used in the manufacture of final product.
- Duty paid on packing material is also eligible.
- No drawback is available on other taxes like sales tax and octroi.
- Drawback also will be paid when the goods supplied from DTA to SEZ.

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Eligibility for draw back on duty paid

1	In case of Entered for export	Proper officer made order for clearance for loading /exportation U/s 51
2	Are to be exported as baggage	When Owner makes a declaration of its contents to the proper officer u/s 77
3	Are entered for export by post	Proper officer makes an order permitting clearance of the goods for exportation, U/s 81

Quantum of Drawback

- In case of sec 74 drawback up to 98%
- In case of goods exported after some time or usage the drawback will be allowed as below

Goods meant not for personal and not for private use – Notification No 23/2008 dt 1.03.2008

Period between date of clearance for home consumption and date when goods are placed under Customs Control for export	Percentage of import duty to be paid as drawback.
< 3 months	95%
>3onths < 6 months	85%
>6 months < 9 months	75%
>9 months < 12 months	70%
>12 months < 15 months	65%
>15 months <18 months	60%
> 18 months	NIL

Goods for personal and private use –

■ If the goods (including motor car) were imported for personal use, the reduction in import duty refundable is as below

- First year of use ----- 4% per quarter
- Second year of use ----- 3% per quarter
- Third year of use ----- 2.5% per quarter *
- Fourth year of use ----- 2% per quarter *

■ * Eligibility is subject to Approval of Commissioner

For example a motorcar was used for 2 years

The drawback will be allowed as below

- For first year of use (4 x 4 %) and
- For second year of use (4 x 3%),
- Total 28%. -- The drawback will be paid 100-28% = 72%

Negative list:

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■The following goods are not eligible for drawback: Wearing apparel, tea chest, exposed cinematographic films passed by censor board, un exposed cinematographic films, X-ray films, paper and plates.

Drawback u/s 75

■Drawback will be paid based on % of F O B as per on All Industry rates notified by C B E C.

All Industry rates (Rule No 3)

■Fixed considering average quantity and value of each class of inputs imported or manufactured in India.

■Average amount of duties paid/Service tax paid on input service is considered.

■ These rates are fixed for broad categories of products. The rates include drawback on packing materials.

■The C G will revise these rates and specify the period in which the rates will be in force (Rule 4 and 5)

Non-applicability of All Industry rates -

■Goods manufactured in customs bonded warehouse

■Manufactured and exported as per export incentive schemes

■Exports by EOU or SEZ unit

■Goods exported after obtaining rebate of excise duty on inputs under rule 18 of Central Excise

■Goods exported without payment of duty under rule 19(2) [However, customs portion of duty drawback rate will be allowable

Brand Rate (Rule 6): -

■Brand rate is fixed if it is not possible to fix All Industry Rate in case of some special products,

■The manufacturer has to submit application with all details to Commissioner, Central Excise.

■Such application must be made within 90 days of export. Extension 90 days + another 90 days by CC

■There should not be '*negative value addition*'.

Special Brand Rate (Rule 7)

■ All Industry rate is fixed on average basis.

■A particular manufacturer may find that the actual duty paid on inputs is higher than All Industry Rate fixed for his product.

■In such case, he can apply for fixation of Special Brand Rate, within 90 days from export. + extension 30 days

■The conditions of eligibility are The all Industry rate fixed should be less than 80% of the duties paid by him

Access to Officers and Information: (Rule 9 & 10):

■Manufacturer and exporter has to submit information to officers sent by AC/DC with regard to class of material, correctness of data, duty paid etc.,

■Officers authorized by AC/DC should be allowed to access factory, examine the process of manufacture, entitlement of drawback.

Drawback claim procedure (Rule 11 to 13)

■Application with Covering Letter along with DB K Statement

■All these statements are to be certified by the manufacturer and/CE by CA/CWA.

Enclosures

■The triplicate copy of shipping bill, Let Export' order, copy of export contract,

■Copy of packing list, Export Invoice, Copy of ARE-1, insurance certificate,

■Copy of communication regarding rate of drawback. In case of brand rates,

■Import Invoice, Evidence for payment of duty,

■ RBI permission for re-export (If required), Export Invoice and packing list, and Copy of Bill of Lading

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- Declaration by Exporter that duty paid, No rebate claimed,
- Declaration of availment or non availment of cenvat credit
- The claim is scrutinized. After claim is found to be complete, a dated acknowledgement is given.
- Commissioner can also pay drawback on provisional basis, on execution of a bond.
- Appraiser can sanction drawback claim up to Rs. one lakh.
- Assistant Commissioner Sanctions claim above Rs. one lakh.

When drawback not eligible

- If sale proceeds of export goods are not received within time stipulated by RBI/FEMA [This provision does not apply to goods supplied from DTA unit to SEZ unit]
- If no customs/excise duty is paid on the inputs
- If imported inputs were obtained under export promotions schemes without payment of duties
- If Cenvat was claimed on indigenous inputs. [In such case, excise portion of duty drawback will not be available].
- In case of negative value addition - i.e. selling price of exported goods is less than value of imported goods.
- Where specific rates are provided, drawback will not be paid if it is less than 1% of FOB Value of the product,
- Exports to Nepal/Bhutan. If payment received in INR
- No drawback of sales tax, octroi or other taxes
- If drawback is less than Rs. 50.

Interest payment if drawback paid late Sec 75 A-

- Duty drawback must be paid within one month.
- If not so paid, interest is payable to the claimant @ 8%
- If the drawback claim is deficient, the interest will commence only after all required papers are submitted.
- Where any drawback has been paid to the claimant erroneously, demand can be raised and interest is payable by exporter @ 13% from the date after expiry of 2 months from the date of demand till the payment of duty.

Distinction between drawback under 74 and 75

S No	Drawback u/s 74	Drawback u/s 75
1	It is applicable when imported goods are re-exported as it is and article is easily identifiable,	It is applicable when imported materials are used in the manufacture of goods which are then exported
2	Available for all goods	Available for only notified goods
3	Rules Cover Customs Duty only	Rules Cover Customs and excise Duty
4	Based on Import duty actual paid	Based on Import duty on average Consumption
5	Goods should be easily identifiable	No such condition
6	There is no manufacturing	Manufacturing and process is must.
7	There is a time limit for export	No time limit for export
8	There is uniform rate of drawback (98%)	Different rates of drawback, Brand rate, All industry rate and Special brand rate etc

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Export Incentives

The export promotion scheme normally consists of Duty Exemption Scheme and duty remission scheme.

Advance Licence

- Advance Licences are issued under Duty Exemption Scheme to allow import of inputs, and consumables without payment of duty,
- Advance Licences are issued by Government of India (Director General of Foreign trade-DGFT) for Physical exports, Intermediate supplies and Deemed exports in accordance with Exim policy
- The Advance Licence holder fulfils export obligation by exporting the resultant product specified in the Advance Licence upto specified quantity/value.
- Advance licence specifies the Value and quantity of each item permitted duty free import
- In order to ensure fulfillment of such export obligation, the Advance Licence holder executes a bond with or without Bank Guarantee (B.G) with Customs undertaking to fulfill the specified export obligation.
- Advance Licences are also issued on the basis of annual requirement for exports /supplies. This enables the exporter to plan out his manufacturing/export programme on long term basis.
- Advance Licences for deemed exports are issued to (i) manufacturer exporter or main contractor in case of deemed exports, and (ii) Merchant exporter having supporting manufacturer.
- All Advance Licences and/or materials, imported there under are not transferable even after completion of export obligation.
- Advance Licences are issued with a positive value addition stipulation.
- All Advance Licences are normally valid for import of goods upto 18 months from the date of issue. Extension can be granted by DGFT.
- No duty drawback is normally admissible to an Advance Licence holder. However the licence holder is entitled to claim brand rate of duty drawback in respect of inputs which are not imported against the advance licence and on which Customs/excise duty has been paid.
- Duty Entitlement Exemption Certificate (DEEC) Book is issued alongwith the Advance Licence to monitor and utilisation of inputs imported against Advance Licences (except Advance Licence for deemed exports), At the time of import and export against Advance Licence, entries are made in the DEEC Book by Customs to keep record of the import/export made against it.
- After completion of export obligation and imports against the Advance Licence, the DEEC book, along with documents will be submitted to DGFT for issue of export obligation (EO) discharge certificate. On the basis of EO discharge certificate issued by DGFT, redemption of bond/B.G. filed by the Advance Licence holder with Customs is allowed.

Duty Remission Scheme:

Duty Remission Scheme consists of;
Duty Free Replenishment Certificate and
Duty Entitlement Passbook Scheme.

Duty free Replenishment certificate

- It is an export promotion scheme under which DFRC licences are issued permitting duty free import of inputs which were used in the manufacture of export product on post export basis as replenishment.
- (DFRC) Licence is issued to a merchant-exporter or manufacturer-exporter.

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- DFRC licensees are issued only in respect of export products covered under the Standard Input Output Norms (SION) as notified by DGFT.
- The validity of such licence is normally 18 months and relevant DGFT authority (who issues the licence) is competent to grant extension of validity period.
- DFRC licence and or the material(s) imported against it are freely transferable.
- Exporters operating under DFRC Scheme are entitled for availing AIR of duty drawback in respect of that duty paid materials, whether imported or indigenous, used in the export product, which are not specified in the DFRC licence. Brand rate of duty drawback can also be availed in respect of such inputs.

Duty Entitlement Pass Book (DEPB) Scheme:

- It is an export promotion scheme and envisages grant of DEPB Credit Entitlement to an exporter at the time of export at an ad-valorem rate notified by DGFT, in relation to FOB value of the export product.
- The DGFT have so far notified DEPB rates for nearly 2000 export products. These rates are based on the computation of Basic Customs Duty suffered by the exporters on the inputs listed in the Standard Input-Output Norms (SION) applicable to the export product.
- The normal validity period of a DEPB Scrip is 12 months and DGFT authority (who issues the scrip) is empowered to grant revalidation.
- This scrip are for a certain amount of DEPB credit and can be utilised for adjusting Customs Duties (Basic or CVD) against import of any products into India, without the necessity of any co-relation between the export product and the import goods, i.e. it is not necessary to import only the relevant inputs corresponding to the export product.
- No duty drawback is allowed on exports made under DEPB Scheme. However, in cases where CVD is paid in cash on imported inputs, or where indigenous duty paid inputs, not specified in SION, are used in the manufacture of export product, drawback is allowed at brand rate.

Export Promotion capital Goods (EPCG) Scheme:

- Under EPCG Scheme import of capital goods which are required for the manufacture of resultant export product specified in the EPCG Licence is permitted at concessional rate of Customs duty.
- This Scheme also enables up gradation of technology of the indigenous industry. For this purpose
- EPCG Licences are issued on the basis of approval granted by EPCG Committee. The EPCG Committee comprises of officers from DGFT, MOF and concerned Administrative Ministry
- At present the EPCG licence holder is permitted to import capital goods at 5% or 10% Customs duty. EPCG Scheme the licence holder is required to undertake to fulfill export obligation. They have to submit bond/bank guarantee where ever required.
- EPCG licenses are issued to manufacturer exporters and merchant exporter with or without supporting manufacturer, and service providers.
- Capital goods imported under EPCG Scheme are subject to actual user condition and the same cannot be transferred/sold till the fulfillment of export obligation specified in the licence.
- The licence holder is required to produce certificate from the jurisdictional Central Excise Authority (CEA) or Chartered Engineer (CE) confirming installation of such capital goods in the declared premises. This is to ensure the the capital goods imported under EPCG Scheme are utilized in the manufacture of resultant export product

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- The normal validity period of EPCG licence is 24 months and DGFT authority (who issues the licence) is empowered to grant further revalidation.
- After fulfillment of specified export obligation, the licence holder submits relevant export documents alongwith EPCG licence to the DGFT authorities for the purpose of obtaining EO discharge certificate. After obtaining EO discharge certificate from DGFT, the licence holder produces the same before Customs for the purpose of obtaining redemption of bond/B.G. filed by him.

In addition to the above incentives, duty draw back also provide for refund of duty paid on inputs

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Penalties and Confiscation

Provisions of penalties and offences are quite similar to Excise Law. Like Excise, Customs Law envisages two types of punishments

- (a) **Civil Liability:** Penalty for violation of statutory provisions involving a penalty of money and confiscation of goods.
- (b) **Criminal Liability:** Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. Both penalty and punishment can be imposed for same offence.

Some important definitions

Smuggling - Smuggling, in relation to any goods, means any act or omission, which will render such goods liable for confiscation under section 111 or 113. [Section 2(39)]. Thus, improper importation attempting improper importation or * attempting improper export will amount to 'smuggling'. *'Smuggling' is much broader term than we normally understand.*

Prohibited goods - Section 2(33) of Customs Act defines - 'prohibited goods means any goods the import or export of which is prohibited under Customs Act or any other law for the time being in force, but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Penalties

Customs authorities are empowered to impose (a) monetary penalty (b) confiscation of goods, conveyance etc. When a person is not traceable, it is not possible to impose penalty, but goods can be confiscated. Penalty can be imposed for improper import as well as attempt to improperly export.

Penalty for Improper Import - Section 112 of Customs Act provide that penalty can be imposed on any person: (a) who does or omits to do any act which act or omission would render such goods liable for confiscation under section 111 of Customs Act or who abets in doing or omission of such act (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.

Quantum of Penalty leviable for improper imports

Section 112 provides monetary penalties for improper imports as below:

S No	Nature of goods	Quantum of Penalty
1	Prohibited for imports under Customs Act or any other law	Value of goods or Rs 5,000 whichever is greater,
2	Dutiable goods, which are not prohibited goods	Duty sought to be evaded in case of or Rs 5,000 whichever is greater
3	Actual value is higher value than Declared value of Bill of entry	Difference in actual value and declared value or Rs 5,000 whichever is greater

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4	If the goods are prohibited and the value is mis-declared	Difference in actual value and declared value or Rs 5,000 whichever is greater
5	If the goods are not prohibited but duty is sought to be evaded and the value is mis-declared,	Difference in actual value and declared value or Rs 5,000 whichever is greater

Quantum of Penalty leviable for Attempt to improperly export

S No	Nature of goods	Quantum of Penalty
1	Prohibited Goods under Customs Act or any other law	Value of goods or Rs 5,000 whichever is greater,
2	Dutiable goods, which are not prohibited goods	Duty sought to be evaded in case of or Rs 5,000 whichever is greater
3	In case of Other goods (inflation value etc)	Value of goods, as declared by exporter, or as value determined under Customs Act, whichever is greater.

Liability of Ship Owner/Airlines

If goods are unloaded without including in 'Import manifest' or loaded without entering in 'export manifest', the shipper is liable. When Ten packages were sent to London without entering in 'Export manifest', penalty was imposed on Air India'.

Penalty upon any person Sec 114 A

Any person who willfully / intentionally makes/signs/uses any Declaration, Statement or Document which is false or incorrect in any material particular in any transaction of business for the purpose of this Act. The maximum penalty leviable is "5 times the value of goods".

Residual Penalty

Section 117 of Customs Act provide general penalty to a person who contravenes any provision of the Act or abets in contravention and *if no penalty has been prescribed*, the penalty would be upto Rs. 10,000.

Procedure for imposing penalty

Section 124 of Customs Act provide that before imposing a penalty, show cause notice must be issued to the person, informing grounds for confiscation and he should be given opportunity to make representation and being heard. *Such notice and representation can be oral at the request of the person concerned.* It is obligatory for such officer to obtain prior approval of Customs Officer not below the rank of DC before issuing SCN

Penalty for short landing Sec 116

If the goods were loaded for importation in India, but they were not unloaded in India - partly or fully - the Shipping Agent must explain the reason for deficiency. If it is not satisfactorily explained, Assistant Commissioner can impose penalty up to twice the amount of duty normally payable on the imported goods, The penalty is payable by the 'person in charge of conveyance' i.e. carrier of goods. This provision is to make sure that carrier unloads goods at authorised places only and that there is no smuggling with connivance of the carrier.

Confiscation of Goods

In addition to penalty on the person liable, some goods can be confiscated. 'Confiscation' means the goods become property of Government and Government can deal with it as it wants. On the other hand 'seizure' means goods are in custody of Government, but the property of goods remains with the owner.

Goods that can be confiscated

Goods improperly imported (-section 111) and goods attempted to be improperly exported (section 113) can be confiscated. In addition, following can be confiscated - * conveyance for

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transport of smuggled goods * packages * Goods used for concealing * The Procedure for confiscation, effect of wrong confiscation and provisions of redemption fine in lieu of confiscation are identical to provisions under Central Excise Act.

Confiscation of goods after clearance from port

It is permissible to take action under section 28 of Customs Act and confiscate the goods, even after goods are cleared from customs. This can be done by issuing a show cause notice cum demand.

Re-export of offending goods

Often it is found that goods are not eligible for import as per Import Policy. In such cases, re-export of such goods is permitted as per EXIM Policy. However, in such cases, penalty and redemption fine is payable.

Provisions for release of goods seized on provisional basis. Sec 110 A

The officer adjudging confiscation may permit release of seized goods to the owner upon execution of bond by the owner. The bond for this purpose shall be executed before the CC.

Prosecution for Offences

Who can be punished

The punishment is imposable on a person (a) who is knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt to evasion of duty or of any prohibition imposed on the imports/export of such goods (b) who acquires possession or is any way concerned with carrying, harbouring, keeping, concealing, selling or purchasing, or otherwise dealing with goods which he knows or has reason to believe are liable to confiscation under section 111 i.e. improper imports or under section 113 i.e. attempt to improperly export (c) who attempts to export any goods which he knows or has reason to believe are liable to confiscation u/s 113. [Section 135(1)]

Punishment that can be imposed

Punishment imposable is in case of goods covered under section 123 (i.e. gold, watches, synthetic yarn and metallised yarn, fabrics of synthetic yarn, electronic calculators, zip fasteners and silver bullion): imprisonment upto seven years and fine (without limit) except in exceptional cases, the imprisonment cannot be less than three years (b) In other cases : three years or with fine or both [second part of section 135(1)] (c) repeat conviction : a person already convicted for offence under Customs Act is convicted again, the imprisonment punishment can be seven years and fine and in absence of special and adequate reasons, the punishment shall not be less than one year. [Section 135(2)]

Publication of Name

If a person is convicted under this Act, Court can order publication of names, place of business or residence, nature of contravention etc., under section 135B. Such publication will be at the cost of accused and in newspaper or otherwise as directed by Court.

Other Offences

False declaration

Person making, signing or using any statement, declaration or document knowing or having reason to believe that such statement, declaration or document is false in any material particular, shall be punishable with imprisonment upto 2years or fine or both (section 132 of Customs Act).

Obstruction of officers of customs

Punishable with imprisonment up to two years or fine or both (section 133 of Customs Act).

Refusal to be X-rayed

Punishable with imprisonment unto six months or fine or both (section 134 of Customs Act). This provision is mainly in respect of persons smuggling goods by hiding the same in their body.

Preparation for improper export

Indirect taxes Customs Simplified

Attempting to make exports in contravention of Customs Act is punishable with imprisonment up to three years or fine or both.

Offence In Case Of Company

Penalties *can be imposed on* person who was in-charge of or was responsible to affairs of the Company/firm such as *employee, partner and Director of the company*. Person will be *relieved from* penalties if he prove that offence was committed without his knowledge or he had taken due care to prevent the offence.

Offence by Officers of Customs

If an Officer of Customs enters into any agreement to do or abstains from doing or permits any act whereby any fraudulent export is effected, or by which duty of customs is evaded or prohibited goods are allowed to enter India or go out of India, he shall be punishable with imprisonment up to a term of three years or with fine, or both. [Section 136(1)].

If any customs officer (a) requires a person to be searched for goods without any reason to believe that he has such goods (b) Arrests a person without any reason to believe that he has committed an offence u/s 135 or (c) Searches or authorises search without any reason to believe that any goods, documents or things are secreted in the place; he shall be punishable with imprisonment upto 6 months or fine upto Rs 1,000 or both. [Section 136(2)].

If an officer of customs discloses any information obtained by him in official capacity, he shall be punishable with imprisonment upto 6 months or fine upto Rs 1,000 or both. Of course, he can disclose the information in discharge of his duties on in compliance with any law in force. [Section 136(3)].

The prosecution can be launched in Court only with previous sanction of Central Government in case of prosecution against officer of rank of Assistant Commissioner and above. In lower ranks, previous sanction of Commissioner is required. [Section 137(2)]

End of customs

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A Comparison of similar provisions in Excise, customs and Service tax

Indirect taxes Customs Simplified

Comparison of Classification Excise, Customs and Service tax

	Excise	Customs	Service tax
Classification rules	Rules under CETA 1985 Rule 1 to 6	Rules under CETA 1985 1to 6 repeated under CUTA	Only 3 1.Essential character Classification- same as excise 2.Prefer specific definition, than general definition If not possible under 1 or 2, Classify under first sub clause- In Excise- Classify under last
Tariff headings HSN, tariff Nos	Similar in excise & customs Ex: Chapter 39- Plastics	Similar in excise and customs Ex: Chapter 39- Plastics	N/A

Comparison of Valuation Excise Customs

	Excise	Customs
Tariff valuation	Sec 3(2) Similar	Sec 14 (2) Similar
MRP, Annual Capacity Production, Compound levy scheme	Sec 4A, Sec 3A, Rule 15	No such valuations in customs. MRP Valuation will be considered for CVD payment.
Transaction value	Sec 4 1.Price of goods sold at the time and place of removal 2.Buyer and seller not related to each other (Relative means- list 4 persons) 3. Price is sole consideration for sale	Sec 14(1) and Valuation rules 1.Price of goods sold at the time and place of Importation/exportation 2.Buyer and seller not related to each other (Relative means- list 8 persons Ex: Employee-, Employer, director, 5% share etc. (these persons are not relatives under excise) 3. Price is sole consideration for sale
Inclusions and exclusions in Transaction value	More or less same Ex Packing, design etc Installation, discount, local taxes	More or less same Ex Packing, design etc Installation, discount, local taxes
Valuation Rules	Applicable when value cannot determined under transaction value Sec 4	Transaction value determined as per Sec 14 (1) read with valuation rules.

Comparison of demand, recovery of duty and tax in case of excise, customs and service tax

Indirect taxes Customs Simplified

	Excise	Customs	Service tax
I Demand	Sec 11 A :Not levied, Not paid, Short Levied, Short paid Erroneously Refunded	Sec 28 :Not levied, Not paid, Short Levied, Short paid Erroneously Refunded	Sec 73 of FA 1994 Similar to Sec 11 A of CE Act
Relevant date	Return filed: Date of filing Return not filed: Last Date of Filing Provisional assessment: date of Final assessment. Erroneous refund: Date of refund Other cases: Date of payment Time Limit: Normal: 1 Year Extended (Fraud cases): 5 years	Non-levy: Date of clearance order Short-levy: Date of payment Provisional assessment: date of Final assessment. Erroneous refund: Date of refund Other cases: Date of payment Time Limit: Normal: In case of imports made by Any Individual for his personal use, or Govt. // Educational, Research or Charitable (ERC) Institution or Hospital :--- 1 Year In any other case :--- 6 months Extended (Fraud cases): 5 years	Same as under Excise Same as under excise
Levy of interest on recovered duty/tax)	Sec 11-AB (@13% p.a.)	Sec 28-AB (@13% p.a.)	Sec 73 (@13% p.a.)
Penalty in fraud cases	Sec 11-AC Similar	Sec 114-A Similar	Similar
Deposit Amount collected in excess from buyer /customer	Sec 11-D Similar	Sec 28-B of Similar	Sec 73 A Similar
Interest leviable on amount collected in excess	Sec 11-DD (@13% p.a.)	No Corresponding provision No interest liability will arise under Customs	Sec 73 Similar to excise
Provisional attachment of property	Sec 11-DDA Similar	Sec 28-BA Similar	Sec 73 C Similar
Publication of name of persons	Sec 9 B, Sec 37 E	Sec 135 B, 154 B	Sec 73 D
II	Sec 11	Sec 142	Sec 87

Indirect taxes Customs Simplified

Recovery of amount due to government	1. Adjustment ag., Refund 2. Attachment of movable immovable property 3. Certificate recovery 4. Recovery from successor	Same as excise	Same as excise
III Power to Grant exemption in public Interest	Sec 5 A Similar	Sec 25 Similar	Sec 93 Similar

Comparison on refunds under Excise, Customs and Service tax

	Excise	Customs	Service tax
Refund	<p>Sec 11 B Time limit: "1 Year from Relevant date"</p> <p>Exceptions to Doctrine of Unjust Enrich:</p> <p>(a) Rebate on export of goods (b) Refund of Cenvat Credit; (c) Unspent balance of PLA; (d) ED paid and borne by manufacturer; (Cum duty price) (e) ED paid and borne by buyer (f) ED paid and borne by notified persons</p>	<p>Sec 27 Time limit: 2 time limits</p> <p>(a) In the case of any import made</p> <ul style="list-style-type: none"> - by any Individual for his personal use or - by Government or - by any Educational, Research or charitable institution or hospital, -- 1 year from relevant date; <p>(b) Other Cases: - 6 months from relevant date</p> <p>Exceptions to Doctrine of Unjust Enrich:</p> <p>(a) Duty Drawback on export of goods; (b) CD paid and borne by importer/exporter; (c) CD paid and borne by buyer (d) CD paid and borne by notified persons (e) CD paid on imports made by an individual for his personal (f) Refund of Export duty on re-import of goods (in situation covered in section 26);</p>	<p>Sec 83 of FA 1994 - Provides</p> <p>Sec 11 B of CE Act will apply</p>

Indirect taxes Customs Simplified

Interest on delayed refund	Sec 11-BB	Sec 27-A.	Sec 83 of FA 1994 provides Sec 11 BB of CE Act will apply
ED/ST to be shown separately on invoice	Sec 12-A	Sec 28-C (Though provision says, Customs duty will not be shown and charge in invoice like excise, service tax.	Sec 83 of FA 1994- provides Sec 12 A of CE Act will apply
Presumption that duty burden passed on Consumer	Sec 12-B	Sec 28-D	Sec 83 of FA 1994 provides Sec 12 B of CE Act will apply

Comparison of Admin and Appeals Excise Customs and Service tax

	Excise	Customs	Service tax
Admin Hierarchy	CBEC To Inspector	CBEC to DC/AC same as excise No Supt/Inspector- Instead Appraiser/Examiner	Excise Dept will administer Service tax
Appeal Hierarchy	CESTAT and Commissioner	CESTAT and Commissioner	CESTAT and Commissioner
Appeal to Commissioner	Sec 35 and Sec 35 A Form EA1 & EA2 (Dept)	Sec 128, Sec 128 A Form CA1 & CA2 (Dept)	Sec 85 Form ST 4
Appeals to CESTAT	Sec 35B, 35 C and Sec 35 D Form EA 3, EA 4, EA 5 Exception : : Order of 1. Goods lost in transit 2. Rebate on exports 3. Export payment of duty 4. Admissibility of Cenvat credit Revisionary Application to C G- Form EA 8	Sec 129 A, 129 B and 129 C Form CA 3, CA 4, CA 5 Exception : : Order of 1. duty drawback 2. baggage 3. short landing of goods Above cases Revisionary Application to C G- form CA 8	Sec 86 Form ST 5, ST 6, ST 7 Exception : : Order of No corresponding provision.

Comparison on settlement Commission

Indirect taxes Customs Simplified

Particulars	EXCISE	CUSTOMS	SERVICE TAX
Case	<p>Sec 31</p> <p>Case- means pending adjudication proceedings before CEO</p> <p>When a tribunal, court, or any authority sent back proceedings to Adj. authority it is not a case</p>	<p>Sec 127A</p> <p>Case- means pending adjudication proceedings before Proper Officer.</p> <p>When a tribunal, court, or any authority sent back proceedings to Adj. authority it is not a case</p>	
Conditions for Admissibility of Settlement Application	<p>Sec 32-E</p> <p>(a) Applicant has filed returns showing production, clearance and duty paid;</p> <p>(b) SCN for recovery of duty has been issued by CEO;</p> <p>(c) Additional ED accepted by the applicant in his application should exceed Rs 3,00,000/-.</p> <p>(d) Additional ED accepted has been deposited along with interest @13%;</p> <p>(e) Question involved is not to be related to "Classification of Goods";</p> <p>(f) When the case is pending before tribunal/court- Application will not be accepted</p> <p>(g) Where seizure operation has been carried out & Excisable Goods/Books of Accounts/ other documents have been seized --- Settlement Application shall be admissible only when made after expiry of 180 days of seizure</p>	<p>Sec 127-B</p> <p>(a) Applicant has filed Bill of Entry // Shipping Bill</p> <p>(b) A SCN has been issued by PO;</p> <p>(c) Additional customs duty accepted by the applicant in his application should exceeds Rs 3,00,000/-.</p> <p>(d) Additional ED accepted has been deposited along with interest @13%;</p> <p>(e) Question involved is not to be related to "Classification of Goods";</p> <p>(f) When the case is pending before tribunal/court- Application will not be accepted</p> <p>(g) Where seizure operation has been carried out & Goods/Books of Accounts/ other documents have been seized --- Settlement Application shall be admissible only when made after expiry of 180 days of seizure</p> <p>No settlement is possible in relation to :</p> <p>Sec 123 Goods (smuggled</p>	<p>Settlement facility is not available in Service Tax.</p> <p>Since there is no prosecution in service tax</p>

Indirect taxes Customs Simplified

		goods) Goods in relation to which offence under NDPS (Narcotics Drugs & Psychotropic Substances) Act has been committed	
Procedure after Receipt Of Application	Sec 32-F Similar	Sec 127-C Similar	
Powers of Settlement Commission	Sec 32-G to 32-L Similar	Sec 127-D to 127-I Similar	
Order of settlement	Sec 32-M Similar	Sec 127-J Similar	

Comparison on Authority for Advance Ruling

	EXCISE	CUSTOMS	SERVICE TAX
Activity	Sec 23-A "Activity" means production or manufacture of goods.	Sec 28-E "Activity" means Import or Export.	Sec 96-A "Activity" means provisioning of service.

Indirect taxes Customs Simplified

Applicat ion For Advance Ruling	Sec 23-C Eligible Issues on which Advance Ruling can be sought: (a) Valuation of goods; (b) Classification of goods; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (f) Determination of liability to pay ED	Sec 28-H Eligible Issues on which Advance Ruling can be sought: (a) Valuation of goods; (b) Classification of goods; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Determination of liability to pay Customs Duty (f) Determination of origin of the goods in terms of rules notified under CTA, 1975; (Admissibility of Cenvat Credit not applicable)	Sec 96-C Eligible Issues on which Advance Ruling can be sought: (a)Valuation of services; (b) Classification of services; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (f) Determination of liability to pay Service Tax
Procedu re On Receipt Of Applicat ion	Sec 23-D Similar	Sec 28-I Similar	Sec 96-D Similar
Applicab ility Of Advance Ruling.	Sec 23-E Similar	Sec 28-J Similar	Sec 96-E Similar
Advance Ruling To Be Void In Certain Circums tances	Sec 23-F Similar	Sec 28-K Similar	Sec 96-F Similar

Indirect taxes Customs Simplified

Excise Provisions Applicable to Service tax

As per Section 83 of the Finance Act, 1994, provisions of the following sections of the Central Excise Act, 1944 have been made applicable to service tax

Excise Section No.	Contents of the Section	Parallel Custom Section No. for reference
9C	Presumption of culpable mental state	138A
9D	Relevancy of statements under certain circumstances	138B
11B	Claim for refund of duty	27
11BB	Interest on delayed refunds	27A
11C	Power not to recover duty of excise not levied or short levied as a result of general practice	28A
12	Application of the provisions of Act No. 52 of 1962 to Central Excise Duties	N.A.
12A	Price of goods to indicate the amount of duty paid thereon	28C
12B	Presumption that the incidence of duty has been passed on to the buyer	28D
12C	Consumer Welfare Fund	2(21A)
12D	Utilization of the Fund	N.A.
12E	Powers of Central Excise Officers	5
14	Power to summon persons to give evidence and produce documents in inquiries under this Act	108
14AA	Audit of CENVAT records by CA/cost accountant	Special Audit of Warehouse

Indirect taxes Customs Simplified

15	Officers required to assist Central Excise Officers	151
33A	Adjudication procedure	122A
35F	Deposit, pending appeals, of duty demanded or penalty levied	129E
35FF	Interest on refund of pre-deposit if delayed beyond three months [section inserted vide Finance Act, 2008]	129EE
35G	Appeal to High Court	130
35H	Application to High Court	130A
35I	Power of High Court or Supreme Court to require statement to be amended	130B
35J	Case before High Court to be heard by not less than two judges	130C
35K	Decision of High Court or Supreme Court on the case stated	130D
35L	Appeal to the Supreme Court	130E
35M	Hearing before Supreme Court	130F
35N	Sums due to be paid notwithstanding reference, etc.	131
35O	Exclusion of time taken for copy	131A
35Q	Appearance by authorized representative	146A
36	Definitions	131C
36A	Presumption as to documents in certain cases	139(i)
36B	Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence	138C
37A	Delegation of Power	152
37B	Instructions to Central Excise Officers	151A

Indirect taxes Customs Simplified

37C	Service of decisions, orders, summons, etc.	153
37D	Rounding off of duty, etc.	154A
38A	Savings clause – Amendments in law	159A
40	Protection of action taken under the Act	155

Customs sections Applicable to Excise

Section 12 of CEA authorizes Central Government to apply provisions of Customs Act these are

	Section	Content of Section
(a)	105(1)	Powers of search
(b)	110	seizure of goods, documents and things
(c)	115	confiscation of conveyances
(d)	118(a)	confiscation of packages containing goods
(e)	119	confiscation of goods for concealing goods
(f)	120	confiscation of goods even if form changes
(g)	121	confiscation of sale proceeds of contravening goods
(h)	124	issue of show cause notice before confiscation of goods
(i)	142(1)(b) and 142(1)(c)(ii)	Recovery of duty
(j)	150	Procedure for sale of goods.

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Customs

Duty payable by EOU for DTA clearance is excise duty and not customs duty. SCN under customs law bad and defective *Suresh Synthetics 2007 (216) ELT 662 (SC)*

The Supreme Court stated that in respect of clearances made by a 100% export oriented undertaking in domestic tariff area, the duty to be paid by the 100% EOU was the duty of excise and not customs duty. The Apex Court pointed out that even the investigations made before the issuance of the show cause notice were made under the Central Excise Act, 1944. Thus, the Supreme Court held that the show cause notice was defective in law and accordingly the demand was not maintainable.

Goods re-imported and failed to export-- duty payable- Indian Rayon & Industries Ltd. - S. C.-2008

The goods were initially exported by the respondent-assessee, which were rejected by the foreign buyer being defective and the assessee re- imported them back to India Assessee has **executed bonds for re-export After repair as per sec. 20)**– later on assessee **could not re-export the goods** held that assessee liable to pay duty along with interest and penalty

Assessee send goods (magnetic heads) sent for repair and reported them. Held he is liable for customs duty as well as CVD. **Super Cassettes Industries Ltd. v CC [2008] 225 ELT 401 (SC)**

Goods cleared from DTA to SEZ not attract export duty liability Essar Steel Ltd. –H.C.

The Supreme Court stated that in respect of clearances made by a 100% export oriented undertaking in domestic tariff area, the duty to be paid by the 100% EOU was the duty of excise and not customs duty. The Apex Court pointed out that even the investigations made before the issuance of the show cause notice were made under the Central Excise Act, 1944. Thus, the Supreme Court held that the show cause notice was defective in law and accordingly the demand was not maintainable.

No security or bond is required when the full duty applicable as demanded by department in case of provisional assessment under sec 18 of Customs Act- *Jhoola Refineries Ltd. v. Union of India 2007 (218) ELT 181 (Guj.)*

Import of laptop along with preloaded software classification

Laptop imported with preloaded hard disc along with Preloaded software should be classified as single unit as laptop and not as different items as operational software, HDD etc., under different headings as claimed by assessee. **Hewlett Packard India Sales (P) Ltd. 2007 (215) ELT 484 (SC)**

Customs Valuation:

Overvaluation not able to prove by department, transaction value acceptable MAHALAXMI GEMS - S. C.-2008

Assessee imported rough diamonds found to be overvalued in **appraisers valuation report and trade panel report. However**, department not proved by showing any contemporaneous evidence that invoices are fabricated or there was any relation between importer and exporter – Held that declared value acceptable.

Rejection of transaction value when the nature of goods has been misdeclared at the request of buyer: *M/s. Atam Manohar Ship Breakers Ltd.-*

A, M O U was entered by importer for import of vessel at USD 9.7 lakh and later at the request of importer an addendum was inserted for an import of vessel at a price of USD 8.7 lakh. Held value will be at \$ 9.7 lakh

Unsigned Xerox copies of documents are not be relied upon for claiming under-valuation of imported goods Bussa Overseas Properties Ltd. 2007 (216) ELT 659 (SC)

Held that no evidence of under valuation particularly when the Department was relying on unsigned xerox copies of the documents in support of its case. The Apex Court added that even the contents of those documents did not support the case of the Department.

The burden to prove that transaction value is not genuine' is on the Department J.D. Orgochem Ltd. [2008] (SC)-

The assessee imported certain goods at US\$ 13.2 per Kg. The same were earlier imported by the assessee at US\$ 18.7 per Kg. The assessee submitted that the due to lessor demand in the international market, the price were declining

The imports made earlier by the importer cannot be regarded as contemporaneous imports.

The Department failed to produce contemporaneous evidence to reject transaction The assessee's submission that international prices have declined was to be considered value, hence, the transaction value of US& 13.2 per Kg. was acceptable.

Rejection of transaction value: Where the transaction value is rejected for extra ordinary or special reasons, without specifying such reasons, then such rejection is not acceptable. **Motor Industries Co Ltd (2009) 244 ELT 4 (SC)**

Royalty which is not a condition to sale is not includible in valuation: When Royalty Payment is not a condition pre-requisite to sale of goods (import of goods), and when royalty payment is not based on value of imported goods, but was payable independent of such value at specific unit rate, it cannot be added to Transaction Value. **WEP Peripherals Ltd (2008) 224 ELT 30 (SC)**

Price Decrease due to Volume Increase: Substantial increase in volume may have resulted in decrease in price (old price per ft \$ 0.0150. new price 0.0100) Identical goods for this purpose should be goods of comparable quantity imported at the same time, and not a lower volume of goods imported sometime back. , transactional value should be accepted as assessable value. **Initiating Explosives Systems (I) Ltd 2008 (224) ELT 343 (SC)**

Related Persons — Mutuality of Interest: Exporter holding 30% of Equity Capital of importer does not establish mutuality of interest, as Importer does not hold any equity in the unit of the Supplier Volume of export has increased which is the reason for decrease in price. The burden to prove is on the department. Held transaction value acceptable.

Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue. Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)

The High Court thus, concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty may be as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

Case Laws On Customs

7- Case laws on Customs

Taxable event in case of imports

It was held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters. It was held that import of goods in India commences when they enter into territorial waters but continues and is completed when the goods become part of the mass of goods within the country. The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed. *Kiran Spinning Mills v. CC 1999 (SC)*, / *Garden Silk Mills Ltd. v. UOI 1999 (SC)*

Taxable event in case of Warehoused goods

In case of warehoused goods, the goods continue to be in customs bond. Hence, 'import' takes place only when goods are cleared from the warehouse. Where it was held that taxable event occurs when goods cross customs barrier and not when goods land in India or enter territorial waters. *UOI v. Apar P Ltd. 1999 (SC)*. - *Kiran Spinning Mills v. CC 1999(SC)* ,

It was held that the 'bulk liquid cargo' would be considered to have crossed customs barrier only when they are pumped into shore tanks. That being the taxable event, duty is leviable only on that quantity. *CC v. HPCL 2000(CEGAT)*- -

Taxable event in case of exports

In case of exports, export commences when goods cross customs barrier, but export is completed when it crosses territorial waters. Thus, 'taxable event' occurs only when goods cross territorial waters. It was held that export is complete once the goods leave Indian waters and property passes to purchasers. Even if goods return due to Engine trouble, duty drawback is payable. It was held that export is complete when ship leaves territorial waters of India. *CC v. Sun Exports - 1988 (SC)*/ *B K Wadeyar v. Daulatram Rameshwarlal (SC)*

If some goods are exempt from customs duty, can it be inferred that they are exempt from additional duty as well?

The High Court observed that exemption from customs duty would not mean exemption from additional duty. The High Court held that when goods are exempted from basic customs duty in terms of section 12 of the Customs Act, 1962, it would not mean that they are exempted from additional duty also, as basic customs duty is leviable by virtue of section 12 of the Customs Act, 1962, while additional customs duty is leviable under section 3 of the Customs Tariff Act, 1975 *Kaur Sain Traders v. Union of India 2006 (199) ELT 224 (Pat.)*

Subsequent amendment of IGM relates back to the date of filing of IGM and is not a separate event. By the time supplementary IGM is filed, if entry inward has already been granted, the rate of duty applicable will be as on the date of presentation of bill of entry.

Case Laws On Customs

[Associated Forest Products (P) Ltd. V. Assistant Commissioner of Customs, 1992 (59) ELT 264, 277-78 (Cal), affirmed by the Supreme Court in 2000 (115) ELT 37 (SC).]

Customs Valuation

Valuation has to be on the basis of condition at the time of import - (a) CVD should be levied on goods in the stage in which they are imported - stage subsequent to processing of goods is not relevant - *Vareli Weaves P Ltd. v. UOI - 1996(SC)*. It is also well settled that the imported goods have to be assessed to duty in the condition in which they are imported. - *D N Sethna v. CC - (1996) (CEGAT) * CC v. Supreme Woollen Mills 1999(CEGAT)*.

Price in case of high sea sale - In case of high sea sale, price charged by importer to assessee would form the assessable value and not the invoice issued to the importer by foreign supplier. - *National Wire v. CC 2000(122) ELT 810 (CEGAT) * Godavari Fertilizers v. CC (1996) 81 ELT 535 (CEGAT)*. If the purchase is on high seas, the selling price will be naturally higher than the price at which the importer imported the goods. It will include his service charges, but also demurrage, bank charges etc. Thus, indirectly, duty will be payable on demurrage, which is really not part of 'normal' price.

Valuation is required to be done by proceeding sequentially from rules 5 to 8 if value cannot be determined under rule 4. Failure to observe this sequential mandate of the rules would render such value the determination to be incorrect. - *Tavadec Industries v. CC 2002(145) ELT 548 (CEGAT)*. The only exception is that the 'computed value' method may be used before 'deductive value' method, if the importer requests and Assessing Officer permits..

Classification -

Software loaded on hard disk classification as software *M/s Sprint RPG India Ltd. Vs. CCE [(2000) 88 ECR 737 (SC)]*

The assessee imported hard disk loaded with computer software. The price paid for 6 such disks was approx. Rs. 68 lacs while the value of the hard disk simpliciter would be roughly are around Rs. 60,000.00.

Rival contentions: Hard disk drive is chargeable to duty under heading 84.71 at a rate of 25% and computer software is chargeable to duty @ 10% [Chapter heading 85.24 read with Notification No. 59/95 dated 16-03-95]. The department's view was that the goods is classifiable as computer hard drive loaded with software. The assessee's contention was that what was imported was software loaded on a hard drive disk and hence the rate of duty should be 10%.

Decision : The SC observed that computer software can be brought either on a floppy or magnetic tape or on a hard disk or in a printed form and hence what is imported is software on a container, which is a hard disk. On the facts of the case the court held that the computer software imported by the appellant on a hard disk is assessable at a rate of 10% as per heading 85.24 because what was imported by the appellant was software on a hard disk and it was not hard disk in the grab of software.

Duty liability is on goods and not product arising out of goods

Case Laws On Customs

The assessee had imported a ship for the purpose of breaking and to use ferrous scrap arising out of ship breaking *Engae Industrial Services Pvt. Ltd. Vs. UOI [2000 (115) ELT 58, 63 (Kar)]*

Rival contentions : In respect of additional duty of customs, the assessee's contention was that the ship is imported for the purpose of breaking and therefore the same is covered under notification no. 167/86-CE dated 01-03-86, which provides for exemption of ferrous scrap arising out of ship breaking. The department's contention was that the imported article was a ship and therefore, the same has to be classified as a ship and not as scrap arising out of ship breaking.

Decision: The court observed that the duty liability arises on the goods imported and not on the products arising from the breaking up of the imported item. Therefore, it was held that the ship should be classified as such and not as scrap arising from the breaking of a ship.

Valuation:

The price u/s 14 for the value is deemed price

The value on which duty payable is deemed value it could be more or less than the agree price between parties or price at invoice. The price relevant for valuation is price on the date when goods reaches at customs barrier *Union of India Vs. Glaxo Laboratories, (1984 (17) ELT. 284) the Bombay High Court/ Garden Silk Mills Ltd vs UOI, 1999 (113) ELT 358, SC*

Price list, negotiated prices, invoice price are some of the factors to determine customs value *UOI vs Mahindra & Mahindra Ltd 1995 (76) ELT 481(SC)*

At which such or like goods are ordinarily sold

When the invoice price is low the price of comparable goods can be adopted for the value *Chander Prakash & Co., Vs. Collector of Customs 1990 (50) ELT 309 the CEGAT*

Assessee imported 100 packages dry fig on particular day an invoice price of 1 US \$ per kg. However on the previous day a consignment of dry figs was cleared at the rate of US \$ 1.50 per kg. The representative samples on comparison were found to be identical, the customs adopted the rate of US \$ 1.50 per kg. as the basis of assessable value is justified *Rajkumar Knitting Mills P.Ltd vs CC 1998 (77) ECR 236 (SC)* It was also held that what is relevant is the date of importation and not the contract date.

Ordinarily sold or offered for sale

If only one buyer and all the goods sold to one buyer, it cannot be said that goods are ordinarily sold In the case of Maruti, who had a collaboration with Suzuki Motor Co. Ltd. it was contended by the Department that since Maruti was the only buyer of Suzuki SKD/CKD packs and complete vehicles, the price charged could not be said to be the one at the which the goods were ordinarily sold or offered for sale". **Relying upon the decision of the Supreme Court in Atic**

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Industries case [1984(17) ELT 323] However even if only one buyer and the price is competitive, commercial price and arms length price goods can be treated as ordinarily sold [Collector of Customs. Bombay Vs. Maruti Udyog Ltd. 1987 (28) ELT 390]

In the course of international Trade:

In a case of procurement of cocoa beans for an Indian company, the UK based principal company entered into a contract with another company also based in UK for delivery of goods on behalf of the Indian company. It was urged by the Revenue that the transaction was not in the course of international trade which was rejected by the Bombay High Court on the grounds that the transaction was done on behalf of the Indian company and therefore it was not in the course of international trade. ***Cadbury Fry India Pvt.Ltd vs UOI 1990 (46) ELT 7.***

In the case of sale on high sea basis, it was held by the Supreme Court in ***Hyderabad Industries Ltd vs UOI 2000 (115) ELT 593*** that the service charges payable to canalizing agency is includible in the assessable value of the imported goods.

At the time and place of importation:

Assessee imported goods with the invoice date was 23.03.1990; the actual date of import is 29.10.1990. There was a gap about 7 months six days Price on invoice as on 23.03.1990 not relevant and price on 29.10.1990 is only the value. ***Punjab Niryat Ayat Private Ltd., Vs. Collector of Customs, Bombay [1991] (26) ECR S32 CEGAT***

Price is the sole consideration of the sale:

That the imported transaction was not influenced by any other factor which makes the price charged as unacceptable for the purpose of valuation. It must be noted that under section 14 or under the Valuation Rules, the transaction value cannot be rejected unless it is proved that price of identical or similar goods at the same commercial levels were imported at a different value. ***Narayan International vs CC 1992 (58) ELT 126 (T).***

Customs Import valuation Rules

The following are some of old decision which are well applicable for new import goods valuation rules 2007

Section 14(1A) and Valuation Rules relating to valuation of imported goods are subject to the provisions of Section 14. ie, the value will be transaction value u/s 14 with inclusion of cost and services under rule 9 & 10 ***Plast Fab vs CC 1993 (66) ELT 441 (T).***

Before resorting to valuation under residuary Rule, applicability of other rules will have to be exhausted ***Polyvinyl Industrial Corporation vs CC 1994 (74) ELT 426.***

Rule 4 of the Valuation Rules talk of "the transaction value" (Now Rule 3) and therefore unless that is unacceptable for the reasons set out in Section 14, it has to be accepted. ***Eicher Tractors Ltd vs CC 2000 (122) ELT 21 (SC).***

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Holding subsidiary relationship may not be relevant if transaction value for contemporaneous import of identical goods is the same. (ie price to relative is arms length commercial price) *Siemens Ltd vs CC 2000 (126) ELT 1134 (T)*.

Transaction value of identical goods

Comparison of goods must be of identical goods at same commercial levels. *Sandip Agarwal vs CC 1992 (62) ELT 528 (Cal)*.

Branded and unbranded goods could be compared. Comparison of goods from different countries of origin possible only if there is proximate linkage. *CC vs Shibani Engineering Systems 1996 (86) ELT 453 (SC)*

Where the importer has adduced evidence, department should produce contemporaneous import values at higher prices to discard transaction value. *CC vs Nippon Bearings Ltd. 1996 (82) ELT 3 (SC)*.

Price list is not conclusive as evidence of contemporaneous imports. Discounts beyond the price list can be given, if it is a normal trade practice *Eicher Tractors Ltd vs CC 2000 (122) ELT 321 (SC)*.

For ascertaining contemporaneous imports, date of import is relevant and not the date of contract *Rajkumar Knitting Mills P.Ltd. vs CC1998 (98) ELT 292 (SC)*

Lowest value to be taken - If more than one value of identical goods is available, lowest of such value should be taken. - *Resina Combination v. CC 1999(114) ELT 860 (CEGAT)*

Transaction value of similar goods

The word "similar" is more expansive than the word "same". Plywood or veneer panels are similar to laminated wood. *CCE vs Wood Craft Products Ltd 1995 (77) ELT 23 (SC)*.

Enhancing the value of goods imported from Japan on the basis of supplies from France not acceptable. Comparing a quantity of 4986 kgs imported with another import of 360 kgs is not correct *Nitisoaya Diamond Tools vs CC 1994 (74) ELT 49 (T)*..

Residual Method Rule 8

The sixth and the last method are called "residual method". It is also often termed as 'fallback method'. This is similar to 'best judgment method' of the Central Excise. This method is used in cases where 'Assessable Value' cannot be determined by any of the preceding methods *CC v. Sanjay Chandiram - (1995) (SC)*. While deciding Assessable Value under this method, reasonable means consistent with general provisions of these rules should be the basis and valuation should be on basis of data available in India. [Rule 8 (1) of Customs Valuation Rules]. -

Valuation of old Machinery and old Motor cars - it was held that concept of transaction value under Rule 4 is applicable to second hand machinery also, particularly because no exactly comparable imports can be found or exist. *Essar Graphics v. CC 1999 (CEGAT)/International*

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Conveyors v. CC 2000(CEGAT), It was held that invoice value of second hand machine supported by Chartered Engineer's certificate is acceptable when transaction is in normal course of international trade and there are no contemporaneous imports of like goods at higher value.
Medak Rubber v. CC 2000(CEGAT)

Depreciation will be allowed on value of old machinery on following scale: (i) for every quarter in 1st year: 4% (ii) for every quarter in 2nd year: 3% (iii) for every quarter in 3rd year 2.5% (iv) for every quarter in 4th and subsequent year : 2% Maximum : 70% [*Vadodara Commissionerate No. Cus/t/93 dated 15-6-1993*]. Same depreciation rate applied for old cars also.

Valuation inclusions/ exclusion

Inclusion of Royalty in valuation

The assessee entered into an agreement with its Japanese Company to import TV components manufactured by Japanese Company. The assessee will use imported components for manufacture of TV. It also entered into an agreement for obtaining technical assistance and know-how. The know how is for technical advice, quality control, inspection of components before they are used. In turn, the Assessee is paying royalty @ 3% on ex-factory price of colour TV. It was held that payment under the said agreement related not only to the production of the goods in India but also to imports. Further, when payment to Japanese Company was at the rate of 3% of the sales turnover of the final product, including cost of imported component, it became a condition of sale of the finished goods. Royalty payment is connected with sales and it is includible in valuation.
MATSUSHITA TELEVISION & AUDIO LTD - 2007 -SC 211ELT288

Rejection of Transaction Value based on Exporter declaration is not tenable

Assessee imported goods from Hong Kong @ 6.00 \$ per 1000 piece... The declared Transaction value of said goods was rejected by Customs Officer as per Customs imported valuation rules the value was rejected not on the basis of any comparable imports -but on the basis of export declaration filed by the supplier in his country (Hong Kong). Assessee(importer) challenged the authenticity of export declaration and he contends that the supplier has over-stated the price in his declaration so as to obtain higher export incentives in his country—importer produced evidence as to contemporaneous imports from same supplier at same price which was not challenged by Department. Held that rejection of transaction value based on exporter declaration is not correct **SOUTH INDIA TELEVISION (P) LTD 2007 -SC 214ELT3**

Post importation cost, technical fees installation not includable in valuation

The assessee imported Machinery from USA for installation in their premises in Mumbai. The transaction value for the said goods as declared in value declaration is US \$ 15,000 CIF. In addition, assessee has paid technical and installation fee of Rs 59 lacs also. The Department has added that technical and installation fee to the declared transaction value to arrive at the proper assessable value. Held that, Under the Customs Valuation Rules, 2007, post-importation expenditure) are excluded. There is no evidence of any flow-back or extra-consideration deflating the price, and therefore, there was no reason to include Rs 59 lacs in the assessable value of the equipment. **GALAXY ENTERTAINMENT (I) PVT LTD- 2007- SC 214 ELT14**

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Valuation in case of second hand car imported- consideration of depreciation

Assessee imported a second hand car (Rolls Royce- 1993 Model) into India in the year 1996. The Bill of entry for clearance thereof was filed by him in Year 1996 (on 31-8-1996) itself. However, Customs Authority gave clearance of car in 2005 only (delay of 9 year). The valuation of machinery was done under Rule 8 taking "depreciated value" as assessable value. Though the mode of valuation was not challenged by the assessee, he claimed allowance of depreciation till year 2005 (the year of clearance).. Held that depreciation was allowed only up to the year of import and not up to the date of clearance **M S SHOES EAST LTD- 2007- SC 210 ELT 641**

Customs department can add landing charges at actual or as percentage. But once percentage is used, no further sum can be added in that component. **Coromandal Fertilisers Ltd vs CC 2000 (115) ELT 7 (SC).**

Addition of royalty on final products (vehicles) mentioned in the collaboration agreement in the value of imported engines not tenable since the two were not subject to each other. **UOI vs Mahindra & Mahindra Ltd.1995 (76) ELT 481 (SC).**

Separate agreements does not make for separate transactions Charges paid for design of equipment through separate agreement to be added to value of equipment. **Andhra Petrochemicals vs CC 1997 (90) ELT 275 (SC).**

Cost of dismantling, process licences, consultancy and technical services rendered abroad to make it ready for import into India includible **CC vs Essar Gujarat Ltd 1996(88) ELT 609 (SC).** **Bombay Dyeing Co.Ltd vs CC 1997 (90) ELT 276.**

Cost of product when shown as licence fee - value not deductible. In this case, SBI imported a software worth USD 4084475 and contended that the actual value was USD 401,047 while the balance USD 3683438 represented licence for using the software at multiple locations. The Tribunal held that since SBI paid nothing to the supplier as licence fee for reproduction of software, the entire value was the product value. This decision was affirmed by the Supreme Court. **SBI vs CC 2000 (115) ELT 597 (SC).**

Charges of purchasing agent abroad not includible - Charges to purchasing agent abroad are not includible - **Apollo Tyres Ltd. v. CC - (1996) (SC) - confirmed and followed in Bombay Dyeing & Mfg v. CC - 1997(2) (SC).**

Cost of durable and re-usable containers When the containers are used to pack goods in containers for convenience of transport. These containers are durable and re-usable. Hence, cost of such containers is not added for Customs Valuation, if importer agrees to execute a bond to re-export the containers within six months.

Cost of erection, test and commissioning is not includible. - **Andhra Pradesh Gas Corpn v. CC 2001 (CEGAT).**

Demurrage charges payable to port trust - Demurrage charges payable to port trust authorities for delay in clearing goods are not to be added. This are incurred in extraordinary

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situation - *Deepak Fertilisers v. CC 1989(41) ELT 550 (CEGAT) * Hindustan Lever v. UOI 2002(142) ELT 33 (Cal HC). Indian Oil Corporation Ltd. v. CC 2000 (CEGAT).*

Bank charges - Bank charges paid to banker for services rendered by them is not consideration of goods given to seller. It is not includible. - *EXIM India Oil Co. v. CC 2001(131) ELT 207 (CEGAT).*

Charges for reproduction of software in India - At present, many popular types of software. If such softwares are Licensed to be reproduced in India by the foreign owner of these softwares, charges for reproducing these softwares will not be added. As per press note dated 17-12-1992 of DOE of GOI, the purpose is to bring down cost of software in India and to save foreign exchange outflow on several copies of software.

Computer Software - Computer software is a distinct item and is classifiable separately. Hence, even if software is supplied with the machine, its price is not includible in value of machinery. - *Technova Imaging Systems v. CC 2003(151) ELT 404 (CEGAT).*

Royalties and license fee of the following not includible

(a) Charges for the right to reproduce the goods in India shall not be added and (b) payments made by buyer (importer) for right to distribute or resale the imported goods shall not be added if such payment is not a condition for export to India. (c) Royalty payment to collaborators un-connected with imported goods

Royalty payment to collaborators un-connected with imported goods not to be included - Often, a lump-sum payment of royalty is made to foreign collaborators for technical know-how. In addition, components /parts/ CKD packs are procured from foreign collaborators. Customs department normally holds that the price of parts/CKD packs should be loaded, on assumption that the part of price of component parts/CKD packs has been paid as 'royalty payment'.

It has been held that cost of technical documents and drawings *cannot* be included in the customs value. However, if part of cost of equipment is transferred to value of engineering drawings, there will be under-valuation of equipment and this can be examined. Engineering drawings are exempt from customs duty. This was because there was a separate heading in Customs Tariff for 'drawings'. Otherwise, the cost would have been includible. *Tata Iron & Steel Co. Ltd. v. CCE 2000(1) SC*

The company had foreign collaboration with M/s Peugeot, a French company, for engines for 10 years. A lump sum payment was made for technical know-how for manufacture of diesel engines in India. In addition, the company imported engine CKD packs from the French company in subsequent period. Department contended that lump-sum payment of royalty has bearing on the price charged for CKD packs. The Invoice price is not the real price. Supreme Court did not accept the view. It was held that there is no nexus between know-how transfer fee and import of CKD packs. These are independent transactions. Department has not able to produced any material to show that price shown in invoice is not the real price, or the lump-sum royalty paid affected that price of goods obtained later. *UOI v. Mahindra and Mahindra Ltd. - 1995 (SC)*

Problems in Customs Valuation

Note: Consider Appropriate Education cess in all Problems

Problem No. 1

Compute the Customs duty liability as per the provisions of the Customs Act, 1962, from the following information. Make suitable assumptions and indicate the same in your answer: Product Imported - 'X' Total FOB Value of the goods - US \$ 74000 Quantity Imported - 100 MTs. Ocean freight - US \$ 10000 Insurance - US \$ 740 Landing charges - 1% of CIF value Exchange rate - 1 US

\$ = Rs. 37. Date of presentation of Bill of Entry - 28.02.2009 Date of Entry Inwards of the Vessel - 03.03.2009 - Customs duty Rates on 28-2-2009 - (i) Basic Customs Duty 30% (ii) Countervailing Duty (Additional Duty) 12%. - Customs duty rates on 3.3.2009 - (i) Basic Customs Duty 25%(ii) Countervailing Duty (Additional Duty) 8%. How much Cenvat can be availed by importer, if he is manufacturer? Will your answer change if the actual cost of Freight and Insurance is not available?

Solution	
Computation of Customs value and Duty payable	
Particulars	US \$
F O B Value of Goods	74,000.00
Add:	
Freight	10,000.00
Insurance	740.00
	84,740.00
	Rs
Convert in to INR 1 \$=37 (CIF Value)	31,35,380.00
Add: 1% towards landing	31,353.80
Total C I F (Assessable Value)	31,66,733.80
Customs Duty payable	
Basic Customs Duty 25%	7,91,683.45
Sub Total	3,958,417.25
Countervailing duty u/s 3 (1) @ 8.24% on Rs.3958417.25	3,26,173.58
Education Cess 3% On Rs. 1117857.03 (791683.45 +326173.58) =	33,535.71
Landed Cost in India	43,18,126.54
Countervailing duty u/s 3(5) @ 4%	1,72,725.06
Total customs duty payable (791683.45+326173.58+33535.71+172725.06)	13,24,117.80
The manufacturer can avail cenvat credit on CVD u/s 3(1). And 3(5) including EC (326173.58+172725.06).	4,98,898.64

When actual freight and insurance is not given, freight should be taken at 20% of FOB and Insurance should be taken at 1.125% of F O B, the answer will change accordingly.

Problem No. 2

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Some spares were imported by air from Germany at CIF value of 1,200 DM, which included airfreight of 380 DM and insurance charges of 20 DM. If exchange rate is 23.40 Rs. = 1 DM, find the Customs Value. Rate of customs duty is 20%, Excise duty chargeable on similar goods in India is 16% as per tariff rate. However, as per an exemption notification, the effective rate of excise duty is 8%. Find the customs duty payable. How much Cenvat can be availed by importer, if he is manufacturer?

Solution	
Computation of Customs value and Duty payable	
C I F value give	1,200
Less Freight	380
Less Insurance	20
F O B	800
Particulars	
F O B Value of Goods	800.00
Add:	
Freight 20% of F O B or actual Which ever is less	160.00
Insurance	20.00
	980.00
	Rs
Convert in to INR 1 DM=23.40 (CIF Value)	22,932.00
Add: 1% towards landing	229.32
Total C I F (Assessable Value)	23,161.32
Customs Duty payable	
Basic Customs Duty 20%	4,632.26
Sub Total	27,793.58
Countervailing duty u/s 3(1) @ 8.24% on 27793.58	2,290.19
Education Cess 3% On Rs. 6922.46 (4632.26+2290.19)	207.67
Total Landed Cost in India	30,291.45
Countervailing duty u/s 3(5) @4%	1,211.66
Total customs duty payable Rs.4632.32+2290.19+207.67+1211.66)	8,341.79
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3(5) including EC on CVD u/s 3(1). (Rs.2290.19+1211.66 =	3,501.85

Problem No. 3

An importer has imported a machine from Japan at FOB cost of 9,00,000 Yens. Other details are as follows:

- (a) Freight from Japan to Indian port was 18,000 Yens.
- (b) Transit insurance charges were 1% of FOB value.
- (c) Design and development charges of 90,000 Yens were paid to a consultancy firm in Japan for design of machinery.
- (d) Packing charges of 22,000 Yen were charged extra.
- (e) Rs. 20,000 was spent in design cost on machine in India.

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- (f) An amount of 98,500 Yen was payable to Japanese manufacturer towards charges for installation and commissioning the machine in India.
- (g) Rate of exchange as announced by RBI was: 1 yen = Rs. 0.309
- (h) Rate of exchange as announced by Central Government by notification under section 14 (3) (a) (i): 1 Yen = 0.302 Rs
- (i) Customs duty was 20% Excise duty on similar machinery in India would be 16%.

Find the customs duty payable. How much Cenvat can be availed by importer, if he is manufacturer?

Solution	
Computation of Customs value and Duty payable	
Particulars	Yen
F O B Value of Goods	9,00,000.00
Add:	
Freight	18,000.00
Insurance	9,000.00
Design and development	90,000.00
Packing	22,000.00
	10,39,000.00
	Rs
Convert in to INR 1 yen=0.302 (CIF Value)	3,13,778.00
Add: 1% towards landing	3,137.78
Total C I F (Assessable Value)	3,16,915.78
Customs Duty payable	
Basic Customs Duty 20%	63,383.16
Sub Total	3,80,298.94
Countervailing duty @ 16.48% on 380298.94	62,673.26
Education Cess 3% on Rs.126056.42 (63383.16 + 62673.26)	3,781.69
Landed Cost India	4,46,753.89
Countervailing duty u/s 3(5) @4%	17,870.16
Total customs duty payable Rs.63383.16+62673.26+3781.69+17870.16)	1,47,708.27
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3(5) including EC on CVD u/s 3(1) . (Rs 62373.16+17870.16)	80,543.42

Problem No. 4

'A' imports by air from USA a Gear cutting machine complete with accessories and spares. Its HS classification is 84.6140 and Value US \$ f.o.b. 20,000. - - Other relevant date/information: (1) At the request of importer, US \$ 1,000 have been incurred for improving the design, etc. of machine, but is not reflected in the invoice, but will be paid by the party. (2) Freight - US \$ 6,000. (3) Goods are insured but premium is not shown/available in invoice. (4) Commission to be paid to local agent in India Rs. 4,500. (5) Freight and insurance from airport to factory is Rs. 4,500. (6) Exchange rate is US \$ 1 = Rs. 45. (7) Duties of Customs: Basic – 20% CVD – 16% Compute (i) Assessable value (ii) Customs duty. How much Cenvat can be availed by importer, if he is manufacturer?

Solution	
Computation of Customs value and Duty payable	
Particulars	US \$

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F O B Value of Goods	20,000.00
Add:	
Freight 20% of F O B or actual WEL	4,000.00
Insurance 1.125% of FOB	225.00
design of machine	1,000.00
	25,225.00
	Rs
Convert in to INR 1 \$=45	11,35,125.00
Add Local agent commission in India	4,500.00
CI F	11,39,625.00
Add: 1% towards landing	11,396.25
Total C I F (Assessable Value)	11,51,021.25
Customs Duty payable	
Basic Customs Duty 20%	2,30,204.25
	13,81,225.50
Countervailing duty @ 16.48%	2,27,625.96
Education Cess 3% on Rs.457830.21 (230204.25+227626.96)	13,734.91
Landed Cost India	16,22,586.37
Countervailing duty u/s 3(5) @4%	64,903.45
Total customs duty payable Rs 230204.25+227625.96+13734.91+64903.45	5,36,468.57
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3(5) including EC on CVD u/s 3(1) . (Rs 227625.96 +64903.45)	2,92,529.42

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Problem No. 5

Determine the assessable value and customs duty amount from the following data: # Name of the raw material—X # FOB value – Euro 1 million # Ocean freight – Actual data not available # Ocean Insurance – Actual data not available # Freight from sea port to godown paid in India Rs. 10,000 # Transit insurance in India – Rs. 2,000 # Selling commission paid to agent in India – 5% # Royalty on manufacture and sale of final product payable to foreign collaborator – 5% # Interest payable on raw material imported at 180 days credit (on FOB value) 12% p.a. # Dividend paid to the foreign supplier of raw material on their equity participation for the year 2001-02 - Rs. 2 per share on 1 million shares of face value Rs. 10/ share. # Importer supplied design and drawings worth Euro 10,000 to the foreign raw material supplier. # Landing charges as per Customs provisions # Customs duty rates: BCD - 20%, CVD - 16%,# Exchange rate: 1 Euro = Rs. 42. How much Cenvat can be availed by importer, if he is manufacturer?

Solution	
Computation of Customs value and Duty payable	
Particulars	Euro
F O B Value of Goods	10,00,000.00
Add:	
Freight 20% of F O B	2,00,000.00
Insurance 1.125% of FOB	11,250.00
Selling agent commission in India 5%	50,000.00

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Design and drawing	10,000.00
	12,71,250.00
	Rs
Convert in to INR 1 euro=42 (C I F)	5,33,92,500.00
Add: 1% towards landing	5,33,925.00
Total C I F (Assessable Value)	5,39,26,425.00
Customs Duty payable	
Basic Customs Duty 20%	1,07,85,285.00
	6,47,11,710.00
Countervailing duty @ 16.48%	1,06,64,489.81
Education Cess 3% on Rs 21449774 (10785285+10664489)	6,43,493.24
Landed Cost India	7,60,19,693.05
Countervailing duty u/s 3(5) @4%	30,40,787.72
Total customs duty payable Rs 10785285+10664489.81+643493.24+3040787.72	1,44,69,567.07
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3(5) including EC on CVD u/s 3(1) . (Rs 10785285+3040787.72) =	1,37,05,277.53

Problem No. 6

Determine the total Customs Duty payable from the following data - Quantity imported: 100 MTs, FOB value: Swiss Franc: 10000, AIR Freight: Swiss Franc: 2500, Insurance: Data not available, Exchange rate: 1 Swiss Franc = Rs. 34, Rate of BCD 30%, Rate of Cenvat under First Schedule to CETA: 16%, Rate of SED under Second Schedule to CETA: 16%, Rate of AED (GSI) under Additional Duties of Excise (GSI) Act : Rs. 10/kg, Rate of NCCD 1%, How much Cenvat can be availed by importer, if he is manufacturer?

Solution	
Computation of Customs value and Duty payable	
Particulars	Swiss Franc
F O B Value of Goods	10,000.00
Add:	
Freight 20% of F O B or actual Whichever is less	2,000.00
Insurance 1.125 of F O B	112.50
	12,112.50
	Rs
Convert in to INR 1swiss franc=34	4,11,825.00
Add: 1% towards landing	4,118.25
Total C I F (Assessable Value)	4,15,943.25
Customs Duty payable	
Basic Customs Duty 30%	1,24,782.98
	5,40,726.23
Countervailing duty equal to	
First Schedule of CETA 16.48%	89,111.68

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Second Schedule of CETA 16.48%	89,111.68
National calamity contingent duty 1.03%	5,569.48
Addl. ED on GST Rs. 10.30 per kg	10,30,000.00
Education Cess 3% on Rs.1338575.82 (Rs.124782.98 +89111.68+89111.68+5569.48+1030000)	40,157.27
Landed Cost in India	17,94,676.34
Countervailing duty u/s 3(5) @4%	7 1,787.05
Total customs duty payable (Rs.124782.98 +89111.68+89111.68+5569.48+1030000+ 40157.27+ 71787.05)	14,50,520.15

Problem No. 7

An importer provided the producer with a mould to be used in production of imported goods. The cost of mould is Rs.5, 00,000 which is expected to produce 25,000 pieces. The importer has imported 5,000 pieces in the first lot. Is it necessary to add the cost of mould in transaction value ? If yes, what will be the amount to be added? The importer is expecting an increase in the rate of customs duty next month, so he has requested to the proper officer that if cost of mould is required to be added in transaction value, the full cost of mould, i.e., Rs.5,00,000 may be added in the transaction value of first lot of 5,000 pieces itself. Is his demand valid in law ?

Solution	
Value of mould to be includible in valuation will be	
Total cost of the mould	500000
No units mould should produce	25000
Cost per unit = 500000/25000	20
No units imported	5000
Value includible in valuation =5000 × 20	100000

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Problem No. 8

Green Gel Ltd. imports chemicals from Russia. Compute the education cess payable by the company on the basis of following data:

- | | |
|---------------------------------|--------------|
| (i) Landed value (CIF) | Rs. 5,00,000 |
| (ii) Customs duty | @ 16% |
| (iii) Countervailing duty (CVD) | @ 16% |
| (iv) Education cess | @3% |

Solution	
Total C I F (Assessable Value)	5,00,000.00
Customs Duty payable	
Basic Customs Duty 16%	80,000.00
	5,80,000.00
Counter vailing duty @ 16.48%	95,584.00
Education Cess 3% on Rs.175584 (80000+95584)	5,267.52

Problem No.9

Zing Yong of China exports Lithium Cell to India, the FOB price of which is one Dollar for 30 cells; however the details of Fright & Insurance were not made available. Investigation reveals that the goods are imported into India at an increased quantity. Similar cells are manufactured in India, the

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cost of sales per cell of which indicates the following break-up:

Direct Material Rs. 2.00,
 Direct Labour Re. 0.25, Direct
 Expenses Re. 0.25, Indirect
 Expenses Re. 0.50, Indirect
 Labour Re. 0.25, Indirect
 Expenses Re. 0.25,
 Administrative Overheads Re. 0.50,
 Selling and distribution overheads Re. 0.50,
 Profit Margin Re. 0.50.

The exchange rate 1 \$ = Rs. 50. Is there any case to impose Safeguard Duty? If yes, what is the duty leviable? Applicable BCD 25%, CVD 16%, and CVD under section 3(5)

Solution	Rupees
F O B Value of Goods (\$ 1= Rs. 50)	50.00
Add:	
Freight-20% of F O B	10.00
Insurance 1.125% of F O B	0.56
	60.56
Add: 1% towards handling	0.61
Total C I F (Assessable Value)	61.16
Customs Duty payable	
Basic Customs Duty 25%	15.29
	76.45
Counter vailing duty @16.48%	12.60
Education Cess 3%	0.84
Total customs duty payable	28.73
Landed Cost = AV + Customs duty	89.89
CVD u/ 3(5)- 4% on above	3.60
Total Landed Cost	93.48
Landed Cost per cell - 93.48/30	3.12
Safe guard duty can be levied up to Rs.1.88 (5.00-3.12)	

Working Note Calculation of selling price in India	
Direct Material	2.00
Direct Labour	0.25
Direct Expenses	0.25
Prime Cost	2.50
Indirect Material	0.50
Indirect labour	0.25
Indirect expenses	0.25
Admin overheads	0.50
Cost of Production	4.00
Selling over head	0.50
Cost of Sales	4.50
Profit	0.50

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Selling Price	5.00
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Problem No. 10

An actual user imports following goods from England per S. S. Vishal: (1) Second hand numerically controlled horizontal lathe machine - Tariff heading – 84.5811, Value FOB - 1,000/- Pound Sterling (2). A. C. motors - Tariff heading – 85.0110, Value FOB - 500/- Pound Sterling. - - Other relevant data are: - Exchange rate 1 UK Pound = Rs. 65, Freight – 150 UK Pounds, Insurance – 25 UK Pounds. -
- Rate of duty: Basic customs duty - 25%, CVD - 16%, SAD - 4%, Ignore landing charges. - - It is found that the lathe machine is undervalued. It is proposed to load the FOB value of the lathe machine by 25%. Party does not want show cause notice and personal hearing. Compute – (i) Assessable value; (ii) Total duty payable.

Solution	
Particulars	U K Pounds
F O B of the Machinery	1,000.00
Add: Loading 25% since under valued	250.00
	1,250.00
A C Motor	500.00
Total F O B Value including motor	1,750.00
Add: Freight	150.00
Add: Insurance	25.00
CIF	1,925.00
Convert 1925 pounds @ Rs. 65	125,125.00
Basic Customs Duty 25%	31,281.25
	33,206.25
Counter vailing duty @ 16.48%	5,472.39
Education Cess 3% on Rs.36753.64 (31281.25+5472.39)	1,102.61
Landed Cost India	39,781.25
Counter vailing duty u/s 3(5) @4%	1,591.25
Total customs duty payable	
Rs 31281.25+5472.39+1102.61+1591.25	39,447.50
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3(5) including EC on CVD u/s 3(1) . (Rs 5472.39+1591.25)	7,063.64

Students can also work Duty payable for Machine and Motor separately, By allocating Freight and insurance on the basic of FOB
 Landing Charges were ignored as per Problem No.

Problem No. 11

Compute the Customs duty from the following data:

	US Dollars
Machinery imported from USA by Air (FOB) Accessories compulsorily supplied with Machine	8,000
(Electric Motor & others) (FOB)	2,000
Air Freight	3,000

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Insurance	100
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Local agents' commission to be paid in Indian Rupees is Rs. 4,500 (say equivalent to US Dollars 100), The exchange rate is 1 US Dollars = Indian Rupees 45., Customs duty on Machinery - 25% ad valorem, Customs duty on Accessory (normal rate 30 % ad valorem), Surcharge on Customs duty - 10%, CVD - 16% (Effective Rate is 8% by a notification), SAD - 4%.

Solution

Fo B Value of Machine	8,000.00
Add: Compulsory supplied accessories along with machine	2,000.00
Total F O B Value	10,000.00
Add: Freight- Actual Rs. 3000 or 20% of F O B Rs. 2000 WEL	2,000.00
Add: Insurance	100.00
CIF	12,100.00
Converting In to INR @ Rs.45	5,44,500.00
ADD: Local Agent Commission in India	4,500.00
	5,49,000.00
Add: 1% towards landing	5,490.00
	5,49,990.00
Customs Duty payable	
Basic Customs Duty 25%	1,37,497.50
	6,87,487.50
Counter vailing duty @ 8.24%	56,648.97
Education Cess 3% on Rs.194146.47 (137498+56649)	5,824.39
Landed Cost India	7,49,960.86
Counter vailing duty u/s 3(5) @4%	29,998.43
Total customs duty payable	
Rs 137497.5+56648.97+29998.43	2,29,969.30
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3(5) including EC on CVD u/s 3(1) .	
56649 +29948.43	86,647.40

Problem No. 12

Compute (keeping in mind the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975), the total customs duty payable by an importer on goods 'X' imported by sea into India, from the following details. You may, wherever appropriate, make suitable assumptions, indicating the same in your answer. -
 * Value of Goods (FOB) \$ 1,000 (Dollars) * Weight of Goods 1,000 Kg * Freight Charges \$ 100 (Dollars) * Insurance Charges \$ 20 (Dollars) * Handling Charges Rs. 200 * Exchange Rate 4 Dollars = Rs. 100 * Date of Presentation of Bill of Entry - 4.5.2008 * Date of Entry Inwards of Vessel - 1.5.2008 Rates of Customs Duty on 1.5.2008 - * Basic 20% Adv. * Education Cess -3% * Additional (CVD) 15%. * Rates of Customs Duty on 4.5.2008 - * Basic 15% Adv. * Education cess - 3% * Additional (CVD) 16%. - . - Note: Special CVD under section 3(5) of Customs Tariff Act is

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applicable. No other particulars are relevant. How much Cenvat can be availed by importer, if he is manufacturer

Solution	
Computation of Customs value and Duty payable	
Particulars	US \$
F O B Value of Goods	1,000.00
Add:	
Freight	100.00
Insurance	20.00
	1,120.00
Convert in to INR 1 \$=25 (CIF Value)	28,000.00
Add: 1% towards landing	280.00
Total C I F (Assessable Value)	28,280.00
Customs Duty payable	
Basic Customs Duty 15%	4,242.00
	32,522.00
Counter vailing duty @ 16.48%	5,359.63
Education Cess 3% on Rs.9601.63 (4242+5359.63)	288.05
Landed Cost India	38,169.67
Counter vailing duty u/s 3(5) @4%	1,526.79
Total customs duty payable (Rs 4242+5359.63+288.05+1526.79)	11,416.46
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3(5) including EC on CVD u/s 3(1) .	
5359.63+1526.79	6,886.41

Problem No. 13

Certain goods were imported in February 2009 "Into bond" bill of entry was presented on 14th February, 2009 and goods were cleared from the port for warehousing. Assessable value was \$5,00,000. Rate of BCD 25%. Customs officer issued the order under section 60 permitting the deposit of the goods in warehouse on 21st February 2009 for 3 months. Goods were not cleared even after warehousing period was over, i.e., 21st May, 2009 and extension of time was also not obtained. Customs officer issued notice under section 72 demanding duty and other charges. Importer cleared goods on 28th June 2009. What is the amount of duty interest payable while removing the goods? Compute on the basis of following information (assume that no additional duty or special additional duty is payable)

Solution

Interest is payable from 22nd May 2009 to 28th June 2009 ie for a period of 38 days @ 15% per annum on the duty amount.

Since rate of duty and Conversion rate is not given, calculations are not made.

Problem No 14

From the following particulars, calculate assessable value and total custom duty payable:

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- (i) Date of presentation of bill of entry: 20.6.2009 [Rate of BCD 25%; Exchange Rate: Rs. 43.60 and rate notified by CBEC Rs. 44.80].
- (ii) Date of arrival of goods in India: 30.6.2009 [Rate of BCD 20%; Exchange Rate: Rs. 43.90 and rate notified by CBEC Rs. 44.00].
- (iii) Rate of Additional Customs Duty: 16%.
- (iv) CIF value 2,000 US Dollars; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Land charges not ascertainable].
- (v) Education cess applicable 3%.
- (vi) Assume there is 4 % special CVD.

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Solution	
Computation of Customs value and Duty payable	
C I F value give	2,000.00
Less Freight	500.00
Less Insurance	100.00
F O B	1,400.00
Particulars	D M
F O B Value of Goods	1,400.00
Add:	
Freight 20% of F O B or actual WEL	280.00
280 or Rs. 500 W E H	
Insurance	100.00
	1,780.00
Convert in to INR @ 44.80 (CIF Value)	79,744.00
Add: 1% towards landing	797.44
Total C I F (Assessable Value)	80,541.44
Customs Duty payable	
Basic Customs Duty 20%	16,108.29
	96,649.73
Counter vailing duty @ 16.48%	15,927.88
Education Cess 3% on Rs.32.03.16	961.08
(16108.29+15927.88)	
Landed Cost India	113,538.69
Counter vailing duty u/s 3(5) @4%	4,541.55
Total customs duty payable	
Rs 16108.29+15927.88+961.08+4541.55)	37,538.80
The manufacturer can avail cenvat credit on CVD	
U/s 3 (1) & 3(5) including EC on CVD u/s 3(1) .	
(Rs 15927.88+4541.55)	20,469.42

Problem No 15

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An Indian company imported certain consumer goods from abroad with MRP printed in packing cartons. In respect of similar goods manufactured in India, excise duty is payable on basis of MRP. The importer will be using the goods for further processing. Customs authorities contend that CVD will be calculated based on the MRP printed in the goods. Is this proper? Will your answer be different, if the goods are imported for retail sales?

(Ans: If goods covered imported for further process CVD is payable on the basis of transaction value not on MRP basis. On the other hand: If goods covered imported for retail sale CVD payable based on MRP)

Problem No 16

An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds, Other details are as follows:

- (i) Freight from UK to Indian port was 700 pounds. (ii) Insurance was paid to insurer in India: Rs. 6,000.
- (iii) Design and development charge of 2,000 UK pounds were paid to a consultancy firm in UK.
- (iv) The importer also spent an amount of Rs. 50,000 in India for development work connected with the machinery.
- (v) Rs. 10,000 was spent in transporting the machinery from India port to the factory of importer. (vi) Rate of exchange as announced by RBI was: Rs. 68.82 = one UK pound.
- (vii) Rate of exchange as announced by CBE & C (Board) by notification under section 14(3)(a)(i); Rs. 68.70 = one UK pound.
- (viii) Rate at which bank recovered the amount from importer: Rs. 68.35 = one UK pound.
- (ix) Foreign exporters have an agent in India. Commission is payable to the agent in India Rupees @ 5% of FOB price.

Customs duty payable was 10%. If similar goods were produced in India, excise duty payable as per tariff is 24 %. There is an excise exemption notification which exempts the duty as is in excess of 16%. Find customs duty payable if (a) Improper is manufacturer using the goods himself,

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Solution	
Computation of Customs value and Duty payable	
Particulars	U K Pounds
F O B Value of Goods	10,000.00
Add:	
Freight	700.00
Insurance =6000/68.70	87.34
Design and development	10,000.00
	20,787.34
Convert in to INR @ Rs. 68.70	14,28,090.26
Local Agent commission 10000*68.70*5%	34,350.00
	14,62,440.26
Add: 1% towards landing	14,624.40
Total C I F (Assessable Value)	14,77,064.66
Customs Duty payable	
Basic Customs Duty 10%	1,47,706.47
	16,24,771.13
Countervailing duty @ 16.48%	2,67,762.28

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Education Cess 3% on Rs.415468.75	12,464.06
147706.47+267762.28	
Landed Cost India	19,04,997.47
Countervailing duty u/s 3(5) @4%	76,199.90
Total customs duty payable	
(Rs 147706.47+267762.28+12464.06+76199.90)	5,04,132.71
The manufacturer can avail cenvat credit on CVD	
U/s 3 (1) & 3(5) including EC on CVD u/s 3(1) .	
(Rs 267762.28+76199.90)	3,43,962.18

Problem No. 17

Compute the assessable value and Custom duty payable from the following information : (i) F.O.B. value of machine – 8,000 UK Pounds (ii) Freight paid (air) – 2,500 UK Pounds (iii) Design and development charges paid in UK – 500 UK Pounds (iv) Commission payable to local agent @ 2% of F.O.B. in Indian Rupees (v) Date of bill of entry – 24.10.2007 (Rate BCD 20%, Exchange rate as notified by CBEC Rs. 68 per UK Pound) (vi) Date of entry inward – 20.10.2007 (Rate of BCD 18%, Exchange rate as notified by CBEC Rs. 70 per UK Pound) (vii) C.V.D. payable @ 16% plus education cess as applicable (viii) Special C. V. D. – as applicable (ix) Insurance charges actually paid but details not available (CA Final, June 2009)

Answer -

	UK Pounds	Amount Rs.
FOB Value of Machine	8,000	5,44,000.00
Add: Freight charges [Actual 2,500 restricted to 20% of FOB= 1,600 UK pounds]	1,600	1,08,800.00
Add: Transit Insurance [1.125% of FOB]	90	6,120.00
Add: Design and development charges paid in UK	500	34,000.00
Add: Selling Commission (Commission paid to Local Agent)		10,880.00
CIF Value		7,03,800.00
Add: Landing Charges (1% of CIF Value)		7,038.00
ASSESSABLE VALUE		7,10,838.00

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Calculation of customs duty payable is as follows -

	Duty		Total Duty
	%	Amount	
(A) Assessable Value Rs		710,838	
(B) Basic Customs Duty	20	142,167.60	142,167.60
(C) Sub-Total for calculating CVD '(A+B)'		853,005.60	
(D) CVD 'C' X excise duty rate	16	136,480.90	136,480.90
(E) Education cess of excise - 2% of 'D'	2	2,729.62	2,729.62
(F) SAH Education cess of excise - 1% of 'D'	1	1,364.81	1,364.81
(G) Sub-total for edu cess on customs 'B+D+E+F'		282,742.93	
(H) Edu Cess of Customs - 2% of 'G'	2	5,654.86	5,654.86
(I) SAH Education Cess of Customs - 1% of 'G'	1	2,827.43	2,827.43
(J) Sub-total for Spl CVD 'C+D+E+F+H+I'		1,002,063.22	
(K) Special CVD u/s 3(5) - 4% of 'J'	4	40,082.53	40,082.53
(L) Total Duty			331,307.75
(M) Total duty rounded to	Rs		331,308

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above.

A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. .

A trader who sells imported goods in India after charging

Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above

Problem No 18

Compute the duty payable under the Customs Act, 1962 for an imported equipment Based on the following information: (i) Assessable value of the imported equipment US \$ 10,100. (ii) Date of Bill of Entry 25.4.2009 basic customs duty on this date 20% and exchange rate notified by the Central Board of Excise and customs US \$ 1=Rs. 65 (iii) Date of Entry inwards 21.4.2009 basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US \$ 1 = Rs. 50. (iv) additional duty payable under Section 3(1) and (2) of the Customs Tariff Act, 1975: 15%. (v) Additional duty under Section 3(5) of the Customs Tariff Act, 1975: 4%. (vi) Educational cess @ 2% in terms of the Finance Act (No. 2), 2004 and secondary and higher educational cess @ 1% in terms of the Finance Act, 2007. Make suitable assumptions where required and show the relevant working and round off your answer to the nearest Rupee (CA Final November 2009 new syllabus) .

Answer – Foreign exchange rate relevant is 1 US \$ = Rs 65. Relevant rate of customs duty is 20%.

Calculate as per standard formula and check that total duty payable is Rs 2,97,290.

Problem No 19

- A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin: (1) Quantity imported (tonnes) 20 at Unit price 260 USD CIF (2) Quantity imported (tonnes) 100 at Unit price 220 USD CIF (3) Quantity imported (tonnes) 500 at Unit price 200 USD CIF (4) Quantity imported (tonnes) 900 at Unit price 175 USD CIF (5) Quantity imported (tonnes) 400 at Unit price 180 USD CIF (6) Quantity imported (tonnes) 780 at Unit price 160 USD CIF . The rate of exchange on the relevant date was 1 US \$ = Rs. 43.00 and the rate of basic customs duty was 15% ad valorem. There is no countervailing duty or special additional duty. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required. (CA Final New Syllabus, November, 2008)

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Answer – Valuation to be under rule 4(3) of Customs Valuation Rules i.e. value on basis of identical goods. As per the rules, lowest among values available should be taken when import is in same commercial level. Hence, only 4 and 6 above can be considered as they are at same commercial level. Lowest among them is USD 160. Hence, that should be taken [see para 32.3].

Convert in Rs to get CIF price of Rs 6,880 Add 1% landing charges (Rs 68.80) to get assessable value as Rs 6,948.80 . Calculate customs duty @ 15.45% [15% basic plus customs education cess @ 3%]. Check that duty is Rs 1,073.59, per tonne. Hence, total customs duty for 800 tonnes is 8,58,872.

Problem No 20

- From the following data, you are required to compute the customs duty payable by Sukbhir & Co: - (i) FOB value of textile machinery - 1,00,000 Euro (ii) Airfreight - 26,000 Euro (iii) Expenses incurred by seller for improving the design, at buyer-importer's request - 4,000 euro (iv) Transit Insurance - 2,000 Euro. (v) Exchange rate 1 Euro = Rs. 60 (vi) Basic duty 25%, Rate of CVD 16%, Rate of SAD 3% (vii) The price offered to the importer is a special discounted price. The buyer-importer has been specifically directed not to disclose this price to any buyer in India. Seller's normal selling price is 1,20,000 Euro (ICWAI Inter June 2010 New Syllabus)

Answer – Even if it is a special price, this will be considered for valuation under new section 14 of Customs Act, where transaction value, if genuine, has to be accepted as assessable value.

Airfreight has to be restricted to 20%. Hence, airfreight for calculation will be 20,000 Euro. Design charges (4,000) and transit insurance charges (2,000) are required to be added. Hence, CIF price is 1,26,000 Euro i.e. Rs 75,60,000 (@60 Rs = 1 Euro). Add 1% landing charges i.e. Rs 75,600. Hence, assessable value is Rs 76,35,600.

Problem No.21

An importer imported some goods for subsequent sale in India at \$ 12,000 on CIF basis. Relevant exchange rate as notified by the Central Government and RBI was Rs. 45 and Rs. 45.50 respectively. The item imported attracts basic duty at 10% and education cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 14% plus education cess. Spl CVD is payable at applicable rates. Arrive at the Assessable value and the total duty payable thereon. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader? [CA Final May 2000 adopted]

CIF Value	=	12,000 US \$
Total CIF in Rs. @ 45.00 per US \$	=	Rs. 5,40,000
Add : Landing Charges @ 1% of CIF	=	Rs. 5,400
(A) Assessable Value	=	Rs. 5,45,400

Calculation of duty payable and check that it is Rs 172,910.

Problem No.22

- An actual user imports following goods from England per S. S. Vishal: (1) Second hand numerically controlled horizontal lathe machine - Tariff heading – 84.5811, Value FOB - 1,000/- Pound Sterling (2). A. C. motors - Tariff heading – 85.0110, Value FOB - 500/- Pound Sterling. - - Other relevant data are: - Exchange rate 1 UK Pound = Rs. 65, Freight – 150 UK Pounds, Insurance – 25 UK Pounds. - - Rate of duty : Basic customs duty - 10%, CVD - 14%, Education Cess and Spl CVD at applicable rates. - - It is found that the lathe machine is undervalued. It is proposed to load the FOB value of the lathe machine by 25%. Party does not want show cause notice and personal hearing. Compute – (i) Assessable value; (ii) Total duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader? [ICWA, December, 2001 - adapted]

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Answer - Since FOB value of lathe machine is being loaded by 25% for under-valuation, the FOB Value of lathe machine for purpose of assessment is 1250 UK Pounds. Value of AC Motors is 500 UK Pounds. Thus, total FOB value for purposes of customs valuation is 1,750 UK Pounds. - - Total insurance and freight is 175 UK Pounds [freight is 150 UK Pounds and insurance is 25 UK Pounds]. This will be allocated on lathe machine and AC motors in proportion to value (as no other basis is available). Thus, allocation of freight and insurance charges will be in ratio of 1250/1750 and 500/1750, i.e. 125 UK Pounds to lathe machine and 50 UK Pounds to AC motors.

Hence, CIF value of lathe machine for purpose of customs valuation is 1,375 UK Pounds (1,250 +125) i.e. Rs 89,375 (@ Rs 65 per UK Pound) and CIF value of AC motors is 550 UK Pounds (500 + 50), i.e. Rs 35,750 (@ Rs 65 per UK Pound). Assessable Value will be CIF plus landing charges of 1%. Hence, Assessable Value of lathe is 90,269 (89,375 + 894) and AV of motors is Rs 36,107 (35,750 + 357).

The duty payable is Rs 28,618 as per formula

Problems in Duty Drawback

Problem No 1

'A' has exported under-mentioned goods under drawback claim. Determine drawback claim

S. No. of DGK Table	Description of goods & quantity exported	Value FOB. Rs	Rate of Drawback
64.01	Leather footwear Boots 200 nos.@ Rs. 1,000 per pair	2,00,000	11% of f.o.b. subject to maximum of Rs. 85 per pair
64.11	Leather chappals 2000 nos. @ Rs. 50 per pair	1,00,000	3% of f.o.b. subject to maximum of Rs. 5 per pair.
71.01	Brass Jewellery 200 kgs. @ Rs.200 per kg		Rs. 22.50 per kg of Brass content
71.05	Plastic bangles with embellishment 200 kgs @ Rs. 100 per kg		Rs. 5.00 per kg of plastic content.

On examination it is found that brass content in brass jewellery is 50% of weight and in plastic bangles the plastic content is 50% but the total weight comes to 190 kgs only. - -Compute drawback on each item and total drawback

Solution

S No of DBK	Description of goods	Rate of Drawback	Calculation	Drawback eligible
64.01	Leather footwear	11% of FOB Rs. 2lacs or Rs. 85 per pair which ever is less	22000 or Rs. 17000 Which ever is less	17000
64.11	Leather Chappals	3 % of FOB Rs.1lac or Rs.5 per pair which ever is less	3000 or Rs.10000 Which ever is less	3000
71.01	Brass Jewellery	Rs. 22.50 per Kg for Brass Content for 200 kgs	200 x 22.50 x 50%	2250
71.05	Plastic Bangles	Rs. 5 per Kg for plastic content Content for 200 kgs	190 x 5x50% 475	
Total D B K				

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Problem No 2

A' exported a consignment under drawback claim consisting of the following items: -

Particulars	Serial/ Sub-serial	FOB value	Drawback rate
(1) 200 pieces of pressure stoves mainly made of brass @ Rs. 80/piece	74.04	Rs 16,000	4% of FOB
(2) 200 kg Brass utensils @ Rs. 200 per kg	74.13	Rs 40,000	Rs. 24/kg
(3) 200 kg Art ware of brass @ Rs 300/Kg	74.22	Rs 60,000	17.50% of FOB subject to a maximum of Rs. 38/per kg.

On examination in docks, weight of brass art ware was found to be 190 Kgs and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party

Solution

S No of DBK	Description of goods	Rate of Drawback	Calculation	Drawback eligible
74.04	Pressure Stoves	4% of FOB Rs. 16000	16000 x 4%	640
74.13	Brass Utensils	Rs. 24 per Kg	200 x 24	4800
74.22	Art ware of Brass	17.5% of FOB Rs.60000 or Rs. 38 per kg on 190 K G which ever is less	10500 or Rs.7220 Which ever is less	7220
	Total D B K Eligible			12660

Problem No 3

An exporter has exported under-mentioned goods under drawback claim:

S.No of Dbk. Table	Description	FOB Value Rs.	Rate of Draw-back
74.24	1000 Kg handicrafts of brass @ Rs. 200 per kg	2,00,000	16.5% of FOB Value subject to maximum of Rs. 33 per kg of brass content
74.27	1000 kg of Art ware of copper @ Rs. 300 per kg	3,00,000	Rs. 33 per kg.
85.81	20,000 pc GLS Lamps @ Rs. 5 per piece	1,00,000	1% of FOB

Note: 1: On examination it is found that brass content in brass handicrafts is 80%. 2: Art ware has copper content of weight 950 kg. Compute the amount of drawback admissible taking into account the above facts

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Solution				
S No	Description of goods	Rate of Drawback	Calculation	Drawback
of DBK				eligible
74.24	handicraft of brass	16.5% of FOB Rs. 2lacs or Rs.33 per kg whichever is less	33000 or Rs.26400 Which ever is less	26400
74.27	Art ware of Copper	Rs. 33 per kg	950 x 33	31350
85.81	GLS Lamps	1% of F O B Rs. 1 lac	100000 x 1%	1000
	Total D B K Eligible			58750

Problems on Baggage

Problem No.1

: An Indian resident visiting Germany brought following goods while returning to India (a) His personal effects like cloth etc. valued at Rs. 25,000 (b) Two Liter of liquor of Rs. 1,600 (c) New Camera of Rs. 39,800. What is the customs duty payable ?

Answer : (a) There is no duty on personal effects. (b) Liquor upto 2 liter of Rs. 1,600 can be accommodated in General Free Allowance. (c) The total GFA is Rs 25,000. Total dutiable goods imported are Rs 41,400 [Rs 1,600 + Rs 39,800]. After deducting GFA of Rs 25,000; passenger has to pay duty on Rs. 16,400 (41,400 - 25,000). (d) The duty payable is 35%, plus education cess of 2% and SAH education cess of 1% of duty. (e) Hence, duty payable is Rs 5,740, education cess of Rs 114.80 and SAH education cess of Rs 57.40.

Problem No 2

: An Indian resident goes to Nepal on tour. He purchases colour TV of Rs. 18,000, a laptop computer of Rs 79,000 and hair dryer of Rs. 2,000 in a duty free shop in Nepal and brings the same to India. What is the duty payable (a) If he returns on 3rd day by air (b) If he returns on 3rd day by land route (c) If he returns on 11th day by air (d) If he returns on 11th day by land route.

Answer : One laptop computer can be imported without payment of customs duty. Hence, the dutiable goods are Rs 20,000.

(a) If he returns within 3 days, there is no general free allowance for tourist coming from Nepal. Thus, duty @ 35% (plus education cesses) of Rs. 20,000. i.e. customs duty of Rs. 7,000 plus education cess of Rs 140 plus SAH education cess of Rs 70 is payable. (b) Same duty is payable if he returns on 3rd day by land route (c) If he returns after 3 days by air, GFA is Rs 6,000. Thus, customs duty is payable on Rs 14,000 @ 35% i.e. duty of Rs 4,900 plus education cess of Rs 98 and SAH education cess of Rs 49 is

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payable (d) If he returns after 3 days by land route, there is no General Free Allowance. Hence duty payable is same as per (a) above.

Problem No.3

Mr. and Mrs. Khanna visited USA and bought a personal computer for Rs. 38,000 and a laptop computer of Rs 98,500 while returning to India, besides their personal effects valued at Rs. 86,000. What is the customs duty payable.

Answer : There is no customs duty on personal effects. One laptop computer can be brought without payment of customs duty. The General Free Allowance cannot be pooled i.e. husband and wife cannot have combined allowance of Rs. 50,000 in respect of one item, though individually, they are eligible for GFA of Rs 25,000 each. Thus, they are eligible for general free allowance of Rs. 25,000. Thus, they have to pay duty on Rs 13,000 (Rs 38,000 – Rs 25,000) @ 35% i.e. customs duty payable is Rs. 4,550 plus education cess of Rs 91 plus SAH education cess of Rs 45.50.

Problem No.4

- Mrs. & Mr. Kapoor visited Germany and brought following goods while returning to India on 8th February, 2008. (i) Their personal effects like clothes, etc., valued at Rs. 35,000. (ii) A personal computer bought for Rs. 36,000. (iii) A laptop computer bought for Rs. 95,000. (iv) Two litres of liquor bought for Rs. 1,600. (v) A new camera bought for Rs. 37,400. What is the amount of customs duty payable? (ICSI Final June 2005 adopted)

Personal effects and one laptop are exempt from customs duty. Two liters of liquor can be accommodated in General free Allowance. Hence, Mr. Kapoor can bring one personal computer and two litres of liquor on his account. Total value is Rs 37,600 (PC Rs 36,000 plus liquor Rs 1,600). He will get General Free Allowance of Rs 25,000 and duty payable will be on Rs 12,600. Customs Duty @ 35% of Rs 12,600 will be Rs 4,410 plus education cess of Rs 88.20 @ 2% of customs duty and SAH education cess of Rs 44.10 @ 1% of customs duty.

Mrs. Kapoor can bring one camera on her account. Total value is Rs 37,400. She will get General Free Allowance of Rs 25,000 and duty payable will be on Rs 17,400. Customs Duty @ 35% of Rs 17,400 will be Rs 6,090 plus education cess of Rs 121.80 @ 2% of customs duty and Rs 60.90 as SAH education cess.

Problem No 5

- Mr. and Mrs. Bapat visited Germany as tourist and bought a personal computer for Rs. 52,000 and a laptop computer of Rs. 78,000 while returning to India, besides their personal effects valued at Rs. 1,33,000. What is the customs duty payable, if duty on baggage is 35% plus education cesses as applicable (CA Final May 2007, ICWA Inter June 2006)

Answer – There is no customs duty on personal effects. One laptop computer can be brought without payment of customs duty. The General Free Allowance cannot be pooled i.e. husband and wife cannot have combined allowance of Rs. 50,000 in respect of one item, though individually, they are eligible for General Free Allowance of Rs 25,000 each. Thus, Mr. and Mrs. Bapat are eligible for general free allowance of Rs. 25,000. They have to pay duty on Rs 27,000 (Rs 52,000 – Rs 25,000) @ 35% i.e. customs duty payable is Rs. 9,450 plus education cess of Rs. 189 plus SAH education cess of Rs 94.50.

Problem No 6

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Mr. A, a person holding Indian passport, brings 1 Kg Gold, out of which Rs. 3,60,000 are in form of biscuits and balance of Rs. 40,000 in form of gold jewellery which he was using abroad. (valued at international rates). What is the duty payable if (a) the person is returning after 3 months stay (b) the person is returning after 9 months stay abroad and the Gold belongs to him. (c) the person is returning after 8 months stay abroad and the Gold belongs to his friend, who has given it only for carrying to India. (d) He is returning after 18 months' stay abroad (ignore difference due to minor impurities in jewellery) [ICWA Inter June 2004].

Answer : (a) Personal jewellery is exempt if it was taken abroad. In this case, it is presumed that the jewellery is not personal jewellery. Hence, duty is payable @ 35% of Rs 4,00,000 is Rs. 1,40,000 plus education cess of Rs 2,8000 and SAH education cess of Rs 1,400. There is no 'General Free Allowance' in respect of Gold. (b) Duty is Rs. 750 per 10 Gms i.e. Rs. 75,000 plus education cess @ 2% and SAH education cess @ 1%, if paid in free convertible currency i.e. dollar, pound, yen, DM, franc etc. Otherwise duty will be as per 'a' above (c) Duty payable is same as 'b' above as ownership of Gold is not relevant (d) He will get free allowance of Rs. 10,000 of Gold jewellery if he is returning after one year (the free allowance is Rs. 20,000 for female). Thus, duty is payable on Gold of Rs. 3,90,000, i.e. 975 Gms @ Rs. 750 per 10 gms plus education cess @ 2% and SAH education cess of Rs. @ 1%, if paid in free foreign currency

Indirect taxes - Vat

Chapter4 VAT (VALUE ADDED TAX)

Vat is indirect tax levied on sale of goods

Vat was introduced primarily as a replacement of existing sales tax in many states in India with effect from 01.04.2005

.The Vat structure has been evolved on the basis of consensus among the states.

•The basic features of Vat will be therefore will be same through the country.

What is Value Added Tax ('VAT')

–Tax on Value addition

–Multi-point taxation

–A state subject

MEANING OF VAT

•Vat is a tax levied on the value added to any product AT EVERY STAGE”

•Provision for input tax credit tax Credit paid at the previous point of purchase.

•The tax paid by a registered dealer is netted. Tax is ultimately borne by the consumer

No VAT

VAT not levied on

•Inter-state sale / Inter-state branch transfer

•Imports/Exports

•Dealers below threshold level

Merits of Vat

•Eliminates multiple taxation of full sale price

•No tax evasion. Because of input tax credit on valid vat invoice

•Neutral on choice of production technique, the vat liability will not vary

•Simple method.

•Lowering tax burden.

•Transparency. – purchase price value addition, vat paid

•Better revenue collection and stability.

•Better accounting systems.- tax paid at earlier stage received back

Demerits of vat

•VAT does not cover services.

•Non integration of central VAT with state VAT. Discourage in purchasing outside state

•Accounting burden.

•Cost of administration for government as the number of dealers will increase

•Exemptions on good, Non applicability of vat, make more cascading effect

METHODS FOR VAT TAXATION (Computation of value added)

Addition method

•Invoice Method

•Subtraction Method

Addition Method

Indirect taxes - Vat

This method aggregates all the factor payments including profits to arrive at the total value addition on which the rate is applied to calculate the tax. This type of calculation is mainly used with income variant of VAT. Addition method does not easily accommodate exemptions of intermediate dealers.

A drawback of this method is that it does not facilitate matching of invoices for detecting evasion.

Invoice Method

This is the most common and popular method for computing the tax liability under 'VAT' system.

Under this method, tax is imposed at each stage of sales on the entire sale value and the tax paid at the earlier stage is allowed as set-off. In other words, out of tax so calculated, tax paid at the earlier stage i.e., at the stage of purchases is set-off, and at every stage the differential tax is being paid.

The most important aspect of this method is that at each stage, tax is to be charged separately in the invoice.

This method is also called the 'Tax Credit Method' or 'Voucher Method'. From the following illustration, the mode of calculation of tax under this method will become clear:

Subtraction Method

Under this method, the tax is charged only on the value added at each stage of the sale of goods. Since, the total value of goods sold is not taken into account, the question of grant of claim for set-off or tax credit does not arise. This method is normally applied where the tax is not charged separately. Under this method for imposing tax, 'value added' is simply taken as the difference between sales and purchases.

Variants of Vat

The gross product variant

The gross product variant allows deductions for taxes on all purchases of raw materials and components, but no deduction is allowed for taxes on capital inputs. That is, taxes on capital goods such as plant and machinery are not deductible from the tax base in the year of purchase and tax on the depreciated part of the plant and machinery is not deductible in the subsequent years. Capital goods carry a heavier tax burden as they are taxed twice. Modernization and upgrading of plant and machinery is delayed due to this double tax treatment.

The income variant

Income variant of VAT on the other hand allows for deductions on purchases of raw materials and components as well as depreciation on capital goods. This method provides incentives to classify purchases as current expenditure to claim set-off. In practice, however, there are many difficulties connected with the specification of any method of measuring depreciation, which basically depends on the life of an asset as well as on the rate of inflation.

Consumption variant

Consumption of VAT allows for deduction on all business purchases including capital assets. Thus, gross investment is deductible in calculating value added. It neither distinguishes between capital and current expenditures nor specifies the life of assets or depreciation allowances for different assets. This form is neutral between the methods of production; there will be no effect on tax liability due to the method of production (i.e. substituting capital for labour or vice versa). The tax is also neutral between the decision to save or consume.

Among the three variants of VAT, the consumption variant is widely used. The reasons for preference of this variant are:

Advantages of Consumption variant

Indirect taxes - Vat

Firstly, it does not affect decisions regarding investment because the tax on capital goods is also set-off against the VAT liability. Hence, the system is tax neutral in respect of techniques of production (labour or capital-intensive).

Secondly, the consumption variant is convenient from the point of administrative expediency as it simplifies tax administration by obviating the need to distinguish between purchases of intermediate and capital goods on the one hand and consumption goods on the other hand.

In practice,, most countries use the consumption variant. Also, most VAT countries include many services in the tax base. Since the business gets set-off for the tax on services, it does not cause any cascading effect.

Input and Output Tax

Input Tax

VAT paid by a registered business dealer on taxable input purchases for business such as raw material, trading goods, capital goods and Consumables

Output Tax

VAT charged by a registered business dealer on sales made by the business to its customers

Input Tax Credit (ITC)

Input tax credit means, credit available on the Purchases made by dealer. Credit of VAT paid will be available only on purchases made within the State. ITC available only to VAT registered **dealer** on purchases made from another VAT registered dealer against a valid VAT invoice, Purchases include raw material, consumables, packing material, capital goods.

Input Tax Credit on Capital goods

- Available and to be adjusted over a period of 24 monthly instalments (2 years)- some states 36 installments.
- States can reduce this period
- No input tax credit on Capital Goods specified in negative list

Use of inputs to avail credit

The purchased inputs can be used for

- For sale/resale with in state or outside state
- As raw material for manufacture of goods for sale inside state or outside state
- As a packing material/consumables in sale of goods
- As goods in execution of works contract.
- For export of goods out of India

The Purchased Capital goods can be used for

For manufacture of taxable goods

Carry forward of Input Tax Credit

- Unutilised Credit will be carried over till the end of the succeeding financial year and if it remains unutilised will be refunded.
- VAT Credit will be refunded within three months in case of exports

Units in SEZ and EOU have an option of either

- Not paying VAT on inputs; or
- Claim full refund within three months
-

Indirect taxes - Vat

No input tax credit in case of

- Inputs used in the manufacture of exempted goods
 - Purchases for other than manufacture/re-sale (Captive Consumption)
 - Purchases made inter State/in-transit
 - if VAT registered dealer purchases from Unregistered dealer (Output tax payable on full sale price)
 - Purchase from a registered dealer who opts of composition scheme.
 - Purchased from registered dealer where invoice does not show tax amount separately.
- Purchases of goods of negative list for example
- Delhi - Fuel in the form of Petrol, Diesel and Kerosene, LPG, CNG, Coal
 - AP - Fuel, Coal and Natural Gas used for power generation
 - Jharkhand - Consumables
 - Tripura – Credit available in excess of 4% on petroleum products (other than petrol, ATF and diesel) and other fuels

Input tax credit on stock transfers

Inputs used in the manufacture of finished goods which are stock transferred; or purchases of goods which are stock transferred Input tax credit available to the extent of 4% of vat paid on such purchases. In excess of 4% if availed it should be reversed

Utilization of vat Credit

Credit can be utilized towards

- VAT payable on Finished Goods
- CST payable on Inter State Sales
- Any interest or penalty under VAT

Common inputs for exempted sale and taxable sale

- Option 1- maintain separate records for inputs used in exempted sale and taxable sale
- Option 2- Proportionate input tax credit on inputs used in taxable sale

Vat payable

•Vat payable = Output tax – Input Tax credit.

In other words, out of the tax charged on your sales, you will first deduct the tax charged on your purchases, and pay balance to the department.

For example, input worth Rs. 1,00,000/- is purchased and sales are worth Rs. 2,00,000/- in a month, input tax rate and output tax rate are 4% and 12.5% respectively, then input tax credit/set-off and calculation of VAT will be as shown below:

(a)	Input purchased within the month	Rs. 1,00,000/-
(b)	Output sold in the month	Rs. 2,00,000/-
(c)	Input tax paid	Rs. 4,000/-
(d)	Output tax payable	Rs. 25,000/-
(e)	VAT payable during the month	Rs. 21,000/-
	after set-off/input tax credit	
	[(d) – (c)]	

Composition scheme under vat

- Applicable to Every registered dealer who is liable to pay vat and whose turnover does not exceed Rs.50 lakhs in the last financial year
- The scheme is optional. Intimation to Commissioner to exercise option in any whole year or part of year

Indirect taxes - Vat

- Dealer need not maintain any statutory records as prescribed under the Act. The records for purchase, sales, inventory should be maintained
- Turnover will be taxed at low rate as 0.25%
- No input tax credit on purchases
- Cannot issue tax invoice, the buyer from composition scheme dealer cannot avail input tax credit

Non eligibility of composition scheme

For the following dealers composition scheme not applicable. They cannot avail

- Dealers of importers and exporters
- Dealers having interstate sales
- Dealers having interstate branch /depot/works contract transfers

Rates of VAT

- 0% -36 commodities –Agricultural Products., sea products
- 1%- 3 commodities (Gold, Silver, Precious metals & Stone, etc.)
- 4%-About 340 commodities Industrial, Packing and IT products
- 12.5% (RNR) All other goods (Some states increase it to 13.5%)

RATES OF VAT NOT APPLICABLE

- Non Applicability of VAT on Petrol, Diesel, Aviation Turbine Fuel, Liquor, Lottery Tickets,
- These goods may be taxed under VAT Act or any other Act at higher rates.

Zero rated sale/Exempted sale- Certain sales are 'zero rated' i.e. tax is not payable on final product in certain specified circumstances. In such cases, credit will be available on the inputs i.e. credit will not have to be reversed. Distinction between 'zero rated sale' and 'exempt sale' is that in case of 'zero rated sale', credit is available on tax paid on inputs, while in case of exempt goods, credit of tax paid on inputs is not available. As per para 2.5 of White Paper on State-Level VAT, export sales are zero rated, i.e. though sales tax is not payable on export sales, credit will be available of tax paid on inputs.

Procedures under Vat

Threshold limit on Vat

0-5 Lacs No Vat- Not liable for Registration

5-50 Lacs - can opt for composition at lower rate up to 0.25% (Only for retailers)

50 Lacs Above - Compulsory VAT

Some states the limit is Rs. 10 lakhs instead of 5 lacs

Registration under Vat

Automatic registration under the VAT Act of all the existing dealers

New dealers require to register after vat come in to existence

Dealers who 'Cross the basic threshold limit

Composition scheme dealers

Time limit- within 30 days from the date of commencement of business

TIN will be allotted all dealers. It will be a 11 digit numerical code. First two digits will indicate State Code. TIN will have to be indicated on each invoice issued

Cancellation of registration

- discontinuance of business; or disposal of business
- transfer of business to a new location

Indirect taxes - Vat

- annual turnover of dealer falling below the specified amount.

Dealer obligation : Inform surrender original RC, pay tax up to date

Records under vat

- Purchase records
- sales records
- VAT account (Input tax credit, utilization, balance)
- Separate record of any exempt sale
- Other documents such as tax invoice, delivery note, bills, credit notes, debit notes

Declaration forms under vat

- No declaration forms
- Old declaration forms under sales tax law dispensed with.
- No concessional sale under vat, Hence no need of forms.

Vat Invoice

- Invoices are important documents for administering VAT.
- In the absence of invoices VAT paid by the dealer earlier cannot be claimed as set off
- Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, .
- The tax invoice shall be dated and signed showing the required particulars.
- The dealer shall keep a counterfoil or duplicate of such tax invoice duly signed and dated.

•Particulars of Vat Invoice

- the words 'tax invoice' in a prominent place
- name and address of the selling dealer;
- registration number of the selling dealer;
- name and address of the purchasing dealer;
- registration number of the purchasing dealer (not under all VAT legislations);
- pre-printed or self-generated serial number;
- date of issue;
- description, quantity and value of goods sold;
- Rate and amount of tax charged in respect of taxable goods;
- signature of the selling dealer or his regular employee duly authorized by him for such purpose.
- The provisions relating to tax invoice do not apply to a selling dealer who has opted to avail the composition scheme ' .

Example on Vat payment

Vat Return

Returns will be filed monthly/quarterly, as prescribed, along with challans. Returns will be scrutinized and if there is technical mistake, it will have to be rectified by dealer

Return normally contains the following particulars

- Name Address and Registration Number of dealer.
- Period of Return.
- Turnover of sales and purchase.
- Claim of Set-off.
- Amount of set-off carried forward.

Indirect taxes - Vat

- Amount of set-off claimed as refund.
- Calculation of Tax
- Declaration that particulars given in return are true and correct

Assessments under Vat

- Most are the self assessment, where dealer calculate vat liability and pay vat as per law and files monthly returns
 - Cross checking by department at the end of year to ensure vat paid correctly.
- Audit under vat
- Some states provide vat audit by CA
 - Other cases, department do audit on specific selected criteria

Vat in case of special transactions

Vat on Works Contract

- The works contract is a deemed sale
 - Vat is levied on goods involved in works contract (Steel. Cement, paints, fittings etc)
 - Sale price of goods transferred in works contract is the turnover for the purpose of Vat
 - The amount representing labour and other service charges incurred for such execution should be excluded from vat purview.
 - Where such labour and other service charges are not quantifiable, the sale price shall be the cost of acquisition of the goods and the margin of profit + all other expenses in transferring the property
- Tax rates on works Contract
- Option 1- Normal vat schedule rate on goods involved in works contract. Rate applicable for each items is considered Input tax credit is available on Purchases
 - Option 2- Composition scheme rate on the total value of works contract including labour and overheads. No input tax credit is available on Purchases
 - Input credit on Capital goods purchased in works Contract is not available, as the works contract execution is not manufacturing and processing of goods.

Vat on Lease transactions

- Constitution provides power to levy tax on the transfer of the right to use any goods (lease)
- Lease is a deemed sale and vat can be levied
- Taxable event is the transfer of the right to use any goods
- Lease rentals collected by lessor is consideration and treated as turnover. Some states provide deduction of interest and finance charge from lease rentals
- Tax rate applicable on the goods given on lease
- Sub lease is also taxable
- Lessor can get input tax credit on the tax paid on purchase of leased asset

Vat on hire Purchase transactions

- Delivery of goods under hire-purchase or installment sale will be taxable event for vat. And not the completion of sale on exercise of option by hirer or last installment paid by buyer
- VAT laws as applicable to normal sales are equally applicable to hire-purchase and installment sales.
- Hire charges/ Installment amount will be taxed
- When all the hire charges and installments are taxed no vat tax on when the sale was concluded on last installment/when hirer exercise option to buy.

Vat & CST

Problems on VAT

Problem No 1

Compute the invoice value to be charged and amount of tax payable under VAT by a dealer who had purchased goods for Rs. 1,20,000 and after adding for expenses of Rs. 10,000 and of profit Rs. 15,000 had sold out the same. The rate of VAT on purchases and sales is 12.5%.

Particulars	Rs.	Rs.
Cost of goods purchased		1,20,000
Add: Expenses	10,000	
Profit margin	15,000	25,000
Product Sale Value		1,45,000
Add: VAT @ 12.5%		<u>18,125</u>
Invoice Value		1,63,125

COMPUTATION OF AMOUNT OF TAX PAYABLE UNDER VAT

VAT charged on sales	18,125
Less: Input credit of VAT paid on purchases @ 12.5% on 1,20,000 (Refer Note)	15,000
Tax Payable under VAT	3,125

Note: It has been assumed that the purchase price of Rs. 1,20,000 is exclusive of VAT.

Problem No 2

input worth Rs. 1,00,000/- is purchased and sales are worth Rs. 2,00,000/- in a month, input tax rate and output tax rate are 4% and 12.5% respectively, Calculate vat payable:

Ans:

Output Tax payable on sales -2,00,000 x 12.5%	Rs.25,000
Less: Tax paid on purchases (input tax)-1,00,000 x 4 %	Rs.4,000
Vat payable	Rs.21,000

Problem No 3

The following are the details in respect of dealer, calculate vat liability

Tax paid on purchases made in the State within a month (input)	Rs.10,000
Tax charged for sales in the State within a month (output tax)	Rs.4,500
CST Charged for inter-State sales within a month	Rs.15,000

Ans

Output Tax Payable on sales in the State within a month	Rs.4,500
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Output Tax Payable on interstate sales within a month	Rs.15,000
Total Output tax payable	Rs.19,500
Less :Tax paid on purchases made in the State within a month(input tax)	Rs.10,000
Net Vat payable	Rs.9,500

Problem No 4

The following are the details in respect of dealer, calculate vat liability

(a) Inputs purchased within a month	Rs. 10,00,000
(b) Outputs sold in the month	Rs. 7,50,000

Ans:

Output Tax Payable on sales 7,50,000 x 12.5%	93,750
Less :Tax paid on purchases (input tax) -10,00,000 x12.5%	93,750
1,25,000- credit to the extent of Rs.93,750	
Net Vat payable	NIL

Problem No 5

Purchases by S & Co. for the month of December are as follow: (1) Rs. 1,00,000 at 4% VAT (2) Rs. 5,00,000 at 12.5% VAT. Sales of S & Co. for the month of December are as follows – (1) Sales of Rs. 3,00,000 at 4% VAT (2) Sales of Rs. 3,00,000 at 12.5% VAT. Compute eligible input tax credit and VAT payable for the month (CA Final, New Syllabus, June 2009).

Answer –

(A) Vat payable for the month of December – (a) VAT payable on local sales @ 4% (3,00,000*4%) – Rs 12,000 (b) VAT payable on local sales @ 12.5% (3,00,000*12.5%) – Rs 37,500. Total – Rs 49,500

(B) Input Tax credit on purchases (a) (1,00,000*4%) - Rs 4000 (b) (5,00,000*12.5%) – Rs 62,500. Total - Rs 66,500

(C) VAT Payable – Nil (As the credit exceeds the Vat payable. Balance credit of Rs 17,000 (66,500 – 49,500) can be carried forward to next month and utilised against future sales.

Problem No.6

The particulars regarding sale, purchase etc. of Shubham Udyog for the last quarter of the year 2009-10 are as under : (1) Purchases of raw material within the state - (i) taxable @ 1% - Rs 40,00,000 (ii) taxable @ 4% - Rs 60,00,000 (iii) taxable @ 12.5% - Rs 10,00,000 (2) Sale of goods manufactured from raw material purchased @ 4% tax rate (i) Taxable sale within the State (tax rate 4%) – Rs 20,00,000 (ii) Exempted sale within the state – Rs 10,00,000 (iii) Sale in the course of Inter-State trade or Commerce (tax rate 4%) – Rs 10,00,000 (3) Sale of raw material purchased @ 1% tax rate – Rs 44,00,000 (4) Goods manufactured from the raw material purchased @ 12.5% tax rate were given on lease. The deemed sale Price of such goods is Rs. 12,00,000, taxable @ 12.5%. - - You may assume that input tax credit of tax on raw material used in manufacture of leased goods is available immediately. Compute the amount of Value Added Tax (VAT) payable by M/s Shubham Udyog for the relevant quarter. There was

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no opening or closing inventory. How can he utilise the balance of input tax credit available, if any? (CA Final May 2010).

Answer –

A. Output tax (VAT plus CST) payable – (i) On raw material (1% of Rs 44,00,000) – Rs 44,000 (ii) On sale taxable @ 4% (4% of Rs 20,00,000) – Rs 80,000 (iii) Vat on lease (12.5% of Rs 12,00,000) – Rs 1,50,000 (iv) CST on inter-State sale (4% of Rs 10,00,000) – Rs 40,000. Total tax payable – Rs 3,14,000

B. Input tax credit (ITC) – (i) Taxable @ 1% (1% of Rs 40,00,000) – Rs 40,000 (ii) Taxable @ 4% (Tax paid on Rs 60,00,000 – 2,40,000. Eligible credit 75% as 25% is exempt sale) – Rs 1,80,000 (iii) Taxable @ 12.5% (12.5% of Rs 10,00,000) – Rs 1,25,000. Total credit – Rs 3,45,000.

C. Input Credit available is more than tax payable. Hence, no tax is payable by cash. The excess credit of Rs 31,000 can be carried forward for utilization subsequently. If such excess credit remains un-utilizable till the time limit as specified in State Vat Act, then it will be refundable.

(Note: The excess credit is because goods purchases @ 4% were sold at a loss by the dealer, as purchase price is Rs 60,00,000 and Sale price is Rs 40,00,000. Even then full ITC shall be available, as Vat provisions do not require one to one relation. Total input credit is a 'common pool' which can be used for payment of Vat on sales. However, it shall be reduced proportionately to extent of tax exempt sales).

Transactions involving inter-state transactions or exports

Problem No. 7

Compute net VAT liability of Rishi from the following information - * Raw materials from foreign Market (Includes duty paid on imports @20%) – Rs 1,20,000 * Raw material purchased from local market - Cost of Raw material Rs 2,50,000 Add : Excise duty @16% Rs 40,000 (sub-total – Rs 2,90,00) - Add : VAT @ 4% - Rs 11,600. Total Rs 3,01,600 * Raw material purchased from neighbouring State (Includes CST @ 2%) - Rs 51,000 * Storage and transportation cost – Rs 9,000 * Manufacturing expenses – Rs 30,000. - - Rishi sold goods to Madan and earned profit @ 12% on the cost of production. VAT rate on sale of such goods is 4% (CA PCC November 2010).

Answer – Cost of production is as follows – (i) Imported raw material – Rs 1,20,000 (ii) Local raw material – Rs 2,90,000 (Vat is not to be considered as its set off i.e. credit is available) (iii) Raw material from neighbouring State – Rs 51,000 (Set off of CST is not available. Hence, it is incudible in cost) (iv) Storage and transportation cost Rs 9,000 (v) Manufacturing Expenses – Rs 30,000. - - Total cost of production [i to v] – Rs 5,00,000. Profit @ 12% - Rs 60,000. Hence, selling price – Rs 5,60,000. Vat @ 4% on selling price – Rs 22,400. Vat credit available – Rs 11,600. Hence, Net Vat payable – Rs 9,800 [22,400 – 11,600].

Problem No 8

Mr. Rajesh is a registered dealer and gives the following information. You are required to compute the net tax liability and total sales value under Value Added Tax. Rajesh sells his products to dealers in his State and in other States. The profit margin is 15% of cost production and VAT rate is 12.5% of sales (i) Intra State purchases of raw material Rs. 2,50,000 (excluding VAT @ 4%) (ii) Purchases of raw material from an unregistered dealer - Rs. 80,000 (including VAT @ 12.5%) (iii) High seas purchases of raw material are Rs. 1,85,000 (excluding custom duty @ 10% of Rs. 18,500) (iv) Purchases of raw materials

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from other States (excluding CST @ 2%) - Rs. 50,000 (v) Transportation charges, wages and other manufacturing expenses excluding tax - Rs. 1,45,000 (vi) Interest paid on bank loan Rs. 70,000 (CA IPCC and AT November 2010)

Answer – The total cost of production is as follows – (i) Intra State Purchases of Raw material (Net of Vat) – Rs 2,50,000 [Since Vat credit i.e. set off is available, it is not considered for calculating cost of production] (ii) Purchases from unregistered dealer - Rs 80,000 including 12.5% Vat [Really, an unregistered dealer cannot charge Vat in his invoice. Even if he has charged Vat in his invoice, the buyer cannot avail set off (Vat credit) of such amount. Hence, cost of production is considered including such Vat] (iii) High seas purchases – Rs 2,03,500 (including customs duty since its Vat credit is not available (iv) Interstate Purchases of raw materials – Rs 51,000 (including CST @ 2% i.e. Rs 1,000 since set off of CST is not available) (v) Transportation charges, wages and other manufacturing expenses – Rs 1,45,000 (vi) Interest – Not considered as it is not to be considered while calculating cost of production (Interest would have been added if the words used were 'total cost, while here the words used are 'cost of production'). - - Hence, total cost of production is Rs 7,29,500 (2,50,000 plus 80,000 plus 2,03,500 plus 51,000 plus 1,45,000). Sale value is cost of production plus 15% i.e. Rs 8,38,925 (7,29,500 plus 1,09,425). Vat payable on sale value @ 12.5% is 1,04,865.63. Vat credit i.e. set off available on intra-state purchases is Rs 10,000 [4% of Rs 2,50,000]. Hence, net tax payable (after taking Vat credit) is Rs 94,865.63

Problem No. 9

Calculate the VAT liability for the period Jan. 1, 2007 to Jan. 31, 2007 from the following particulars: Inputs worth Rs. 1,00,000 were purchased within the State. Rs. 2,00,000 worth of finished goods were sold within the State and Rs. 1,00,000 worth of goods were sold in the course of inter-State trade. VAT paid on procurement of capital goods worth Rs. 1,00,000 during the month was at 12.5%. If the input and output tax rate in the State are 12.5% and 4% respectively and the central sales tax rate is 3%, show the total tax liability under the State VAT law and under the Central Sales Tax Act. (CA Final, November 2008, New Syllabus)

Answer – Tax payable on sale within State – Rs 8,000 (4% of Rs 2,00,000) Tax payable on inter-state sale – Rs 3,000 (3% of Rs 1,00,000). Thus, total tax payable is Rs 11,000.

Vat Credit – On capital goods – Rs 12,500. As per White Paper credit on capital goods will be spread over three years. Hence, credit available in first year is Rs 4,166.67. Balance of Rs 8,333.33 will be carried forward. On inputs – Rs 12,500 (12.5% of Rs 1,00,000). Total Vat Credit Rs 16,666.67 can be utilized in current year.

Thus, out of Vat credit of Rs 16,666.67, Rs 11,000 can be utilised to pay sales tax and balance Rs 5,666.67 (balance credit Rs 5,666.67 plus carry forward credit of capital goods Rs 8,333.33) will be carried forward.

Problem No. 10

Mr. Goenka, a trader selling raw materials to a manufacturer of finished products. He imports his stock in trade as well as purchases the same from the local markets. Following transaction took place during financial year 2008-09 - (1) Cost of imported materials (from other State) excluding tax - Rs 1,00,000 (2) Cost of local materials including VAT – Rs 2,25,000 (3) Other expenditure includes storage, transport, interest and loading and unloading and profit earned by him - Rs 87,500. Calculate the VAT and invoice value charged by him to a manufacturer. Assume the rate of VAT @12.50% (CA PCC November 2009)

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Answer – On imported material, the trader does not get credit. On local material, he gets Vat credit. The Vat paid on local material is Rs 25,000 (by back calculations). Hence, his net purchase price of local material is Rs 2 lakhs.

Hence, his net selling price would be Rs 1,00,000 + Rs 2,00,000 + Rs 87,500 i.e. Rs 3,87,500. He will charge Vat @ 12.5% i.e. Rs 48,437.50. Thus, his selling price to customer (inclusive of Vat) is Rs 4,35,937.50.

Net Vat paid is Rs 23,437.50 (Rs 48,437.50 less Rs 25,000).

(Note that if the purchase price of local material is taken as Rs 2,25,000, his actual profit will be higher than as indicated in the example).

Problem No.11

Compute the net VAT liability of Janak from the under-mentioned information: (i) Raw material purchased from foreign market (including duty paid on imports @ 20%) - Rs 47,000 (ii) Raw material purchased from local market (including VAT charged on the material @ 1 %) – Rs 10,100 (iii) Raw material purchased from another State (excluding CST) – Rs 20,000 (iv) Storage, transportation cost and insurance – Rs 3,000 (v) Other manufacturing expenses incurred – Rs 600. - - Janak sold the goods to Prem adding margin of profit @ 10% on the selling price. VAT rate on sale of such goods is 10% (ICWAI Final New Syllabus June 2010)

Answer – No Vat credit is available on imports and raw material purchased from other State. Vat paid on local material is Rs 100 (1% of Rs 10,000). In case of inter-state purchases, assuming that CST rate is 2%, purchase cost is Rs 20,400.

Total cost is = 47,000 + 10,000 + 20,400 + 3,000 + 600 = Rs 78,000. the margin of profit is 10% of selling price. If X is selling price, profit is 0.10X. Hence, cost = 0.90X = 78,000. Hence, selling price is Rs 86,666.67 (check that 86,666.67 – 8,666.67 = Rs 78,000). Vat @ 10% of Rs 86,666.67 is Rs 8,666.67. The dealer has Vat credit of Rs 100. Hence, he has to pay by cash Rs 8,566.67.

Problem No 12

M/s. Abanti Associates is a registered dealer engaged in the manufacturing of steel in the State of Maharashtra. During the year 2008-09 the firm has procured raw materials of Rs. 25,50,320 (VAT @ 4%) and purchased plant and machinery of Rs. 20,00,000 (VAT @ 4%) and Rs. 5,00,000 (CST @ 2%) for use in the manufacturing of steel. Sales of steel materials made during the year is Rs. 40,00,000 (VAT @ 4%) and inter-State sale is Rs. 5,29,000 (@ 2% CST). Besides above, branch transfer of Rs. 3,20,000 was made to Kolkata. Calculate the following as per White Paper on VAT Law in India - (i) Output tax (ii) Input tax credit to be availed during the year (iii) Balance tax payable and (iv) Input tax credit, if any, to be carried forward (ICWA Final New Syllabus June 2009)

Answer -

(A) Output tax – (a) sale within State – Rs 1,60,000 (4% of Rs 40,00,000) (b) Interstate sale – Rs 10,580 (2% of Rs 5,29,000) (c) Stock transfer of Rs 3,20,000 – No tax. Total sales (including stock transfer) – Rs 48,49,000. Total Tax payable – Rs 1,70,580

(B) Input tax credit on raw material 1,02,012.80 (4% of Rs 25,50,320 – It is presumed that the purchase price given in example is net of Vat). Total sales (including stock transfer) are Rs 48,49,000, out of which stock transfer is of Rs 3,20,000 i.e. 6.6%. Hence, on 6.6% of input raw material, 2% Input Tax Credit is

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disallowed. Total raw material – Rs 25,50,320. Raw material used for stock transfer (6.6%) i.e. Rs 1,68,321.12. Hence, 2% of Rs 1,68,321,12 i.e. Rs 3,366.42 is not allowed. Thus, Input Tax Credit available is Rs 98,646.38 (Rs 1,02,012.80 – Rs 3,366.42)

(C) Input credit on Plant and machinery – Rs 20,000 (4% of Rs 5,00,000 – As per White Paper, the credit is to be taken in three years. Hence, credit in first year is Rs 6,666.67. Balance Rs 13,333.33 will be carried forward.

(D) No Input tax credit of inter-state purchases of Rs 5,00,000.

(E) Hence, total credit available for use – Rs 98,646.38 + 6,666.67 = Rs 1,05,313.05.

(F) Net tax payable by cash – Rs 65,266.95 (Rs 1,70,580 – Rs 1,05,313.05).

(G) Credit of Rs 13,333,33 on capital goods will be carried forward.

Problem No.13

A dealer purchased 11,000 Kgs of inputs on which Vat paid @ 4% was Rs 4,000. He manufactured 10,000 Kgs of finished products from the inputs. 1,000 Kgs was the process loss. The final product was sold at uniform price of Rs 10 per Kg, as follows – Goods sold within State – 4,000 Kgs. Finished product sold in inter-state sale against C form – 2,500 Kgs. Goods sent on stock transfer to consignment agents outside the State – 2,000 Kgs. Goods sold to Government departments outside the State – 1,500 Kgs. There was no opening or closing stock of inputs, WIP or finished product. The State Vat rate on the finished product of dealer is 12.5%. Calculate liability of Vat and CST. Find Vat credit available to dealer and tax required to be paid in cash.

Answer - CST against C form is 2%. Sale to government will be treated as sale to unregistered dealer and tax payable is 12.5%. Thus, the tax payable would be as follows –

Description	Quantity sold	Value of goods sold	CST payable Rs	State Vat payable Rs
Sale within State @ 12.5%	4,000	40,000		5,000
Goods sent on stock transfer	2,000	20,000		
Goods sold against C form, tax rate 2%	2,500	25,000	500	
Goods sold to Government, tax rate 12.5%	1,500	15,000	1,875	
Total	10,000	1,00,000	2,375	5,000

Tax paid on inputs – Rs 4,000. Credit (set off) will not be available in case of goods sent on stock transfer. Tax on inputs attributable to goods sent on stock transfer is 20% i.e. Rs 800. Out of this, credit will be available of tax paid in excess of 2%.. Thus, credit of Rs 400 will be available in respect of goods stock transferred and credit of Rs 400 will not be available (since Vat rate is 4%). Thus, total credit of Rs 3,600 (tax paid on inputs) is available.

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Thus, tax payable is as follows –

(A) Total Tax payable (State Vat plus CST) – Rs 7,375

(B) Set off (credit) available) – Rs 3,600

Tax payable in cash – Rs 3,775

Problem No.14

In aforesaid example, if 2,000 Kgs were exported (and not stock transferred), what would be the tax liability and credit available.

Answer - If finished product is exported. There is no tax liability. Further, the credit of tax paid on raw material is available. This credit can be utilised either for payment of CST or for State Vat or even for both, if required. Hence, tax payable is as follows –

(A) Total Tax payable (State Vat plus CST) – Rs 7,375

(B) Set off (credit) available – Rs 4,000

Tax payable in cash – Rs 3,375.

Problem No 15

Mr. X, a manufacturer sells goods to Mr. B, a distributor for Rs. 2,000 (excluding of VAT). Mr. B sells goods to Mr. K, a wholesale dealer for Rs. 2,400. The wholesale dealer sells the goods to a retailer for Rs. 3,000 who ultimately sells to the consumers for Rs. 4,000. Compute the Tax Liability, input credit availed and payable by the manufacturer, distributor, wholesale dealer and retailer under Invoice method assuming rate @ 12.5%.

Problem No 16

Mr. Goenka, a trader selling raw materials to a manufacturer of finished products. He imports his stock in trade as well as purchases the same from the local markets. Following transactions took place during financial year 2010-11. Calculate the VAT and invoice value charged by him to a manufacturer. Assume the rate of VAT @ 12.50%.

(1) Cost of imported materials (from other State) excluding tax 1,00,000 (2) Cost of local materials including VAT 2,25,000 (3) Other expenditure includes storage, transport, interest and loading and unloading and profit earned by him 87,500

Particulars	Amount
Cost of outside state purchases (incl, CST-2 %)	102,000
Cost of local purchases with in state	
(excluding Vat)- $225000 \times 100/112.5$	200000
Add: Value addition	
Expenditure and Profit	87500
	389,500
Vat @ 12.5% on above	48688
Invoice Value	438,188

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No Vat credit in case of purchased made from other states. Hence cost includes CST paid on Outside state purchases. It is assumed that rate of CST is 2%, as purchases are from registered dealer

Problem 17 :

Aloke, a registered dealer in the State of Orissa, furnishes the following details relating to its sales for the month of March, 2011

Rs.

1. Sale of exempted goods (<i>Schedule A</i> goods)	75,000
2. Sale of goods of zero rate (<i>Schedule AA</i> goods)	50,000
3. Sale of goods taxable at 4% (<i>Schedule C</i> goods)	4,00,000
4. Sale of goods taxable at 12.5% (<i>Schedule CA</i> goods)	1,20,000

On buyer of *Schedule C* goods (taxable at 4%) returned goods worth Rs. 20,000 on 20th April,

2011 Tax on maximum retail price has been paid at the time of purchase of *Schedule CA* goods, taxable at 12.5%. Determine turnover of sales and taxable turnover of the dealer.

Ans:

Computation of Turnover of Sales and Taxable Turnover of Mr. Alok for the Month of March, 2011

	Rs.	Rs.
Aggregate Sale Price Rs. (75,000 + 50,000 + 4,00,000 + 1,20,000)		6,45,000
Less : (i) Sales return of <i>Schedule C</i> goods within 6 months from the date of sale		
(ii) Sale price of goods, tax on which has been paid on the Maximum Retail Price (MRP) at the time of purchase	1,20,000	1,40,000
Turnover of Sales [Section 2(55)]		5,05,000
Less : (i) Sale of Exempted Goods (<i>Schedule A</i> goods) (ii) Sale of Zero-rated Goods (<i>Schedule AA</i> goods)	75,000 50,000	1,25,000
Taxable Turnover (on which tax is payable)		3,80,000

Problem 18 :

M/s. Vijoy Traders, a registered dealer in the State of Bihar, furnishes the following details relating to it's sales and purchases during the month of March, 2011 :

Details of sales :

Invoice No. 301 dated	5.3.2011	Rs.	10,500	(inclusive of 12.5% tax)
Invoice No. 302 dated	10.3.2011	Rs.	15,000	(inclusive of 12.5% tax)
Invoice No. 303 dated	12.3.2011	Rs.	12,500	(inclusive of 4% tax)
Invoice No. 304 dated	18.3.2011	Rs.	14,700	(inclusive of 12.5% tax)
Invoice No. 305 dated	22.3.2011	Rs.	16,750	(inclusive of 4% tax)
Invoice No. 306 dated	25.3.2011	Rs.	9,750	(inclusive of 12.5% tax)
Invoice No. 307 dated	31.3.2011	Rs.	10,000	(inclusive of 4% tax)

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Details of Purchase : Within

Bihar on

	4.3.2011	Rs.	7,000	(inclusive of 12.5% tax)
From Other State (CST)	8.3.2011	Rs.	3,500	(inclusive of 4% tax)
Within Bihar on	12.3.2011	Rs.	9,500	(inclusive of 4% tax)
Within Bihar on	15.3.2011	Rs.	10,000	(inclusive of 12.5% tax)
Within Bihar on	18.3.2011	Rs.	7,500	(inclusive of 12.5% tax)
Within Bihar on	22.3.2011	Rs.	12,000	(inclusive of 4% tax)

Out of sale against Invoice No. 302, Goods worth Rs. 2,000 has been returned on 15.4.2011. Compute the amount of VAT liability for the month of March, 2011

Total sales within state

Date	Invoice No	4%	12.50%
05.03.2011	301		10500
10.03.2011 (less returns)	302		13000
12.03.2011	303	12500	
18.03.2011	304		14700
22.03.2011	305	16750	
25.03.2011	306		9750
31.03.2011	307	10000	
Total sales including vat		39250	47950
Purchase value			
29250 x 100/104, 38200 x100/112.5		37740	42622
Vat value			
29250 x 4/104, 38200 x12.5/112.5		1510	5328

Total purchases with in state including vat			
Date	Invoice No	4%	12.50%
04.03.2011			7000
12.03.2011		9500	
15.03.2011			10000
18.03.2011			7500
22.03.2011		12000	
		21500	24500
Purchase value			
21500 x 100/104, 24500 x100/112.5		20673	21778
Vat value			
21500 x 4/104, 24500 x12.5/112.5		827	2722

Calculation of Vat liability

Output tax			
for sales within state (1125+4244)			6837
Less: vat credit on Purchases			
with in state -827+2722			3549
Vat Payable			3288

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Note : No input tax credit is available in respect of purchases from other states, i.e., inter-State purchase.

Problem No1 9

M/s Ashok Engg. Co. Ltd., a registered dealer in the State of Punjab, furnishes the following details relating to it's sales and purchases during the quarter ended 31st March, 2011 :

Sales :

Invoice No. 101 dated	4.3.2011	Rs.	20,000	(inclusive of 12.5% tax)
Invoice No. 102 dated	8.3.2011	Rs.	17,000	(inclusive of 4% tax)
Invoice No. 103 dated	12.3.2011	Rs.	16,000	(inter-State sale inclusive of 4% tax)
Invoice No. 104 dated	18.3.2011	Rs.	19,700	(inclusive of 12.5% tax)
Invoice No. 105 dated	26.3.2011	Rs.	20,100	(inclusive of 4% tax)
Invoice No. 106 dated	27.3.2011	Rs.	22,750	(inclusive of 12.5% tax)

Goods sent to Patna branch of the company on 15.3.2011 for Rs. 12,000.

Purchases :

From dealer in Punjab on	2.3.2011	Rs.	10,000	(inclusive of 4% tax)
From dealer in Punjab on	4.3.2011	Rs.	15,000	(inclusive of 12.5% tax)
From dealer in Delhi (CST) on	6.3.2011	Rs.	7,500	(inclusive of 4% tax)
From dealer in Punjab on	12.3.2011	Rs.	8,500	(inclusive of 12.5% tax)
From dealer in Punjab on	18.3.2011	Rs.	18,000	(inclusive of 12.5% tax)
From dealer in Punjab on	22.3.2011	Rs.	14,000	(inclusive of 4% tax)

Goods purchased on 2.3.2011, was sent to Patna branch of the company. Compute the amount of VAT liability for the month of March, 2011.

Total sales including within state			
Date	Invoice No	4%	12.50%
04.03.2011	101		20000
8.03.2011	102	17000	
18.03.2011	104		19700
26.03.2011	105	20100	
27.03.2011	106		22750
Total sales including vat		37100	62450
Sale value			
$31700 \times 100/104, 62450 \times 100/112.5$		35673	55511
Vat value			
$31700 \times 4/104, 62450 \times 12.5/112.5$		1427	6939

Total purchases with in state including vat			
Date	Invoice No	4%	12.50%
04.03.2011			15000
12.03.2011			8500
18.03.2011			18000
22.03.2011		14000	

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		14000	41500
Purchase value			
24000 x 100/104, 41500 x100/112.5		13462	36889
Vat value			
24000 x 4/104, 41500 x12.5/112.5		538	4611

Calculation of Vat liability			
Output tax			
for sales within state (1427+6939)			8366
Less: vat credit on Purchases			
with in state -1212+4611			5150
Vat Payable			3216
CST Liability on outside sales			
16000 x 4/104			615

Problem No 20

BBJ Co. Ltd., a registered dealer under the Central Sales Tax Act and VAT Act in the State of West Bengal. It makes inter-State sale as well as sale within West Bengal of goods specified in *Schedule C* (rate of tax 4%) and *Schedule 3 CA* (tax rate 12.5%).

From the following details, determine the amount of Central Sales Tax and VAT liability of the dealer for the month of January, 2011.

- (1) Sale price of *Schedule C* (4%) goods in West Bengal on 12.3.2011 Rs. 5,00,000.
- (2) Sale price of *Schedule CA* (12.5%) goods in West Bengal on 18.3.2011 Rs. 3,00,000. (3) Sale price of *Schedule C* (4%) goods in West Bengal on 20.3.2011 Rs. 7,50,000.
- (4) Sale price against *Form C* (4%) goods in West Bengal on 24.3.2011 Rs. 4,00,000.

(All the above sales are exclusive of sales tax)

Purchase of *Schedule C* (4%) Goods in West Bengal Rs. 4,16,000 inclusive of tax. Purchase of *Schedule CA* (12.5%) Goods in West Bengal Rs. 1,68,750 inclusive of tax. Purchase from Delhi, against *Form C* (4%) Rs. 52,000 inclusive of CST.

Computation of Net VAT liability of M/s BBJ Co. Ltd. for the month of March, 2009.

Output Tax Liability :	Output Tax
1. On Sale price of Rs. 5,00,000	Rs.
Rs. 5,00,000 × 4%	20,000
2. On Sale price of Rs. 3,00,000	
Rs. 3,00,000 × 12.5%	37,500
3. On Sale price of Rs. 7,50,000	
Rs. 7,50,000 × 4%	30,000
Total Output VAT Liability [A]	87,500

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Input Tax Credit on Purchase :	
1. On Purchase of Rs. 4,16,000 inclusive of 4% tax Rs. $4,16,000 \times \frac{4}{104}$	16,000
2. On Purchase of Rs. 1,68,750 inclusive of 12.5% tax Rs. $1,68,750 \times \frac{12.5}{112.5}$	18,750
Total Input Tax Credit [B]	34,750
Net VAT Payable [A – B]	52,750

Note : No input tax credit is available in respect of purchases from other State. Hence inter- State purchase from Delhi of Rs. 52,000 is not eligible for input tax credit under VAT.

Liability under Central Sales Tax :

Sale of Rs. 4,00,000 @ 4% CST (against Form C) = Rs. 16,000

Accordingly, Net VAT Payable = Rs. 52,750

Net CST Payable = Rs. 16,000

Problem no 21 :

M/s Jyoti Industries, a registered dealer of VAT in the State of Rajasthan, furnishes the following details relating to it's sales and purchases during the quarter ended 31st March, 2011 :

Sales :

Sale of *Schedule C* (4%) goods in Rajasthan Rs. 8.32,000 inclusive of tax

Sale of *Schedule CA* (12.5%) goods in Rajasthan Rs. 4,50,000 inclusive of tax

Sale of *Schedule C* (4%) goods in Rajasthan Rs. 4,16,000 inclusive of tax

Sale of *Schedule A* (Exempted) goods in Rajasthan Rs. 85,000.

Sale, return of *Schedule CA* goods in April, 2011 for Rs. 20,000 inclusive of tax. Freight and delivery charges included in turnover and not separately charged :

For <i>Schedule A</i> goods	Rs.	5,000
For <i>Schedule C</i> goods	Rs.	30,000
For <i>Schedule CA</i> goods	Rs.	22,000

Purchases :

Schedule C (4%) goods from dealers in Rajasthan Rs. 9,00,000 inclusive of tax

Schedule CA (12.5%) goods in Rajasthan Rs. 3,50,000 inclusive of tax

Schedule A (exempted) goods in Rajasthan Rs. 70,000

Purchase from unregistered dealer in Rajasthan for Rs. 2,000 goods used in regular business of the dealer (*Schedule CA* goods) 12.5%

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Determine aggregate sale price, taxable turnover of sales, output tax liability, input tax credit and net VAT liability of the dealer.

Solution :

Computation of Net VAT Liability of M/s. Jyoti Industries Ltd. for the month of March, 2011.

	Output Tax Rs.
Output Tax Liability :	
1. On Turnover of Rs. 8,32,000 inclusive of 4% tax Rs. $8,32,000 \times \frac{4}{104}$ Sale Price Rs. 8,32,000 – Rs. 32,000 = Rs. 8,00,000 on which VAT is payable @ 4%	32,000
2. On Turnover of Rs. 4,50,000 less returned goods Rs. 20,000 Net turnover of Rs. 4,30,000 @ 12.5% Rs. $4,30,000 \times \frac{12.5}{112.5}$ Sale Price Rs. 4,30,000 – Rs. 47,778 = Rs. 3,82,222 on which VAT is payable @ 12.5%	47,778
3. On Turnover of Rs. 4,16,000 inclusive of 4% tax Rs. $4,16,000 \times \frac{4}{104}$ Sale Price Rs. 4,16,000 – Rs. 16,000 = Rs. 4,00,000 on which VAT is payable @ 4%	16,000
4. Tax on purchase from Unregistered Dealer [Section 17] Rs. 2,000 × 12.5%	250
Total Output Tax [A]	96,028
Input Tax Credit :	
1. On Purchase within Rajasthan @ 4% on Rs. 9,00,000 Rs. $9,00,000 \times \frac{4}{104}$	34,615
2. On Purchase of Rs. 3,50,000 @ 12.5% Rs. $3,50,000 \times \frac{12.5}{112.5}$	38,889
3. On Purchase from Unregisterd Dealer (No credit is available)	Nil
Total Input Tax Credit [B]	73,504

Total Output Tax	(A)	96,028
Less : Input Tax Credit	(B)	73,504
Net VAT Liability		22,524

- Notes :**
- (1) No Input Tax Credit is available in purchase of exempted goods.
 - (2) No Input Tax Credit is available on purchase from unregistered dealer under Section 22(5) of the Act.
 - (3) Freight and delivery charges are included in the definition of 'Sale Price' under Section 2(41) of the Act and hence no deduction is allowed.

Indirect taxes

Service tax

Amended FA 2010

RAJASEKHAR N., FCA

Notifications and circulars up to 31.12.2010

Indirect taxes service tax

Chapter 3 Service tax

Service tax is an indirect tax levied on Services

- Services tax was imposed by chapter V of Finance Act 1994
- No separate "Service Tax Act".
- Service tax is imposed every year by making amendment to the Finance Act 1994
- Central excise department has been entrusted to look after the administration of service tax
- Service tax is a destination based consumption tax, as per CBE&C Circular No. 56/5/2003 dated 25-4-2003.
- **Service implies existence of two parties** - Service tax is attracted when there are two parties. One cannot give service to himself.

Coverage of Service tax

The following is various legislatures to cover Service tax

Finance Act, 1994 [Sections 64 to 96]

- Service Tax Rules, 1994
- Service Tax (Registration of Special Category of Persons) Rules, 2005.
- Export of Services Rules, 2005.
- Cenvat Credit Rules 2004
- Service Tax (Advance Rulings) Rules, 2003
- Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
- Service Tax (Determination of Value) Rules, 2006.
- Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005
- Central Excise (Appeals) Rules 2001
- Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982
- Service tax circulars, notifications and case laws

Approaches to levy Service tax

Selective or comprehensive coverage of service tax: The levy of a service tax can be based on either of the following 2 approaches:

1. Comprehensive coverage/approach
2. Selective coverage/approach

1. Comprehensive coverage/approach: The comprehensive approach contemplates taxation of all services and a negative list is given in case some services are to be exempted.

2. Selective coverage/approach: In the case of selective approach, only selective are subject to service tax. In this case, the legislator attempts to specify and list the services that would be taxable and the scope of coverage of each service. There is no residuary category for taxing all services.

Applicability of Service tax

Service tax extends to whole of India except the state of Jammu and Kashmir.

- There shall be no service tax on the services provided/consumed in the state of Jammu and Kashmir.
- However if service provider is in the state of Jammu and Kashmir and provides services to anyone outside the state of Jammu and Kashmir then service tax shall be imposed on such services rendered

Indirect taxes service tax

Charging Section Sec 65(105) and Sec 66

Service tax is imposed on taxable services provided or to be provided in future, by the service provider.

- Services to be provided in future shall be chargeable to service tax only if the advance payment for it is received
- Taxable services are mentioned in section 65(105) of Finance Act 1994
- Total 110 + services listed in Sec 65(105), which are liable for service tax.
Taxable Event is for service tax is date of rendering of Service
- All taxable Services charged to Service tax @ 10.3%

Alternate rate of service tax in case of certain services: Rule 6 (7) (7A)(7C)-

Although service tax is levied at the basic rate of 10% but in case of certain services, an Alternative **Optional** rate is also provided. Some of these are as under:

1. Specified immovable properties an optional composition tax rate of **4%** of gross value has been provided.

2. In case of life insurance services alternate mode of discharge of service tax liability has been provided and the rate of service tax in this case is **1%** of total premium.

3. In case of Air Travel Agents services, the Air Travel Agent, shall have the option to pay service tax of an amount calculated as under:

In case of domestic bookings – **0.6%** of the basic fare. In case of international bookings – **1.2%** of the basic fare

4. In case of foreign exchange dealer , 0.25% on the Gross amount of currency exchanged.

5. In case of lottery distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing, organizing or in any other manner assisting in organizing lottery shall liable to pay as below: **Notification No 49/2010 dated 08.10.2010**

No.	Rate	Condition
(1)	(2)	(3)
1.	Rs 6000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2.	Rs 9000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

Provided that in case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold, and service tax shall be calculated in the manner specified in the said Table.

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within one month of providing of service under the said sub-clause and such option shall not be withdrawn during the remaining part of that financial year.

Persons other than distributor and selling agent of lottery tickets is exempts from payment of service tax. If distributor and selling agent of lottery tickets opt for the composition scheme as above.

Notification No 50/2010 dated 08.10.2010

Small Service Providers Exemption: Notification No. 6/2005(Small service providers

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Indirect taxes service tax

Each year service receipt up to 10 lakhs exempt , If previous year service rendered up to 10 lakhs.

Conditions

- Exemption is optional;
- Exemption limit not for individual service or individual premise – aggregate value of 10 lakhs is exempt.

No Cenvat credit of Input+ Input Service + Capital goods can be availed till limit of 10 lakhs.

Calculation of monetary limits for Rs. 10 lakhs

- Where the previous year's value of taxable service provided exceeds Rs. 10 lakhs, service tax would be payable even if the current year's turnover is less than Rs. 10 lakhs.
- Where the previous year's turnover is Rs. 10 lakhs or below and the current year's turnover exceeds Rs. 10 lakhs, no service tax is payable up to Rs. 10 lakhs if the specified conditions are complied with.
- Further, the sum total of first consecutive payments '**received**' during the financial year towards the taxable services up to Rs. 10 lakhs would be exempt.

The payments received towards wholly exempt services are to be excluded for determining the amount of Rs. 10 lakhs

10 lakhs Small Service Provider exemption not applicable

- Where taxable services are provided by a person under a brand name / trade name of **another** person whether registered or not.

Thus, service provided by a person under his own brand name would not be affected by this restriction and would be entitled for the exemption.

Where service tax is payable by a person As a receiver of service (reverse charge) e.g.

- Services provided by Non-residents / foreign companies who do not have an office in India
- Services provided by insurance agents
- Service provided by a mutual fund distributor

–As a payer of service - for transport services

Thus, the exemption would apply only in cases where service tax is payable as a provider of service.

All taxable services are exempt under following situations

Provided to United Nation or International Organization;

- Provided to SEZ Unit or Developer of SEZ(subject to certain conditions).
- Provided to RBI;
- Provided by RBI;
- Provided to Foreign Diplomatic Missions / Consulates;
- Provided for personal use of member (or his family) of a Foreign Diplomatic Mission/ Consulates;
- Cost of goods or material sold by service provider to the receiver of such services.

Notification No. 12/2003.

- Export of services i.e. services rendered abroad. Notification No. 9/2005.
- Exemption available to small service providers (10 lakhs)

Services provided to EOU - Services provided to EOU/EHTP/STP are **not** exempt from service tax. EOU/EHTP/STP units can avail Cenvat credit of service tax paid. The EOU units can claim rebate of service tax paid on their input services vide Rule 5 of Cenvat Credit Rules

Condition for getting exemption from Service tax for SEZ- Notification No 15/2009 dt 20.05.2009

Indirect taxes service tax

Where the services are consumed wholly within SEZ

Procedure to be followed :

Approval of list of services

The developer or units of SEZ shall get the services required in relation to the authorized operations in the SEZ approved from the Approval Committee

Actual use of specified services

The developer or units of SEZ claiming the exemption actually uses the services in relation to the authorised operations in the SEZ

Exemption from payment of service tax

In case of the services consumed wholly within the SEZ, the exemption can be claimed by the developer or units SEZ without following the refund route.

No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone.

Exemption under no other notification claimed

Exemption on the specified services used in relation to the authorized operations in the Special Economic Zone shall not be claimed except under this notification

Proper records of receipts and utilization of services

The developer or unit of a special economic zone shall maintain proper account of receipt and utilization of the taxable services for which exemption is claimed.

II. Where the aforesaid services are consumed partially or wholly outside SEZ

The above referred same procedure to be followed, exemption is provided to the services consumed within the SEZ following the refund route, first they and claim refund as per prescribed procedure.

Partial exemption in respect of Materials/ goods and services involved in service: Notification No 12/2003 [applicable to all taxable service]

That part of value of service = Value of goods and material sold in course of service shall be exempt if the following conditions are satisfied

Conditions:

- Invoice of service shall separately show the value of goods and material;
- Cenvat Credit of input shall not be availed [However, Cenvat Credit of input service and capital goods can be taken

Calculation of service tax when service tax not charged

Where a service provider not collected service tax or not charged service tax

- Service Provider has to pay service tax treating the value service is inclusive of Service tax
- Service tax is to be calculated using backward calculation as below

Taxable value of service = amount collected x 100/100 + Rate of service tax

For example, if Bill amount is Rs. 1,000 and service tax is not shown separately in Invoice, the tax payable calculated by backwards as follows -

Assessable Value = (Cum tax price)/(1 + rate of tax)

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Assessable Value (AV) = $1000 \times 100/110.3 = 906.62$.Assessable Value is Rs. 906.62 and service tax @ 10% will be Rs. 90.67. Education cess @ 2% of service tax will be Rs. 1.81 . SAH education cess 1% is Rs. 0.91 . Thus, total service tax including ec will be Rs.93.38

Short Recovery or excess Recovery of Service tax

- Where there is short recovery of the billed amount, service provider should revise the bill Otherwise he shall be liable to pay service tax on the full amount which has been billed to service receiver.
- Where there is excess recovery from a client or customer then such excess amount can be refunded to such client or customer, or it should pay to Government.

Reverse Charge in case of Service tax

Normally service Provider will have to pay service tax. But in the following cases service Receiver has to pay service tax

Service	ST to be paid by
Insurance Auxiliary Service of Insurance Agent	Insurer
Service provided by a person from outside India	Service receiver in India (except in case of individual where the service received for personal purposes)
Goods transport Agency – when either Consignor or Consignee is of “specified category	Person paying the freight to GTA
Business Auxiliary Service of Distribution of Mutual Fund	Mutual Fund or Asset Management Company
Sponsorship service	Body Corporate or Firm receiving such service If the recipient of sponsorship service is located outside India, service tax is required to be paid by the service provider and not by the recipient

Service tax Valuation: Sec 67 and Service tax Valuation Rules 2006

Free service No service tax liability

Sec 67 (1)

Situation	Value
Where total consideration is monetary consideration	Taxable Value = Gross Amount Charged Exclusive of ST
Where consideration is in kind [“non-monetary consideration”] <input type="checkbox"/> Wholly in Kind <input type="checkbox"/> Partly in Kind	Taxable Value= Monetary Equivalent of “non-monetary consideration” Rule 3 of Service Tax Valuation Rules, 2006 Method-1: Taxable Value= GAC by service provider for similar service provided to third party Method-2: Taxable Value = [Monetary Consideration + Mkt Value of Non-Monetary Consideration] [but it shall not be less than the cost of provisioning of service
Where consideration is “not- quantifiable”	Taxable Value = Value determined in prescribed manner No manner prescribed so far – but it is practically best judgment assessment

Other points

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Consideration also includes any amount which is payable for the taxable services provided or to be provided.

2. Money includes any currency, Cheque, promissory note, letter of credit, draft, pay order, travelers Cheque, money order, postal remittance and other similar instruments but does not include currency that held for its numismatic value.

3. Gross amount charged include payment by Cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

4. Service tax is payable on the gross amount and not on the net amount.

5. Section 67 provides that the amount charged has to be in relation to services rendered.

Rejection of Value by CEO Rule 4

- ❖ Where the CEO is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue SCN, why cannot fix the value at the amount specified in SCN
- ❖ The C E O after providing reasonable opportunity of being heard, determine the value of such taxable service as per provisions of the Act and these rules

Treatment of Reimbursement of Expenses for Service

Cost/Exp incurred by Service provider and then recovered from service receiver ---

Treatment of such recovery in valuation is as below:

Where such cost/exp was incurred in the capacity of "PURE AGENT" of service receiver [Pure Agent:-- 4 features: i) Separate agreement to act as pure agent ii) No title over the goods/services so procured iii) Does not use such goods/services iv) Recovery cost on actual basis	Such costs/expenses are not includible in valuation
All Other cases	Such costs/expenses are includible in valuation

Commission Costs etc (list) includible in Service for valuation purpose (Rule 6)

Rule 6, provides the list of certain items includible/excludible in valuation in case of certain specific services. They are as below:

Inclusions:

- (i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker
- (ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
- (iii) The amount of premium charged by the insurer from the policy holder;
- (iv) The commission received by the air travel agent from the airline;
- (v) The commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
- (vi) the reimbursement received by the authorized service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
- (vii) The commission or any amount received by the rail travel agent from the Railways or the customer;
- (viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; and

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(ix) The commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.

Exclusions

- (i) Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
- (ii) The airfare collected by air travel agent in respect of service provided by him;
- (iii) The rail fare collected by rail travel agent in respect of service provided by him;
- (iv) Interest on loans.
- (v) The taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger (Notification No 15/2010 dt.27.02.2010)

Actual consideration to be the value of taxable service provided from outside India Rule 7

The value of taxable service received shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

Notwithstanding above, the value of taxable services in respect of Services partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India

Classification of Service- Sec 65 A

If one service – classifiable into more than 1 category

- i) Choose specific over general
- ii) If Composite service – determine which service provides the essential character and classify composite service into that
- iii) Choose first in numerical order

Service tax payment Rule 6

As and when Payment is received

- ST is payable only on the amount received
- Service tax is payable even advance payments received
- Service tax is payable even amount received in installments or on part payments received
- Any amount received whether before or after provisioning of Service shall attract Service tax upon its receipt.
- Free Service- Sec 67 not applicable -No ST payable

Service on sub-contract basis

CBE&C vide circular No. 999.03/23.8.07 has clarified that a sub-contractor is also a taxable Service provider. His services are taxable even if these are used by main provider for Completion of his work. The sub- contractor is liable even if the service is input service of the main contractor and main contractor is paying service tax on entire value of contract.

Due dates: Service tax had to be paid on a monthly / quarterly basis depending upon the status of the service provider as below

Service provider	Due dates April to February/ April to December -3 QTRS	Due date for the month of March and Quarter ending March
Individuals and Firms (Quarterly Payment	5th of the following the Quarter ended June, Sep, Dec	31 st March
Others (Monthly)	5th of the following month	31 st March
E payment	6 th instead of 5 th	31 st March

1. Assessee who paid Service tax 10 lakhs in Previous year or they have already paid 10 lakhs in current year they should pay tax electronically.).

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2. If the last date for paying tax is a public holiday, tax may be paid on the next working day.
3. Tax is paid by debit to CENVAT account (if credit available) or through GAR – 7 challan.
4. The date of presentation of Cheque to the designated bank shall be deemed to be the date of payment of service tax (But the Cheque is honored).
5. If tax has been paid to Government for service not provided, then the excess payment made to Government may be adjusted in future dues, provided, the excess is refunded to customer.
6. Service Tax collected by the Service provider/ Service receiver as the case may be, should be remitted within the due date to the credit of the Central Government.
7. Rounding off of tax: The payment of service tax should be round of in multiple of Rupees. Where such amount includes 50 paise or more it should be increased to one rupee and if it is less than 50 paise it should be ignored.

Self Adjustment of Excess service tax paid

1. In case of reason not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification, adjustment cannot be made
2. On account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.
3. In case other than specified in clause 2 above, for example difficult to accurately estimate the amounts he is going to receive from his customers in last two days in the month of march the excess amount paid may be adjusted with a monetary limit of rupees **One lakh** for a relevant month or quarter, as the case may be
4. The details and reasons for such adjustment shall be intimated to the jurisdiction Superintendent of Central Excise within a period of fifteen days from the date of such adjustment. This is directory provision and not mandatory provision, since in many cases, it is impossible to inform in 15 days. In such cases, information at the time of filing return should be sufficient
5. Self- adjustment of excess credit is not allowed on account of reasons like interpretation of law, taxability, classification, valuation or applicability of any exemption notification [Rule 6(4B)(i)]. In such cases, refund application should be filed and self adjustment is not Permissible.

Adjustment if service not provided partly or fully - If excess tax is paid, in respect of service which is not provided either wholly or partly for any reason, the excess service tax paid can be adjusted against service tax payable for subsequent period, if the value of services and tax thereon is refunded to the person from whom it was received. [Rule 6(3)]. Such adjustment is permissible only when refund is on account of services not provided. Thus, if the person refunds on account of giving some discount to client, this provision does not apply.

Adjustment in case of service tax on renting of immovable property - In case of service tax on renting of immovable property, abatement is available in case of property tax paid to local authorities. If such tax is paid at a later date, self adjustment in service tax payable is permissible within one year from date of payment of tax, without any monetary limit. Assessee should inform Superintendent within 15 days of making adjustment [Rule 6(4C) of Service Tax Rules].

Excess collection of tax – Sec. 73A & 73B

1. The service provider shall not collect tax in excess of what he pays to the Government.

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2. The case his collection is more than his payment, he shall promptly deposit the excess with Government or refund the amount collected excess to the customer.

3. Any delay in this regard attracts payment of interest @ 13% p.a.

Service tax abatements in case of certain specific services: Notification No 1/2006

Certain % of "Gross Amount Charged" is Exempt, if the service includes the cost of materials, goods and other items. No Cenvat credit. ST payable on Taxable value The following are the details

Sl No.	Nature of Service	Abatement Allowed	Taxable Value	Remarks
(i)	Rent-A-Cab Scheme Operator's Service	60%	40%	Service include fuel cost
(ii)	Tour-Operator's Service 4 Package Tour [i.e., accommodation cum-transport, part of tour] 4 Non-package Tour [say,	75%	25%	
		60%	40%	
		90%	10%	
(iii)	Mandap Keeper Service	40%	60%	Service include supply of food
(iv)	Convention services	40%	60%	Service include supply of food
(v)	Outdoor Catering	50%	50%	Service include supply of food
(vi)	Pandal & Shamiana Contractor's Service	30%	70%	Service include supply of food provided
(vii)	Commercial or Industrial Building Construction Service	67%	33%	Service including the value of materials
(viii)	Residential Complex Construction Service	67%	33%	includes value of material
(ix)	Erection, Commissioning & Installation	67%	33%	includes value of material
(x)	Transport of goods in Containers by Rail	70%	30%	Service including the value of materials.
(xi)	Business Auxiliary Service in relation to production/ <u>processing of PARTS</u> and <u>ACCESSORIES</u> which are used in	30%	70%	inclusive of cost of inputs and input services, whether or not supplied by the client

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	the manufacture of "Cycles / Cycle Rickshaws / Hand-operated Sewing Machines."			
(xii)	Goods Transport Agency	75%	25%	Tax on amount in his Invoice [Payment will be made by consignor/consignee who is actually paying freight]]
(xiii)	Chit fund	70%	30%	

Service tax Registration Sec 69 / Rule 4

Persons requiring Registration

Person	Time Limit
Person liable for payment of Service tax (Normally Service providers and in some cases service receivers – reverse charge)	Within 30 days of service becoming taxable ,if business is commenced later on, then within 30 days of commencement of business
Service exempt – no liability for payment Service Tax – Aggregate value of service exceeding 9 lacs	Within 30 days of value exceeding 9 lacs
Input Service Distributor	Within 30 days of commencement of business

The following persons who are receivers of service liable to pay service are required to be Registered

	Category of Service	Specified Person
1	General Insurance Business	Insurer of Re-insurer
2	Insurance Auxiliary Service provided by an Insurance Agent.	Insurance Company
3	Service provided by a Goods Transport Agency for transport of goods by road.	Person Liable: Specified Consignor/ Consignee who pays or is liable to pay freight should pay the Service Tax. <input type="checkbox"/> Specified consignor or consignee includes – (i) Factory; (ii) Company; (iii) Corporation, (iv) Society; (v) Co-operative Society; (vi) Registered Dealer of Excisable
4	Business Auxiliary Services provided by Mutual Fund Distributors in relation to distribution of Mutual Fund	Asset management Company
5	Sponsorship Service provided to any Body Corporation or Firm	Body Corporate or Firm,
6	Any Taxable Service provided by any person from a country other than India u/s 66A.	Person receiving such service

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Premises to be registered

S No	Premises details	Registration required
1	Single Premise, Single Service or Single premises multiple services	Single Registration
2	Multiple Premises, Single Service/Multiple Services	<p>Centralized Billing System or Centralized Accounting System not in existence - <input type="checkbox"/> Registration required for all premises registration with Superintendent of Central Excise]</p> <p><input type="checkbox"/> Centralized Billing System or Centralized Accounting System in existence - <input type="checkbox"/> Registration only those premises where CBS/CAS is in existence with Commissioner of Central Excise</p>

Procedure for Registration

Registration should be made in Application by form No ST-1 duly filled up and signed along with self certified copy of PAN

Other enclosures normally required are MOA, AOA in case of Company, Partnership deed in case of Firm, Power of Attorney copy in case of appointment of Manager, declaration about date of commencement of service/business. Board resolution in case of director who sign the application and returns and records.

Document to be Submitted with ST-1 As per Hyderabad-IV, Trade Notice No. 76/2003, dated 6-11-2003

- Proof of address of the premises office sought to be registered
 - PAN number of the assessee
 - List of Branches offices or premises of the assessee
 - Brief note on accounting system adopted by the assessee
 - Branch-wise series of invoices maintained along with a sample copy thereof
 - Previous years audited balance sheet along with gross trial balance of different branches
 - Details of records accounts maintained at different branches and Central Office
- Bank account numbers of the Branches and Central Office through which the receipts are deposited, transacted

The application will be scrutinized and registration certificate will be granted in form NO ST-2 within 7 days)

STC code i.e. registration number- Registration No., also known as 'Service Tax Code (STC)' is a fifteen digit PAN based number. First 10 digits of this number are the same as the PAN of such person. Next two digits are 'ST'. Next three digits are serial numbers indicating the number of registrations taken by the service taxpayer against a common PAN - CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Premises code - The registration certificate gives details of 'premises code' which is given on the basis of Commissionerate + Division + Range + Serial No. The number is given in the registration certificate ST-2 at Sl No. 5. This number is used for easy identification of location of registration of tax payer – para 2.6 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

- Penalty for failure to obtain registration - Rs. 5000/ Rs 200 per day whichever is higher

Change in the Constitution of firm

- Intimate any change in the details furnished in ST1 to AC/DC

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-Within 30 days of such change

Surrender of Registration

- Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately. rule 4(7)
- Assessee should file up-to-date returns and apply for cancellation. Registration may not be cancelled if any demands are pending.

Records and Returns under Service tax

Invoice by Service Provider

Invoice should be raised and prepared within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.

Details required to be shown in invoice/bill/challan - As per Rule 4A(1),

the invoice/challan/Bill should be signed by authorised person of provider of input services, should be serially numbered and should contain following details -

- (1) Name, address and registration number of person providing taxable service
- (2) Name and address of person receiving taxable service
- (3) Description, classification and value of taxable service provided or to be provided and
- (4) Service tax payable on the taxable service

The Rule does not make mention of date, but actually, date should be mentioned.

Education Cess and SAH education Cess to be shown separately in the Invoice for complying with requirements of Cenvat Credit Rules to facilitate availment of Cenvat credit by recipient
Relaxation in case of banking and financial services

In case of banking and financial services provided by banking company, FI, NBFC or a commercial concern, the invoice/challan need not be serially numbered and name and address of person receiving taxable service need not be contained on the invoice/challan.[proviso to Rule 4A(1) of Service Tax Rules]. This facility is also available to input service distributors of such type of service Para 5.3 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Invoice in case of continuous service/Periodical billing

In some cases, service is provided continuously for successive periods of time and value of such taxable service is determined or payable periodically. In such cases, the Invoice or challan shall be issued within 14 days from last date of the period [second proviso to Rule 4A(1) .

Invoice at end of billing period

In case of some services like services of commission agent, it is impractical to prepare invoice of commission for each sale. Billing is done at end of the agreed period (say month or quarter), which is termed as 'Billing Period'. In such cases, it can be argued that such services are provided on continuous basis and Billing at end of the period should be acceptable.

Maintenance of Records Rule 5

No separate form has been prescribed.

Records can be kept in electronic form also.

Record should normally include

- (1) Register for value of services billed giving bill wise details
- (2) Register for value of services received/collected giving bill wise details

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(3) Register for Cenvat credit for Credit available, utilized and balance as per Cenvat credit rules 9

(4) Usual financial records such as cash, bank book general ledger, copies of invoices and Bank statements etc.,

Records should be preserved for a period of five years.

They should be made available for inspection by departmental officers

Returns to be filed under Service tax

Person liable for payment of Service tax	April to September - Due date October 25th October to March – Due date April 25th
Service exempt - no liability for payment of Service Tax - Aggregate value of service exceeding 9 lacs	April to September - Due date October 25th October to March – Due date April 25th
Input Service Distributor	April to September - Due date October 30 th October to March – Due date April 30 th

ST return can be revised to correct error or omission – revised return can be filed within 90 days. From the date of filing ST3. Revised return can be filed only when the original ST3 filed in time. If return is revised, then Relevant Date for the purposes of sending SCN shall be “Date of

filing of revised return” [Rule 7-B of STR, 1994]

Where the St paid(Gross) was Rs. 10 lakhs or more returns to be filed electronically

Documents to be attached along with return

The following documents that are to be attached along with ST-3

1. Copies of GAR-7 challans, for payments made. (Now it is not mandatory. 20 digit CIN to be quoted)

2. Memorandum ST-3A, incase of provisional payment of tax.

3. In case of first return, details of accounts maintained in relation to service tax should be furnished to superintendent of Central Excise, at the time of filing first half yearly return i.e., ST-3, a list of all accounts maintained by him in relation to service tax including memorandum received from his branch office

Penalty of belated filing of service tax return

Sec 70 has been amended by FA, 2007. It provides for payment of late fees for belated return .As per Rule 7C. Amount to be paid for delay in furnishing is as below

Period of delay	Late fee payable
(i) 15 days from the due date	Rs 500/-
(ii) beyond 15 but not later than 30 days from the due	Rs 1,000/-
(iii) beyond 30 days from the due date	Rs 1000 plus Rs 100 for every day from the 31st day till the date of furnishing the said return

Provided that the total amount of late fee shall not exceed Rs.2000/-.

Penalty can be waived if no tax was payable

Where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.

Department is required to accept late return even non submission of proof of late fee is not paid – In case of returns filed late, the appropriate late fees should be paid at the time of filing the return, without waiting for any communication or notice from the department.

Indirect taxes service tax

Mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return – para 6.4 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

E filing of Returns

Mandatory where the Service tax paid is Rs. 10 lakh (Gross) during PY or already paid Rs. 10 lakhs in CY. Optional- Other cases

Basic Requirement PAN Based Service Tax Code (STC)

Procedure

File Application to Divisional AC/DC in Annexure 'A' with a Trusted email id & a Contact No.

AC/DC will Provide User id & Password within Ten Days of receipt of Application through e-mail

You can Change Password File return on www.aces.gov.in

Condonation of Delay

Only for those using e-filing Facility first time

Assessee has faced technical difficulties

Delay of 1 month shall be condoned as per Circular No. 71/2004

Import of Services

Import of Service [Service provided from outside India and received in India]

Charge of Service Tax on services received from outside India Sec 66 A

Person residing out of India, Providing or to be provided service having (SP)	Person residing In India,(Service Receiver)
(i) established a business or has a fixed establishment or	(i) established a business or has a fixed establishment or
(ii) or has his permanent address or usual place of residence	(ii) or has his permanent address or usual place of residence

Taxable service shall be treated as if the recipient had himself provided the service in India and Service recipient is liable to pay service tax

Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted

Indirect taxes service tax

Non Applicability of Service recipient liability

Where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce. I.e. personal purpose. In such a cases as per charging section 65 (105), Service provider, Nonresident liable to pay service tax

Taxation of Service (Provided from outside India and received in India) Rules 2006

Rule 3: It provides Criteria for charge in case of import of services, as below

<i>Immovable Property Criteria</i>	Immovable property situation in India
<i>Performance Based Criteria</i>	Service is physically performed in India (whether wholly or partly)
<i>Residuary</i> Excluding 2: a) Foreign Travel Air b) Travel by Cruise Service	<i>Provided in relation to Business or Commerce</i> <i>Service recipient is located in India</i>

Rule 4 Service recipients shall get him registered.

Rule 5 the service imported into India for which service recipient is liable for payment of ST Shall not be treated as “Output Service” for the purpose of using Cenvat credit of other services for payment of such amount.

India” includes the installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone (UP to 200 nautical miles) of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

Liability of Service tax in case of import of services

S No	Nature of Transaction	Liability of service tax
1	Services performed by Nonresident in India	Liability is on recipient (If recipient deals with foreign establishment,)
2	Services performed by Nonresident outside India, but consumed in India	Liability is on recipient
3	Services performed and consumed Outside India but paid from India	No ST Liability
4	Services performed and consumed Outside India but paid from India, Accounted in India books	No ST Liability
5	Services performed and consumed Outside India but paid by branch outside India but claimed as reimburse of expenditure from Indian H O	ST liability may arise

Export of Services/ Export of service rules 2005

Rule 3

<i>Immovable Property Criteria</i>	Immovable property situation in India
<i>Performance Based Criteria</i>	Service is physically performed in India (whether wholly or partly)
<i>Residuary</i> Excluding 2: a) Foreign Travel Air	<i>Provided in relation to Business or Commerce</i> <i>Service recipient is located in India</i>

Indirect taxes service tax

b) Travel by Cruise Service	<i>Other cases ---Service receiver is located outside India at the time of provision of service is made.</i>
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Additional Conditions for all 3 categories:

- 1) Service must be provided from India and used outside India
- 2) Payment must be received in convertible Foreign Exchange.

How to export service

2-Options

Export without payment of Service tax (Rule 4 of Export of Service Rules, 2005)

Pay ST and then claim rebate (Rule 5 of Export of Service Rules, 2005)

[Rebate is also admissible of related input and input service]

"India" includes the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof

Exemption to specified taxable services used for export of goods

Notification No. 40/2009 ST dated 30.09.2009 has amended Notification No.17/2009 ST dated 07.07.2009 which exempts Service provided for transport of export goods through national waterway, inland water and coastal shipping (zzzzl)

The exporter shall produce the Bill of Lading or a Consignment Note or a similar document by whatever name called, issued in his name; and produce evidence to the effect that the said transport is provided for export of relevant goods.

SERVICE TAX RETURN PREPARERS SCHEME

Service Tax Return preparers Scheme:

1. Definitions:

- a. **Service Tax Return Preparer:** It refers to an individual who has been authorized to act as a "Service Tax Return Preparer" under a scheme framed under this section.
- b. **Specified Classes of persons:** It refers to persons specified in the Scheme, who are required to furnish a return required to be filed under section 70.

2. Power of Board: The CBEC is empowered to frame a scheme for furnishing return of income by any specified classes through a Service Tax Return Preparer.

3. Duty of Service Tax Return Preparer: Every Service Tax Return Preparer should assist the specified classes of persons to prepare and furnish the service tax return in the manner specified in the scheme.

4. Structure of the Scheme: The scheme framed by the Board may provide for the following –Manner in which and the period for which the Service Tax Return Preparer shall be authorized,

- a. Educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return, Preparer,
- b. Code of Conduct for the Service Tax Return Preparer,
- c. Duties and Obligations of the Service Tax Return Preparer,
- d. Circumstances under which the authorization given to a Service Tax Return Preparer may be withdrawn, Any other matter which is required to be specified by the Scheme for the purposes of this section.

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Assessments demands, refunds and recoveries, settlement Commission, AAR etc.

The provisions are similar to excise and excise provisions will be applicable: Check the comparison chart available at the end of customs notes

Rectification of Mistake apparent on record Sec 74

The Central Excise Officer who has passed order (of assessment or demand or penalty) can rectify any mistake apparent from the record, within two years of the date on which the order was passed. The mistake must be 'apparent from the records'. Any rectification that reducing the refund or increasing the liability, opportunity should be given to assessee.

Revision orders by Commissioner Sec 84

The Commissioner of Central Excise can revise the orders passed by adjudicating authority subordinate to him. The revision order can be passed anytime within two years of the original order, but not afterwards. No revision can be made if appeal against such order is pending with Commissioner (Appeals) [Section 84]. Appeal against the order of Commissioner (after revision) lies with CESTAT under Section 86.

Power of Central Excise Officer to Access to a registered premises Rule 5 A

(1) An officer authorized by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee shall, on demand, make available to CEO or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-

Penalties under Service tax – Sec. 76, 77 & 78

S.N	Nature of Violation	Penalty
1.	Failure to pay Service tax [Sec.76	Not less than Rs.200 per day of default or 2% per month of tax whichever is higher. In no case penalty can exceed the amount of tax.
2.	Suppression of Value (fraud cases)	100% to 200% of duty sought to be charged. Penalty is reduced to 25% of if service tax paid within 30 days.
3.	Failure of registration	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
4.	Failure to furnish information called by officer on Central Excise Officer	Rs.5,000 or Rs. per day whichever is higher from the first day after due date till the day of actual compliance.

Problems on Service tax

Problem No 1

A Ltd. has agreed to render services to Mr. Guru. The following are the chronological events: Contract for services entered into on 31/8/2010

Advance received in September 2010	Rs. 60,000
Total value of services, billed in February 2011	Rs. 2,10,000
Above includes non-taxable services of	Rs. 70,000
Balance amount is received in March 2011	

When does the liability to pay service tax arise and for what amount? Contract contains clear details of services; consideration and Service Tax are charged separately, as mutually agreed upon.

Answer:

A Ltd. being a company, is liable to pay service tax on monthly basis. The service tax shall be paid within 5 days. Further, taxable value of service tax is "gross amount charged" which includes any amount received before or after provisioning of service. Accordingly, service tax liability shall be discharged in following manner

Advance Received in Sep. 2010: This advance will attract ST liability immediately on the receipt thereof since service tax is payable on any amount received towards the value of taxable services. Thus, he shall pay Rs $[(60,000 * 1.40.000 / 2,10,000) * 10.30\%]$ by 5th Oct. 2010.

Note :

It shall be noted that only advance towards taxable service will attract ST on its receipt. Out of advance of Rs 60,000/-, 20,000 is towards non-Taxable services (computed on pro-rata basis)

Payment received in March, 2011: Out of total contract value of Rs 2,10,000, value of taxable services is Rs 1,40,000 (Rs 2,10,000 - 70,000). And out of this Rs 1,40,000, advance of Rs 40,000 has already been taxed and ST thereon has been paid for. Thus, on balance amount of Rs 1,00,000/- ST is payable by 31st March itself. The amount payable shall be Rs. $(80,000 * 10.30\%)$.

Problem No 2

A PARTNERSHIP FIRM gives the following particulars relating to the services provided to various clients by them for the HALF YEAR ENDED 30/9/2010.

- a. Total bills raised for Rs. 8,75,000 out of which : bills for Rs. 75,000 was raised on an approved international organization and the payment of bill for Rs. 1,00,000 were not received till 30/9/2010.
- b. Amount of Rs. 50000 was received as an advance from XYZ Ltd. on 25/9/2010 to which the services were to be provided in Oct 2010.

You are required to work out the taxable value of services and amount of service tax payable.

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Problem No 3

Mr. Saravanan has collected sum of Rs. 15000 as a service tax from a client mistakenly, even though no service tax is chargeable for such service. Should the amount so collected be remitted to the credit of the central government?

Provisions of sec 11 D of Central excise act applicable to service tax, any amount collected towards service tax should be deposited to the credit of the central government within due dates specified. Hence saravanan has to deposit the service tax collected Rs.15000/- to the credit of the Government.

Problem No 4

M/s Priya rendered taxable services to a client. A bill of Rs. 40000 was raised on 29/4/2010. Rs. 15000 was received from a client on 1/5/2010 and the balance on 23/5/2010. No service tax was separately charged in the bill. The questions are:

- Is Ms Priya liable to pay service tax, even though the same has not been charged by her?
- In case she is liable, what is the value of taxable services and the service tax payable?

Answer

a. **Liability to pay Service tax when not charged from service recipient** : Under service tax provision, service provider is liable to pay service tax and his liability is not dependent upon whether he has charged it from the client or not. Thus, M/s Priya will remain liable for payment of service tax even though he has not charged it from service recipient.

b. **Amount of Service tax payable** : M/s Priya is liable to pay service tax on quarterly basis as it is proprietary concern. So, on whatever value it has received in the quarter ending 30th June, 2009, it is liable to pay service tax by 5'h of July. 2009 (presuming payment is not e-payment). It has realized entire bill (payment) in the quarter ending on 30cn June. 2009. Since service tax has not been charged separately, the amount charged shall be treated as cum-service tax and service tax shall be computed by making backward calculations. So, on entire Rs 40,000, it shall pay service tax of Rs $(40,000 * 10.30 / 110.30)$.

Problem No 5

An unregistered "Service provider" provides following details in respect of taxable services provided during the Financial Year:2010-11

Date	Particulars	Amount
30.6.2010	Advance received from a customer	1,00,000
30.9.2010	Part payment received against a bill of Rs. 9,50,000 raised on a customer	5,00,000
31.12.2010	Money received against taxable services provided during	3,00,000
31.1.2011	Taxable services rendered during January, 09	1,00,000
31.3.2011	Taxable service provided during March, 10	2,00,000

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The service tax provider complies with the provisions of registration and collection of service tax as per service tax laws.

He gets registered during the year. He received the money against the bills raised during the months January and March, 2011. Compute the service tax liability of service provider for the year 2010-11 considering the rate of service tax @ 10.3%.

The service provider is unregistered service provider at the start of the FY 2009-2010. This means his turnover for the year preceding to the FY 2009-2010 was less than the prescribed limit of Rs. 9 lakhs. This will mean that he is a small service provider during the year 2009-2010 and therefore he is entitled to claim exemption of Rs. 10 lakhs from the turnover of the FY 2009-2010

COMPUTATION OF Service Tax Liability

Total amount received for the services provided/ to be provided	12,00,000
Less: exemption available to SSP (upto 10 lakhs receipts)	(10,00,000)
Taxable value	2,00,000
Service tax @ 10.30%	20,600

Problem No 6

Ms. Priyanka, a proprietress of Royal Security Agency received Rs.1,00,000 by an account payee cheque, as advance while signing a contract for providing taxable services. She receives Rs.5,00,000 by credit card while providing the service and another Rs.5,00,000 by a pay order after completion of service on 31/1/2011. All three transactions took place during financial year 2010-11. She seeks your advice about her liability towards value of taxable service and the service tax payable by her.

Answer:

Ms. Priyanka is liable for service tax in financial year 2010-11 as gross receipt from security agency exceeded the basic exemption limit of Rs.10,00,000. Ms. Priyanka has to pay service tax on amount exceeding Rs.10,00,000 i.e. (11,00,000 - 10,00,000 = 1,00,000) @ 10.30%.

Note – It has been assumed that during the preceding, year the value of services rendered by her were less than Rs.10,00,000 and therefore she is small service provider, Otherwise she shall be liable to pay service tax on the entire amount of Rs.11,00,000.

Problem No 7

Mr. Y is a CONSULTING ENGINEER raised a bill of Rs. 2,24,720 (including service tax) on his client for the consulting services rendered by him in the month of June 2009. A partial payment of Rs. 1,68,540 was received by him in the month of March 2010. COMPUTE the service tax amount payable by Mr. Y and THE DUE DATE by which service tax can be deposited.

Ans:

Computation of Service Tax: Service tax is payable on receipt basis. Though charge of service tax is on the event of providing services but payment of service tax to the CG is deferred till the receipt of the value of taxable services.

In other words, Service tax is not payable at the time of rendering of service or at the time of invoicing. Service Tax is payable only upon receipt of payment. Mr. Y, being an individual, is required to pay

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service tax on quarterly basis. Thus, for quarter ending on March, service tax shall be payable by 31st March. Whatever amount has been received in quarter ending on month

of March, service tax shall be payable only on that amount. Further, whatever amount is received by the assesses that shall be treated as cum-service tax. Thus, the amount of service tax shall be calculated as follows: ST Payable - $[1,68,540 * 10.30 / 110.30] = \text{Rs. } 15,739/-$

Problem No 8

Mr. X, a service provider who pays service tax regularly, was of the opinion that a particular service was not liable for service tax. He, therefore, did not charge service tax in his bill. He received the bill amount without service tax. How will service tax liability of Mr. X be determined in such case?

The liability to pay service tax remains with the service provider in the current scenario. Failure to charge service tax doesn't negate(cancel) his statutory liability. In the event of any such failure, whatever is recovered from the customer / client will be taken to constitute amount inclusive of service tax. Accordingly, the amount of service tax shall be determined and that amount shall be deposited to the credit of CG [CBEC Clarification]. Thus, Mr. X, shall be liable to pay service tax which shall be computed as below: $ST = (\text{Gross Amount Charged}) * 10.30 / 110.30$

Problems on Specific Services A to L

Problem No 9.

- The value of service provided by a consulting engineer is Rs. 10,00,000 (exclusive of service tax). He has paid Rs. 50,000 as cess under Section 3 of the Research and Development Cess Act, 1986. What is the amount of Service tax payable by him? (CA Final Old Syllabus November 2008)

Answer – Service tax on Rs 10 lakhs is 1,03,000. R&D cess paid is Rs 50,000, which is allowable as deduction. Hence, net service tax payable is Rs 53,000.

Problem No.10 - Calculate the value of taxable service under Cargo handling services of Cargo Ltd., providing brief reasons where required with suitable assumptions based on the following information for the month of April, 2009: (i) Total amount charged for all services Rs 40 lakhs (ii) Receipts for services in relation to export cargo and Handling of passenger baggage including in (i) above Rs 13 lakhs (iii) Charges for storage and cleaning of empty containers of Shipping lines included in (i) above Rs 10 lakhs (iv) Charges for packing and transport of Cargo included in (i) above Rs 3 lakhs (v) Charges for handling of agricultural produce included in (i) above Rs 2 lakhs (vi) Charges for transportation of Cargo included in (i) above Rs 5 lakhs (CA Final November 2009)

Answer – Deduction of export cargo is allowed in the definition itself. Cargo handling relating to agricultural produce is exempted. Packing and transport incidental to cargo are included in the definition itself. Charges for storage and cleaning of empty containers of shipping lines is not part of 'Cargo Handling Service' and hence not includible.

Thus, deduction of 13 plus 10 plus 2 can be claimed from Rs 40 lakhs and value of taxable service is Rs 15 lakhs.

Problem No.11

X & Co. a partnership firm, is providing taxable legal consultancy services, for the second consecutive year. The firm furnishes the following information relating to the services rendered, bills raised,

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amounts received relating to this service, for the year ending March 31, 2010 – (i) free services rendered to poor people (value of the services computed on comparative basis) – Rs 40,000 (ii) Advances received from clients for which no taxable service has been rendered so far – Rs 5,00,000 (iii) Services billed to clients (gross amount) (service tax has been charged separately in all the Bills; the firm follows mercantile system of accounting) – Rs 12,00,000 (iv) The firm has received the following amounts during the year relating to taxable services rendered in March, 2009 (excluding service tax at applicable rates and TDS under section 194J to the tune of Rs 45,320) – Rs 5,44,680 (v) amount received relating to taxable services rendered in the current year 2009-10 (excluding service tax at applicable rates and TDS under section 194J to the tune of Rs 1,20,000) – Rs 9,80,000 (This amount includes Rs 50,000 for the appearance before Labour Court received from another firm. Service tax has been separately received for the applicable items in (v) above. You are required to compute the value of taxable services for the year ending March 31, 2010 and the service tax payable, briefly explaining the treatment of each item above (CA IPCC May 2010).

Answer – (i) No service tax (ii) Tax payable on service to be provided i.e. advance received. Hence value is Rs 4,53,309 $[(5,00,000 \times 100)/110.30]$ and service tax is Rs 46,691 (iii) No tax since service tax is payable on receipt basis and not billing basis (iv) Net amount received including TDS – Rs 5,90,000 (Rs 5,44,680 + 45,320) [TDS is also 'amount received' and hence service tax is payable (v) Taxable amount received during 2009-10 – Rs 10,50,000 $[9,80,000 + 1,20,000 - 50,000]$ (No service tax on charges for appearing before Court, Tribunal or statutory authority) Service tax payable is Rs 1,08,150 $[10.30\%$ of Rs 10,50,000]. Hence, total service tax payable is Rs 2,15,611.

Problem No 12

Smart & Express Co. is providing taxable information technology software services. The firm furnishes the following information relating to the services rendered, bills raised, amount received pertaining to this service, for the financial year ended on 31st March, 2010 as under - (i) Amount received being 10% of the assignment fees on 31st March, 2010 for the upgradation and enhancement of software services to be rendered during the financial year 2010-11- Rs 6,00,000 (ii) Services provided to UNICEF, an International Organisation in Gandhinagar, for analysis, design and programming of latest information technology software – Rs 5,00,000 (iii) Services billed to client – Rs 3,00,00,000 (In one of the bill amounting to Rs. 3,00,000, service tax was not charged due to conflicting nature and in another bill, the firm failed to recover the service tax from the client, which was charged separately, due to insolvency of the client, the bill details are as under - Being the charges for right to use IT software – Rs 8,00,000 plus Service tax @10% Rs 80,000 plus Education cess @ 2% Rs 1,600 plus Secondary & Higher education cess @1% Rs 800 – Total Rs 8,82,400) (iv) Amount received for services rendered during current financial year (excluding payment for 2 bills in item (iii) above for which payment received during current financial year) - Rs 1,04,78,500. - - Service tax and education cess have been charged separately in all the bills except wherever mentioned when it is not so charged separately. - - Compute the value of total taxable services and service tax payable thereon for the year ended 31-03-2010, assigning reason in brief to the treatment of all items (CA IPCC and AT November 2010)

Answer – Treatment of each item is as follows - (i) Tax payable on advance of Rs 6,00,000 (ii) The service is not in the course of or furtherance of commerce and hence Rs 5,00,000 not taxable (Note – This exclusion has been omitted w.e.f. 1-7-2010. Thus, after 1-7-2010, such service will be taxable) (iii) Service tax is not payable on billing basis but on receipt basis. Hence, figure of Rs 3,00,00,000 is not relevant (iv) Tax is payable on amount received Rs 1,04,78,500. In absence of any specific information, this amount is assumed to be inclusive of service tax charged in Bills. In respect of bill of Rs 3,00,000, in absence of any specific information, it is presumed that the service was actually taxable. Hence, the

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amount is to be treated as inclusive of service tax. Similarly, in respect of another bill, only Rs 8,00,000 have been received. These have to be treated as inclusive of service tax. - - Hence, total gross amount received – Rs 6,00,0000 plus Rs 1.04,78,500 plus Rs 3,00,000 plus Rs 8,00,000. Thus, total gross amount received – Rs 1,21,78,500. Hence, value of taxable service is $(1,21,78,500 \times 100)/110.30$ i.e. Rs 1,10,41,251.13 Service tax @ 10% is Rs 11,04,125.12. Education cess @ 2% is Rs 22,082.50 and SAHE cess @ 1% of service tax is Rs 11,041.25

If amount of Rs 1,21,78,500 is treated as net amount excluding service tax, the calculations will change.

Problem No 13

X Bank Ltd., furnishes the following information relating to services provided and the gross amount received : (Figures in Rs lakhs) * Merchant Banking Services 8 * Asset Management (including portfolio management) 3 * Service charges for services to the Government of India 1.5 * Interest on overdraft and cash credits 2 * Banker to the issue 5 * Locker rent 2. Repayment of financial lease made by the customer to the bank Rs. 80 lakhs which includes a principal amount of Rs. 50 lakhs. Compute the value of taxable service under “Banking and other financial services” under the Finance Act, 1994 and the service tax liability of X Bank Ltd., considering the rate of service tax at 10.3% (CA Final New Syllabus November 2010)

Answer – Interest on overdraft and cash credit facility is exempt (Notification No. 29/2004-ST dated 29-9-2004).. Hence, service tax is not payable on Rs 2 lakhs. Services provided to Government for tax collection are exempt (Notification No. 13/2004-ST dated 10-9-2004). It is not clear what service was provided to Government of India. It is presumed that it was for tax collection and hence exempt. In case of leasing, tax is payable on 10% of interest only. Hence tax is payable on 10% of Rs 30 lakhs (80 – 50), i.e. on Rs 3 lakhs. Thus, service tax is payable on gross amount of Rs 21 lakhs (8 + 3 + 5 + 2 + 3). Net value for service tax will be Rs 19,03,898.45 $[21,00,000 \times 100/110.30]$. Service tax @ 10% will be 1,90,389.85, education cess @ 2% Rs 3,807.80 and SAHE cess @ 1% - Rs 1,903.90. Total tax – Rs 1,96,101.55.

Examples on taxable services M to Z

Problem No.14

A labour contractor of manpower charges to the principal employer for the wages of their labour which amounts to Rs. 1,00,000 plus PF and ESIC contribution of labour Rs 10,000 plus their service charges of Rs. 12,000 for arranging the labour. How much service tax is payable under Manpower Recruitment and Supply service if service tax rate is 10.30%. What will be the tax payable if Principal Employer pays wages directly to workmen and PF and ESIC directly to concerned authorities?

Answer - .As per MF(DR) circular No. B1/6/2005-TRU dated 27-7-2005 para 22.4, service tax is to be charged on the full amount of consideration for the supply of manpower, whether full-time or part-time. The value includes recovery of staff costs from the recipient e.g. salary and other contributions. Thus, as per departmental circular, service tax is payable on Rs. 1,22,000. Even if employer pays Rs. 1,00,000 directly to workmen/staff, Rs. 10,000 towards ESIC/PF and Rs. 12,000 to the contractor, still service tax will be payable on Rs. 1,22,000. Thus, service tax payable is Rs 12,566 even if the labour contractor gets only Rs 12,000 for arranging the labour.

Problem No.15

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Compute value of taxable service under “intellectual property service” using the details given below : (figures in Rs.) (1) Royalty for providing designs and patents @ 5% 20,00,000 (2) Lumpsum royalty for permanent transfer of trademark 25,00,000 (3) Royalty under brand licensing arrangement for use of brand name 15,00,000 (CA Final Old Syllabus November 2010)

Answer – (1) It is taxable (2) Not taxable (3) Taxable. The amount should be taken as inclusive of service tax and value to be found out by back calculations.

Problem No.16

D & Co. is engaged in the services of site preparation and clearance, excavation earth moving and demolition services. The gross amount received during the quarter ended 30-06-2009 for the services provided by them are given below : (Figures in Rs) - Core extraction services for construction 1,80,000, Land reclamation work 80,000, Services in relation to agriculture 2,00,000, Renovating or restoring water sources 3,50,000, Horizontal drilling of passage of cables or drain pipes 1,00,000, Soil stabilization 90,000, Construction of transport terminals 55,000. Calculate the value of taxable services under “Site preparation and clearance, excavation, earth moving and demolition services’ under the Finance Act, 1994 and the service tax payable at 10.3%. (Provide brief explanations where required.) (CA Final November 2010)

Answer – Work relating to agriculture and renovating or restoring of water sources has been excluded from the definition of ‘site preparation and clearance, excavation earth moving and demolition services’. Site preparation relating to construction of transport terminals has been exempted vide Notification No. 17/2005-ST dated 7-6-2005. Thus, gross amount on which service tax is payable is Rs 4.5 lakhs (1.8 + 0.8 + 1.0 + 0.9). Hence, value for purpose of service tax is Rs 4,07,978.24 (4,50,000 x 100/110.3). Service tax @ 10% is Rs 40,797.82. Education Cess @ 2% is Rs 815.96 and SAHE cess @1% is 407.98. Total tax payable is Rs 42,021.76.

Problem No.17

Shashwat Hotels Pvt. Ltd. has given the following information for F.Y.2009-10. You are required to compute the taxable services under Service Tax Act and the tax thereon for FY 2009-10 without assigning any reason for the treatment - (i) Reception room and vehicle parking space were let out for a film shooting for 3 months. The charges received for this Rs. 5 lacs (ii) The conference hall was let out to a Gujarati Samaj Trust for a week for a music competition for Rs. 50,000 (iii) The hotel was booked by a customer for 3 days for a marriage function. The room booking charges were received in advance (excluding service tax) in the same year of Rs. 50,000. The electricity charges separately billed Rs. 20,000, hire charges including catering charges for 3 days billed of Rs. 3,25,000 after deducting the advance (iv) During the year, the conference hall was let out to MNO Ltd. The charges received were as under - Hall rent Rs. 4 Lacs, computer & projector systems charges Rs. 25,000, electricity charges Rs. 30,000. Hall rent includes charges for snacks and cold drinks Rs. 50,000 (v) The hotel garden was let out to a political party for 2 days for a meeting. The charges received Rs. 25,000. - - The hotel charges 10% service charges which are later distributed as tips to employees. - - The above charges are excluding service tax. All the charges have been received in FY 2009-0. The hotel has already been registered under Service Tax Act in F.Y. 2008-09 (CA IPCC and AT November 2010)

Answer – It is presumed that assessee is registered for service tax under ‘mandap service’. It is also presumed that assessee is not eligible for threshold exemption of Rs 10 lakhs, as he is already registered under service tax in FY 2008-09. Taxability of each is as follows – (i) Not taxable as the service is not for official, social or business function (ii) Rs 50,000 taxable (iii) No service tax on room booking

Indirect taxes Problems and Solutions /May -June/ Nov- Dec 2011 Exam

charges but electricity charges are includible. Hence, value of service is Rs 3,45,000 (iv) Total value of service – Rs 4,05,000 (Charges for snacks and cold drinks are deductible since these are 'goods'. Value of goods is not considered while calculating value of service) (v) Political meeting is not an official, social or business function and hence the amount is not subject to service tax. - - Service charges of 10% are includible as it is part of value of service. - - Total value of Bills taxable – Rs 8,00,000 (50,000 plus 3,45,000 plus 4,05,000). Add 10% service charges Rs 80,000. Hence, total value of services for levy of service tax – Rs 8,80,000. Service tax @ 10% - Rs 88,000. Education cess @ 1% - Rs 1,760. SAHE cess – Rs 880. Total service tax payable – Rs 90,640.

Problem No.18

A mandap keeper is providing catering services of full meals along with mandap services. His total Bill for services came to Rs 1,00,000, including catering charges. Calculate the service tax payable, if tax rate is 10.30%.

Answer - If a mandap keeper or hotel provides catering services of full meals, tax will be payable only on 60% of the gross amount charged to client, provided he does not avail Cenvat credit of inputs and capital goods. Hence, service tax is payable on Rs 60,000. Hence, service tax @ 10% will be Rs 6,000 plus education cess of Rs 120 (2% of Rs 6,000), plus SAHE cess of Rs 60 (1% of Rs 6,000)

Problem No.19

- Rosy Tours Co. has arranged three package tours during F Y 2008-09. The particulars of the Services and Charges are as under : (i) Tour 1: April, 2008 – Charges received Rs. 3.5 Lacs The package includes transportation, accommodation, food, tourist guide and entry fees for monuments (ii) Tour 2 : October, 2008 – Charges received Rs. 6.5 lacs. The package includes transportation and accommodation for stay (iii) Tour 3 : December, 2008 – Charges received Rs. 4 lacs. The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not mention it clearly that the charges are solely for arranging the accommodation for stay. All the charges are excluding service tax. The rate of service tax is 12% plus education cess. Compute the taxable services and tax thereon (CA IPCC November 2009)

Answer – (i) Tax payable is 25% of normal tax. Hence service tax @ 25% of 12.36% of value of Rs 3.5 lakhs would be Rs 10,815.

(ii) Tax payable is 25% of normal tax. Hence service tax @ 25% of 12.36% of value of Rs 6.5 lakhs would be Rs 20,085.

(iii) The rate of 10% applies if the charge is inclusive of cost of accommodation and bill indicates that it is towards charges for such accommodation. Since these conditions are not fulfilled, the service tax would be 40% of normal tax. Hence service tax @ 40% of 12.36% of value of Rs 4 lakhs would be Rs 19,776.

Problem No 20

Charges received Rs. 3.5 Lacs The package includes transportation, accommodation, food, tourist guide and entry fees for monuments (ii) Tour 2 : October, 2008 – Charges received Rs. 6.5 Lacs. The package includes transportation and accommodation for stay (iii) Tour 3 : December, 2008 – Charges received Rs. 4 Lacs. The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not mention it clearly that the charges are solely for arranging the accommodation for stay.

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All the charges are excluding service tax. The rate of service tax is 12% plus education cess. Compute the taxable services and tax thereon (CA IPCC/AT November, 2009)

Answer – (i) Tax payable is 25% of normal tax. Hence service tax @ 25% of 12.36% of value of Rs 3.5 lakhs would be Rs 10,815.

(ii) Tax payable is 40% of normal tax. Hence service tax @ 40% of 12.36% of value of Rs 6.5 lakhs would be Rs 32,136 (It is 40% since the tour does not fall within the definition of 'package tour' as defined in exemption notification)

(iii) The rate of 10% applies if the charge is inclusive of cost of accommodation and bill indicates that it is towards charges for such accommodation. Since these conditions are not fulfilled, the service tax would be 40% of normal tax. Hence service tax @ 40% of 12.36% of value of Rs 4 lakhs would be Rs 19,776.

Problem No.21

Calculate the net service tax payable under the provision of rule 2A of the Service tax (Determination of Value) Rules, 2006 relating to determination of value of services in the execution of a works contract from the following particulars: (i) Gross amount for the works contract (excluding VAT) Rs 1,00,000 (ii) Value of goods and materials sold in the execution of works contract Rs. 70,000 (iii) CENVAT credit on (ii) above Rs. 1,000 (iv) Service tax paid on input services Rs. 1,000 (v) CENVAT credit on capital goods issued in the provision Rs. 1,000 of works contract service (vi) Service tax rate 10.30%. Make suitable assumptions and provide explanations where required (CA Final, New Syllabus, Nov., 2008)

Answer – Service tax on 'value of service'; i.e. on Rs 30,000 [100,000-70,000] @ 10.30% is Rs 3,090. Cenvat credit of Rs 1,500 is available [Credit of Rs 1,000 on input services and Rs 500 (50% of Rs 1,000) on capital goods is available. Cenvat credit of service tax paid on inputs of Rs 1,000 is not available]. Hence, net service tax payable is Rs 1,590.

Problem No. 22

Calculate the value of taxable service of "X" Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. No freight is received from any of the specified category of Consignor/Consignee. Suitable assumptions may be made wherever required. X does not avail Cenvat credit. (1) Total freight charges received by 'X' during the year – Rs 13,50,000 (2) Freight charges received for transporting fruits - Rs 1,25,000 (3) Freight collected for transporting small consignment for persons who paid less than Rs. 750 for each consignment - Rs 75,000 (4) Freight collected for transporting goods in small vehicles for persons, who paid less than Rs 1500 per trip - Rs 1,50,000 (CA Final New Syllabus, June 2009).

Answer – All these freight charges mentioned in (1), (2) and (3) are exempt from service tax by notification. Hence, his value of taxable service is Rs 10 lakhs. It is not specified what was his turnover in previous year. If it was less than Rs 10 lakhs, 'X' can avail exemption from service tax in current financial year for entire amount of Rs 10 lakhs. However, if his value of taxable services in previous year were more than Rs 10 lakhs, he cannot avail exemption. In that case, he will be liable to pay service tax on Rs 10 lakhs. In case of GTA service, abatement of 75% is available. Hence, service tax is payable @ 10.30% on Rs 2.50 lakhs, i.e. service tax (including education cess and SAH cess) is Rs 25,750 [Note, if 'X' has not charged service tax extra in his invoice, the value of Rs 2.50 lakhs should be taken as inclusive of service tax and then tax payable should be calculated by making back calculations].

Indirect taxes Central Sales tax simplified

Chapter 5 Central Sales tax

- CST will be levied on interstate sales as per Entry No 92 A List I of Indian Constitution.
- CST Act Provides for impose of the sales tax on interstate sales ie sale from one state to another state.

■

- CST Act makes provisions for very few procedures and rules for administration
- In respect of provisions like return, assessment, appeals etc., provisions of General Sales Tax law of the State applies.

Objects of CST Act

- To determine the principles with regard to When a sale is said to interstate /export/import sale

Levy collect and distribution of taxes on interstate sale

To declare certain goods as goods of special importance and restrict the state to levy tax on these (Declare goods) goods

Types of sales

Intra state sales- Sales with in the state- only sales tax/Vat- No CST

- Inter state Sales- No Sales tax/ Vat - Only CST

- Export Sales- No Sales tax/No Vat/No CST

Important Definitions under CST Act
--

Sale Outside State:

- If the sale is inside state and it will sale outside state for all other state

Sale inside a State

If the goods are within the State

- In the case of specific or ascertained goods, at the time the contract of sale is made *and*
- In the case of un-ascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Chapter 1 Sale to ship which is within territorial waters is 'local sale'

Goods: Section 2(d)

All materials, articles, commodities and all kinds of movable property,

Excluding

Examples for Goods

All movable property, all intangible goods, such as patents, trademarks, licenses lottery tickets, steam, Electrical energy - animals and bird in captivity Goods include uprooted trees, second hand goods, rejected goods, worn out goods, Waste Scrap etc. Branded software) is 'goods' and sales tax can be levied.

Examples for not as goods

'Immovable property' includes land, benefits arising out of land and things attached to the earth or permanently fastened to anything that is attached to the earth is not goods. However, as per section 2(7) of Sale of Goods Act, goods include standing crop, grass and things attached to and forming part of the land, which is agreed to be severed before sale or under contract of sale.

Indirect taxes Central Sales tax simplified

Sale

Transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration,

Sales include

- (i) Transfer of property in goods
- (ii) Goods involved in Works contract
- (iii) Right to use goods (like leasing)
- (iv) Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.
- (v) Supply of food articles
- (vi) Hire purchase

Sales does not include

- barter
- a mortgage
- hypothecation or a charge
- pledge
- Consignment sales (declaration in form F is require)
- Branch and head office transfers (declaration in form F is require)
- Job work/processing
- Gifts/Samples
- Transfer to C & F Agent (declaration in form F is require)

Business

- Trade, Commerce, manufacture, or any adventure motive to make gain or profit or may not have motive to gain profit
- any transaction in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern

Place of Business –

- Place where dealer carries business
- Place where dealer stores the goods -Factory, warehouse, store, depot
- Place where dealers books of account kept

Dealer

Every person carries on the business of buying, selling, supplying or distribution of goods, directly or indirectly, for cash, or for deferred payment, or for valuable consideration &

Include

- a local authority, a body corporate, a company, any cooperative society, club, firm, Hindu undivided family or other association of persons which carries on such business
- a factor, broker, commission agent, delcredere *agent*, or any other mercantile agent
- auctioneer
- Government/Club is also a dealers

Charging section of CST Sec 3

- Levy is on sale of goods (i.e. levy is not on purchases)
- No Levy on Electrical Energy (though electrical energy is goods)
- Levy is only on Inter state sales
- The liability is subject to other provision of Act (ie exemptions if any in other sections should be considered)

Meaning of 'Inter State Sale' sec 3

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase

- Occasions the movement of goods from one State to another *or*

Indirect taxes Central Sales tax simplified

- Is effected by a transfer of documents of title to the goods during their movement from one State to another.

Essential features of Inter-state Sale

Transaction must be completed sale

Location of buyer and seller immaterial

There should be agreement to sale stipulation that there should be movement of goods from one place to another

There should be physical movement of goods from one state to other

It is immaterial which state the ownership passes

Mode of transport is immaterial, transportation may be any mode

Ever Buyer takes deliver from seller, if there is movement one state to another it is interstate sale

Sale should conclude in different state. It conclude in same state, subsequent movement will be on behalf of Purchaser and it is not interstate sale

Temporary movement through another State is not Inter State sale –

Sale by transfer of documents of title

Documents of title:

Lorry Receipt - LR in case of transport by Road

Railway Receipt - RR - in case of transport by rail

Bill of Lading - BL - in case of transport by sea

Air Way Bill - AWB - in case of transport by air.

One who submits document of title, the same is entitled to get delivery of goods, if document is in his name or endorsed in his name.

Transfer of documents of title is also interstate sale:

The movement of goods from one State to another need not be occasioned by sale. For example, if the goods are being sent to a branch by transport, sale during movement by transfer of document will also be an 'inter state sale' u/s 3(b).

Goods involved in Works Contract

No CST on works contract

CST can be levied on goods involved in works contract if goods move from one State to another on account of such works.

CST on works contract only in case of movable property and not on immovable property

Sale price for the goods is similar to that of definition of goods.

Rates of Central Sales Tax sec 8

SNO	Section	Description	Rate of Tax
1	8(1)(a). 8(2)	Sale to Government/ unregistered dealer all goods	Local general sales tax rate for sale within the State,
2	8(1)(b)].	Sale to registered dealer	@ 2% or general sales tax rate for sale within the State, whichever is lower provided that the goods are 'eligible' as per section 8(3) and these are specified in the Registration (Condition: Form to be issued by purchaser- C form

Note: When local sales tax rate is nil CST is also Nil

Taxable turnover & Inclusions and Exclusions in Turnover sec 2 (j)

Turnover

- Aggregate of the sale prices received and receivable by the dealer in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period

Determination of Turnover

Indirect taxes Central Sales tax simplified

Turnover is to be determined in accordance with provisions of Central Sales Tax Act and Rules

■ In determining turnover, deduction of sales tax should be made from the aggregate of sale price. Section 8A(1)

Prescribed period under CST

■ Period in a dealer is liable to submit returns under the local Sales Tax law For example, monthly/quarterly.

The 'aggregate sale price

The aggregate sale price is assumed as inclusive of Central Sales Tax and backward calculation is made.

■ Thus, if aggregate of sale price is 'S' and rate of tax is 'R'; 'turnover' and 'tax payable' will be calculated as follows:

■ Turnover = $S \times 100/100+R$

■ Tax = $S \times R/100+R$

■ Round off of CST payable To nearest rupee. (Section 9B of CST)

Inclusions in Turnover for CST liability

■ Central Excise

■ All expenses before the delivery (loading, wieghment ,coolie)

■ Packing material and packing charges

■ Freight is not shown separately in invoice

■ Freight in case of F O R Contracts

■ Design and development charges in respect of goods

■ Salesman commission

■ Freight from factory to depot in case of sale from depot

Exclusions in Turnover – Where no CST Payable

■ transit Insurance at the at the request of buyer

■ Freight if shown separately in invoice

■ Subsidy/charity

■ Cost of installation shown separately in invoice

■ Goods returned by buyer with in 6 months from the date of sale

■ Goods rejected by buyer (No time limit)

Exemptions from CST

■ Sales during movement of goods Section 6(2)

■ Sale to diplomatic missions, UN, international organizations etc Section 6(3)

■ When local sales tax rate is nil, CST is also nil. Sec 8

■ Exemption when sale is penultimate to export as defined u/s 5(3) u/ S 6(1)

■ Exempting sale to SEZ unit. Section 8(6)

■ Exemption by issue of notification by State Government

■ Sale during export/import is not taxable,

Export sale and sale in the course of export

■ Export Sales means -Direct exports

Sale during the course of export – includes direct export and also (a) Sale by transfer of documents after goods cross customs frontier (b) Penultimate sale for export (c) Export with help of agent./Sale to export house/sale to exporter, who exports

Penultimate sale

Penultimate sale (last but one sale) is exempted from CST when all the following conditions are satisfied

■ Exporter should have export order in his hand before taking delivery.

■ Sale is made as per as per agreement considering the export order

■ The goods shall be exported in the same condition (without any process)

Indirect taxes Central Sales tax simplified

- Exporter should issue declaration in form no H/I to seller

Import sale and sale during the course of Import

- Direct imports – directly importing by person
- Sale in course of imports means imports through agent
- A Sale is said to imported sale, when sale take place before reaching the customs barriers
- No CST in case of Imports, After importing If goods sold in local state local sale tax is payable
- When the sale is after reaching territorial waters it is sale with in the state and local sales tax can be levied. Because territorial waters will belong to respective state government

Goods of special importance (Declared Goods) Section 14

- Cereals (rice paddy wheat)
 - Pulses(gram, tur, moong, masur, urad)
 - Coal, coke, all form excluding charcoal
 - Hides and skins
 - Crude oil
 - Cotton in un manufactured form excluding cotton waste
 - Iron and Steel
 - Jute
 - Oil seeds
 - Manmade fabrics
 - Sugar and Khandasari Sugar
 - Woven Fabric of wool
 - Aviation fuel sold to turbo prop aircraft
- State Government cannot charge more than 3% tax on declared goods

Procedures under CST

Registration under CST Act

- Dealers who 'effect' inter state sales are required to register with in 30 days from the date of first inter state sale.
- Other dealers voluntarily can also register (example inter state purchases no inter state sale, branch transfers etc)

Procedure for registration

- Application in form No A affixed with Rs. 25 court fee stamp.
- Application should be signed by dealer

Enclosures to Application

- Particulars of Directors/ partners
- Copies of articles of association, memorandum in case of company and partnership deed if applicant is a firm
- Copies of rent agreements
- Nominations as Manager
- List of places of business, go down
- Details of machinery
- Details of bankers
- Photographs of directors / partners
- List of goods deal for purchase, sale, resale, manufacture, export etc
- Place of business location sketch
- Security deposit
- Introduction by two dealers in from the place of dealer
- Self addressed stamped envelop Rs. 30
- Different places in same state One registration, different places in different states, registration required under each state separately

Indirect taxes Central Sales tax simplified

Grant of Registration Certification

Registering authority will ensure that application is in conformity with provisions of CST Act.

He can make necessary enquiries about the particulars given are correct

Materials requested for registration are eligible for inclusion and the goods are in fact needed for the business.

After he is satisfied and after obtaining required security,

The dealer will be issued a Certificate of Registration in prescribed form 'B'.

A copy of the same will be issued for every additional place of business in the State.

This certificate should be kept at principal place of business

A copy of the certificate should be kept at each additional place of business in the State.

Amendment of Certificate

The certificate can be amended e.g. change of name, change of business, change of class of goods in which he carries business, change/addition of place of business, warehouses etc. This amendment can be made on application from dealer

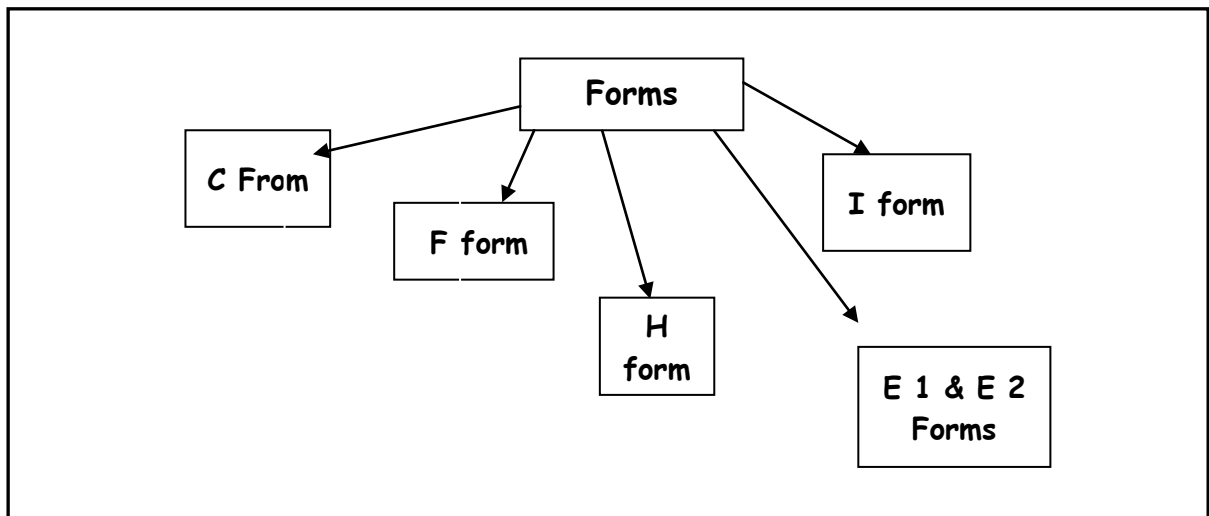
Sales tax authorities themselves after giving notice to dealer.

The amendment will be effective from date of application

Cancellation of CST Registration

- Registration can be cancelled either on request of dealer or
- Suo motu by sales tax authorities.

Forms under CST



Nature of form	Issued by	Issued to	Purpose
Form C	Registered Dealer who is a buyer	To Registered Seller	To Avail Concession Rate of Duty
Form F	Receiver of goods in case of Branch/HO/Depot transfers	To Sender of goods	To exempt CST and treat transfer is not as sale
Form H	Registered Dealer who is a Exporter (buyer)	To Registered Seller	To exempt CST

Indirect taxes Central Sales tax simplified

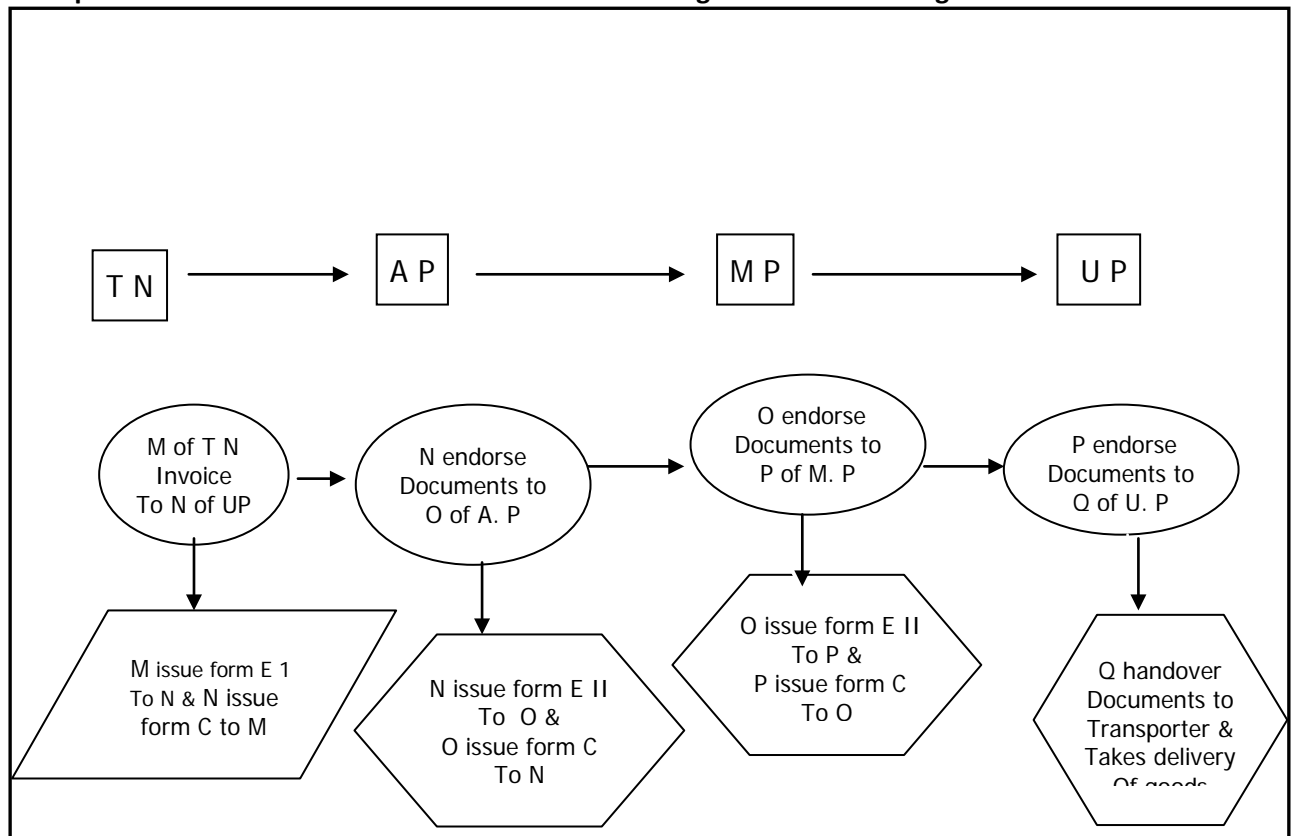
Form I	Registered Dealer who is a Exporter in SEZ (buyer)	To Registered Seller	To exempt CST
For E1 & E2	Registered Seller in sale through documents of title on movement of goods	To Registered Dealer who is a buyer	To exempt CST

- A dealer has to issue certain declarations in prescribed forms to buyers/sellers.
- These forms are prescribed in Central Sales Tax (Registration and Turnover) Rules, 1957.
- Forms C, E-I, E-II, F, H and I are printed and supplied by Sales Tax authorities
- Dealer has make a written request to obtain the forms
- Dealer has to issue declarations in the forms printed and supplied by the Sales Tax authorities only.
- These forms are in triplicate.
- One C form can be issued to each dealer for covering all the transactions in whole financial year.
- State government has no power to waive the declarations in form C

Benefits of using forms

- C form is issued to avail Concession rate
- F form is issued in case of Brach/Ho/Depot transfer to avail CST Exemption
- H form/I form is issued to avail exemption from CST when Purchasing for export
- E1 & E2 was issued to avail exemption from CST in case of sale by transfer of documents of title on the movement of goods

Exemption of sale in case of transfer of documents during the movement of goods



Indirect taxes Central Sales tax simplified

No CST in case of sale through transfer of documents between Mr. N to Mr. O and Mr. O to Mr. P.

Appeals to Appellate Authority

In case of dispute, concerning the sale of goods effected in inter-state sale the appeal will lie with 'Central Sales Tax Appellate Authority Sec'6A read with 9 of CST Act. In respect of other matters appeal lies with State sales tax authorities (like Appellate Commissioner or Tribunal etc).

Formation of Appellate Authority –

A separate 'Central Sales Tax Appellate Authority' will be constituted by Central Government. The Authority will consist of Chairman, Officers of Legal Service of Central government Central Government will provide administrative staff to the Authority. [Section 19 of CST Act]. The authority will regulate its own procedures. [Section 23 of CST Act].

Matters appealable to the authority –If the dispute relates to sale of goods effected in inter-state sale. Appeal should be filed within 45 days from date on which order is served on him. Appellate Authority can grant further extension of 15 days. [Section 20(2)]. Appeal must be filed in quadruplicate and accompanied by a fee of Rs 5,000/-.

Procedure for hearing

- On receipt of appeal, a copy of appeal will be forwarded to assessing authority as well as State Governments concerned.
- Appellate Authority will call upon assessing authority and State Government/s to furnish relevant records.
- The records will be returned to assessing authority/State Government as soon as possible. [Section 21(1)].
- Authority will hear the matter, examine the matter and either accept or reject the appeal.
- Before rejecting appeal, opportunity of hearing will be given to appellant or his authorised representative and also to State Government concerned. [Section 21(3)].
- Appeal should be normally decided within 6 months.
- Copy of order will be sent to appellant and assessing authority. [Section 21(5)].
- It may happen that sales tax was paid to one State Government while in fact, it was payable to another State Government
- Section 26 provides that order of CST Appellate Authority will be binding on assessing authorities and other authorities under State sales tax laws
- There is no provision for appeal against the order of CST Appellate Authority.

Offences under the Act

Central Sales Tax Act provides for penalties and punishments in respect of certain offences. In respect of offences not provided in the CST Act, provisions of General Sales Tax Law of the State where the dealer is carrying on business are applicable.

CST Act envisages three types of punishments (a) Imprisonment and fine which can only be imposed by Court of Law (b) Compounding of offences by Sales Tax authorities (c) Penalty in certain cases which can be imposed by Sales Tax authorities.

Indirect taxes Central Sales tax simplified

Section 10 of CST Act provides that punishment up to six months of simple imprisonment or with fine or both can be imposed for following offences under CST Act.

- *Knowingly* giving declaration in form C, E-I, E-II, F or H which he knows, or has reason to believe, to be false
- Not registering under CST Act when required to be registered
- False representation by a registered dealer that the goods being purchased are covered under his Certificate of Registration for concessional rate
- Falsely representing that he is a registered dealer, though he is not.
- Misusing or using for different purpose the goods obtained under C form or H form prescribed for SEZ unit, at concessional rate
- Having in possession C forms or H form prescribed for SEZ unit, which are not obtained as per provisions of Act.
- Collecting any amount representing as Central Sales Tax by an unregistered dealer or by a registered dealer in contravention of provisions of Act.
- Provisions regarding offences in 'General Sales Tax Law' (excepting those enumerated above) are applicable in respect of offences committed by dealers in that State.
- Punishment of imprisonment and/or fine can be imposed only by Court of law.

Penalty in lieu of Prosecution –

- Section 10A of CST Act authorises imposition of penalty in lieu of punishment in respect of offences regarding
 - obtaining goods not included in registration certificate
 - purchasing goods representing that he is registered dealer, though he is not
 - using goods for purposes different than the purposes for which purchased
- The penalty can be up to one and half time the tax which would have been payable.
- Sales Tax Authority having jurisdiction over the dealer's place of business can impose the penalty.

Other provisions

Liability of company in liquidation Sec 17

- If a liquidator or receiver is appointed for a Company, he should inform sales tax authorities within 30 days of the appointment.
- The appropriate authority [assessing officer i.e. sales tax officer] will inform him within three months the amount of tax due from company, which is in liquidation. .
- Liquidator cannot sell assets of company before setting aside amount of due as informed by sales tax authorities - unless such transfer or sale is by order of Court. . Otherwise, liquidator is personally liable. .

Priority of State dues

Government dues most of the times have priority over other dues in case of liquidation. The priority is subject to provisions of Companies Act.

Liability of directors of Private Limited Company in case of liquidation sec 18

- if a private limited company is being wound up, liability of directors of such private limited company is personal if amount cannot be recovered in liquidation i.e. the tax due can be recovered from his personal property.

Indirect taxes Central Sales tax simplified

- Director save the liability only if he proves that non-payment of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to affairs of the company.

XX

Problems and Solutions in CST June/Dec 2011

Problems & Solutions to problems in CST

Problem No 1

Mr. A reports his turnover at Rs. 51,50,000 for the year ended 31/03/11 Also he reported that goods sold in March, 2009 have been returned by the customers to the value of Rs. 5,15,000 in June, 2010 He has not charged tax separately in the sale invoices. Sales returns are included in the turnover, and not deducted from turnover assuming the tax rate @ 2% compute his tax liability under the Central Sales Tax Act.

Solution	
Turnover Given	51,50,000
Taxable Turnover	
$5150000 \times 100/102$	50,49,020
CST payable	1,00,980
$5150000 \times 2/102$	

Problem No 2

The aggregate turnover during the month of December, 2010 for inter-State sales made from Delhi of declared goods chargeable to tax @ 2% within Delhi is Rs. 97,740 which includes Rs. 54,060 for sale made to registered dealers against form C and Rs 43,680 for sales made to unregistered dealers. Calculate the taxable turnover and central sales tax payable for the above month

Solution		
Particulars	Sales to Registered dealers	Sales to unregistered dealers
Turnover	54,060	43,680
Taxable Turnover		
$54060 \times 100/102$	53,000	
$43680 \times 100/102$		42,824
CST payable		
$54060 \times 2/102$	1,060	
$43680 \times 2/102$		856
Total Taxable Turnover	$53000 + 42824 =$	95,824
Total CST payable	$1060 + 856 =$	1,916

Problem No 3

Mr. X reported sales turnover of Rs. 36,20,000. This includes the following: (i) Excise duty Rs. 3,00,000; and (ii) Deposit for returnable containers and packages Rs. 5,00,000. Sales tax was not included separately in the sales invoice. Compute tax liability under the CST Act, assuming the rate of tax @ 2%.

Problems and Solutions in CST June/Dec 2011

Solution	
Turnover given	36,20,000
Less" Exclusions	
Deposit for returnable containers	5,00,000
	31,20,000
Taxable Turnover	
(3120000 x100/102)	30,58,824
CST payable	61,176
(3120000 x2/102)	

Problem No 4

Total interstate sale for the Financial Year 2010-11 of X Ltd. is Rs. 1,50,70,000, which consists of the following: 2% CST sales - Rs 91,50,000, 1% CST sales - Rs 59,20,000 Out of the goods sold for Rs. 1,50,000, on 16.7.2008 that were liable to CST @ 2 %, goods worth Rs. 50,000 were returned on 12.12.2010 and goods worth Rs. 1,00,000 were returned on 01.02.11 A buyer to whom goods worth Rs. 55,000 carrying 1% CST was despatched on 16.04.2010 rejected the goods and the same were received back on 15.11.2010. Compute the taxable turnover and tax liability of X Ltd., since all the relevant Forms have been received

Solution		
Particulars	2% sales	1% sales
Turnover	91,50,000	59,20,000
Less Exclusions		
Goods returned within 6months	50,000	`
Goods rejected		55,000
	91,00,000	58,65,000
Taxable Turnover		
9100000 x 100/102	89,21,569	
5865000 x 100/101		58,06,931
CST payable		
9100000 x2/102	1,78,431	
5865000 x 1/101		58,069
Total Taxable Turnover	8921569 +5806931	14,728,500
Total CST payable	178431 +58069 =	2,36,500

Problem No 5

M/s Snow White Ltd., Mumbai sells iron rods to M/s Hyderabad Ltd. in Vijayawada, both of them are registered dealers, for a value of Rs 10,00,000 inclusive CST @ 2%. The local sales tax on iron rods in Mumbai is 2%. Ascertain the CST payable. (ii) If Hyderabad Ltd. were unable to submit form 'C', being an unregistered dealer, what will be the CST liability, if the local sales tax rate is 12% ? Note - Iron rods are not 'declared goods'.

Problems and Solutions in CST June/Dec 2011

Solution	
Turnover Given	10,00,000
Taxable Turnover	
10,00,000 x100/102	9,80,392
CST payable	19,608
10,00,000 x2/102	

When Hyd Ltd is unregistered dealers and not able to submit the forms

Turnover Given	10,00,000
Taxable Turnover	
(10,00,000 x100/112)	8,92,857
CST payable	1,07,143
(10,00,000 x12/112)	

Problem No. 6

Determine the Central Sales Tax liability from the following data when a sale is affected from Faridabad to Luck now: * Invoice No. : 00708374 * Basic Price: Rs. 3,00,000 * Excise Duty : 16% ad valorem * CST : As applicable under `C' forms * Trade Discount : 8% * Cash Discount : 2% * Quantity supplied : 10,000 Kgs * Quantity rejected by buyer within 3 days of delivery : 1000 Kgs * Quantity returned by buyer after 6 months of despatch: 1000 Kgs

Solution		
It is assumed basic price is given for 10000 kgs		
Calculation of taxable turnover		
Basic price per Kg =		30
300000/10000		
Less Trade Discount- 8%	2.40	
Less Cash Discount- 2%	6.00	3
		27
Add Central Excise @ 16.48%		4.45
Price per Kg on Cst Payable		31.45
Quantity supplied	10000	
Less : Quantity rejected	1000	
Quantity on which CST payable	9000	
Taxable Turnover =9000 x 31.45		2,83,050
CST payable 283050 x 2/100		5,661

Problems and Solutions in CST June/Dec 2011

Problem No 7

Determine the rate of tax applicable under CST Act 1956 and fill up the blanks from the following information:

Products -	A	B	C	D	E	F	G
Rate of tax under local sales tax Act	0%	2%	3%	6%	8%	10%	12%
Sale to Government							
Sale to registered dealers - specified goods							
Declared goods sold to unregistered dealers							
Undeclared goods sold to unregistered dealers							

Solution

Products -	A	B	C	D	E	F	G
Rate of tax under local sales tax Act	0%	2%	3%	6%	8%	10%	12%
Sale to Government	0%	2%	3%	6%	8%	10%	12%
Sale to registered dealers - specified goods	0%	2%	2%	2%	2%	2%	2%
Declared goods sold to unregistered dealers	0%	2%	3%	4%	4%	4%	4%
Undeclared goods sold to unregistered dealers	0%	2%	3%	6%	8%	10%	12%

Problem No 8

During the year 2010-11, the gross inter-State sales made by Stead Fast Ltd. of Jodhpur is Rs. 71,79,000. Although the central sales tax is not shown separately, the following information is available from the records of the company: (i) the company sell machinery, which makes copper wire rods. If it is sold in Rajasthan State, the sales tax rate is 7% (plus additional tax @ 10% of sales tax). (ii) Information regarding sales with and without Form-C is as follows:

	Inter-State Sale with Form-C (Rs.)	Inter-State Sale without Form C (Rs.)
Gross Sales	44,25,000	27,54,000
It includes the following		
Excise duty	19,12,500	6,15,000
Fright (not being shown separately)	55,500	72,000
Packing charges	22,815	29,550
Cost of installation (shown separately)	1,38,000	1,59,000
Insurance charges to cover seller's risk	15,750	22,800
Insurance charges to cover buyer's risk (at the request of the buyer)	22,500	1,26,000
Freight (shown separately)	1,05,000	25,500

The following items have not been deducted to calculate gross sales turnover.

Trade discount (given by way of credit note on 31 st March, 2011)	27,000	30,000
Goods returned within 6 months	3,00,000	1,50,000
Incentive bonus for additional sales	37,500	30,000

Problems and Solutions in CST June/Dec 2011

Ascertain the sales turnover and central sales tax payable CS Inter June2005

Solution		
Particulars	Sales to Registered dealers (with Form C	Sales to unregistered dealers (without form C
Turnover	44,25,000	27,54,000
Less Exclusions		
Cost of installation shown separately	1,38,000	1,59,000
Insurance to cover buyer risk	22,500	1,26,000
Freight shown separately	1,05,000	25,500
Trade discount	27,000	30,000
Goods returned with in 6 months	3,00,000	1,50,000
	38,32,500	22,63,500

Taxable Turnover		
$3832500 \times 100/102$	37,57,353	
$2263500 \times 100/107.7$		21,01,671
CST payable		
$3832500 \times 2/102$	75,147	
$2263500 \times 7.7/107.7$		1,61,829
Total Taxable Turnover	3757353 + 2101671	58,59,024
Total CST payable	75147 + 161829=	2,36,976

Problem No 9

Vishal is a dealer. His sales during the first quarter of 2009-10 (July to September) are as under:

Date	Invoice No.	Amount (Rs.)
05.07.2010	101	10,000 plus tax @ 2%
12.07.2010	102	80,000 plus tax @ 2%
05.08.2010	103	62,400 (inclusive of tax)
06.09.2010	104	14,000 plus C.S.T. @ 2%
27.09.2010	105	18,000 plus C.S.T. @ 2%

- (i) Goods worth Rs. 7,000 (exclusive of tax) against Invoice No. 104 were returned on 29.09.2010. (ii) Goods worth Rs. 13,000 (inclusive of tax) sold on 26.02.2010 was returned on 30.09.2010. (iii) Goods worth Rs. 6,500 (inclusive of tax) sold on 27.02.2010 was returned on 30.09.2010. All the above sales were made in the course of inter-State trade. Calculate the turnover and sales tax payable if the rate of tax is 2%.

Problems and Solutions in CST June/Dec 2011

Solution		
Particulars/ Invoice No	Sales Excluding CST	Sales including CST
05.07.2010 Invoice No 101	10,000	
12.07.2010 Invoice No 102	80,000	
05.08.2010 Invoice No 103		62,400
06.09.2010 Invoice No 104	14,000	
27.09.2010 Invoice No 105	18,000	
Turnover	122,000	62,400
Less Exclusions		
Goods returned with in 6months	7,000	
	1,15,000	62,400
Taxable Turnover	1,15,000	
62400 x 100/102		61,176
CST payable		
115000 x 2/100	2,300	
62400 x 2/102		1,224
Total Taxable Turnover	115000 +61176	176,176
Total CST payable	2300 +1224 =	3,524

Problem No 10

Gross inter-state sales of ZX Co. Ltd., Patna, Bihar, were Rs. 18,00,000 during 2010-11 (April . CST was not shown separately in invoices. Other information are as follows: (i) If product P is sold within State of Bihar, sales tax rate is 8%. (ii) Sales of Rs. 8 lakhs are inclusive of erection expenses of Rs. 1,00,000, excise duty of Rs. 76,000 and packing charges of Rs. 25,000. The sale price is also inclusive of trade discount of Rs. 24,000, which has been later given by issuing a Credit Note. Buyers of these goods have issued form 'C' for these purchases. (iii) Balance sales of Rs. 10 lakhs are inclusive of excise duty of Rs. 95,000 and outward freight of Rs. 30,000. The freight was charged separately in Invoice. Buyers of these goods have not issued any declaration under Central Sales Tax Act. Out of these sales, goods of Rs. 2 lakhs were returned by customers. The goods were dispatched in February 09 and returned in June 09, i.e. after end of the accounting year. Find the turnover and CST payable

Solution		
Particulars	Sales to Registered dealers (with Form C	Sales to unregistered dealers (without form C
Turnover	8,00,000	10,00,000
Less Exclusions		
Cost of installation shown separately	10,0,000	
Trade discount	24,000	
Freight shown separately		30,000
Goods returned with in 6 months		2,00,000
	6,76,000	7,70,000

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Taxable Turnover		
$676000 \times 100/102$	662,745	
$770000 \times 100/108$		712,963
CST payable		
$676000 \times 2/102$	13,255	
$770000 \times 8/108$		57,037
Total Taxable Turnover	$662745 + 712963$	1,375,708
Total CST payable	$13255 + 57037 =$	70,292

Problem No 11

How would you arrive at taxable turnover under the Central Sales Tax Act, 1956 from the following particulars: (i) Gross sales as per accounts: Rs. 10,00,000. (ii) Gross sales include: (a) Rs. 50,000 being trade discount allowed to wholesale dealers in terms of agreement. (b) Rs. 20,000 being quantity discount allowed to buyers on the basis of off-take in a specified period. (c) Rs. 70,000 being excise duty paid on goods but recovered from customers by charging the same in invoices. (iii) No sales tax is included in gross sales. (iv) Gross sales figures are net of sales returns detailed below: (a) Goods worth Rs. 25,000 received back after the expiry of six months from the date of sale as the customer rejected the goods not found in accordance with the order. (b) Goods worth Rs. 40,000 returned by the buyers after six months because of inability to the price. (v) A sum of Rs. 75,000 has been recovered from the customers towards freight, which has been separately charged in the invoices. The amount of freight is not included in gross sales. **(ICSI Final Dec. 1991)**

Solution		
Gross Sales		10,00,000
Less Exclusions		
Trade discount	50,000	
Qty. discount	20,000	70,000
		9,30,000
Add: Goods returned after 6 months		
wrongly deducted add back		40,000
Taxable Turnover		9,70,000

Problem No 12

Kamath was a dealer engaged in oil business at Bangalore. He furnished the following particulars with a request to compute the central sales tax payable for the year 2010-11 (April to March)

	Total turnover for the year which included central sales tax:	22,50,000
(i)	Cost of oil containers as packing material	50,000
(ii)	Trade commission against separate credit notes to be issued	64,000
(iii)	Excise duty	1,25,000
(iv)	Freight, insurance and transport charges recovered separately in the invoices.	95,000
(v)	Installation charges	36,000
(vi)	Goods returned by dealers within 6 months of sale, but after	62,000

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	the end of financial year.	
(vii)	Goods returned by dealers beyond 6 months of sale, after end of the financial year	27,000
(viii)	The dealer received 'Form-C' from all the buyers	

Solution		
Turnover		22,50,000
Less Exclusions		
Trade Commission	64,000	
Freight Insurance shown separately	95,000	
Installation	36,000	
Goods returned with in 6 months	62,000	2,57,000
Turnover		19,93,000
Taxable Turnover = $1993000 \times 100/102$		19,53,922
CST payable $1993000 \times 2/102$		39,078

Problem No 13

A dealer effected following sales during January-March, 2011 quarter - (i) Invoice No. 65 dated 10th January, 2011 for Rs. 1,76,800.00 (inclusive of tax) (ii) Invoice No. 66 dated 21st January, 2011 for Rs. 1,25,000.00 plus tax @ 3% (iii) Invoice No. 67 dated 5th February, 2011 for Rs. 40,000.00 plus C.S.T. @ 3% Goods worth Rs. 10,400.00 (inclusive of taxes) were returned within 6 months. Calculate the turnover and sales tax payable, if rate of tax is 2%. (ICWA Inter - June 1997)

Solution

Particulars/ Invoice No	Sales Excluding CST	Sales including CST
10..01.2011 Invoice No 65		1,76,800
21.01.2011 Invoice No 66	1,25,000	
05..02.2011 Invoice No 67	40,000	
Turnover		
Less Exclusions		
Goods returned with in 6months		10,400
Taxable Turnover	1,65,000	1,66,400
$166400 \times 100/102$		1,63,137
CST payable		
$165000 \times 2/100$	3,300	
$166400 \times 2/102$		3,263
Total Taxable Turnover	165000 + 163137	328,137
Total CST payable	3300 + 3263 =	6,563

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Problem No 14

Calculate the CST payable from the following data -

- (1) Invoice No.1011 dated 01.06.2010 for Rs.1,78,967 inclusive of CST @2%
- (2) Invoice No.1012 dated 02.06.2010 for Rs.1,87,697 exclusive of CST @ 2%
- (3) Invoice No.1013 dated 03.06.2010 for Rs.1,75,000 inclusive of local Sales Tax. @ 10%
- (4) Invoice No.1014 dated 04.06.2010 for Rs.2,50,000 exclusive of local Sales Tax @ 8%
- (5) 50% of the goods sold on 01.06.2010 on inter-state trade was rejected and returned on 31.03.2010
- (6) 20% of the goods sold on 04.06.2010 on local sale was returned on 30.08.2010
- (7) 30% of the goods sold on 02.06.2010 on inter-state trade returned on 02.08.2010
- (8) 10% of goods sold on 03.06.2010 on local sale was rejected on 03.10.2010
- (9) Goods of Rs.1,50,000 was stock transferred from Bangalore to Indore on 05.06.2010 excludes CST elements of 2%
- (10) Export of goods worth 10 million Yens to Japan on 06.06.2010 of which 50% were rejected and returned on 01.01.2010 (1 Yen = Re. 0.35)
- (11) Export through Canalising Agency for value of 100 thousands Dollars (Export order with Canalising Agency) (1dollar = Rs. 48)
- (12) Purchased goods for Rs.3,00,000 from the market on 09.01.2010 and exported to Singapore on 14.01.10 to the Agent for further sale (The goods attracted local sales tax of 10%). -- Give reasons for inclusion/non-inclusion of the above

Solution

Particulars/ Invoice No	Sales Excluding CST	Sales including CST
01..06.2010 Invoice No 1011		1,78,967
02..06.2010 Invoice No 1012	1,87,697	
Turnover	1,87,697	1,78,967
Less Exclusions		
Goods returned with in 6months 30%	56,309	
Goods rejected 50%		89,484
Adjusted turnover	1,31,388	89,483
Taxable Turnover	1,31,388	87,728
89483 x 100/102		
CST payable		
131388 x 2/100	2,628	
89483 x 2/102		1,755
Total Taxable Turnover	131388 + 87728	2,19,116
Total CST payable	2628 +1755 =	4,382

Note

1. Invoice No 1013 and 1014 are relating to Local Sales and respective returns are not relevant.
2. In respect of Stock Transfer of Rs. 150000/ from Bangalore to Indore it is assumed F form was received By Bangalore. Hence No CST is payable
3. Export to Japan is in the nature of Direct exports, No CST payable. If rejected goods

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sold in interstate sale CST is payable

5. Export to Singapore is in the nature of Direct exports, No CST payable.

Problem No 15

From the following details, compute the central sales-tax payable by a dealer carrying on business in New Delhi: Gross Turnover - Rs 16,00,000. Other details - i) Trade commission for which credit notes have to be issued separately - 48,000 ii) Installation charges - 25,000 iii) Excise duty - 80,000 iv) Freight, insurance and transport charges recovered separately in the invoices - 60,000 v) Goods returned by dealers within six months of sale, but after the end of financial year - 40,000 vi) Central Sales-tax. - Buyers have issued 'C' forms for all purchases

Solution

Turnover		16,00,000
Less Exclusions		
Trade Commission	48,000	
Freight Insurance shown separately	60,000	
Installation	25,000	
Goods returned with in 6 months	40,000	1,73,000
Turnover		14,27,000
Taxable Turnover = $1427000 \times 100/102$		13,99,020
CST payable $1427000 \times 2/102$		27,980

Problem No 16

Inter State sales of 'XYZ Co. Ltd., Trivandrum, Kerala' was Rs. 12 lakhs during April 10 - March 11 of their product 'Quest'. The sales are inclusive of sales tax charged in Invoice at appropriate rates. The goods were liable to tax @ 2% if sold within State of Kerala. Out of the goods sold, goods of Rs. 80,000 were returned. These were sold by XYZ Co. Ltd. in January 09 and returned by buyer in May 09 as the buyer could not pay for the same. Some goods of Rs. 20,000, despatched in October 09 were rejected by buyer and sent back in November 09. The aggregate sale price of Rs 12 lakhs is without considering these returns and rejections. Find the CST payable if (a) all buyers are registered dealers giving declaration in form C. (b) All dealers are unregistered, not giving any declaration

Solution

Turnover		12,00,000
Less Exclusions		
Goods Rejected	20,000	
Goods returned with in 6 months	80,000	1,00,000
Turnover		11,00,000
Taxable Turnover = $1100000 \times 100/102$		10,78,431
CST payable $1100000 \times 2/102$		21,569

when all the goods sold to unregistered dealers, When local sales tax rate is 3%

Turnover		11,00,000
Taxable Turnover = $1100000 \times 100/103$		10,67,961
CST payable $1100000 \times 3/103$		32,039

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Problem No 17

State with reasons whether the following transactions be treated as inter-State Sales

	Name & State of Dealer	Purpose of Buying the Goods	State from which Goods are purchased	State in which Goods are Sold
1	A of Delhi	Resale	Delhi	Delhi
2	B of Delhi	Resale	Delhi	Haryana and Delhi
3	C of Delhi	Resale	Punjab	Delhi
4	D of Delhi	Resale	Punjab	Rajasthan
5	E of Delhi	Manufacture and sale	Delhi	Delhi
6	F of Delhi	Manufacture and sale	Delhi	Rajasthan and Delhi
7	G of Delhi	Manufacture and sale	Rajasthan	Delhi
8	H of Delhi	Manufacture and sale	West Bengal	Punjab

Solution

A of Delhi	Local sale
B of Delhi	Haryana Interstate sale
C of Delhi	Local sale
D of Delhi	Interstate sale
E of Delhi	Local sale
F of Delhi	Rajasthan Interstate sale
G of Delhi	Local sale
H of Delhi	Interstate sale

Problem No 18

From the following information, compute the taxable turnover and tax liability of four products, namely, A, B, C and D. The State sales tax rate of Product-A is 12%, it is 8% for Product-B, Product-C is for which tax rate is 3%. The local sales tax on Product-D has been declared by the State Government generally to be 2%. Total sales value including central sales tax applicable against Form-C :

Year	Product-A	Product-B	Product-C	Product-D
2008-09	Rs.10,40,000	Rs.15,60,000	Rs.10,30,000	Rs.15,30,000

Additional information:

- (i) A buyer of Product-A to whom goods worth Rs.1,04,000 were sold on 14th August, 2009, returned goods worth Rs.20,800 (including CST) on 15th January, 2010.
- (ii) Another buyer of Product-A could not provide Form-C for goods worth Rs.15,600.

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- (iii) A buyer of Product-B to whom goods worth Rs.20,800 were sold did not send the Form-C as the Product-B was not covered in his registration certificate.
- (iv) A buyer of Product-C to whom goods worth Rs.10,300 was sold on 5th April, 2009 returned the goods on 17th November, 2009.
- (v) Another buyer of Product-C to whom goods worth Rs.15,450 were sold could not provide Form-C.

There was only one buyer of Product-D and he did not provide any Form-

Solution

Particulars	Product A	Product B	Product C	Product D
Total Sales	10,40,000	1,560,000	1,030,000	15,30,000
Less Goods Returned	1,04,000			
Less: Sales which are not provided C forms	15,600	20,800	15,450	15,30,000
Turnover	9,20,400	15,39,200	10,14,550	-
Taxable Turnover - Turnover x 100/102	9,02,353	15,09,020	9,94,657	
CST payable - Turnover x 2/102	18,047	30,180	19,893	
Tax Liability in case of dealers Who has not issued C forms				
Turnover	15,600	20,800	15,450	15,30,000
Taxable Turnover - Turnover x 100/112	13,929			
Taxable Turnover - Turnover x 100/108		19,259		
Taxable Turnover - Turnover x 100/103			15,000	
Taxable Turnover - Turnover x 100/102				15,00,000
CST payable - Turnover x 12/112	1,671			
CST payable - Turnover x 8/108		1,541		
CST payable - Turnover x 3/103			450	
CST payable - Turnover x 2/102				30,000
Total Taxable Turnover(Reg + un reg)	9,07,521	15,13,628	10,00,000	15,00,000

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Total CST Payable (reg+unreg) 28,479 46,372 30,000 30,000

Note :

1. Product C goods worth Rs. 10300 were returned after 6 months hence not deductible

2. It is assumed that returns from Product A were from registered dealer.

Problem No 19

Mr. Ram furnishes the following information pertaining to inter-state sales effected by him:

	Products		
	L	M	N
Local State Sales tax	12%	8%	3%
Total sales value	7,84,000	5,40,000	4,12,000

Additional information (i) In respect of product L sold in May, 2010, goods of total sales value of Rs. 67,200 were returned in July, 2010 and Rs. 44,800 in December 2010: Rs. 56,000 were rejected and returned in January, 2011 (ii) Buyer of product N did not produce C forms. (iii) Buyer of product M for total sale value Rs. 43,200 did not furnish C form as the product was not covered in his registration certificate. - - Compute the taxable turnover and the sales tax liability of the three products L, M and N, for the financial year 2008-09

Solution

Particulars	Product L	Product M	Product N
Total Sales	7,84,000	5,40,000	4,12,000
Less Goods Returned	67,200		
Goods Rejected	56,000		
Less: Sales which are not provided C forms	15,600	43,200	4,12,000
Turnover	6,45,200	4,96,800	-
Taxable Turnover -Turnover x 100/102	6,32,549	4,87,059	
CST payable -Turnover x 2/102	12,651	9,741	
Tax Liability in case of dealers Who has not issued C forms			
Turnover	15,600	43,200	4,12,000
Taxable Turnover -Turnover x 100/112	13,929		
Taxable Turnover -Turnover x 100/108		40,000	
Taxable Turnover -Turnover x 100/103			400,000

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CST payable -Turnover x 12/112	1,671		
CST payable -Turnover x 8/108		3,200	
CST payable -Turnover x 3/103			12,000
Total Taxable Turnover(Reg +un reg)	6,40,336	5,22,330	4,00,000
Total CST Payable (reg+unreg)	20,464	14,470	12,000

Note :

1. Product M goods worth Rs. 44800 were returned after 6 months hence not deductible
2. It is assumed that returns from Product M were from registered dealer.

Problem No 20

Geet Pvt. Ltd., Chandigarh, made the following transactions in inter-state sale/purchase: i) Goods sold to a government department in Maharashtra: Rs. 5,50,000. ii) Goods sold to a trader in Himachal Pradesh: Rs. 5,00,000. iii) Goods purchased when they were in transit from Rajasthan to Haryana and sold during movement of the goods to a manufacturer in Haryana by transfer of documents : Rs 2,50,000. iv) Goods exported directly: Rs. 12,00,000. v) Goods exported through agent : Rs. 1,00,000, the agent being paid commission @ 1%. vi) Goods sold to an exporting agency in Delhi which in turn exported the goods : Rs. 1,50,000. - . - Sales tax on the goods is 4% if sold within the territory of Chandigarh. - . - What are the sales tax declaration forms obtainable from each of the above buyers? - . - What will be the sales tax rate applicable in each case, if the (a) required declaration is obtained (b) required declaration is not obtained.

Solution

Particulars of transaction	Sales Value	form to be obtained	Rate when form Obtained	Rate when form not Obtained
Goods Sold to Government	5,50,000	No form	4%	4%
Goods sold to trader in Himachala Pradesh	5,00,000	Form C	2%	4%
Goods purchased in transit	2,50,000	Form C/EI/E II	Exempt	4%
Direct exports	12,00,000	No form	Exempt	Exempt
Exports through Agent	1,00,000	Form H	Exempt	4%
Exports through agency	1,50,000	Form H	Exempt	4%

Problem No 21

The sales of a dealer (including central sales tax/ sales tax, if any) are as under:

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Cereals, pulses, sugar and salt (Exempt in the State)	10,00,000
Shares and securities	2,50,000
Other goods sold in the State	20,00,000
Exports from India	15,00,000
Goods purchased and sold in other State	3,00,000
Inter-State sale on which rate of tax is 10%	11,00,000
Inter-State sale to a State Government (Sales tax rate in the State is 12.5%)	2,60,000
Inter-State sale to a registered dealer on Form-C (State tax rate is 2%)	5,10,000
Goods sent to branch office located in other State on Form-F	10,00,000

Calculate taxable turnover of the dealer under the Central Sales Tax Act, 1956.

Solution

Calculation of Taxable Turnover

Inclusions	Turnover	Taxable turnover	CST payable
Goods purchased and sold in other state	3,00,000	2,94,118	5,882
Interstate sale (Sale to URD rate 10%)	11,00,000	10,00,000	1,00,000
Interstate sale to Government- rate 12.5%	2,60,000	2,31,111	28,889
Interstate sale to Registered dealer-2%	5,10,000	5,00,000	10,000
Total taxable turnover		20,22,373	1,52,627

Problem No 22

Balaji Traders, Nagpur, have made various sales as under:

- (i) Sale of Rs.5 lakh against Form-H.
- (ii) Sale of Rs.3 lakh as direct export in their names.
- (iii) Sale to Government Rs.2 lakh.
- (iv) One Form-C was lost in respect of sale of Rs.1.50 lakh. The buyer had sent a Xerox copy duly certified by his sales tax officer.
- (v) One Form-C was misplaced in post covering sale of Rs.70,000. The buyer had sent another Form-C marked as 'duplicate'.
- (vi) One Form-C was received in respect of one invoice of Rs.4.50 lakh.

If goods are sold within Maharashtra, the local sales tax rate is 15%.

You are required to find out central sales tax rates applicable to different sales.

Solution

Particulars of transaction	Sales Value	Rate applicable
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Problems and Solutions in CST June/Dec 2011

Sale against form H	5,00,000	Nil
Direct exports	3,00,000	Nil
Sale to Government	2,00,000	15%
Sale in respect of photo copy attested	1,50,000	2%
Sale in respect of duplicate form	70,000	2%
One c form sale	4,50,000	2%

Problem No 23

Adwell Co. of Indore (Madhya Pradesh) has supplied the following statement of sales:

- (i) Sales of cloth Rs.12,00,000 of which Rs.7,50,000 sold in Madhya Pradesh and rest in Rajasthan.
- (ii) Sales to Rajasthan government: Rs.6,24,000.
- (iii) Sales to a registered dealer of Gujarat for sale on Form C of such goods which are given in his registration certificate: Rs.4,68,000.
- (iv) Sale of declared goods to unregistered dealers of Maharashtra: Rs.9,45,000.
(The rate of sales-tax on such goods is 2% in the State and the customer returned goods worth Rs.46,500 within 6 months.)
- (v) Sale to a registered dealer of Gujarat of such undeclared goods which have not been given in his registration certificate: Rs.3,63,000. (Sales tax on such goods in the State is 7%.)
- (vi) Sale of goods to Bangladesh: Rs.6,00,000. (Rate of sales tax in the State is 4%)
- (vii) Subsequent sale during inter-State trade: Rs.1,20,000. (Rate of tax in State is 10%).

Compute the taxable turnover under the Central Sales-tax Act, 1956. Sales include the sales tax

Solution

Calculation of Taxable Turnover

Particulars	Turnover	Taxable turnover	CST payable
Goods sold in Rajasthan	4,50,000	4,36,893	13,107
Interstate sale to Govt.(Assume rate 3%	6,24,000	6,05,825	18,175
Interstate sale to registered Dealer - 3%	4,68,000	4,54,369	13,631
Interstate sale Declared goods-			17,618

Applied Indirect Taxation

Answer Q No. 1 which is compulsory and any five from the rest.

Q 1(a) Fill in the blanks: (i) Waste and Scrap will not be excisable unless it is specified in _____. (ii) In addition to departmental audit, C & AG carries out selective audits which is termed as _____. (iii) A passenger returning to India after stay in Germany for one week is entitled to bring goods up to Rs. _____ without payment of any Customs duty. (iv) In case of imports other than imports by EOU, the imported goods can be kept in Customs bonded warehouse for _____ days without paying any interest. (v) An out-door caterer is providing full and substantial meals. His invoice does not show breakup between value of food and value of service. He is liable to pay service tax on _____ of the bill amount. (vi) _____ is payable on inter state sales, while _____ is payable on sale within the State. (vii) Central Sales Tax applies to the whole of India _____ the State of Jammu & Kashmir. (1 x 7 = 7 marks)

Q1(b) State with reasons, whether the following statements are true or false (Answer without reasoning will not receive any credit): (i) Repacking of an already manufactured product would amount to manufacture in Excise Law. (ii) Customs duty is not paid by an importer and it was found that such non-payment was on account of fraud committed by him. In such case, there is no time limit for issue of show cause notice demanding duty and penalty. (iii) A service provider is required to file return in form ST-4 on quarterly basis within 15 days from close of quarter. (iv) Appeal against an order passed by the Registration authority must be filed within 90 days of the service of order to the Central Sales Tax Authority (v) Levy of VAT will have effect on retail price of goods (2 x 5 = 10 marks)

Q1(c) (i) Define Excisable goods as mentioned in Central Excise Act, 1944 (ii) A sub-contractor is a taxable service provider. Do you agree? Discuss. (iii) Goods under CST includes all kinds of movable property. Comment. (iv) Is it possible for a Trader to claim refund of special CVD from customs department? State your views. (v) VAT is termed as 'Consumption based' Tax. Explain. (2+2+1+1+2 = 8 marks)

Q2(a) Briefly discuss about the general exemption and concessions given to SSI units for excise duty purposes (b) Can an importer, exporter or 'person in charge' amend the documents submitted to customs authorities? If yes, from what date is the amendment effective? (c) Explain briefly the provisions of CST Act, relating to Inter-State sale by transfer of document of title to goods (d) What is the "taxable event" in the case of export of goods under customs law? Is export duty payable in case of applicable goods where ship travels 40 nautical miles from Indian port and the title passes to the buyer, but the ship returns to India because of engine trouble? What is the relevant date for export duty? (4+3+4+4 = 15 marks)

Q3(a) Who is liable to pay Excise Duty in case goods are produced or manufactured on Job Work? (b) Discuss the includibility or otherwise to the assessable value under the Customs Act, 1962 of the following payments made by an importer to the overseas supplier of a second hand Plant in India. (i) Dismantling charges for removing the second hand Plant at the supplier's place and shipping to the Indian importer. (ii) Fees for supervision of erection and commissioning of plant in India. For this purpose the Foreign Supplier deputed their technicians in India. (c) What are the sources of Service Tax Law? (d) Discuss the validity or otherwise of the following statements with reasons: (i) Subsidy given by Government to manufacturer to compensate cost of production will form part of sale price. (ii) When goods are sent by VPP, the sale is said to take place in the State from where the parcel is sent. (e) State briefly the basic distinction between VAT and Sales Tax (2+4+3+4+2 = 15 marks)

Q4 (a) Explain steps involved in classifying a product under Central Excise Tariff Act. (b) Calculate the net service tax payable under the provision of the rule 2A of the Service tax (Determination of Value) Rules 2006 relating to determination of value of services in the execution of a works contract from the following particulars: (i) Gross amount for the works contract (excluding VAT) Rs. 1,00,000. (ii)

Value of goods and materials sold in the execution of works contract Rs. 70,000. (iii) CENVAT credit on (ii) above Rs. 1,000. (iv) Service tax paid on input services Rs. 1,000. (v) CENVAT credit on capital goods issued for works contract Rs. 1,000 (vi) Service tax rate for the relevant Assessment year is 10.30%. Make suitable assumptions and provide explanations where required. **(c)** Which dealers are not eligible for composition scheme under VAT? **(d)** Sales Tax payable on product 'A' if sold within State of Punjab is 10%. If the product is sold in inter-state sale, what will be the central Sales Tax payable if: (i) Buyer furnish 'H' form. (ii) Buyer furnish 'J' form. **(e)** An Importer imported a novel and new article. He was unable to classify his goods under any of the tariff heading or sub-heading and none matched with the goods under import. Even rules 1 to 3 of classification Rules could not find solution. Hence, no customs duty is payable on such product. Comment (5+3+3+2+2 = 15 marks)

Q5(a) What do you understand by advance ruling under Service Tax? State briefly the question on which "Advance Ruling" can be sought? **(b)** How would you arrive at the assessable value for the purpose of levy of Excise Duty from the following particulars? Cum-duty selling price exclusive of sales Tax Rs. 20,000. Rate of Excise duty applicable to the product 10%; Trade discount allowed Rs. 2,400, Freight Rs. 1,500. **(c)** A dealer purchased 22,000 kgs. of inputs on which VAT paid @ 4% was Rs. 8,000. He manufactured 20,000 kgs. of finished products from the inputs. 2,000 kgs. was the process loss. The final product was sold at uniform price of Rs. 10 per kg. as follows - Good sold within State 8,000 kgs. Finished product sold in inter-state sale against 'C' Form 5,000 kgs. Goods sent on stock Transfer to consignment agents outside the State 4,000 kgs. Goods sold to Government departments outside the state 3,000 kgs. There was no opening or closing stock of inputs, WIP or finished products. The State VAT rate on the finished product of dealer is 12.5%. Calculate liability of VAT and CST. Find VAT credit available to dealer and tax required to paid in cash [5+2+8 = 15 marks]

Q6(a) CIF value of imported goods is Rs. 10,00,000. Basic Customs Duty payable is 10%. If the goods were produced in India, Excise Duty payable would have been 8%. Education cess is 2% and Special Education cess is 1%. Spl. CVD is payable at appropriate rates. Find the Customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) Service provider (c) Trader? **(b)** Define 'Works contract' as per CST Act. Can Sales Tax be levied on activity of textile processing? (11+4 = 15 marks)

Q7(a) M/s P Ltd. used to label its products with a foreign brand and claimed exemption under a notification. The classification list was approved by the department after carrying out verifications and all returns were regularly filed. The invoice containing description of goods were also regularly approved by the department. The department denied the benefit of exemption to the assessee for previous period of five years, by invoking extended period of limitation under section 11A on the ground that it failed to declare the particulars regarding affixing of labels. Is the department justified? Discuss **(b)** Write note on 'Input service' for purpose of Cenvat Credit as applicable to a manufacturer **(c)** Name two situations where excise duty liability is not of the actual manufacturer but of the person who has supplied the raw material to the manufacturer **(d)** Write a brief note on categories of services for classifying a service as export of service [5+6+2+2 = 15 marks]

Q8(a) Explain provisions in respect of valuation for excise duty purposes determined when sales are generally through a related person **(b)** Explain how DEPB scheme helps in making exported products tax free **(c)** Discuss provisions relating to mandatory penalty equal to the amount of duty under the Central Excise Act and circumstances when such penalty shall be reduced [5+5+5 = 15 marks]

ICWAI Inter June 2010 New Syllabus

Answer question No. 1 which is compulsory and any five from the rest.

Q1 (a) Fill in the blanks: (1 x 11 = 11 marks)

(i) E-payment of service tax is mandatory where the service tax paid in the immediate preceding year is not less than Rs. _____.

(ii) Taxes and duties are _____ in arriving at the assessable value for customs duty purposes.

- (iii) VAT rate applicable within Gujarat State for gold is 1%; if gold is sold to an unregistered buyer in Delhi, the CST is chargeable at %.
- (iv) EOU can sell a portion of their production in Domestic Tariff are (DTA) upto % of their value of exports in earlier year.
- (v) A service provider avail CENVAT credit of special CVD paid u/s 3(9) of Customs Tariff Act.
- (vi) The adjudicating authority review the order passed by it earlier.
- (vii) An importer who knowingly mis-declares assessable value can be imprisoned for a period up to years.
- (viii) An assessee can claim refund of excise duty within from relevant date u/s 1 IB of the Central Excise Act, 1994.
- (ix) EOUs has to issue certificate for obtaining inputs without payment of excise duty.
- (x) Margin of dumping means the difference between and
- (xi) First appellate authority can condone delay up to days in filing the CST appeal if proper cause is shown.

Q1(b) State with reasons, whether the following statements are true or false (Answers without reasoning will not receive any credit): (2x7 = 14 marks)

- (i) VAT helps in checking tax evasion and in achieving neutrality.
- (ii) Installation/use of capital goods is a pre-requisite for taking CENVAT credit.
- (iii) According to Central Excise Act, 1944, 'Assessment' includes self assessment of duty and also provisional assessment.
- (iv) There is provision for payment of Central Excise Duty 'under protest'.
- (v) Customs officer should pass an adjudication order in all situations where an assessment is done more than the claim of importer/exporter.
- (vi) The Commissioner of Central Excise is empowered to review the service tax orders passed by the officers subordinate to him and re-adjudicate it, in case he finds the order to be legally inappropriate.
- (vii) The person providing both taxable and non-taxable services and not maintaining separate books of accounts, wishing to avail Cenvat credit is required to reverse 6% of the value of exempted services.

Q2(a) State the powers of Central Government in the area of taxation, as per the Constitution of India (7 marks) (b) Bopara & Co., which has heavy indirect taxes outlay, wishes to know the situations in which it can file a revision application with the Central Government. Please outline the various situations (8 marks)

Q3(a) Briefly discuss the provisions of Section 14A of the Central Excise Act, 1944 relating to special audit (5 marks) (b) Will the quantum of goods manufactured relating to printed laminated rolls with brand name, be considered for SSI exemption limit? (3 marks) (c) Is it correct to say that the concept of Input Service Distributor is a facility and not a compulsion for availing CENV AT credit? (4 marks) (d) Who are the persons liable to pay Central excise duty? (3 marks)

Q4(a) From the following data, you are required to compute the customs duty payable by Sukbhir & Co: - (i) FOB value of textile machinery - 1,00,000 Euro (ii) Airfreight - 26,000 Euro (iii) Expenses incurred by seller for improving the design, at buyer-importer's request - 4,000 euro (iv) Transit Insurance - 2,000 Euro. (v) Exchange rate 1 Euro = Rs. 60 (vi) Basic duty 25%, Rate of CVD 16%, Rate of SAD 3% (vii) The price offered to the importer is a special discounted price. The buyer-importer has been specifically directed not to disclose this price to any buyer in India. Seller's normal selling price is 1,20,000 Euro (8 marks) **(b) Briefly discuss the aspects relating to self assessment by an importer on the basis of 'Risk Management System'. State the categories of eligible and ineligible persons who can make use of this scheme (7 marks)**

Q5(a) Arun of Tamil Nadu sells his land along with the standing crops and trees for Rs. 20 lakhs to David of Kerala. Central Sales Tax Officer wants to assess to tax the value of standing crops and trees in the said land. Comment (4 marks) (b) The following items relating to inter-State sales have been recorded separately in the books of account of Nathan & Co., dealer in CST: (Rs. in '000) (i) Sales as per bills (excluding CST) - 1,42 (ii) Excise Duty – 80 (iii) Labour charges for packing goods – 18 (iv)

Insurance charges incurred by Nathan & Co. for goods transported (charged separately in invoices) – 20 (v) Freight charges incurred for moving goods from factory to depot – 45 (vi) Freight charges incurred from depot to buyers (incidental to sale) – 25 (vii) Design charges incurred for manufacturing goods as per buyer's design – 5. - - You are required to compute the taxable turnover of Nathan & Co. and the CST payable. Brief treatment of each item should be given (8 marks) (c) What is 'Acquisition fraud' in the context of VAT? (3 marks)

Q 6. Write short notes on any three – (a) CENVAT credit where inputs are partially used for manufacture of dutiable goods/taxable services (b) Deemed manufacture as per excise law is legal fiction (c) Reverse charge in VAT and service tax (d) Simplified Brand Rate Fixation scheme (e) Monetary limits of adjudicating authorities, Officers of Central Excise, Customs and Service Tax (5 x 3 = 15 marks)

Q7(a) Mr. Suresh Raina, who is rendering taxable services, wants to know what he should do, if he discovers a mistake after 90 days from the date of filing service tax return, resulting in short/excess payment of tax. Can he file a revised return? (4 marks) (b) Is there any obligation to file service tax return, even if no service tax is payable? (3 marks) (c) Discuss briefly the provisions conferring general exemption to small service providers in die context of levy of service tax (8 marks)

Q8(a) What are the methods of valuation of customs duty? Is it mandatory that they should be applied sequentially? (4 marks) (b) Mr. Ram, the assessee, has purchased goods from Mr. Rahim, on high sea sales basis. Mr. Rahim has imported the same from Mr. Antony of Malaysia for an invoice value of 10,000 USD. Mr. Rahim has charged the assessee for 11,000 USD. The assessee contends that while arriving at die assessable value for customs, the price charged by die foreign supplier to Mr. Rahim should be taken as die basis. Is die same correct? (3 marks) (c) Mrs. Bose is rendering taxable services, which were brought into the service tax net w.e.f. 1.5.2009. The following information are made available to you: - (i) Amount received on 10.5.2009 for services provided in April, 2009 – Rs 2,00,000 (ii) Advance received from one client on 10.5.2009 – Rs 3,39,000 (iii) For balance services of Rs. 7,00,000 bill was raised on 12.3.2010 and the amount due was received from die above client on 15.3.2010 (iv) Other taxable services billed and received during 1.5.2009 to 31.3.2010 – Rs 4,00,000 (v) Value of free services rendered in October, 2009 - 1,50,000. - - Compute die value of taxable services and service tax payable for the year ended 31.3.2010 (8 marks).

ICWAI Intermediate - Applied Indirect Taxation December 2009

Answer question No. 1 which is compulsory and any five from the rest.

Q1 (a) State with reasons whether the following is true or false. (i) Parts used for repair or replacement during warranty period are excisable (ii) the conveyances are not allowed to leave India without written permission from the customs authorities. (iii) Central excise authorities cannot raise demands contrary to the approved classification/price list retrospectively (iv) There are common provisions in Customs/Central Excise/ST (v) Delay in filing appeal can be condoned but condonation is not a matter of right (3 x 5 = 15 marks)

Q1(b) Fill up the blanks: (i) Appeals under Central Excise and Customs must be filed within _____ days from the date of communication of order (ii) Exclusive economic zone extends to _____ nautical miles from the base line under the Customs Act. (iii) Compressing and bottling gas _____ (is/is not) manufacture. (iv) Erection of civil structure _____ (is/is not) taxable services. (v) At present deduction _____ (is/is not) available on the basis of equalized freight and Central Excise (vi) Laptop Computer (Note Book Computer) brought as baggage by person above 18 years of age _____ (is/is not) fully exempt from customs duty. (vii) Captive consumption is _____ to duty, value is determined on the basis of cost + _____. (viii) Job work is not _____. (ix) Show cause notice issued by an officer beyond his power will be _____. (10 marks)

Q2 (a) Briefly examine the significance of the levy of “anti Dumping” duty under the Customs Tariff Act. (b) Sakti has imported certain goods by AIR. FOB value of goods is \$ 2,000, freight \$ 500 and insurance \$ 50. Rate of Exchange is \$ 1 = Rs. 50. Landing charges is 1% of CIF value. Calculate the assessable value for Customs Duty (7+8 = 15 marks)

Q3 Write short notes on any three of the following. (a) Related person under the Central Excise Act. (b) Determination of value when goods are manufactured on job work basis. (c) Transaction value under the Central Excise Act. (d) Special Audit or Cenvat Credit Audit under section 14AA of the Central Excise Act (3 x 5 = 15 marks)

Q4 (a) Explain the provisions of interest on delayed payment under Central Excise and Customs (b) Explain the provisions of the Central Excise Act, 1944 which empower the Central Government not to recover the duties of excise not levied or short levied as a result of general practice. If the duty has been paid despite such practice, is it refundable? (7+8 = 15 marks)

Q5. (a) State briefly whether sales tax will be levied on the following: (i) Shares and Debentures (ii) Sale of newspapers (b) Write notes on – e-payment of excise duty and state whether it is compulsory or not (6+9 = 15 marks)

Q6. (a) State how the VAT system operates (b) What will be the consequences in case the ‘subject goods’ are not used by manufacturer for the purpose specified in the notification? When will the subject goods be deemed as not been used for intended purpose? (c) Discuss the validity or otherwise of the following statements with reasons – (i) Input cleared as such to a job worker on 1.10.2008 was not returned in 180 days, assessable value being Rs. 20,000, Excise duty @ 16.48%, 50% of the inputs were received on 1.04.2009. In this situation no Cenvat will be allowed in the year ending on 31.03.2009 (ii) Purchased a plant for Rs. 1,16,480 cum-duty (excise duty rate 16.48%) on 12.12.2008 and received the plant into factory on 5.4.2009. Cenvat allowed will be only Rs. 8,240 for the year ended on 31.03.2009 (5+5+5 = 15 marks)

Q7. (a) A dealer effected following interstate sales during the quarter January-March 2009. (i) Invoice No. 1 dt. 01.01.09 Rs. 1,02,000 inclusive of tax (ii) Invoice No. 2 dt. 31.01.09 Rs. 50,000 exclusive of tax CST Rs. 1,000 Total Rs. 51,000 (iii) Invoice No. 3 dt. 01.02.09 Rs. 40,800 inclusive of CST (iv) Invoice No. 4 dt. 15.02.09 Rs. 25,500 inclusive of CST (v) Invoice No. 5 dt. 01.03.09 Rs. 2,00,000 exclusive of tax. - - Following further information is given - All registered dealers gave form ‘C’ except purchase of goods of invoice No. 5. 50% of goods pertaining to invoice No. 1 are returned on 21.3.09. 10% of goods pertaining to invoice No. 2 is rejected. CST is 2%, State Sales Tax is 8%. Compute the taxable turnover and tax payable (8 marks) **Q7(b)** CST is single point tax. Elucidate. A Sells goods worth Rs. 1,00,000 in Delhi to ‘B’ a registered dealer in Madras. B gives ‘C’ form and pays CST of Rs. 2,000/- B sells it to ‘D’ for Rs. 1,10,000 a registered dealer by delivery of R/R and endorsing it on the back of R/R. Is there any CST liability to ‘D’? **Q7(c)** What is deemed sale in CST? **Q7(d)** Why certificate in form ‘H’ is necessary to a penultimate exporter? (8+4+2+1 = 15 marks)

Q8. Describe, in brief, the procedure for export of goods under bond as per Rule 13 of C.E. Rules, 1944 (15 marks).

Applied Indirect Taxation – June 2009

Answer question No. 1 which is compulsory and any five from the rest.

Q 1 (a) Fill in the blanks : (i) Goods under Central Excise must be _____ (movable/immovable) and _____ (marketable/packaged). (ii) CETA specifies some _____ (process/operations) as amounting to manufacture. This will be said to be manufactured _____ (even if/unless) as per court decisions they do not amount to manufacture. (iii) Processing can amount to manufacture if a _____ (new/existing) and _____ (identifiable/similar) product known in the market emerges (iv) Exclusive economic zone extends to _____ (200/300) nautical miles from the base line of the coast. Beyond _____ (100/200) nautical miles is High Seas. (v) General Free Allowance (GFA) under Customs Act is _____ (allowed/not allowed) on unaccompanied baggage; GFA is _____ (allowed/not allowed) on alcoholic liquor or wines up two litres (10 marks)

Q 1 (b) State with reasons, whether true or false; (i) Brand owner is considered as manufacturer under Central Excise. (ii) Under Central Sales Tax Act, for an activity to be classified as business, profit motive is immaterial. (iii) The concession under Customs Act for person who is transferring his residence to India whereby he is eligible to bring used personal and household articles to India without duty is applicable to Indian residents returning from overseas after 2 years but not available to foreigners (15 marks)

Q2 (a) What do you understand by transit and transshipment of goods? Under what conditions do they enjoy exemptions from duty under the Customs Act, 1962? (b) The assessable value of an imported item is Rs. 1,00,000. Basic customs duty is 20%, additional duty of customs is 2% and secondary and higher education cess is 1% on duty. No additional duty of customs is chargeable on such goods u/s 3(5) of the Act. Compute the amount of customs duty payable. Also state the amount of credit available to the importer (10+5 = 15 marks)

Q 3 Write short notes on any three of the following: (a) Appeals to appellate authority under CST Act (b) Meaning of "accessory" for excise duty purpose (c) Duty Entitlement Pass Book (DEPB) scheme (d) Special Audit as per S. 14A of Central Excise Act, 1944 (5 x 3 = 15 marks)

Q 4 (a) Who is a job worker? State how is value determined when the goods are manufactured on job work basis. (b) A Ltd. supplies raw material to a job worker J Ltd. After completing the job-work, the finished product of 5, 000 packets are returned to A Ltd. putting the retail sale price as Rs. 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 supplies – Rs 28,000, Job worker's charges including profit – Rs. 9,000/- Transportation charges for sending raw material to the job worker – Rs. 4,000/- Transportation charges for returning the finished packets to A Ltd. – Rs. 4,000/- (9+6 = 15 marks)

Q 5 (a) Outline the provisions relating to registration under service tax. (b) Explain 'Export of Services' under service tax. What is the exemption available to exporter of service from service tax? (7+8 = 15 marks)

Q 6 (a) A dealer effected following inter-state sales during the quarter July, 2008-September,2008. (a) Invoice No. 25 dated 5th July, 2008: Rs. 1,12,400 (tax not shown separately), (b) Invoice No. 26, dated 13th August, 2008: Rs. 50,000 plus tax @ 4% i.e. Rs. 2,000, Total Rs. 52,000, (c) Invoice No. 27 dated 18th September, 2008: Rs. 20,000 plus tax @ 4% Rs. 800 i.e. Total Rs. 20,800, (d) Invoice No. 28 dated 27th September, 2008: Rs. 31,200. Tax not shown separately. Goods returned within 6 months were Rs. 8,400 (inclusive of taxes). Sales Tax rate is 4% if goods are sold within the State. What is the turnover and what is tax payable, if the buyers did not issue C Form? (b) What is the impact of VAT on CST? (8+7 = 15 marks)

Q 7 (a) Explain the provisions relating to Cenvat credit on goods, services and capital goods under Central Excise **(b)** An assessee cleared various manufactured final products during June, 2008. The duty payable for June, 2008 on his final products was as follows: Basic Rs. 2,00,000, Education Cesses-as applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows: Basic duty Rs. 50,000, Education Cess Rs. 1,000, SAH education Cess Rs. 500. Excise duty paid on capital goods received during the month was as follows: Basic duty Rs. 12,000, Education Cess Rs. 240, SAH Education Cess Rs. 120. Service Tax paid on input services was as follows: Service Tax Rs. 10,000, Education Cess Rs. 200, SAH Education Cess Rs. 100. How much duty the assessee will be required to pay by GAR-7 challan for the month of June 2008, if assessee had no opening balance in PLA account? What is last date for payment? (8+7 = 15 marks)

Q 8 (a) Mention briefly any five illustrative cases under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, where all industry Drawback rate will not apply. **(b)** Write notes on Special Brand Rate. **(c)** ABC Co. Ltd. provided services valuing Rs. 8 lakhs during the financial year 2007-08. During 2008-09, it has provided taxable services valuing Rs. 10 lakhs and has received payments towards payable services Rs. 8.5 lakhs. It has also received services in the nature of transport of goods by road valuing Rs. 50,000, in respect of which it is the person liable to pay service tax. Compute the service tax, if any, payable by ABC Co. Ltd. for the financial year 2008-09. It is given that goods transport service is exempt to the extent of 75% of value thereof (6+4+5 = 15 marks).

Applied Indirect Taxation – December 2008

Answer question No. 1 which is compulsory and any five from the rest.

Q 1(a) Fill in the blanks: (i) Goods covered by Central Excise Tariff but fully exempt from duty are _____ (excisable/not excisable) (ii) SSI units whose turnover exceeds Rs. _____ per annum have to furnish declaration in prescribed form for Central Excise purposes. (iii) Basic Customs duty is levied under section _____ of the Customs Act. (iv) Compressing and bottling gas _____ (is/is not) manufacture. (v) A secondary and higher education cess of _____ (1%/2%) has been imposed on services liable to service tax under the Finance Act, 2007. (vi) Affixing brand name, labelling or re-labelling and repacking from bulk pack to small pack of readymade garment _____ (is/is not) manufacture. (vii) Cenvat credit _____ (can/can not) be utilised for payment of service tax on output service. (viii) In case of Central Excise and Customs, appeals must be filed within _____ days from the date of communication of order. (ix) Job work done under Cenvat provisions _____ (is/is not) exempt from service tax. (x) Finance Act, 1994 which contains provisions relating to service tax _____ (does/does not) provide for criminal liability in service tax matter [1 x 10 = 10 marks]

Q1 (b) State with reasons, whether True or False: (i) Cenvat credit on capital goods can be availed in full in the year of purchase. (ii) Security demanded from dealer under the Central Sales Tax Act, 1956 can be satisfied in the form of Security Bond. (iii) Wastes and scrap are always treated as excisable goods. (iv) In case of delayed payment of service tax the assessee has to pay simple interest @ 13% for the period for which the payment is delayed. (v) Excise duty is payable on all sample, even if given free [3 x 5 = 15 marks]

Q 2(a) Briefly explain the procedure for assessment and clearance of imported goods through a customs sea port under the Customs Act, 1962. **(b)** Customs value (Assessable value of imported goods) is Rs. 4,00,000. Basic customs duty payable is 10%. If the goods were produced in India, excise duty would have been 16%. Education cess is as applicable. Special CVD is at appropriate rates. Find the customs duty payable. How much Cenvat can be availed of by importer if he is manufacturer? [8+7 = 15 marks]

Q 3(a) Distinguish 'Zero rated sale' and 'exempt sale' with reference to VAT. **(b)** Write notes on - (i) Doctrine of unjust enrichment in case of refunds under Central Excise and Customs. (ii) Appeals under service tax [5 + 5x2 = 15 marks]

Q 4(a) State the provisions relating to general exemption available to small service providers. **(b)** State briefly the provisions for valuation of taxable services for charging Service Tax [7+8 = 15 marks]

Q 5(a) State with reasons whether sales tax will be levied on the following (any two): (i) Sale of newspapers (ii) Development of software for marketing (iii) Shares and debentures **(b)** Write short note on taxable turnover [5x2 + 5 = 15 marks]

Q 6(a) What is special Audit under section 14AA of CEA? (Cenvat credit Audit) **(b)** Who can conduct such audit? **(c)** Who can order such audit? **(d)** What is the time limit for submission of report? [4+3+4+4 = 15 marks]

Q 7(a) Determine the value of a product and excise duty payable on the basis of following data (i) Goods sold at Depot Price 20,000, Fright from factory to Depot 500, Insurance 500, Octroi 1200, State VAT 800, CE 16%, Education Cess 2% SAH Cess 1% (ii) Complete AV2CE if the goods are used for captive consumption. Assume cost of production is 80% of the invoice price in above question. **(b)** Write short note on Exemption to Small Scale Industry units [6+4+5 = 15 marks]

Q8(a) A Dealer effected following inter state sales during 2nd quarter of 2008. Invoice No. 1 Dt.1st August,08 – Rs. 20,000 + C.S.T. 3%, Invoice No. 2 Dt. 15th August, 08 – Rs. 70,000 + T. 3%, Invoice No. 3 Dt. 31st August, 08 – Rs. 51, 500 tax not shown, Invoice No. 4 Dt. 15th October, 08 – Rs. 15,000 + 3% S.T., Invoice No. 5 dt. 31st October, 08 – Rs. 20,000 + 3% S.T. Goods worth 5,000 exclusive of Tax were returned from Invoice No. 4 within 6 months. Compute turn over and C.S.T. making necessary assumption. **(b)** Offences under C.S.T. are cognizable mention a few. **(c)** Ability to pay is one of the most important cannons of Taxation [8+3+4 = 15 marks]

Old Syllabus

JUNE 2008

Business Taxation

ICWA Inter- Revised Syllabus – June 2008 – Business Taxation - The paper consists of section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only Section II is given below.

Section – B

Q5. (a) Fill up the blanks:

- (i) Ownership of raw materials is _____ (relevant/not relevant) for excise duty liability.
- (ii) Goods were removed by the manufacturer without payment of excise duty on the premise that the goods are exempt. Later it transpires that such goods are excisable at 15% (all inclusive). The manufacturer has invoiced at Rs. 11,500/-. The assessable value is Rs. _____.
- (iii) Customs duty is levied under section _____ of the Customs Act.
- (iv) Foreign visitors are permitted to bring articles upto Rs. _____ for making gifts, without payment of duty.
- (v) Stock transfer to branch is not treated as inter-State sale when Form _____ is submitted.
- (vi) Application for registration under the Central Sales-Tax Act, 1956 should be filed within _____ days (1 x 6 = 6 marks)

Q 5(b) State with reasons, whether True or False:

- (i) Waste and Scrap are always treated as excisable goods.

(ii) In exceptional circumstances, goods can be cleared from factory without payment of excise duty and stored in any other premises.

(iii) Since the Government wants to encourage exports, there is export (customs) duty on very few items.

(iv) There is no "fast track clearance" for any importer towards clearance of imported goods.

(v) Importers can store imported goods without payment of duty in public warehouse or private warehouse.

(vi) Security demanded from dealer under the Central Sales-tax Act, 1956 can be satisfied in the form of Surety Bond (2 x 6 = 12 marks)

Q 6. (a) Customs value (Assessable Value) of imported goods is Rs. 2,00,000. Basic customs duty payable is 10%. If the goods were produced in India, excise duty payable would have been 14%. Education Cess is 2% and Special Education Cess is 1%. Special CVD is payable at appropriate rates. Find the Customs duty payable. What are the duty refunds/Cenvat credits available if the importer is (i) manufacturer, (ii) service provider, (iii) trader? (b) How is the value determined for excise duty purposes when sales are made to or through a related person? (10+6 = 16 marks)

Q 7. (a) Briefly explain the provisions under the Customs Act relating to import through courier (b) Who can file refund claims under the Customs Act? (13+3 = 16 marks)

Q 8. (a) Is it correct to say that every dealer, who in the course of inter-State trade or commerce sells the goods, shall be liable to pay Central Sales Tax? Explain in detail who are all 'dealers'. (b) What are the Central sales tax rates applicable for inter-State sale of declared goods? (11+5 = 16 marks)

ICWA Inter- Revised Syllabus – December 2007 – Business Taxation - The paper consists of section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only Section II is given below.

Answer Q No. 6 which is compulsory and any two from the rest.

Q 6 (a) Fill up blanks. (i) Import manifest is required to be filed by the person in charge of vessel _____ arrival of vessel. (ii) The relevant date for foreign exchange rate for customs valuation is _____. (iii) Goods covered by Central Excise Act Tariff but fully exempt from duty are _____ (excisable/not excisable) goods. (iv) State Government _____ (can/cannot) waive the condition of submission of C Form by issue of notification. (v) SSI units whose turnover exceeds Rs. _____ per annum have to furnish declaration in prescribed form for central excise purposes. (vi) Under the Customs Act, where refund becomes due in the final assessment, interest will be payable if refund is not granted within _____. (1 x 6 = 6 marks)

Q 6(b) State with reasons, whether true or false. (i) The peak rate of basic customs duty on non-agricultural products is 15%. (ii) Cenvat credit on capital goods has to be availed in full in the year of purchase. (iii) As per section 20 of the Central Sales Tax Act, 1956, appeal may be filed within 90 days from the date on which the order is served on the aggrieved person (iv) There is no provision under the Customs Act for remission of customs duty on goods lost, damaged or pilfered (3 x 4 = 12 marks)

Q 7 (a) Vasudha Electronics Ltd. having its factory at Delhi, furnishes the following information. (i) 3000 Units sold at factory gate (ii) 6000 Units sold to dealers in Nagpur. Actual transport expenses Rs. 30,000 charged. (iii) 1000 Units sold to dealers in Lucknow, actual transport expenses Rs. 10,000, but charged to dealers at Rs. 12,000. (iv) Invoice price for the above is Rs. 10,000 per unit, excluding transport charges and all items below: (1) Sales tax shown separately Rs. 40,000 (2) Octroi shown separately Rs. 18,000. (3) Dharmada shown separately collected from dealers Rs. 12,000. The basic rate of excise duty is 16%. Determine the total excise duty payable, assuming that the dealer is not entitled to any exemption (10 marks)

Q 7 (b) Discuss whether Cenvat credit can be availed in respect of goods used for manufacture of capital goods within the factory and in respect of inputs for effluent treatment plant (6 marks)

Q 8(a) What is the effective rate of customs duty on baggage? (b) Can gold be brought into India? What is the customs duty payable thereon? Can such gold be subsequently sold in India? (c) Briefly discuss about the Deductive value method for customs valuation (4+7+5 = 16marks)

Q 9(a) What is meant by 'place of business' under the Central Sales tax Act, 1956? What should a dealer do towards registration, if he has more than one place of business? (b) What are the acts of

omission or commission which attract the penal provisions of section 10 of the Central Sales tax Act?
(c) A dealer makes inter-state sale of goods which are generally exempt within the State, to registered as well as unregistered dealers? Should he obtain any Central Sales-tax Form from the buyers? (7+5+4 = 16 marks)

Q 10 Write short notes on the following: (a) Liability of a company in liquidation, under the Central Sales-tax Act. (b) Meaning and relevance of 'Crossing Customs frontiers of India' under the Central Sales-tax Act. (c) Relevant date for rate and valuation of customs duty for imports through post and imports as baggage. (d) Exemption from registration under Central Excise Act (4 x 4 = 16 marks).

ICWA Inter- Revised Syllabus – June 2007 – Business Taxation

The paper consists of section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only Section II is given below.

Q 5. (A) Choose the correct answer: (i) In order to attract excise duty under the Central Excise Act, 1944, goods must be (a) Movable (b) Movable or immovable (c) Immovable (d) None of the above
(ii) The following is not liable to sales-tax under CST Act, 1956: (a) Newspapers (b) Lottery tickets (c) Sim cards (d) Trade Licenses (iii) R of Coimbatore, Tamil Nadu sold to a Malaysian Ship at Kochi port in Kerala, some goods for consumption on board the ship; such sale will be (a) Intra-State sale (b) Inter-State sale (c) Export sale as it is a foreign ship (d) Sale in the course of import (iv) Imported goods can be kept in custom bonded warehouse up to ____ days without payment of any interest. Beyond that period interest payable is ____ per cent (1 x 4 = 4 marks)

Q5 (B) State with reasons whether true or false: (a) There is provision for payment of Central Excise Duty "under protest". (b) Goods mentioned in Central Excise tariff but fully exempt from excise duty are not "excisable goods". (c) State Government cannot waive condition of submission of C Form by issue of a notification (d) Central Government is empowered to make Rules providing for the manner of determination of the sale price for a works contract, under the CST Act, 1956. (e) On 14.03.2007, Central Excise or customs authorities can make a provisional attachment of property of a person to whom a show cause notice has been issued (f) Customs Officer should pass an adjudication order in all situations where the assessment is done contrary to the claim of importer/exporter (2 x 6 = 12 marks)

Q 6(a) Define the term Large Taxpayer Unit (LTU) under the Central Excise Law (b) Is it compulsory for a taxpayer to join LTU Scheme? (c) Briefly discuss about the "other taxes" which are deductible in arriving at the "transaction value" under the Central Excise Act (d) SV Ltd. purchase a Boring-Drilling Machine at a cum-duty price of Rs. 32,14,476. The excise duty rate charged on the said machine was @ 16% plus education cess @ 2%. The machine was purchased on 01.04.2005 and disposed off on 01.10.2006 for a price of Rs. 12 lakhs. The company was claiming depreciation @ 25% following straight line method. In the light of the said information, answer the following questions: (i) What was the excise duty paid on the machine? (ii) What is Cenvat credit allowable? (iii) What is the amount of Cenvat credit reversible or duty payable at the time of clearance of the said machinery? (2+2+6+6 = 16 marks)

Q 7. (a) How is value determined for purposes of special CVD under the Customs Tariff Act? (b) Write brief note on Anti-dumping Duty (c) Briefly discuss about EDI system of assessment under the Customs Act (5+8+3 = 16 marks)

Q8 (a) Explain the term "Crossing the customs frontiers of India" as per the Central Sales-tax Act, 1956. (b) Mr. Ashoke Kumar, a first stage dealer in packing machinery in the city of Mumbai, furnishes the following data: (i) Total inter-State sales during financial year 2006-07 CST not shown separately – Rs. 92,50,000, (ii) Above Sales include: Excise duty – 9,00,000, Freight (of this Rs. 50,000 is not shown separately in invoices) – Rs 1,50,000, Insurance charges incurred prior to delivery of goods – Rs 32,000, Installation and commissioning charges shown separately – Rs 15,000. Determine the turnover and CST payable, assuming that all transactions were covered by valid "C" Forms (c) What is "interest-free period" in respect of warehoused goods under the Customs Act, 1962? Is

interest payable when warehoused goods are exempt from duty on the date of clearance? (4+6+6 = 16 marks)

ICWA Inter- Revised Syllabus – December 2006 – Business Taxation

The paper consists of section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only Section II is given below.

Q 5. (a) Answer the following giving brief comments where applicable; (i) Fill in the blanks: Captive consumption means _____. (ii) An SSI unit manufacturing goods with other's brand name is not entitled to any exemption from duty. However, it can avail SSI exemption, if goods are manufactured in a specified area. Which is that area? (iii) A dealer in Patna sold to a ship, goods for consumption on board the ship at Mumbai port. The sale will be (a) Inter-State sale (b) Sale in Course of export (c) Inter-State sale within Maharashtra (d) None of above. (iv) VAT rate of gold, if sold within State of Gujarat, is 1%. If gold is sold to a unregistered buyer in Delhi, the CST rate will be (a) Nil (b) 1% (c) 4% (d) 10% (v) An assessee was availing SSI exemption from 1-4-2005. He crossed turnover of Rs. 100 lakhs on 15-11-2005 and started payment of excise duty. He had received machinery on 10-11-2005 on which excise duty paid was Rs. 3,20,000. He intends to avail Cenvat credit of this duty. Can he do so? (vi) State true or false: Trade discount is permissible as deduction from assessable value for Central Excise, only if it is given before removal from factory. Discount given later is not allowable as deduction. (vii) State True or False: Dharmada (Charity) charged in invoice is required to be included while calculating Assessable Value for purpose of Central Excise. (viii) Fill up the blanks; A SSI unit is eligible for exemption up to Rs. _____ lakhs. However, if its turnover in the previous financial year was more than Rs. _____ lakhs, it is ineligible for exemption from duty in current year (1 x 8 = 8 marks)

Q 5 (b) Following transactions took place in a month: (i) The manufacturer received inputs with Invoice evidencing payment of duty of Rs. 42,800 on 2nd. The invoice was marked 'Original for Buyer'. (ii) 400 pieces of Final products were dispatched under Invoice on 6th. Assessable value was Rs. 80 per piece and excise duty rate was 16%. (iii) 1,000 pieces of input 'I' were sent outside for job work on 10th. When the inputs were received, credit of duty of Rs. 15,000 was taken on those inputs. (iv) Some inputs were purchased from a manufacturer in Chennai in March, 2004. These were directly dispatched from factory of the supplier to factory of job worker. Duty paid on the inputs is Rs. 40,000. Out of those inputs, 45% of inputs were received after carrying out the job work, on 18th. (v) An imported consignment of raw materials was received on 19th. The materials were not imported directly, but was purchased from an importer. The invoice of importer showed that customs duty paid was Rs. 26,000, special duty of Rs. 3,000, Additional customs duty paid was Rs. 13,200 and anti dumping duty paid was Rs. 5,400. The importer is registered with Central Excise authorities. (vi) Goods worth Rs. 2,00,000 were dispatched on 24th. Rate of duty was 16%. - - There was no opening balance in PLA or Cenvat credit account at the beginning of the month. Calculate the amount of excise duty payable (1 x 6 = 6 marks)

Q 6 (a) Elaborate the concept of transaction values as assessable value under Central Excise Act, 1944. (b) Enumerate the circumstances when raw material supplier will be treated as manufacturer of goods (13+5 = 18 marks)

Q 7. (a) (i) 500 pieces of inputs were received. Duty paid on these goods was Rs. 2,500. These were issued to production. While on production line, a fire broke out and 200 pieces of inputs lying on the shop floor were destroyed. (ii) 1000 litres were received on which duty paid was Rs. 18,000. These were issued to production. Out of these, 940 litres of final products were manufactured. 60 litres of inputs were lost in process. Discuss eligibility of Cenvat credit in the above cases (2+2 = 4 marks)

Q 7(b) A manufacturing unit undertook the following job work: (i) Machining of raw materials supplied by the customer: The material was sent under Cenvat challan. Job work charges were Rs. 30,000. Cost of the raw material was Rs. 3,50,000. These were returned after job work. (ii) Repairs of a component: Original cost of component was Rs. 25,000, Repair Charges were Rs. 3,000. The component was sent by customer under cover of his letter. - - If excise duty is payable @ 15%, find

out total duty payable and procedure to be followed by manufacturer for dispatch in each case after carrying out the work (4 x 2 = 8 marks)

Q 7(c) An Indian company imported certain consumer goods from abroad with MRP printed in packing cartons. In respect of similar goods manufactured in India, excise duty is payable on basis of MRP. The importer will be using the goods for further processing. Customs authorities contend that CVD will be calculated based on the MRP printed in the goods. Is this proper? Will your answer be different, if the goods are imported for retail sales? (6 marks).

Q 8. (a) Explain how Cenvat provisions are used for providing duty relief to exported goods. (b) Write a note on first appraisal and second appraisal systems under the Customs Act, 1962. (c) The gross turnover of a dealer for the financial year 2005-06 is Rs. 54 lakhs (including CST). The CST on goods transacted by the company are subject to local State Sale-tax @ 7%. The dealer made inter-State Sales of Rs. 24 lakhs to registered dealers, which includes erection charges of Rs. 3 lakhs, excise duty of Rs. 1.50 lakhs and packing charges of Rs. 60,000. Fright and delivery charges shown separately in the invoice is Rs. 60,000. The dealer also made inter-State sales aggregating to Rs. 30 lakhs to unregistered dealers, which included excise duty of Rs. 2.50 lakhs and transport charges of Rs. 1 lakh charged separately in the invoice. There was a sales return of goods worth Rs. 50,000 (invoice value) within 6 months in respect of sales to unregistered dealers. Calculate the CST payable and turnover of the company (5+5+8 = 18 marks)

June 2006

Answer Question No. 5 which is compulsory.
and any two from the rest from this Section

Q 5 (a) Answer any eight from the following: (i) If customs duty is evaded by suppression of facts or fraud or wilful misstatement, there is mandatory penalty equal to _____. (Value of goods, duty and interest payable, twice the duty and interest payable, customs duty payable) (ii) Imported goods can be kept in customs bonded warehouse without payment of interest for a period of _____ days. (30,60,90,180) (iii) Value of software loaded on computer at the time of clearance from factory, is required to be _____ (excluded/included) for purpose of valuation of computer, under section 4 of Central Excise Act. (iv) A company has factory in Surat and HO in Mumbai. It pays audit fees from Mumbai, for auditing its annual accounts. The Auditor charged service tax in his Invoice. Can the company avail Cenvat credit of that service tax? (v) State correct or wrong: Countervailing duty (CVD) is payable on assessable value plus basic customs duty plus anti-dumping duty. (vi) A manufacturer purchased certain inputs from 'X'. The assessable value is Rs. 10,000 and excise duty Rs. 1,632 (including education cess) [Total Invoice Rs. 11,632]. The manufacturer paid only Rs. 10,200 to 'X' in full settlement of his Bill. How much Cenvat credit can be availed by the manufacturer? (vii) A assessee cleared some goods on payment of excise duty, considering value as Rs. 20,000. Later, he found that actual value was Rs. 24,000. Which document he should prepare to pay the differential duty so that buyer can avail Cenvat credit? (viii) Excise Departmental appeal against order passed by Commissioner (Appeals) can be filed when it is authorised by _____. [Committee of two Commissioners/Committee of two Chief Commissioners/Chief Commissioner/ Board i.e. CBE & C] (8 marks)

Q5 (b) An assessee cleared his manufactured final products during January 2006. The duty payable for the month on his final products was as follows: Basic duty – Rs. 48,000, NCCD – Rs. 2,000, Education cess – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows - Basic duty – Rs. 40,000 plus applicable education cess; Special Excise Duty – Rs. 4,000 plus applicable education cess. Service tax paid on input services was as follows: Service tax – Rs. 8,000. Education cess – Rs. 160. How much duty the assessee will be required to pay through account current for the month of January 2006? [6 marks]

Q 6. (a) Turnover of an SSI unit during financial year 2005-06 was as follows: (i) Clearances under his own brand name – Rs. 110 lakhs (ii) Clearances of goods bearing other's brand name, on full payment of duty – Rs. 180 lakhs (iii) Waste and Scrap – Rs. 10 lakhs (iv) Goods which were exempt

from duty – Rs. 225 lakhs (v) Job work done under notification No. 214/86-Central Excise-Job Charges-Rs. 30 lakhs, Cost of material on which job work done – Rs. 120 lakhs (vi) Exports – Rs. 80 lakhs. Can he avail SSI exemption during 2006-07? **(b)** Explain meaning of ‘benches’ of Customs, Excise and Service Tax Appellate Tribunal (CESTAT). Distinguish between Principal and Zonal Bench and Single Member bench and Full Bench. **(c)** Mr. and Mrs. Bapat visited Germany as tourist and bought a personal computer for Rs. 52,000 and a laptop computer of Rs. 78,000 while returning to India, besides their personal effects valued at Rs. 1,33,000. What is the customs duty payable, if duty on baggage is 35% plus education cess of 2% [7+5+6 = 18 marks].

Q 7 (a) Customs Valuation Rules provide that if valuation is not possible on the basis of transaction value of identical goods, valuation can be done on basis of transaction value of ‘similar goods’. What are the distinctions and similarities between ‘identical goods’ and ‘similar goods’? **(b)** State giving brief reasons, whether sales tax can be levied on following transactions: (i) Sale of newspapers (ii) Giving utensils on rental basis (iii) Supply, erection, testing and commissioning of water supply line. **(c)** A manufacturer sold the goods @ Rs. 300 per piece without charging excise duty, as he was under impression that his product was exempt from duty. Later, it was found that the product was dutiable @ 16%. Excise Department claimed that since goods were removed without duty, assessable value should be Rs. 300 and duty @ 16% plus education cess of 2% is payable on assessable value of Rs. 300. Assessee contended that price of Rs. 300 should be taken as cum-duty price and actual duty payable should be calculated by back calculations. Who is correct? Explain and determine the correct duty payable per piece [6+6+6 = 18 marks].

Q 8 (a) Discuss provisions relating to ‘deemed manufacture’ in respect of goods covered under MRP provisions of valuation **(b)** Discuss the circumstances when an Advance Ruling will be void under Central Excise Act, 1944. **(c)** Write a short note on Provisional Assessment under Customs Act, 1962 [6+6+6 = 18 marks]

December 2005

The paper covers section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only section II is given below.

Answer Question No. 5 which is compulsory. and any two from the rest from this Section

Section II

Q 5 (a) Answer the following (i) Fill in the blanks – An EOU Unit is required to execute a _____ bond. (ii) An EOU unit can obtain indigenous material without payment of duty on submission of _____ certificate. (iii) State true or false – Petrol is ‘declared goods’ under CST Act. (iv) State true or false – State Government can waive condition of submission of C Form by issue of a notification under CST Act. (v) A registered dealer has procured some goods from depot of a manufacturer. Is the registered dealer ‘first stage dealer’ or ‘second stage dealer’? (vi) Fill in the blank – A service provider is providing both taxable and exempt services and he is unable to bifurcate the common input services used for providing exempt output services. In such case, his Cenvat credit of input services is restricted to _____ (10%, 20%, 33%, 40%) of service tax payable on his output taxable services. **(b)** Selling price of a product is Rs. 10,000. It is inclusive of outward freight of Rs. 250, packing charges of Rs.200, CST @ 4%, excise duty @ 16% and education cess @ 2%. Find the Assessable Value. **(c)** (i) State the basic two requirements that should be satisfied for treating something as “goods” for the purpose of levy of Excise Duty (ii) XYZ situated in Kolkata placed order for a certain product with the manufacturer ABC in Mumbai. The product manufactured to the buyer’s specification by ABC is transferred by ABC to its branch in Kolkata. The Excise authorities refused to treat the transfer from Mumbai to Kolkata branch as “Branch Transfer” and treated it as “Sale”. Are they justified in doing so? (6+8+6 = 20 marks)

Q 6 (a) Explain provisions in Cenvat Credit Rules in respect of ‘Input service distributor’ **(b)** From Central sales tax point of view, distinguish between goods returned by buyer and goods rejected by buyer. **(c)** State purpose and use of “Yellow Bill of Entry” (5 x 3 = 15 marks).

Q 7. A large manufacturing unit undertook following job work: (a) Machining of raw materials supplied by the buyer. The material was sent under Cenvat challan. Job work charges were Rs. 30,000. Cost of raw material was Rs. 3,50,000. These were returned after job work. (b) Processing of inputs sent by a buyer under his own (buyer's) challan. Processing charges were Rs. 10,000 and cost on inputs was Rs. 2,00,000. (c) Repairs of a component. Original cost of component was Rs. 25,000 and repairs charges were Rs. 3,000. The component was sent by customer under cover of his letter. In all these cases, raw material was sent by customer. Excise duty payable is 16% plus education cess of 2%. You are required to (a) Find total duty payable, (b) Procedure to be followed by manufacturer for dispatch in each case after carrying out job work (15 marks).

Q 8 Write notes on: (a) Aggregate sale price under CST Act, 1956 (b) Unaccompanied Baggage under Customs Act, 1962 (c) House mark and Brand name under the Central Excise Act, 1944 (5 x 3 = 15 marks)

June 2005

The paper covers section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only section II is given below.

Answer Question No. 5 which is compulsory. and any two from the rest from this Section

Section II

Q 5 Fill up the blanks (with the appropriate expression out of those put in brackets where applicable.) **(i)** SSI units paying duty under notification No. 9/2003-Central Excise have to pay excise duty on ----- (Monthly/quarterly/half yearly) basis. They have to file return within the prescribed time on -----(monthly/quarterly/half yearly/yearly) basis. **(ii)** A registered dealer has procured some goods from depot of a manufacturer. The registered dealer is ----- ('first stage dealer'/'second stage dealer'). Invoice of second stage dealer is ----- (required/not required) to be authenticated by Inspector of Central Excise. **(iii)** Advance licence is ----- (transferable/not transferable). Advance licence -----(can be/cannot be) issued for deemed exports. **(iv)** Duty drawback on re-export is allowable if goods are re-exported within -----years from date of import. -----of customs duty which was paid while importing the goods is allowed as duty drawback u/s. 74 of Customs Act. **(v)** EOU units can sell part of their production in domestic market up to -----% of their FOB value of exports in previous year, with permission from -----.**(vi)** W.e.f. 1-11-2004, assessee paying duty of rupees ----- or more per annum through PLA, should file Annual Financial Information Statement for the proceeding financial year by ----- of succeeding year in Form ER-4. **(vii)** Where an assessee has opted for provisional assessment of central excise duty, if differential duty is found to be payable on finalization of assessment, the rate of interest chargeable under section 11AA or 11AB is -----%. The time limit for finalization of provisional assessment is -----. The said time limit for finalization or provisional assessment can be extended for a further period of ---- **(viii)** In case of transfer of business, the successor in business is ----- (liable/not liable) for the excise dues of the predecessor **(ix)** CESTAT can grant a maximum of ----- adjournments. **(x)** Education cess is ----- (payable/not payable) on safeguard duty levied under section 8B of the Customs Act. **(xi)** W.e.f. 10-09-2004, a manufacturer producing both exempt as well as non-exempt services, not maintaining separate accounts would pay excise duty at ----- & Education cess is -----(payable/not payable) on the same. (20 marks)

Q 6 (a) An SSI unit, which is a partnership firm, has achieved turnover of Rs. 90 lakhs in 2003-04. It is receiving good orders and its turnover may cross Rs. 100 lakhs in current year. It is planning to start another unit so that SSI exemption can be availed for both the units. The firm approaches you for advice. Advise them the legal position with reference to clubbing provisions of the Central Excise Act. **(b)** Briefly explain the term "dealer" as per the Central Sales-tax Act, 1956 (10+5 = 15 marks).

Q 7 (a) Briefly explain the provision in respect of 'burden of proof' in respect of goods covered under section 123 of Customs Act, 1962. List at least four articles which are covered under these provisions. **(b)** FOB Cost of an article imported on 10-12-2004 is 3000 UK pounds. Insurance and transport costs are not available. On the date of filing of Bill of entry, RBI rate of USD was Rs. 43.37

and inter-Bank closing rate was Rs. 43.38 per USD and Rs. 69.38 per UK pound. Exchange rate as per Customs notification was Rs. 69.78 per UK pound. Assuming customs duty of 20% and excise duty payable on similar product in India as 16%, find the total duty payable. **(c)** Briefly discuss about interchangeability of duties for Cenvat credit (6+5+4 = 15 marks).

Q 8 (a) Gross inter-state sales of ZX Co. Ltd., Patna, Bihar, were Rs. 18,00,000 during 2004-05 (April 2004-March 2005). CST was not shown separately in invoices. Other information are as follows: (i) If product P is sold within State of Bihar, sales tax rate is 8%. (ii) Sales of Rs. 8 lakhs are inclusive of erection expenses of Rs. 1,00,000, excise duty of Rs. 76,000 and packing charges of Rs. 25,000. The sale price is also inclusive of trade discount of Rs. 24,000, which has been later given by issuing a Credit Note. Buyers of these goods have issued form 'C' for these purchases. (iii) Balance sales of Rs. 10 lakhs are inclusive of excise duty of Rs. 95,000 and outward freight of Rs. 30,000. The freight was charged separately in Invoice. Buyers of these goods have not issued any declaration under Central Sales Tax Act. Out of these sales, goods of Rs. 2 lakhs were returned by customers. The goods were dispatched in February 04 and returned in June 04, i.e. after end of the accounting year. Find the turnover and CST payable. **(b)** What is meant by "Indian customs water" under the Customs Act, 1962? (10+5 = 15 marks)

December 2004

The paper covers section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only section II is given below.

Section II

Q No. 5 carrying 18 marks which is compulsory. 2 other questions each carrying 16 marks are to be answered out of the remaining three questions in section II.

Q 5 An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds. Other details are as follows: **(i)** Freight from UK to Indian port was 700 pounds. **(ii)** Insurance was paid to insurer in India: Rs. 6,000. **(iii)** Design and development charges of 2,000 UK pounds were paid to a consultancy firm in UK. **(iv)** The importer also spent an amount of Rs. 50,000 in India for development work connected with the machinery **(v)** Rs. 10,000 were spent in transporting the machinery from Indian port to the factory of importer **(vi)** Rate of Exchange as announced by RBI was Rs. 68.82 = one UK pound. **(vii)** Rate of exchange as announced by CBE&C (Board) by notification under section 14(3)(a)(i): Rs. 68.70 = one UK pound. **(viii)** Rate at which bank recovered the amount from importer Rs. 68.35 = one UK pound. **(ix)** Foreign exporters have an agent in India. Commission is payable to the agent in Indian Rupees @ 5% of FOB price. Customs duty payable was 25%. If similar goods were produced in India, excise duty payable as per tariff is 24%. There is an excise exemption notification which exempts the duty as is in excess of 16%. Find customs duty payable if (a) Importer is manufacturer using the goods himself, (b) Importer is a trader who has imported goods for subsequent sale in India (18 marks).

Q 6. (a) A small scale manufacturer having a SSI Unit has achieved turnover of Rs. 1.52 crores during the year ended 31.03.2004. Normal duty payable on the product is 16%. Find the total excise duty payable by the manufacturer during the year: (i) if the unit has availed CENVAT Credit (ii) if the unit has not availed CENVAT Credit (The turnover mentioned above is without taxes and duties) **(b)** Describe the Constitutional provisions under which central excise duty is imposed **(c)** Explain the penal provisions relating to vexatious search, seizures, etc. by Central Excise officers (8+4+4 = 16 marks).

Q 7 (a) M/s. Snow White Ltd., Mumbai sells iron rods to M/s Hyderabad Ltd. in Vijaywada, (both of them are registered dealers), for a value of Rs. 10,00,000 inclusive of CST @ 4%. The local sales tax

on iron rods in Mumbai is 3%. Ascertain the CST payable. If Hyderabad Ltd. were unable to submit Form 'C' being an unregistered dealer, what will be the CST liability, if the local sales tax rate is 12%? Note – Iron rods are not declared goods. **(b)** Inter-State sales of Deepak brothers, Bhopal, MP of product X was Rs. 6 lakhs during the year ended 31st March, 2004. The same is inclusive of sales tax charged in invoices at appropriate rates. The goods were liable to tax @ 4% if sold within State of MP. Out of the goods sold, goods of Rs. 50,000 were returned. These were sold by Deepak Brothers in February, 2004 and returned by buyer in May 2004 as they were in excess of his requirements. Some goods of Rs. 30,000 dispatched in December, 2003 were rejected by a buyer and sent back in November 2004. Find the taxable turnover and CST if C form was received from all buyers. **(c)** What is the compounded levy scheme under Central Excise Act, 1944? Explain giving instances where it is applicable (6+5+5 = 16 marks).

Q 8 Write short notes on: **(a)** Surrender of registration certificate/deregistration under the Central Excise Act, 1944 **(b)** Provisional Assessment under Customs Act 1962 **(c)** Deemed Sales under CST Act, 1956 (5+6+5 = 16 marks).

REVISED SYLLABUS

Business Taxation – Inter ICWA

June 2004

The paper covers section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only section II is given below.

Section II

Q No. 5 carrying 18 marks which is compulsory. 2 other questions each carrying 16 marks are to be answered out of the remaining three questions in section II.

Q. 5 – Answer the following, giving brief reasons/comments not exceeding 3 to 4 sentences [18 marks] **(a)** Expand the following abbreviations – EPCGS, NCCD, CCCE, DFRC **(b)** A book often contains a CD. If a software is purchased, a manual is given along with CD. The CD contains the software. Thus, in both cases, there is a book and CD. What test will be applied while classifying these products? **(c)** State true or false – (i) Trade discount is permissible as deduction from assessable value only if it is given before removal from factory. Discount given later is not allowable as deduction (ii) In case of CIF contract, the assessee will be entitled to deduction of outward insurance and freight while calculating assessable value (iii) Charges for training the buyer in use of the machinery supplied are includible in assessable value **(d)** (i) An assessee has discontinued his manufacturing activities. He has applied for cancellation of excise registration. Explain circumstances in which the Excise Superintendent can refuse cancellation of registration (ii) If assessee is required to pay differential duty subsequent to removal from his factory, which document he should prepare? **(e)** – Fill in the blanks – If duty is not paid fully on due date, assessee is liable to pay the outstanding amount along with interest on unpaid amount @ .%. per month on outstanding amount, or Rs . per day, whichever is . (higher/lower), till payment of duty **(f)** State purpose of B-2 and B-4 bond **(g)** State whether following are eligible as inputs for Cenvat – (i) Safety appliances used by workmen (ii) Light Diesel Oil (LDO) used in manufacture (iii) Dies (iv) Parts used to manufacture capital goods within the factory **(h)** An assessee had procured some inputs in May 2002 for Rs 20 lakhs. Duty paid on the inputs was Rs 3,20,000 (@ 16%). He was unable to use the inputs in view of change in market conditions. He sold the inputs in March 2004 for Rs 16,00,000. How much 'duty' or 'amount' is payable while clearing the inputs?

Q 6 (a) – An assessee has factory in Kolkata. As a sales policy, he has fixed uniform price of Rs 2,000 per piece (excluding taxes) for sale anywhere in India. Freight is not shown separately in his invoice. During F.Y. 2003-04, he made following sales – (i) Sale at factory gate in Kolkata – 1,200 pieces – no transport charges (ii) Sale to buyers in Gujarat – 600 pieces – actual transport charges incurred – Rs 28,000 (iii) Sale to buyers in Bihar – 400 pieces – actual transport charges incurred – Rs 18,000 (iv) Sale to buyers in Kerala – 1,000 pieces. – Actual transport charges – Rs 54,800. Find assessable value.

(b) What is the purpose of 'safeguard duty'? What are restrictions of WTO in respect of safeguard duty? Can it be imposed on provisional basis? [8+8 = 16 marks]

Q 7 (a) Mr. A, a person holding Indian passport, brings 1 Kg Gold, out of which Rs. 3,60,000 are in form of biscuits and balance of Rs. 40,000 in form of gold jewellery which he was using abroad (valued at international rates). What is the duty payable if (i) the person is returning after 3 months stay (ii) the person is returning after 9 month's stay abroad and the Gold belongs to him (iii) the person is returning after 8 months stay abroad and the Gold belongs to his friend, who has given it only for carrying to India. (iv) He is returning after 18 months' stay abroad (ignore difference due to minor impurities in jewellery) **(b)** Define 'Indian Customs Waters'. What is the significance in terms of Customs Act, 1962? [8+8 = 16 marks]

Q 8 Write short notes on – **(a)** Document of title of goods **(b)** Customs value as per section 14(1) of the Customs Act, 1962 **(c)** Manufacturer under the Central Excise Act, 1944 [5+6+5 = 16 marks]

December 2003

The paper covers section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only section II is given below.

Section II

Q No. 5 carrying 18 marks which is compulsory. 2 other questions each carrying 16 marks are to be answered out of the remaining three questions in section II.

Q 5. (a) What is a stock transfer/branch transfer? Is it considered as a sale under Central Sales Tax Act, 1956? **(b)** What are goods under Customs Act, 1962? **(c)** What are the inputs eligible and inputs not eligible for Cenvat in Central Excise? [6 x 3 = 18 marks]

Q 6. In the context of valuation of goods for determining the price paid or payable in the course of arriving at the assessable value under the Customs Act, discuss about the inclusion of the following items: **(a)** Cost of durable and reusable containers used for transportation; **(b)** Technical know-how drawing supplied by importer; **(c)** Air freight charges incurred for importing items urgently required, which are normally imported by sea **(d)** Cost of insurance not readily ascertainable. [3+7+3+3 = 16 marks]

Q 7. (a) Discuss about the eligibility of Cenvat Credit in each of the following situations - (i) 1000 kgs of raw materials were purchased on which duty paid was Rs. 16,000. Whilst in the production yard, they were destroyed by accidental fire (ii) 1000 kgs of raw materials on which duty paid was Rs. 10,000 was used in manufacture of a final product for which the duty payable is Rs. 8000 (iii) The original invoice for 1,000 units of inputs purchased were missing; however 'Duplicate for transport' copy of invoice is available, which shows that duty of Rs. 10,000 had been paid on inputs **(b)** (i) Discuss the importance of noting of bill of entry *vis-à-vis* rate of customs duty applicable for import of goods, under the Customs Act; (ii) An Indian resident visiting Germany brought following goods while returning to India (a) his personal effects like cloth etc. valued at Rs. 25,000; (b) one litre of liquor of Rs. 1,600; (c) new camera of Rs. 24,800. What is the customs duty payable? [(a) 3 x 3 = 9 marks (b) 4+3 = 7 marks]

Q 8. Write short notes on: **(a)** Drawback rates; **(b)** Valuation in case of job work under Central Excise Act, 1944; **(c)** Exclusions from sale price under Central Sales Tax Act, 1956 [5+5+6 = 16 marks]

June 2003

The paper covers section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only section II is given below.

Section II

Q No. 5 carrying 18 marks which is compulsory. 2 other questions each carrying 16 marks are to be answered out of the remaining three questions in section II.

Q 5. (a) Define transaction value under the Central Excise Act, 1944. What are its main requirements? **(b)** State whether the following items are includible in T.V. citing reasons, if any: (i)

Regional discount (ii) Commission (iii) Surprise incentive scheme (iv) Trader's margin (c) How would you arrive at the T.V. for the purpose of levying excise duty from the following data?

Cum-duty selling price (exclusive of Sales Tax)	Rs 10,000
Rate of Excise Duty	16%
Trade discount allowed	Rs 1,200
Freight	Rs 750

(d) How is Turnover determined under the Central Sales Tax Act, 1956? [7+4+3+4= 18 marks].

Q 6. (a) An importer in India imported raw materials @ US \$ 25,000 FOB. The goods were packed for which US \$ 600 were charged extra. The goods were stuffed in Container, the price of which was US \$ 2,000. Insurance charges and ocean freight of US \$ 250 and 800 respectively were paid. A commission of US \$ 500 had to be paid to a broker for arranging the deal; 1 US \$ = Rs. 42.38, Customs Duty is 35%, Special Additional Duty (SAD) is 4%, Excise duty on similar goods in India is 16%. Determine the duty payable. **(b)** Mr. And Mrs. K visited the USA and bought there a personal computer for US dollars equivalent to Rs. 31,000 while returning to India. They carried personal effects also, valued at Rs. 46,000/-. What is the customs duty payable? **(c)** An Indian resident goes to Nepal on tour. He purchases a Colour TV for Rs. 18,000 and a hair-dryer for Rs. 2,000 (Indian Rs.) from a duty-free shop in Nepal and brings these into India. What is the duty payable, if he returns on (i) the 3rd day of arrival in Nepal? (ii) the 11th day of arrival in Nepal? [12+2+2 = 16 marks]

Q 7 (a) Examine whether the following amounts to manufacture under the Central Excise Act, 1944: (i) Cutting or sizing; (ii) Repairing, reconditioning; (iii) Re-melting; (iv) Mixing of metals **(b)** Distinguish between CENVAT on capital goods and on inputs for production **(c)** What are the documents and accounts required to be maintained for availing oneself of CENVAT credit? [4+6+6 = 16 marks]

Q 8. Write short notes on: **(a)** Penultimate sale for export under the Central Sales Tax Act, 1956 **(b)** Stores under the Customs Act, 1962. **(c)** Tariff value under Central Excise Act, 1944 [6+5+5 = 16 marks]

December 2002

The paper covers section I (Direct Taxes) 50 marks and section II (Indirect Taxes) 50 marks. Only section II is given below.

Section II

Q No. 5 carrying 18 marks is compulsory. 2 other questions each carrying 16 marks are to be answered out of the remaining three questions in section II.

Q 5. (a) What is deemed manufacture under the Central Excise Act, 1944? Give four examples of deemed manufacture. **(b)** Briefly state the salient features of the CENVAT Scheme. **(c)** Explain the term 'Related Persons' under section 4 of the Central Excise Act. **(d)** What are the essential elements of a valid sale under the Central Sales Tax Act, 1956? [6+4+4+4 = 18 marks]

Q 6. Explain the reference to the Customs Act, 1962, the difference between **(a)** Identical goods and Similar goods. **(b)** Territorial Water and Indian Customs Water. **(c)** Public Bonded Warehouse and Private Bonded Warehouse. [5+5+6 = 16 marks]

Q 7. (a) Explain how the value is to be determined for the purposes of section 4 of the Central Excise Act and Rules in the following cases: (i) Dutiable goods manufactured and used for Captive Consumption in the manufacture and sale of other final excisable products. (ii) Excisable goods manufactured and cleared as free samples (iii) A manufacturer charges separately for the goods produced and sold and for the packing. How will the cost of packing be treated for determining the value? (iv) The goods manufactured are sold ex-factory and the freight and insurance are charged on actual basis through invoices. **(b)** Briefly describe the offences that the penal provisions of section 10 of the Central Sales Tax Act, 1956. [(3 x 4) 12 + 4 = 16 marks]

Q 8. Write short notes on: **(i)** Dealer under the Central Sales Tax Act, 1956. **(ii)** Doctrine of unjust enrichment under the Central Excise Act, 1944. **(iii)** Searches under the Customs Act, 1962. [5+6+5 = 16 marks]

INDIRECT TAXATION

June 2004

Time Allowed : 3 Hours - Full Marks : 100.
Answer Q No 1 which is compulsory carrying 20 marks and any 5 from the rest, each carrying 16 marks.

Q 1 (a) Capital goods on which Cenvat credit has been availed are required to be used within the factory. These cannot be sent outside to job worker's place for his use. What are the exceptions ? **(b)** Cenvat credit is never refundable in cash. What is exception ? **(c)** Explain the meaning of 'Exclusive Economic Zone' and 'Continental Shelf' under the provisions of Customs Act, 1962. **(d)** What are the advantages of moving the Settlement Commission under the provisions of Customs Act, 1962 **(e)** Describe the provisions of section 11DD of Central Excise Act, 1944 [4 x 5 = 20 marks]

Q 2 (a) Define 'inter connected undertakings' under the provisions of Central Excise Act, 1944 **(b)** Explain whether the following elements are includible in the assessable value under section 4 of Central Excise Act, 1944 – (i) Advertising Charges (ii) Warranty Charges (iii) Interest on delayed payments (iv) Quantity Discount **(c)** Define 'Retail Sale Price' under section 4A of Central Excise Act, 1944 [4+8+4 = 16 marks]

Q 3 (a) Discuss whether the following goods are entitled for Cenvat credit – (i) Plastic trays used in a factory to move the raw materials within the factory (ii) Steel sheets used to erect a storage tank of 1 million capacity (iii) Light diesel oil used to generate electricity consumed within the factory (iv) Caustic soda used in the factory to treat the waste water let out to prevent water pollution **(b)** State the warehousing provisions available to a manufacturer of excisable goods **(c)** What is meant by 'presumption of culpable mental state' under the Central Excise Act ? [8+4+4 = 16 marks]

Q 4 Write short notes on any four of the following with reference to Customs Act, 1962 – **(a)** Salient features of Section 14(1) of Customs Act, 1962 for valuation of imported/exported goods **(b)** First Appraisalment **(c)** Provisional Assessment **(d)** Demand of duty **(e)** SEZ (Special Economic Zone) **(f)** NCCD (National Calamity Contingent Duty) of Customs [4 x 4 = 16 marks]

Q 5 Discuss briefly any four of the following with reference to Customs Act, 1962 – **(a)** Remission of duty on abandoned goods **(b)** Deemed exports **(c)** Re-export of duty paid goods **(d)** The right of a person searched **(e)** High Court can directly formulate question of law and decide [4 x 4 = 16 marks]

Q 6 (a) M/s Sharma Traders imported certain goods from USA. The FOB value was US \$ 5,000. Freight was US \$ 200 and insurance charges were US \$ 50. As per the agreement with USA suppliers, agency commission of Rs 10,000 was payable by Sharma Traders to their Indian Agents. M/s Sharma Traders filed Bill of Entry on 24-2-2004. Entry Inward was granted to the ship on 5-3-2004. Duty was actually paid by Sharma Traders on 25-3-2004. Basic customs duty payable on various dates was as follows – (i) 24-2-2004 – 25% (ii) 5-3-2004 – 20% (iii) 25-3-2004 – 30%. Exchange rates as announced by CBE&C on various dates was as follows – (i) 24-2-2004 – 1 US \$ = Rs 44.70. (ii) 5-3-2004 – 1 US \$ = Rs 45.10 (iii) 25-3-2004 – 1 US \$ = Rs 45.40. M/s Sharma Traders actually paid to Bank @ 1 US \$ = Rs 44.90 against payment of the invoice. Excise duty on similar goods in India is 16%. However, as per an exemption notification, if Cenvat credit on input is not availed, excise duty will be @ 8%. No Special Additional Duty (SAD) is payable. Calculate the Assessable Value and customs duty payable **(b)** State the provisions in respect of 'burden of proof' in respect of goods covered under section 123 of Customs Act, 1962 (12+4 = 16 marks).

Q 7 (a) Ram & Co. are dealers in engineering goods. They obtained an order for an engineering item 'A'. They quoted a price of Rs 5,000 per piece for 'A'. Ram & Co. then approached Laxman & Co. who was manufacturer of engineering items. It was agreed that Ram & Co. will supply raw material required for manufacture of 'A' to Laxman & Co. free of cost. Laxman & Co. will manufacture product 'A' and supply it to Ram & Co. It was agreed that Laxman & Co. will charge Rs 1,500 per piece as their job charges per piece. Other information is as follows – (i) Raw material supplied by Ram & Co. to Laxman & Co. was purchased by Ram & Co. from the manufacturer 'Z'. The breakup of the invoice of 'Z' was as follows – Net Price per Kg of raw material – Rs 40. Excise duty – Rs 6.40 Sales Tax – Rs 1.86. Total – Rs 48.26. Ram & Co. generally sales goods after adding 10% to their purchase price (ii) Product A requires 50 Kg of raw material per piece, including normal wastage of 5%. (iii) Transport charges incurred by Ram & Co. for delivering raw material to factory of Laxman & Co – Rs 100 per piece (iv) Transport charges for returning the finished product to the Ram & Co – Rs 130 per piece. These are paid by Laxman & Co. and recovered from Ram & Co. by issuing a separate debit note. - - The rate of duty is 16%. Who is liable for payment of excise duty ? What will be the assessable value ? **(b)** State provisions in Central Excise Act in respect of special audit of Cenvat credit under section 14AA of Central Excise Act, 1944 [8+8 = 16 marks]

Q 8 (a) How would you treat the following transactions under the provisions of CST Act ? – (i) A, who is dealer in Jaipur, agrees to sell goods to B in Banlagore, but he books the goods from Jaipur to Bangalore in his own name and his agent in Bangalore receives the goods on behalf of A. Thereafter the goods are delivered to B in Bangalore and the same accepted by B (ii) A VPP dispatch from Ahmedabad to Hyderabad **(b)** Explain the provisions relating to 'cognizable offences' under the CST Act, 1956 **(c)** Define 'sale price' as defined in CST Act, 1956 [8+4+4 = 16 marks]

ICWA - INTERMEDIATE EXAMINATION

INDIRECT TAXATION

December 2003

Time Allowed : 3 Hours - Full Marks : 100.
Answer Q No 1 which is compulsory carrying 20 marks and any 5 from the rest, each carrying 16 marks.

Q 1. (a) Define 'Factory' under Central Excise Act, 1944. **(b)** Define 'wholesale dealer' under Central Excise Act, 1944. **(c)** Discuss the 'powers of officers of Customs' under the provisions of Customs Act, 1962. **(d)** Are the goods imported or belonging to Government dutiable under Customs Law? Explain. **(e)** Define 'Place of Business' under CST Act, 1956 [4 x 5 = 20 marks]

Q 2. (a) When does the Central Government have powers to grant exemption from duty under Central Excise Act, 1944. **(b)** Explain the relevance of statement under certain circumstances as described in section 9D of Central Excise Act, 1944. **(c)** Is there any provisions to collect interest on amount collected in excess of duty and deposited with the Government? Explain the relevant provisions. **(d)** State the penal provisions for delayed payment of duty under Central Excise Rules [4 x 4 = 16 marks]

Q 3. (a) Under what conditions 'Cenvat' credit is available if the credit is deniable on Technical grounds? **(b)** How a manufacturer or buyer of inputs can satisfy himself about the payment of duty by the input supplier/manufacturer to avail Cenvat credit? **(c)** When is the notional interest on Advance includible in the value u/s 4 of Central Excise Act, 1944? **(d)** Mention those elements of cost that shall not form part of the assessable value of captively consumed goods under Rule 8 of Central Excise Valuation Rules, 2000 [4 x 4 = 16 marks]

Q 4. Write short notes on any four of the following under Customs Act, 1962: **(a)** 'Electronic Declaration' of Bill of Entry; **(b)** Advance Ruling; **(c)** Anti Dumping Duty; **(d)** Export Houses and criteria for their recognition; **(e)** Self assessment scheme for importers and exporters including claim; **(f)** Re-importation of goods produced or manufactured in India – section 20 of Customs Act, 1962. [4 x 4 = 16 marks]

Q 5. Attempt any eight of the following by filling the blanks/choosing appropriate word/stating the statement as True or False etc. as the case may be : **(a)** Customs Act, 1962 consolidates

_____ and provisions of Air Customs Acts. **(b)** In second appraisement system the assessment is done on the basis of _____ and goods are _____ later. **(c)** Identical goods means that goods should be _____ in all respects, should be produced in the same _____ and should be _____ by same _____. **(d)** Rate of duty applicable in the following cases shall be the rate on the date; (i) for home consumption when _____ is presented. (ii) for warehouse goods when goods are _____ from warehouse. (iii) for baggage when _____ is made. (iv) for postal import when the authorities present the _____. **(e)** The maximum period for warehousing (i) capital goods for 100% EOU is _____ years. (ii) for other goods is _____ years. The period may be extended by _____. **(f)** Drawback Rules, 1995 are made under section _____ of Customs Act, 1962 and section _____ of Central Excise Act, 1944. **(g)** Penalty for short levy etc. of duty by collusion or willful misstatement is equal to _____ and _____. However, if paid within 30 days it will be _____ per cent of the amount. **(h)** Interest on delayed payment of refund is _____. (9, 10,15) **(i)** Offences under Customs Act are non-cognizable. Customs officer himself may grant bail. True or False. [2 x 8 = 16 marks]

Q 6. (a) A has imported from U.S.A. by Air under-mentioned goods at Mumbai: Tariff Heading - 85-01, (1) Description - Micro motors – Value in FOB – US \$ 10,000 (2) Soldering irons and guns - Value in FOB – \$ 5000 - - Other relevant data are : Air freight \$ 400, Insurance actual \$ 200, Local agent's commission Rs. 5,000, Rate of exchange 1\$ = Rs. 50, Customs duty – 25% Ad-valorem, CVD – 16% Ad-valorem, SAD – 4% Ad-valorem. Effective Rate of duty on soldering irons and guns through a customs notification is 20%. Compute assessable value of each item and relative total customs duty and aggregate customs duty payable [8 marks] **(b)** (i) What is 'Brand Rate'? (ii) An exporter has exported under-mentioned goods under draw-back claim:

Sub.S.No.of Dbk. Table	Description	FOB Value Rs.	Rate of Draw-back
74.24	1000 Kg handicrafts of brass @ Rs. 200 per kg	2,00,000	16.5% of FOB Value subject to maximum of Rs. 33 per kg of brass content
74.27	1000 kg of Artware of copper @ Rs. 300 per kg	3,00,000	Rs. 33 per kg.
85.81	20,000 pc GLS Lamps @ Rs. 5 per piece	1,00,000	1% of FOB

Note : 1: On examination it is found that brass content in brass artware is 80%. **2:** Artware has copper content of weight 950 kg. Compute the amount of drawback admissible taking into account the above facts. [2+6 = 8 marks]

Q 7. Write short notes under the provisions of Central Excise Law regarding: **(a)** Procedures for end-use exemption **(b)** Removal of goods from FTZ, EOU and SEZ to DTA **(c)** Return of duty paid goods for repairs and other purposes **(d)** Storage of non-duty paid goods outside the factory [4 x 4 = 16 marks]

Q 8. (a) What is document of Title of goods under CST Act, 1956? **(b)** Mention the names of certain goods declared to be of special importance in inter-state trade or commerce for the purposes of CST Act, 1956. **(c)** When is indemnity granted under CST Act, 1956 to the officers of the Government? **(d)** Give a few illustrations of Consignment transactions, which are not considered as sale under the CST Act, 1956 [4 x 4 = 16 marks]

INDIRECT TAXATION

June 2003

Time Allowed : 3 Hours - Full Marks : 100.
Answer Q No 1 which is compulsory carrying 20 marks and any 5 from the rest, each carrying 16 marks.

Q 1 (a) Mention the types of duties that could be imposed on excisable goods under Central Excise Tariff Act, 1944 and other allied Acts and on what value such duties are imposed if the rate is *ad valorem* rate of duty. **(b)** Define 'inter connected undertakings' as required under Section 4 of Central Excise Act, 1944. **(c)** Why Special Additional duty of Customs is levied? On what value is the

said duty computed? Is there any exemption available from the said levy? **(d)** Under which provision of Customs Act, 1962, Customs Duty is levied? Explain the relevant provisions. **(e)** Define 'Sale price' under CST Act, 1956. [4 x 5 = 20 marks]

Q 2 (a) Specify the exempted goods that require reversal of credit under Rule 6 of Cenvat Credit Rules. **(b)** How does a manufacturer availing Cenvat satisfy himself that duty was paid on such goods by the supplier of the Inputs/Capital goods? **(c)** State the powers of Central Excise Officers to grant 'Remission' of duty. **(d)** What is the penal provision when any person acquires or possesses or sells or keeps or purchases or transports or removes or deals with goods liable for confiscation under Central Excise Rules, 2002? [4 x 4 = 16 marks]

Q 3 (a) What are penal provisions in the case of vexatious search and seizure by Central Excise Officers? **(b)** Explain the circumstances when an Advance Ruling will be void under Central Excise Act, 1944 **(c)** State the circumstances under which an application will not be entertained by the Settlement Commission under the provisions of the Central Excise Act, 1944? **(d)** Describe the provisions relating to offences by Companies under Section 9AA of Central Excise Act, 1944 [4 x 4 = 16 marks]

Q 4 Write short notes on any four of the following: **(a)** Customs Documents **(b)** Notice of Short Export **(c)** Status Certification for Export Houses under Exim Policy 2002-07 – Handbook of Procedure **(d)** Test Report by Customs Chief Chemist **(e)** Detention Certificate **(f)** Import of Commercial Samples [4 x 4 = 16 marks].

Q 5 Answer the following under Customs Act, 1975 by filling in the blanks/choosing the appropriate word/stating whether statement is true or false: **(a)** Baggage includes ----- but does not include ----- - as per section ----- of Customs Act, 1975 **(b)** There are four forms of shipping Bills (i) Green colour stands for ----- (ii) Yellow colour stands for ----. (iii) White colour stands for ----- (iv) Pink colour stands for ----. **(c)** An authorised representative may be ----- (any one/none) of the following : Employee, Custom House Agent, Advocate, Qualified professional such as Chartered Accountant, Company Secretary, Cost Accountant etc. **(d)** Refund claim should normally be filed within ----- months. It can be filed within one year by ---- and also by an individual for ----- use. **(e)** Time limit to file appeal to Commissioner (Appeals) is ----- days. He ----- (can/cannot) remand cases. **(f)** There is no time limit for launching ----- for ----- offences. **(g)** Penalty for improper import/export is equal to an amount not exceeding Rs. ----- or ----- times the value of goods, whichever is higher. **(h)** In case of post parcel, label/declaration is deemed "Bill of Entry". State whether True or False. [2 x 8 = 16 marks]

Q 6 (a) Zing Yong of China exports Lithium Cell to India, the FOB price of which is one Dollar for 30 cells; however the details of Fright & Insurance were not made available. Investigation reveals that the goods are imported into India at an increased quantity. Similar cells are manufactured in India, the cost of sales per cell of which indicates the following break-up:

Direct	Material	Rs.	2.00,
Direct	Labour	Re.	0.25,
Direct	Expenses	Re.	0.25,
Indirect	Expenses	Re.	0.50,
Indirect	Labour	Re.	0.25,
Indirect	Expenses	Re.	0.25,
Administrative	Overheads	Re.	0.50,
Selling and	distribution	overheads	Re. 0.50,
Profit	Margin	Re.	0.50.

The exchange rate 1 \$ = Rs. 50. Is there any case to impose Safeguard Duty? If yes, what is the duty leviable ?

(b) Determine the total Customs Duty payable from the following data -

Quantity	imported	:	100	MTs,
FOB	value	:	Swiss Franc	: 10000,
AIR	Fright	:	Swiss Franc	: 2500,

Insurance : Data not available,
Exchange rate : 1 Swiss Franc = Rs. 34,
Rate of BCD 30%,
Rate of Cenvat under First Schedule to CETA : 16%,
Rate of SED under Second Schedule to CETA : 16%,
Rate of AED(GSI) under Additional Duties of Excise (GSI) Act : Rs. 10/kg,
Rate of NCCD 1%,
Rate of SAD 4% [8+8 = 16 marks]

Q 7 (a) X Ltd. is engaged in the manufacture of 'paracetamol' tablets that has an MRP of Rs. 9 per strip. The Company cleared 1,00,000 tablets and distributed as physician's samples. The goods are not covered by MRP, but the MRP includes 16% Excise Duty and 4% CST. If the cost of production of the tablet is 40 paise per tablet, determine the total duty payable. **(b)** From the following data, determine the CENVAT allowable if the goods are produced or manufactured in a FTZ or by a 100% EOU and used in any other place in India.

Assessable value :	Rs. 770	per unit,
Quantity cleared	77,770	units,
BCD	-	30%,
CVD	-	16%

(c) Mrs. E fails to pay Excise Duty of Rs. 60,000 on the goods cleared in February by 5th March of 2003. The assessee, Mrs. E, is owner of a SSI unit. What is the interest payable under Rule 8 of Central Excise Rules, 2002 if the duty was actually paid on 10th May of 2003? **(d)** Is there any provision to store non-duty paid goods outside the factory? State the provisions, if any, under Central Excise Rules, 2002. [4 x 4 = 16 marks].

Q 8 (a) What is the liability of a "Company in Liquidation" under Section 17 of CST Act, 1956? **(b)** Describe the provisions relating to rounding off of tax under Section 9B of CST Act, 1956? **(c)** State the transactions that are not taxable under CST Act, 1956. **(d)** Define the meaning of 'Occasions such export/import sales' under CST Act, 1956. [4 x 4 = 16 marks]

ICWA - INTERMEDIATE EXAMINATION

INDIRECT TAXATION

December 2002

Time Allowed : 3 Hours - Full Marks : 100.

Answer Question No. 1 which is compulsory and any five from the rest.

Q.1 (a) What is the relevant date for determination of rate of duty and tariff value under Central Excise Rules, 2001? **(b)** (i) A big ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty, quote relevant section and case law, if any. (ii) Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to drawback? **(c)** Describe the constitutional provisions under which Central Excise duty is imposed. **(d)** An officer of the Customs has reason to believe that a person has secreted gold/diamonds or documents about his person liable to confiscation. He wants to search him. The person requests the officer to take him to a Gazetted Officer or Magistrate. Should his request be acceded to? What precautions should be taken in such a search? **(e)** Describe constitutional provisions that restrict imposition of tax on sale of or purchase of goods. [4 x 5 = 20 marks]

Q 2. (a) H Ltd. purchased a Boring-Drilling machine at a cum-duty price of Rs. 32,14,476. The Excise duty rate charged on the said machine was @ 16%. The machine was purchased on 01.04.2000 and disposed of on 30.09.2002 for a price of Rs. 12 lakhs. The company was claiming depreciation @ 25% following Straight Line Method. Using the said information, answer the following questions: (i) What is the Excise duty paid on the machine? (ii) What is the Cenvat credit allowable under Cenvat Rules? (iii) What is the amount of Cenvat credit reversible or duty payable at the time of clearance of the said machinery? **(b)** Explain the provisions relating to confiscation and penalty under Rule 25 of

Central Excise Rules. **(c)** Explain the penal provisions relating to vexatious search, seizures, etc. by Central Excise Officers. [8+4+4 = 16 marks]

Q 3. Distinguish between the following under Central Excise Law: **(a)** 'Transfer of Cenvat credit' and 'Transitional provisions of Cenvat credit'. **(b)** 'Exempted goods' and 'Nil rate goods' **(c)** 'Assessment of return' and 'Scrutiny of return' **(d)** 'Memorandum of appeal' and 'Memorandum of cross objections'. [4 x 4 = 16 marks]

Q 4. Write brief notes on any four of the following under Customs Act, 1962: **(a)** First appraisement **(b)** Procedure for filing appeal to Commissioner (Appeals) **(c)** Import under Duty Exemption Pass Book 1997-2002 **(d)** Legal position of instructions in manuals/trade circulars/public notices **(e)** Retrospective effect of rule/regulation notification even amended/repealed or superseded. [4 x 4 = 16 marks]

Q 5. Answer any four of the following under Customs Act, 1962 - **(a)** IEC code **(b)** Classification of an article which is incomplete or unfinished but has the essential characteristics of the complete/finished article **(c)** Nominated agencies **(d)** Negative List of Imports **(e)** Custom House Agent. [4 x 4 = 16 marks]

Q 6. (a) 'A' imports by air from USA a Gear cutting machine complete with accessories and spares. Its HS classification is 84.6140 and Value US \$ f.o.b. 20,000.

Other relevant date/information: (1) At the request of importer, US \$ 1,000 have been incurred for improving the design, etc. of machine, but is not reflected in the invoice, but will be paid by the party. (2) Freight - US \$ 6,000. (3) Goods are insured but premium is not shown/available in invoice. (4) Commission to be paid to local agent in India Rs. 4,500. (5) Freight and insurance from airport to factory is Rs. 4,500. (6) Exchange rate is US \$ 1 = Rs. 45. (7) Duties of Customs : Basic – 25% CVD – 16% SAD – 4%. - - Compute (i) Assessable value (ii) Customs duty.

Q 6 (b) 'A' has exported under-mentioned goods under drawback claim –

S. No. of DGK Table	Description of goods & quantity exported	Value f.o.b. Rs	Rate of Drawback
64.01	Leather footwear Boots 200 nos.@ Rs. 1,000 per pair	2,00,000	11% of f.o.b. subject to maximum of Rs. 85 per pair
64.11	Leather chappals 2000 nos. @ Rs. 50 per pair	1,00,000	3% of f.o.b. subject to maximum of Rs. 5 per pair.
71.01	Brass Jewellery 200 kgs. @ Rs.200 per kg		Rs. 22.50 per kg of Brass content
71.05	Plastic bangles with embellishment 200 kgs @ Rs. 100 per kg		Rs. 5.00 per kg of plastic content.

On examination it is found that brass content in brass jewellery is 50% of weight and in plastic bangles the plastic content is 50% but the total weight comes to 190 kgs only. - -Compute drawback on each item and total drawback. [10+6 = 16 marks]

Q 7 (a) State whether the following elements are to be included or not as part of the 'Transaction value' under section 4 of the Central Excise Act, 1944. (i) Erection and commissioning charges (ii) System software etched in the computer system (iii) Cylinder holding charges (iv) After-sales warranty charges - - **(b)** X Ltd. manufactures three health drinks viz. Slim, Trim, Prim. Slim was sold only to Y Ltd., a subsidiary company of X Ltd. Trim was sold to Z Ltd., where the Managing Director of X Ltd. is a Manager. Prim is sold to P Ltd. who are sole distributor of X Ltd., and was coming under the same management of X Ltd. Determine the assessable value/transaction value of the three products in the hands of X Ltd. on the basis of the following information :

Price of X Ltd. to Y Ltd.	Rs 100
Price of X Ltd. to Z Ltd.	Rs 50
Price of X Ltd. to P Ltd.	Rs 20
Price of Y Ltd. to consumer	Rs 120
Price of Z Ltd. to consumer	Rs 60

(c) Define 'Transaction value' under section 4 of the Central Excise Act, 1944. [8+5+3 = 16 marks]

Q 8. (a) Distinguish between 'concessions' and 'exemptions' under CST Act, 1956. **(b)** State 'omissions' and 'commissions' that attract penal provisions under CST Act, 1956. **(c)** Are the following 'Sale' under section 2(g) of CST Act, 1956? (i) Sale of illegal goods. (ii) Gifts given by a company to their shareholders. (iii) Credit sale. (iv) Leasing of Fixed Assets (v) Works contract (vi) Development of Computer Software to the requirement of clients (vii) Xerox copying for customers (viii) Job work [4+4+8 = 16 marks].

June 2002

Time Allowed : 3 Hours - Full Marks : 100.

Answer Question No. 1 which is compulsory and any five from the rest.

Q.1 (a) Who is exempted from registration under Rule 9 of Central Excise Rules, 2001? **(b)** Distinguish between 'reference application' and 'revision application' under Central Excise Law. **(c)** Explain the provisions relating to short-shipment/shut out notice under the Customs Act and Rules. **(d)** Under Section 28A of the Customs Act, 1962, the Central Government has power not to recover Duties levied or short levied. – Discuss. **(e)** List the restrictions and conditions in regard to tax on sale or purchase of declared goods within a State under Section 15 of CST Act, 1956. [4 x 5 = 20 marks]

Q.2 (a) Is transfer of Cenvat Credit admissible on account of change of ownership? Explain the relevant provisions under Central Excise Law. - - **(b)** Fill in the blanks: i) Cenvat credit is available on _____. (additional customs duty/special additional duty) ii) When excise duty paid goods are returned to a factory, _____. (Cenvat is allowed/ Cenvat is not allowed) iii) Cenvat credit can be taken on the basis of _____. (Bill of Entry/bill of Lading) iv) Transitional provisions are covered by _____. (Rule 9/Rule 8) of Cenvat Credit Rules, 2002. v) Any wrong availment of Cenvat credit may attract a penalty equivalent to the duty or Rs. _____. (10,000/100,000) vi) Under Cenvat Credit Rules, 2001, capital goods includes _____. (water tank/storage tank) - - - **(c)** Prepare a Cenvat account in the books of A Ltd., and determine the balance as on 30-09-2002 from the following data: -

* Opening balance as on 01-04-2002 Rs. 47,000.

* Inputs received on 04-04-2002 involving excise duty paid Rs. 14,747

* Purchased a lathe for Rs. 1,16,000 -cum duty price @ excise duty rate of 16% on 05-04-2002 and received the lathe into the factory on 05-12-2002.

* On 06-04-2002 paid excise duty on final products @ 16% through Cenvat A/c (cum duty price of the goods Rs. 2,32,000).

* Inputs cleared as such to a job worker on 01-04-2002 not returned in 180 days, quantity 1,000 Kgs; Assessable value Rs. 2 lacs; ED @ 16% of the above, 50 % of the inputs were received on 01-10-2002.

* Common inputs were used in a product, which was exempted from payment of duty cleared at a price of Rs. 100/unit, which included taxes of Rs. 20/unit; quantity cleared 1,000 units.

* On 07-04-2002 duty paid on inputs amounting to Rs. 17,867 was taken credit for in the Cenvat A/c as Rs. 17,687. [4+6+6 = 16 marks].

Q.3 (a) Z Ltd. is a small-scale industrial unit manufacturing a product X. The Annual report for the year 2000-01 of the unit shows a gross sale turnover of Rs. 1,91,40,000. The product attracted an excise duty rate of 16% as BED and Sales Tax 10%. Determine the duty liability under Notification Nos. 8/2001 and 9/2001 meant for SSI units. **(b)** B Ltd. manufactures two products namely, Eye Ointment and Skin Ointment. Skin Ointment is a specified product u/sec. 4A of Central Excise Act, 1944. The sales prices of both the products are at Rs. 43/unit and Rs. 33/unit respectively. The sales price of both products included 16% excise duty as BED and 8% excise duty as SED. It also includes CST of 4%. Additional information is as follows -

Units cleared: Eye Ointment : 1,00,000 units

Skin Ointment : 1,50,000 units

Deduction permissible u/sec 4A: 40%.

Calculate the total excise duty liability of B Ltd., on both the products. - -

(c) Explain the term “Process ‘Amounting to’ Manufacture”. i.e. deemed manufacture. [6+6+4 = 16 marks]

Q.4 Examine any four of the following under Customs Act, in the light of and incorporating recent changes as per Finance Act, 2001, if any - (a) Interest payment on duty not levied, short levied, and the date from which it is to be reckoned. (b) Interest on warehoused goods. (c) Time limit for filing appeal to Commissioner (Appeals). (d) Penalty for improper importation/exportation of goods. (e) Budget day clearance under CE and Customs. [4 x 4 = 16 marks]

Q.5 Discuss any four of the following with reference to Customs Act: (a) Salient features of valuation of goods under Customs Act. (b) Provisional assessment of imports. (c) CEGAT. (d) LUT (Legal Undertaking) (e) Standard input-output and value addition norms. [4 x 4 = 16 marks]

Q.6 (a) Determine the assessable value and customs duty amount from the following data:

Name of the raw material	X
FOB value	Euro 1 million
Ocean freight	Actual data not available
Ocean Insurance	Actual data not available
Freight from sea port to godown paid in India	Rs. 10,000
Transit insurance in India	Rs. 2,000
Selling commission paid to agent in India	5%
Royalty on manufacture and sale of final product payable to foreign collaborator	5%
Interest payable on raw material imported at 180 days credit (on FOB value)	12% p.a
Dividend paid to the foreign supplier of raw material on their equity participation for the year 2001-02	Rs. 2 per share on 1 million shares of face value Rs. 10/ share.

Importer supplied design and drawings worth Euro 10,000 to the foreign raw material supplier. #

Landing charges as per Customs provisions

Customs duty rates : BCD - 30%, ACD – 16%, SAD – 4%

Exchange rate: 1 Euro = Rs. 42.

Q6 (b) (i) What is all industry rate of Drawback? (ii) ‘A’ exported a consignment under drawback claim consisting of the following items: -

Particulars	Serial/ Sub-serial	FOB value	Drawback rate
(1) 200 pieces of pressure stoves mainly made of brass @ Rs. 80/piece	74.04	Rs 16,000	4% of FOB
(2) 200 kg Brass utensils @ Rs. 200 per kg	74.13	Rs 40,000	Rs. 24/kg
(3) 200 kg Artware of brass @ Rs 300/Kg	74.22	Rs 60,000	17.50% of FOB subject to a maximum of Rs. 38/per kg.

On examination in docks, weight of brass artware was found to be 190 Kgs and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party. [10+2+4 = 16 marks]

Q 7 Distinguish between the following under Central Excise Law: (a) Remission of duty and Rebate of duty. (b) Bond and LUT (c) General Bond (B1 Bond) and Bond for provisional release of seized goods (B4 Bond). (d) Excisable goods and Dutiable goods. [4 x 4 = 16 marks]

Q 8 (a) What are the limitations on use of ‘C’ form in terms of value ? Are the said limitations applicable to ‘D’ forms. (b) Distinguish between ‘Consignment sale’ and ‘subsequent sale’ under CST Act, 1956 (c) Calculate the CST payable from the following data -

- (1). Invoice No.1011 dated 01.04.2001 for Rs.1,78,967 inclusive of CST @4%
- (2) Invoice No.1012 dated 02.04.2001 for Rs.1,87,697 exclusive of CST @ 4%
- (3) Invoice No.1013 dated 03.04.2001 for Rs.1,75,000 inclusive of local Sales Tax. @ 10%
- (4) Invoice No.1014 dated 04.04.2001 for Rs.2,50,000 exclusive of local Sales Tax @ 8%
- (5) 50% of the goods sold on 01.04.2001 on inter-state trade was rejected and returned on 31.03.2002
- (6) 20% of the goods sold on 04.04.2001 on local sale was returned on 30.06.2001
- (7) 30% of the goods sold on 02.04.2001 on inter-state trade returned on 02.06.2001
- (8) 10% of goods sold on 03.04.2001 on local sale was rejected on 03.10.2001
- (9) Goods of Rs.1,50,000 was stock transferred from Bangalore to Indore on 05.04.2001 excludes CST elements of 4%
- (10) Export of goods worth 10 million Yens to Japan on 06.04.2001 of which 50% were rejected and returned on 01.11.2002 (1 Yen = Re. 0.35)
- (11) Export through Canalising Agency for value of 100 thousands Dollars (Export order with Canalising Agency) (1dollar = Rs. 48)
- (12) Purchased goods for Rs.3,00,000 from the market on 09.01.2001 and exported to Singapore on 14.01.01 to the Agent for further sale (The goods attracted local sales tax of 10%). - - Give reasons for inclusion/non-inclusion of the above. [4+4+8 = 16 marks].

ICWA Inter – December 2001 - Indirect Taxation - Time Allowed : 3 Hours - Full Marks : 100. Answer Question No. 1 which is compulsory and any five from the rest.

Q.1 (a) Under section 3 of the Central Excise Tariff Act, 1985, the Central Government has emergency powers to increase the duty of Excise. Under what circumstances and to what extent can these be exercised? (b) Can a manufacturer claim exemption from payment of Excise duty on any intermediate product manufactured and used within the same factory? Explain the provisions. (c) Explain the applicability of Courier Imports Regulations under the Customs Act, 1962. (d) Explain anti-dumping duty and its relevance in the present day scenario of globalisation and free trade. (e) Describe briefly the offences that attract penal provisions under section 10 of CST Act, 1956. – (4 x 5 = 20 marks)

Q.2 Determine the value on which Excise duty is payable in the following instances. Quote the relevant section / rules of Central Excise Law. (a) A Ltd. sold goods to B Ltd., at a value of Rs. 100 per unit, In turn, B Ltd. sold the same to C Ltd. at a value of Rs. 110 per unit. A Ltd. and B Ltd. are related, whereas B Ltd. and C Ltd. are unrelated. (b) A Ltd. and B. Ltd. are inter-connected undertakings, under section 2(g) of MRTP Act. A Ltd. sells goods to B Ltd. at a value of Rs. 100 per unit and to C Ltd. at Rs. 110 per unit, who is an independent buyer. (c) A Ltd. sells goods to B Ltd. at a value of Rs. 100 per unit. The said goods are captively consumed by B Ltd. in its factory. A Ltd. and B Ltd. are unrelated. The cost of production of the goods to A Ltd. is Rs. 120 per unit. (d) A Ltd. sells motor spirit to B Ltd. at a value of Rs. 31 per litre. But motor spirit has administered price of Rs. 30 per litre, fixed by the Central Government. (e) A Ltd. sells to B Ltd. at a value of Rs. 100 per unit. B Ltd. sells the goods in retail market at a value of Rs. 120 per unit. The sale price of Rs. 100 per unit is wholesale price of A Ltd. Also, A Ltd. and B Ltd. are related. (f) Depot price of a company are –

Place of removal	Price at depot on 1.1.2001	Price at depot on 31.1.2001	Actual sale price at depot on 1.2.2001
Amritsar Depot	Rs 100 per unit	Rs 105 per unit	Rs 115 per unit
Bhopal Depot	Rs 120 per unit	Rs 115 per unit	Rs 125 per unit
Cuttack depot	Rs 130 per unit	Rs 125 per unit	Rs 135 per unit

Additional information: i) Quantity cleared to Amritsar Depot - 100 units ii) Quantity cleared to Bhopal Depot - 200 units iii) Quantity cleared to Cuttack Depot - 200 units iv) The goods were

cleared to respective depots on 01/01/2001 and actually sold at the depots on 01/02/2001. [2 + 2 + 2 + 2 + 6 = 16 marks]

Q.3 Write short notes on the following with reference to Central Excise Law: (a) Fortnightly payment of Excise duty. (b) Procedures for claiming 'Rebate'. (c) Restrictions on removal of Excisable goods on the Budget day. (d) Date for determination of 'duty' and 'Tariff valuation'. [4 x 4 = 16 marks]

Q 4 (a) An actual user imports following goods from England per S. S. Vishal: (1) Second hand numerically controlled horizontal lathe machine - Tariff heading – 84.5811, Value FOB - 1,000/- Pound Sterling (2). A. C. motors - Tariff heading – 85.0110, Value FOB - 500/- Pound Sterling. - - Other relevant data are: - Exchange rate 1 UK Pound = Rs. 65, Freight – 150 UK Pounds, Insurance – 25 UK Pounds. - - **Rate of duty** : Basic customs duty - 25%, CVD - 16%, SAD - 4%, Ignore landing charges. - - It is found that the lathe machine is undervalued. It is proposed to load the FOB value of the lathe machine by 25%. Party does not want show cause notice and personal hearing. Compute – (i) Assessable value; (ii) Total duty payable. Q 4 (b) A person makes an unauthorised import of 1000 pieces of ophthalmic rough blanks CIF priced at \$ 1 per piece by air from USA (Tariff heading 70.1510). The consignment is liable to be confiscated. Import is adjudicated. AC gives to the party an option to pay fine in lieu of confiscation. It is proposed to impose fine equal to 50 % of margin of profit. The market price is Rs 100 per piece of ophthalmic rough blank. The rates of duty are - Basic customs - 35%, CVD - nil, SAD - 4%, Exchange rate is - \$ 1= Rs. 45. Compute: i) Amount of fine; ii) Total payment to be made by party to clear the consignment. What is the maximum amount of fine that can be imposed in this case? Quote section. [8 + 8 = 16 marks]

Q.5 Distinguish between the following with reference to the Customs Act, 1962: a) SEZ (Special Economic Zone) and EPZ (Export Promotion Zone); b) CVD and SAD; c) Cess and Duty; d) Penalty and Fine. [4 x 4 = 16 marks]

Q.6 Briefly discuss the following: (a) Searches under Customs Act: (b) Adjudicating authority, adjudication and departmental adjudication under Customs Act; (c) Recovery of sums due to Government; (d) Warehousing without warehousing. [4 x 4 = 16 marks]

Q.7 (a) State whether the following duties are entitled for 'Cenvat' credit. Quote the relevant rules of Central Excise. i) Cess, ii) Basic Excise Duty (Cenvat), iii) AED (T & T), iv) AED (GSI), v) Special Excise Duty, vi) National Calamity Contingent Duty, vii) Additional Customs Duty. (b) Enumerate the groups of commodities excluded from the purview of rule 57AD of Cenvat Rules. (c) Under Tariff Notification No. 6/2001 meant for SSI units, mention the clearances not includible in the aggregate value of clearances. [7+4+5 = 16 marks]

Q.8 (a) Distinguish between 'sale in the course of export' and 'export sale'. (b) With reference to section 5(3) of the CST Act, 1956, examine whether the following goods are 'same'. i) 'Rice' and 'Paddy', ii) 'Copper wire' and 'Insulated wire', iii) 'Cashew nuts' and 'Cashew nut kernels', iv) 'Fresh prawns' and 'Dressed prawns' c) Determine the rate of tax applicable under CST Act 1956 and fill up the blanks from the following information:

Products -	A	B	C	D	E	F	G
Rate of tax under local sales tax Act	0%	2%	4%	6%	8%	10%	12%
Sale to Government							
Sale to registered dealers – specified goods							
Declared goods sold to unregistered dealers							
Undeclared goods sold to unregistered dealers							

[4+4+8 = 16 marks]

ICWA Inter – June 2001 - Indirect Taxation - Time Allowed : 3 Hours - Full Marks : 100. Answer Question No. 1 which is compulsory and any five from the rest.

Q 1. Distinguish between the following:

a) "Penultimate Sale" and "Consignment Sale" under CST Act, 1956. **b)** "Normal Price" and "Transaction Value" under Central Excise Act, 1944. **c)** "MODVAT" and "CENVAT" under Central Excise Rules. **d)** "Territorial Waters" and "Indian Customs Waters" under The Customs Act, 1962. **e)**

“Interest on delayed payment of duty” and “Interest on delayed refunds” under Customs Act, 1962. [4 x 5 = 20 marks]

Q 2. a) State the different types of duties leviable on Excisable goods. Also state under which Act such duties are levied. **b)** Name at least eight commodities on which Excise duty is leviable under section 4A of the Central Excise Act, 1944. **c)** Determine the transaction value and the Excise duty payable from the following information: **i)** Total Invoice Price Rs. 18,000 **ii)** The Invoice Price includes the following: [4+4+8 = 16 marks]

a) Sales-tax	Rs. 1000
b) Surcharge on ST	Rs. 100
c) Octroi	Rs. 100
d) Insurance from Factory to depot	Rs. 100
e) Freight from factory to depot	Rs. 700
f) Rate of Basic Excise duty	16% ad valorem
g) Rate of Special Excise duty	24% ad valorem

Q 3. Write short notes on any four of the following with reference to the Customs Act, 1962 **a)** Duty Entitlement Passbook Scheme (DEPS). **b)** Foreign Privileged Person. **c)** Summons under Customs Act, 1962. **d)** All Industry Rate of Drawback. **e)** Noting of Bill of Entry. [4 x 4 = 16 marks]

Q 4. a) Compute the Customs duty from the following data:

	US Dollars
Machinery imported from USA by Air (FOB) Accessories compulsorily supplied with Machine (Electric Motor & others) (FOB)	8,000
Air Freight	2,000
Insurance	3,000
	100

Local agents' commission to be paid in Indian Rupees is Rs. 4,500 (say equivalent to US Dollars 100), The exchange rate is 1 US Dollars = Indian Rupees 45., Customs duty on Machinery - 25% ad valorem, Customs duty on Accessory (normal rate 30 % ad valorem), Surcharge on Customs duty - 10%, CVD - 16% (Effective Rate is 8% by a notification), SAD - 4%.

b) What is the relevant date for rate of duty, rate of exchange and tariff valuation of imported goods? Will it be different, i) if Bill of Entry (BE) is presented before the import of goods, ii) if goods are imported by post, iii) for baggage?

c) Anukool imported several consignments of goods under proper license valid up to 31st December 2000. A consignment was imported per “S. S. Vaishali” on 28th December 2000. Before the goods were unloaded, strike broke out and goods could not be unloaded. Ship was forced to leave the port. The strike ended on 7th January 2001. The ship Re-entered the port on 9th January 2001 and the goods were unloaded. Anukool claims that the leaving of the port by the ship was involuntary and to save the goods. Anukool also claims that since the vessel has entered the territorial waters earlier, import was complete. Could the goods be cleared in the same license? [8+5+3 = 16 marks]

Q 5. a) Under rule 173G(6) of the Central Excise Rules, what are the records which every assessee is bound to produce before the Central Excise Officers?

b) Fill in the blanks : **i)** CENVAT credit is not available for the final products _____.(cigarettes/matches) **ii)** Transitional provisions are covered by rule _____ of Central Excise Rules, 1944. (57AF/57AG). **iii)** CENVAT is permissible on the document namely _____. (Bill of Entry/Bill of Export) **iv)** When inputs or Processed Inputs are sent to a Job Worker under rule 57AC of Central Excise Rules, the amount to be debited is _____ (10% of value of goods/Nil) **v)** Under rule 173C of Central Excise Rules, 1944 an assessee makes a declaration of the _____ on the Invoice. (Assessable value/Cost of the goods)

c) M/s Tips and Toes Ltd., manufactures four types of “Nail Polishes”, namely Sweety, Pretty, Beauty, Tweety. The company has availed CENVAT credit of Rs. 4,00,000 on the common inputs used in the manufacture of ‘Nail Polishes’. During the financial year 1999-2000, the company manufactured 1000 litres of each type of ‘Nail Polishes’. The CENVAT availed input was used in equal proportion in

all the four types of the products. Calculate the CENVAT credit amount not available or amount payable under CENVAT Rules 57AA read with 57AD of CENVAT Rules of Central Excise, using the following additional data:[5+5+6 = marks]

Product	Nature of Sale	Sale Price excluding Sales Tax & other local taxes
Sweety	Sale to Home Consumption	Rs. 30 per 20 ml bottle
Pretty	Sold to a 100% EOU	Rs. 40 per 20 ml bottle
Beauty	Fully exported	Rs. 50 per 20 ml bottle
Tweety	Supplied to Defence Canteen under exemption	Rs. 60 per 20 ml bottle

Q 6. Write short notes on the following with reference to the Central Excise Act, 1944: **a)** Settlement Commission; **b)** Remission of Duty; **c)** Re-assessment of warehoused goods; **d)** Power to summon persons to give evidence and documents. [4 x 4 = 16 marks]

Q 7. a) Distinguish between "Duty Drawback" under Customs Act, 1962 and "REBATE" under Central Excise Rules, 1944. **b)** Name at least six commodities which attract "CESS". On what component of price is "CESS" payable? **c)** Describe the penal provisions under section 114A of Customs Act, 1962 for "short levy or non-levy of duty in certain cases." **d)** Mention the orders against which an appeal can be filed before the 'Tribunal' under section 129-A of the Customs Act, 1962. [4 x 4 = 16 marks]

Q 8. a) State whether the following forms part of "Sale Price" under CST Act, 1956. i) Excise duty; ii) Cash Discount; iii) Quantity Discount; iv) Interest and Service charges in the case of Hire Purchase

b) What is Nexus Theory under CST Act, 1956?

c) State whether the following are "goods" under CST Act, 1956: i) Old newspapers; ii) Animals and birds in captivity; iii) Steam; iv) Lottery tickets; v) Computer software; vi) Advance licenses; vii) Stocks and shares; viii) Standing trees. [4+4+8 = 16 marks]

ICWA Inter - December 2000 - Indirect Taxation - Time Allowed : 3 Hours - Full Marks : 100. Answer Question No. 1 which is compulsory and any five from the rest.

Q 1. (a) Explain the amended provisions of Central Excise Law by which "Duties of Excise collected from the buyer are to deposited with the Central Government" under section 11-D of Central Excise Act, 1944. **(b)** What is the time limit to issue notice for payment of Custom duties under the Customs Act, 1962? **(c)** Detail the circumstances under which the Customs department can order for 'Provisional Assessment' of import or export of goods. **(d)** Under the CST Act 1956 when is a "sale" treated as "sale outside the State"? [5+5+5+5 = 16 marks]

Q 2. (a) Under the Central Excise Act, 1944 duty is chargeable on the basis of maximum recommended retail price (MRP). Discuss the relevant section and the date from which it has been made effective. Name at least five commodities which attract Excise duty on the basis of Maximum Retail Trade Price under the Central Excise Act, 1944. **(b)** Thunder TV Ltd. is engaged in the manufacture of colour television sets having its factories at Bangalore and Pune. At Bangalore the company manufactures picture tubes which are stock transferred to Pune factory where it is consumed to produce television sets. Determine the Excise duty liability of captively consumed picture tubes from the following information: - * Direct material cost (per unit) Rs. 600 * Indirect Materials Rs. 50 * Direct Labour Rs. 100 * Indirect Labour Rs. 50 * Direct Expenses Rs. 100 * Indirect Expenses Rs. 50 * Administrative Overheads Rs. 50 * Selling and Distribution Overheads Rs. 100. Additional Information: - (1) Profit Margin as per the Annual Report of the company for 1999-2000 was 15% before Income Tax. (2) Material Cost includes Excise Duty paid Rs. 100 (3) Excise Duty Rate applicable is 16%. **(c)** Name the decisions or orders which could be appealed to the Appellate Tribunal under section 35-B of the Central Excise Act, 1944. Are there any exceptions to the said provision? If yes, mention those exceptions. [5+7+4 = 16 marks]

Q 3 (a) A consignment of 20 tonnes of chemicals produced by Company A in Berlin, West Germany is imported by Company B at \$ 20 per kg., C.I.F. Mumbai. At about the same time a consignment of 16 tonnes of same chemical manufactured by same company viz., Company A in Berlin, is imported by Company C at Mumbai; for their principals at \$ 16 per kg., C.I.F., Mumbai. What value should be

taken for assessment of consignments of both the importers - i.e. Company B and C ? Give reasons in support of your determination of value. Quote relevant sections of Customs Act, 1962. **(b)** Write short notes on the following : (i) "Goods" as per section 2(d) of the CST Act, 1956. (ii) "Document of title of goods" in the context of CST Act, 1956. [8+4+4 = 16 marks]

Q 4 (a) What is certificate action (certification proceedings), under the Central Excise Act, 1944 ? - Explain. **(b)** Under the Central Excise Tariff Act, 1985, certain processes have been treated as process amounting to manufacture by way of chapter note. - Explain. **(c)** Write a note on related person under Central Excise Act, 1944. **(d)** Write a note on physical control under Central Excise Act, 1944. [4+4+4+4 = 16 marks]

Q 5 (a) Mention the includible and excludible elements from the value of imported goods under section 14 of Customs Act, 1962 read with Valuation Rules, 1988. **(b)** Calculate the total Customs duty liability from the following data: - Product imported from France : Gears * C.I.F. value in French France : 20,000 * Exchange rate : 1 FF = Rs. 6.25. * Additional Information : (1) C.I.F. value includes Air Freight of 2,000 FF's and Insurance of 200 FF. (2) Basic Customs duty : 25% (3) Special Customs surcharge : 10% (4) Special Additional duty : 4% (5) Excise duty chargeable on similar goods in India is 16% as per tariff rate. However, as per an exemption notification the effective rate is 8%. (6) Ignore Landing charges. **Q 5 (c)** Determine the interest liability on Customs duty payable under section 28 AB of Customs Act, 1962., given the following particulars: * Amount of Customs duty Rs. 10,00,000 * Date on which duty was due 31.12.1998 * Date of determination of duty by Commissioner 31.12.1999 * Date of payment by Importer (Customs duty payment) 31.12.2000 * Rate of interest 24%. [5+8+3 = 16 marks]

Q 6 Write short notes on the following with reference to the Central Excise Act, 1944 : **(a)** Provisions for Appeal **(b)** Tax Planning for Central Excise **(c)** Concept of Unjust Enrichment **(d)** SSI Exemption under Central Excise . [4 x 4 = 16 marks]

Q 7 Distinguish between the following: **(a)** "Identical Goods" and "Similar Goods" - under Customs Law. **(b)** "Transit of goods" and "Transshipment of goods" - under Customs Law. **(c)** "Safeguard duty" and "Antidumping duty" - under Customs Law. **(d)** "Provisional Assessment" and "Self Assessment" - under Excise Law. [4 x 4 = 16 marks]

Q 8 (a) When is stock transfer treated as 'Inter-State Sale' under CST Act, 1956? **(b)** What are the prescribed rates of tax under section 8 of CST Act, 1956. **(c)** Determine the Central Sales Tax liability from the following data when a sale is effected from Faridabad to Lucknow: * Invoice No. : 00708374 * Basic Price : Rs. 3,00,000 * Excise Duty : 16% ad valorem * CST : As applicable under 'C' forms * Trade Discount : 8% * Cash Discount : 2% * Quantity supplied : 10,000 Kgs * Quantity rejected by buyer within 3 days of delivery : 1000 Kgs * Quantity returned by buyer after 6 months of despatch: 1000 Kgs [3+5+8 = 16 marks]

ICWA Inter - June 2000 - Indirect Taxation - Time Allowed : 3 Hours - Full Marks : 100. Answer Question No. 1 which is compulsory and any five from the rest.

Q 1. (a) What is the Compounded Levy Scheme under the Central Excise Act, 1944? Explain giving instances where it is applicable. **(b)** What is the relevant date for determining the duty rate and tariff valuation for imported goods? **(c)** Explain the procedure to be followed for removal of waste, refuse and by-product under the Central Excise Act, 1944. **(d)** Sumita Garments, Goa had inter-state sale of their product 'Z' for the year April 1999 to March 2000 of Rs. 17,50,000 (inclusive of sales tax). The rate of C.S.T. was 5%. Goods worth Rs. 1,50,000 sold in January 2000 were returned by a buyer in May 2000, as they were in excess of his requirement. Goods worth Rs. 1,30,000 despatched in May 98 were rejected by the buyer and send back in March 2000. Find the taxable turnover if "C" form was received from all buyers. - . - What will be the taxable turnover if goods worth Rs. 1,50,000 (mentioned above) sold in Jan. 2000 were returned by the buyer in Aug. 2000? [4+5+5+6 = 20 marks]

Q 2. (a) Discuss the procedure and provisions relating to claim of refund of customs duty paid in excess under the Customs Act, 1962. **(b)** Discuss the procedure to send the inputs to job worker on which Modvat has been availed under the Central Excise Act, 1944. **(c)** M/s. Premium Industries Ltd., has imported a machine from Japan at an F.O.B. cost of 1,00,000 Yen (Japanese). The other expenses

incurred were as follows : (i) Freight from Japan to Indian Port 10,000 Yen; (ii) Insurance paid to insurer in India Rs. 5,000; (iii) Designing Charges paid to consultancy firm in Japan 15,000 Yen; (iv) M/s Premium Industries Ltd. spent Rs. 50,000 in India for development work connected with the machine, (v) Transportation cost from Indian port to Factory Rs. 15,000; (vi) Central Government has announced exchange rate of 1 Yen = Re. 0.40 by notification under section 14(3). However the exchange rate prevailing in the market was 1 Yen = Re. 0.4052 (vii) M/s Premium Industries Ltd. made payment to the bank based on exchange rate of 1 Yen = Re. 0.4150, (viii) The commission payable to the agent in India was @ 5% of F.O.B. price in Indian Rupees. - . - The rate of custom duty is 35%. Similar goods are subject to 15% excise in India. Find the custom duty and other duties payable : (1) If the importer M/s Premium Industries Ltd. is importing goods for captive consumption ;2) If the importer M/s Premium Industries Ltd. is a trader and imported goods for the purpose of trading. [4+4+8 = 16 marks]

Q 3. (a) Explain the provisions relating to excise duty liability in case of branded goods manufactured by Job Worker who is a small scale unit, not being a brand owner. **(b)** Explain the provisions relating to sale of goods through depot / godown under Central Excise Act, 1944. **(c)** M/s Bharat (Trader) supplies raw material costing Rs. 4,500 to processor. Processor processes the raw material and supplies finished product to the trader. The processor charged Rs. 1,050 as processing charges which include Rs. 800 as processing charges and Rs. 250 as his profit margin. The cost of transportation of raw material to the premises of the processor is Rs. 400 and for returning of the finished product to the trader is Rs. 450. The finished product is sold by the trader for Rs. 6,700. The rate of excise duty is 16%. What is the assessable value and what is the total duty payable. [4+4+8 = 16 marks]

Q 4. Write short notes on any four of the following with reference to the Customs Act, 1962 and other relevant provisions: a) IEC; b) EPZ; c) Powers and functions of Director General of Foreign Trade; d) WTO (World Trade Organisation); e) Export Promotion Councils; f) Advance Intermediate Licence. [4 x 4 = 16 marks]

Q 5. (a) State whether each of the following statement is correct or wrong: i) All the documents prescribed for availing Modvat credit are valid for six months only; ii) Modvat credit is not available on additional duty (CVD) paid on imported goods; iii) Rate of duty as applicable at the time of actual removal from factory or warehouse will be relevant; iv) No duty of excise is payable if goods are lost in storage as these are not sold; v) Goods removed from factory for job work must come back within 90 days; vi) Design and development work done in India are not to be considered for the purpose of custom value; vii) Sales tax can be levied on declared goods only at one stage and at rate not more than 4%; viii) The burden of proof regarding non-existence of mens-rea is on the accused. **(b)** Explain the provision under the Customs Act, 1962 relating to Baggage duty and concessions to Indian resident returning from abroad after a short visit. [8+8 = 16 marks]

Q 6. (a) The selling price of a product inclusive of excise duty and sales tax is Rs. 3,500 per dozen. Sales tax is 4%. The excise duty payable is 16%. Work out the assessable value and total duty payable per dozen. **(b)** Closing balance in RG 23 A Part II of a manufacturer on 3rd July 1999 was Rs. 11,500 at serial number 1054. On 4th July 1999, following transactions took place : (i) The manufacturer received inputs under Invoice No. 253 dated 5th June 1999, evidencing payment of duty of Rs. 74,000; (ii) 90 pieces of Final products were despatched under Invoice No. 768. Assessable value was Rs. 1,200 per piece and excise duty rate was 25%; (iii) Some inputs on which Modvat was taken earlier were sold for Rs. 1,20,000 as they were found in excess. When the inputs were received duty rate on inputs was 15%, and Modvat credit taken was Rs. 21,000. However on 4th July 1999, the excise rate applicable on inputs was 20%; (iv) Some inputs (10,000 pieces) were sent outside on 1st July 1999 for job work under rule 57F(4). Duty of Rs. 5,000 was paid while sending the inputs for job work. On 4th July 1999, 6000 pieces (out of 10,000 pieces) were returned to the factory after job work. - . - Make suitable in RG 23A Part II (only relevant columns of register need to be shown). **(c)** What are Post Removal Expenses? Give four examples of such expenses. Are they includible in determining Assessable Value under the Central Excise Act, 1994? [4+8+4 = 16 marks]

Q 7. Write short notes on the following with reference to the relevant Acts and procedures : (a) Physical cannot under Central Excise Act, 1944 (b) Test report and its use in clearance of import / export goods; (c) Indian customs waters and its relevance to levy duty under the Customs Act, 1962; (d) Brand Rate of Drawback. [4 x 4 = 16 marks]

Q 8. Write short notes on the following with reference to the relevant Act and procedures : (a) Essential ingredients of sale (b) Dealer under Central Sales Tax Act, 1956 (c) What do you understand by the expression 'penultimate sale' under the Centre Sales Tax Act, 1956? Discuss (d) Define Sales Turnover. Illustrate its calculation with hypothetical figures. [4 x 4 = 16 marks]

ICWA Inter - December 1999 - Indirect Taxation - Time Allowed : 3 Hours - Full Marks : 100. Answer Question No. 1 which is compulsory and any five from the rest.

Q-1 (a) State the salient features of 'valuation of goods' for determining the 'value' for the purpose of assessment under the Customs Act, 1962. **(b)** Is the Central Government empowered to charge Excise Duty on the basis of production capacity ? State the relevant provisions. **(c)** How is the rate of tax determined under the CST Act, 1956, in respect of inter-state sale ? **(d)** Can a manufacturer sell the inputs on which Modvat has already been availed of, as they are ? Discuss the procedure to be followed. [8+4+4+4 = 20 marks]

Q-2 (a) State whether the following elements are includible or not in the assessable value of excisable goods : i) cost of recording songs on blank audio tape ii) repacking charges incurred by the manufacturer at the depot / godown iii) 'discount in kind' - 13 pieces of goods given against the price of 12 iv) value of software loaded into the computer system v) interest on advance deposits and / or security deposits advanced by the buyers. - . - **(b)** Sigma Ltd. asked for a quotation from Omega Ltd. for the supply of 100 complete computer systems. Omega Ltd. furnished the following quotation : (A) - Components - CPU - 20,000, Monitor - 10,000, Keyboard 5,000. Sub-Total - Rs 35,000 (B) Labour & Overheads - Rs 10,000 (C) Profit - Rs 5,000. Total price per unit (A+B+C) = Rs 50,000. Advance of Rs 20,000 was payable along with order. Delivery period was one month from date of receipt of firm order and advance. - . - Sigma Ltd. accepts the quotation subject to the following alterations which are agreed to by Omega Ltd. : i) Keyboard would be supplied free of cost by Sigma Ltd. to Omega Ltd. since Sigma Ltd. is able to purchase the keyboard for Rs. 3,000 per unit. ii) Profit charged by Omega Ltd. is to be reduced to Rs. 4000 since Sigma Ltd. would make an advance of Rs 20,000. However, no interest is payable on the advance. - . - Determine the assessable value under section 4 of the Central Excise Act, 1944, and the Excise Duty liability @ 15% ad valorem. (10+6 = 16 marks)

Q-3 Write short notes on the following : **a)** First appraisalment **b)** Daily list of imports and exports **c)** Declaration by owner of baggage **d)** Import through post parcel. (4 x 4 = 16 marks)

Q-4 (a) Name the documents on which Modvat credit is permissible as per Rule 57-G of the Excise Rules, 1944. **(b)** A manufacturer received certain inputs. The cost of inputs was Rs. 2,00,000 and duty paid @ 16% was Rs. 32,000. After receipt of the inputs, the Modvat credit was availed of by the manufacturer. He further carried out some processes on the inputs. The cost of processing was Rs. 50,000. The semi-processed material was sent to a small-scale unit for a job work. - What should be the duty payable at the time of removal of inputs for the job work ? The material sent was not returned by the small-scale unit after the job work within 180 days. What will be the duty payable on such goods not returned after being sent out for the job work ? **(c)** Machinotech Ltd. purchased a lathe machine at a price of Rs. 1,00,000 on which 20% Excise Duty was paid and the company availed of the Modvat credit on the said capital goods. The lathe machine was purchased on 27-01-1999 and it was disposed of on 29-04-1999. Can the assessee enjoy the Modvat credit ? Is it necessary to reverse the Modvat credit on disposal of the machine ? If your answer is yes, quantify the amount. **(d)** Surya Ltd. purchased certain inputs for Rs. 50,00,000 and also paid Excise Duty @ 10% ad valorem. The company also purchased a drilling machine for Rs. 5,00,000 and paid Excise Duty @ 15% ad valorem. The company availed of the Modvat credit on the inputs and on the capital good in April, 1999, on the same day. On 10-05-1999, the company cleared the finished goods to Tara Ltd., the cum-duty price of which worked out to Rs. 70,80,000. The final product (finished goods) sold attracted Excise Duty @ 18% ad valorem. The company also deposited Rs. 6,00,000 through TR-6

Challan on 10-05-1999, itself. It may be noted that the inputs were purchased from Usha Ltd. and the drilling machine from Probha Ltd., on credit in both cases. Pass the necessary journal entries in the books of Surya Ltd. (4 x 4 = 16 marks)

Q-5 (a) You are the Manager (Taxation) of Eastern Ltd. Draft a note explaining the procedure involved in the export of excisable goods. **(b)** Give the procedure for re-export of imported goods and duty drawback available on such goods. [8+8 = 16 marks]

Q-6 (a) Geet Pvt. Ltd., Chandigarh, made the following transactions in inter-state sale/purchase : i) Goods sold to a government department in Maharashtra : Rs. 5,50,000. ii) Goods sold to a trader in Himachal Pradesh : Rs. 5,00,000. iii) Goods purchased when they were in transit from Rajasthan to Haryana and sold during movement of the goods to a manufacturer in Haryana by transfer of documents : Rs. 2,50,000. iv) Goods exported directly : Rs. 12,00,000. v) Goods exported through agent : Rs. 1,00,000, the agent being paid commission @ 1%. vi) Goods sold to an exporting agency in Delhi which in turn exported the goods : Rs. 1,50,000. - . - Sales tax on the goods is 4% if sold within the territory of Chandigarh. - . - What are the sales tax declaration forms obtainable from each of the above buyers ? - . - What will be the sales tax rate applicable in each case, if the (a) required declaration is obtained (b) required declaration is not obtained. - . - **(b)** Write short notes on (i) Sale price under the CST Act, 1956 (ii) 'Sale or purchase of goods taking place outside a state' under section 4 of the CST Act, 1956. (8+8 = 16 marks)

Q-7 Distinguish between the following **(a)** Direct Tax and Indirect Tax **(b)** Selective Audit and Special Audit under the Excise Act **(c)** DEEC Scheme and DEPB Scheme **(d)** Self Assessment and Provisional Assessment under the Excise Act. (16 marks)

Q-8 (a) Lalit Fans Ltd. is selling fans at a price of Rs. 1,200 at the factory gate at Chandigarh, Rs. 1,275 from their depot at New Delhi and Rs. 1,250 from Calcutta. 200 fans were dispatched on 1st March, 1999, to their depot at New Delhi which reached the depot on 20th March, 1999. 100 fans were dispatched on 3rd March, 1999, to Calcutta which reached on 15th March, 1999. - . - Lalit Fans Ltd. revised the price of fans on 15th March, 1999, as follows : Ex-factory price Rs. 1,300 Ex-Delhi Depot Rs. 1,375. Ex-depot Calcutta Rs. 1,350 - . - The goods were actually sold from Delhi depot at Rs. 1,375 per fan on 8th April, 1999. The Calcutta depot sold 90 fans @ Rs. 1,250 and 10 fans @ Rs. 1,350 per fan. Calculate the total duty payable, if the rate of Excise Duty is 10%. Prices given above are exclusive of taxes and duties. - . - **(b)** M/s. Garima Enterprises, an SSI manufacturer, wants to pay Excise Duty even when it is eligible to pay concessional duty. i) Can it do so ? ii) Why does it want to pay full duty ? iii) What is the duty payable ? - . - **(c)** 200 cycles were sold by ABC Ltd. to a related person M/s XYZ at Rs. 1,500 per cycle. M/s XYZ sold these cycles to independent buyers at Rs. 1,850 per cycle (prices exclusive of all taxes). The rate of Excise Duty is 10%. i) Determine the assessable value and the total duty payable. ii) What would be the position if 50 cycles are sold by ABC Ltd. to M/s. XYZ @ Rs. 1,500 per cycle and 50 cycles are sold directly to an independent buyer @ Rs. 1,700 per cycle ? [8+4+4 = 16 marks]

ICWA Inter - June 1999 - Indirect Taxation - Time Allowed : 3 Hours - Full Marks : 100. Answer Question No. 1 which is compulsory and any five from the rest.

Q 1. (a) What is Assessable Value as per the Central Excise Act, 1944, and what is the basis of arriving at the Assessable Value ? **(b)** Write a short note on Special Additional Duty of Customs under the Customs Act, 1962. **(c)** M/s. Menoka Enterprise placed orders for import of sugar from various exporters abroad. All import documents were in the name of M/s. Menoka Enterprises. After import, M/s. Menoka Enterprises allotted the imported sugar to various buyers in India. No Sales Tax was charged as the sales were treated as "in the course of import". Is this in order ? Discuss. **(d)** Section 4 of the Central Excise Act, 1944, has been amended w.e.f. 28th September, 1996, which says - "If the goods are ordinarily sold through depots, the depot will be considered as the place of removal and the price prevalent at such place will be considered for determining the assessable value." - Discuss. (8+4+4+4 = 20 marks)

Q 2. (a) Discuss any five processes which have been treated as 'process of manufacture' under the Central Excise Tariff Act (CETA), 1985, by way of 'chapter note'. **(b)** Sugandhi supplied certain raw

materials and inputs to several household ladies to make dhoop sticks and incense sticks (agarbattis) in their own premises/houses. The ladies used their own labour to make the incense sticks for which they received job charges on piece rate basis. Though Sugandhi did not supervise their work, she had the right to reject defective sticks. The Central Excise Department proposes to raise a huge demand on Sugandhi, claiming that she is a manufacturer. Advise Sugandhi in the matter. (10+6 = 16 marks)

Q 3. (a) Write short notes on the following with reference to the Customs Act, 1962 - i) All industry rate ii) Owner's right to deal with warehouse goods iii) Sums due to Government **(b)** Define 'accessory'. What rate of Import Duty will be chargeable on accessories supplied compulsorily with the article ? 12+4 = 16 marks)

Q 4. (a) What is Duty Drawback ? How is Duty Drawback rate fixed under the Customs Act, 1962 ? **(b)** List the capital goods eligible for Modvat Credit. What is the basic condition for their use in order to claim such credit ? (6+10 = 16 marks)

Q 5. Write short notes on the following with reference to the Customs Act, 1962. **(a)** Land customs station **(b)** Effective date of notification **(c)** Penalty for short landed goods **(d)** Prior entry bill (4x4 = 16 marks)

Q 6. (a) Which are the duties paid on inputs that are eligible for Modvat ? **(b)** Differentiate between rule 57F(2) and rule 57F(4) of Modvat for removal of inputs from a factory. **(c)** On 15th March, 1999, at 9.00 a.m., following was the position of Camac Corporation, Calcutta - 1) opening balance of PLA Rs. 50750, 2) opening balance of RG 23A, part II Rs. 12,000, 3) opening balance of RG 23C, part II Rs. 9,200. The following materials were received up to 3 p.m. on the same day. - i) A machine was received vide invoice No. 1075 dated 3rd January, 1999, marked 'duplicate for transport', indicating that duty paid was Rs. 25,000. The same is not yet installed. ii) Some inputs were sent for job work on payment of duty of Rs. 20,000. Out of these inputs, 60% were received after carrying out the job work. iii) Raw materials purchased from a dealer were received. The dealer was registered with the Central Excise. The dealer's invoice No. 1052 dated 10th February, 1999, has certified that the duty paid by the manufacturer Rs. 22,700. The invoice was marked as 'first stage dealer' and 'duplicate for transport'. iv) Some raw materials were received vide invoice No. 758 dated 20th June, 1998. Duty paid was Rs. 50,750. The invoice was marked 'duplicate for transport'. At 4 p.m., an urgent dispatch order was received to dispatch the maximum possible quantity of the finished product X to Chennai. The Assessable Value of X is Rs. 500 per kg. and duty is payable at 10%. Adequate stock of X is lying with Camac Corporation. What is the maximum quantity of X which can be dispatched on 15th March, 1999 ? (4+4+8 = 16 marks)

Q 7. (a) Write a note on the Customs, Excise & Cold Control Appellate Tribunal (CEGAT), explaining its composition, working procedure and powers. **(b)** What offences are punishable under the Central Excise Act, 1944 ? **(c)** Give the administrative set up of the Central Excise Department. (8+4+4 = 16 marks)

Q 8. (a) M/s. Johuree Brothers, Mumbai, Maharashtra, are dealing in two products A and B. The gross inter-state sales are Rs. 5 lakhs and Rs. 3 lakhs respectively during the financial year 1998-99. No CST was charged in the invoice. If sold within Maharashtra, the rates of sales tax are 6% and 5% on products A and B respectively. Product B is 'declared goods' included under section 14 of the CST Act. The other details in respect of the financial year 1998-99 are as follows. (i) M/s. Johuree Brothers imports product A from Japan, stocks it and then sells it from its godown. (ii) Product A worth Rs. 1 lakh was returned by a customer in March, 1999, as this was in excess of his requirements. The product A had been sold to him in June, 1998. (iii) Product A worth Rs. 0.5 lakh was imported but was sold by transfer of documents to a buyer in New Delhi before it was cleared from Customs. Customs Duty was paid by the buyer from New Delhi. (iv) The C Form was received in respect of the balance sale of product A. (v) Out of the total sale of product B, sales of Rs. 1 lakh were inclusive of packing charges Rs. 5,000, transport charges Rs. 3,000 and transit insurance Rs. 3,500. The charges were shown separately in the invoice. The D Form was received in respect of these sales. These goods were purchased by M/s. Johuree Brothers from a manufacturer in Mumbai for Rs. 75,000 which included Maharashtra Sales Tax of Rs. 5,500. You are required to work out the

turnover and the CST liability for the year 1998-99. Will M/s. Johuree Brothers be able to obtain any refund of tax paid on purchases ? If so, how much ? **(b)** Write short note on 'goods' as per section 2(d) of the CST Act. **(c)** Define and distinguish between inter-state sale and intra-state sale. (8+4+4 = 16 marks)

ICWA Inter - December 1998 - Indirect Taxation - Time Allowed : 3 Hours - Full Marks : 100. Answer Question No. 1 which is compulsory and any five from the rest.

Q 1 (a) What are the provisions under the Central Excise Rules, 1944, for movement of inputs or partially processed goods outside the factory for job work ? Briefly narrate the procedure and the conditions to be complied with. **(b)** What is sale by transfer of documents under the Central Sales Tax Act, 1956? **(c)** Modvat Rule 57C prevents the misuse of Modvat credit and reiterates the principle that Modvat is aimed at removing the cascading effect of taxes. Discuss this statement. **(d)** An importer, imported consignment of imported goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 26th August, 1997. A bill of entry for warehousing the goods was completed and the goods were duly warehoused. In the meantime an exemption notification was issued on 15th October, 1997, reducing the effective custom duty to 25% ad valorem. Thereafter, the importer filed bill of entry claiming 25% duty. The custom department charged higher rate of duty @ 40% ad valorem. Please give your view about the same, discussing the relevant provisions of the Customs Act, 1962. (8 + 4 + 4 + 4 = 20 marks]

Q 2 (a) When can provisional assessment of duty be resorted to under the Central Excise Act, 1944 ? **(b)** What is the taxable event in Central Excise ? What is the distinction between levy and collection ? **(c)** A manufacturer brings some inputs valued at Rs 25,000 on which duty of Rs. 5,000 has been paid @ 20%. Subsequently the manufacturer sold the input as such, which goods he sold for Rs. 30,000. What is the duty payable by the manufacturer if - i) rate of duty on the date of clearance on inputs was 25% ii) rate of duty on the date of clearance on input was 10% ? **(d)** "Intention to evade payment of duty is not mere failure to pay duty. It must be something more i.e. the assessee must be aware that duty was leviable and he must have deliberately avoided payment of duty." Discuss with reference to the Central Excise Act, 1944. [4 x 4 = 16 marks]

Q 3 Write short notes on following with reference to the Customs Act, 1962 : **(a)** P.D. Bond **(b)** Trading House **(c)** Deemed Export **(d)** Notified Goods [4 x 4 = 16 marks]

Q 4 (a) A vessel containing imported goods (automobile parts) entered into Indian territorial waters, when exemption notification exempting these automobile parts was in force. Before the automobile parts were unloaded from the ship, the Government cancelled / withdrew the exemption notification. The custom department insisted on payment of appropriate customs duty. The custom department relied upon the provisions of section 15(1) of the Customs Act, 1962. Discuss the taxability of this imported consignment giving the relevant provisions of the Act. **(b)** State whether each of the following statements is correct or wrong with reference to the Central Excise Act / Modvat : i) There must be 'one to one' correlation between input and output in order to avail Modvat ii) Modvat is not available on manufactured tobacco products iii) Rule 57C deals with removal of input for job work iv) List of capital goods eligible for Modvat have been specified under Rule 57O v) RG-23A Part I is similar to PLA vi) Moulds and dies are eligible for Modvat under Rule 57A vii) Invoice shall be in quadruplicate and Modvat credit shall be available on duplicate copy viii) First stage dealer means a dealer who purchases goods from the depot of the manufacturer ix) Modvat can be availed in respect of additional duty (CVD) paid on imported inputs x) Special audit of Modvat credit can be ordered by chief commissioner of central excise under section 14A. [6 + 10 = 16 marks]

Q 5 (a) What is the relevant date for issue of show cause notice under the Central Excise Act, 1944 ? **(b)** Discuss 'End use exemptions under section 25 of Customs Act, 1962 and their control'. **(c)** Section 14A of Central Excise Act, 1944 provides for special audit. Why is it called special audit ? Under what circumstances and by whom can it be ordered ? (4 + 8 + 4 = 16 marks]

Q 6 Write short notes on the following with reference to Central Sales Tax Act, 1956 : **(a)** Place of business **(b)** Dealer **(c)** Essential ingredients of sale **(d)** Transactions which are not sales. [4 x 4 = 16 marks]

Q 7 (a) Discuss whether the following expenses will form part of assessable value under the Central Excise Act, 1944 and why ? i) Advertisement expenses incurred by the buyer / dealer ii) Depot expenses iii) After sale service during warranty period iv) Interest on security deposit / advances. **(b)** Define and discuss the chapter X procedure under the Central Excise Act, 1944 **(c)** What is Personal Ledger Account (PLA) ? Discuss its accounting treatment. (8 + 4 + 4 = 16 marks]

Q 8 (a) Give various ideas which can be considered while planning a business so that tax liability under the Central Sales Tax Act is minimised. **(b)** Write short notes on the following with reference to the Customs Act - (i) 'Spares' and rate of duty applicable to accessories / spares compulsorily supplied with the machine (ii) rate of exchange and relevant date for converting value expressed in foreign currency. [8 + 8 = 16 marks]

ICWA Inter - June 1998 - Indirect Taxation - Time Allowed : 3 Hours - Full Marks : 100. Answer Question No. 1 which is compulsory and any five from the rest.

Q 1 (a) The finance Bill, 1997, provides for charging of excise duty with reference to Maximum Retail Price. (MRP). Explain the provisions in brief. Which is the section under which this duty can be levied and the date from which it has been made effective ? **(b)** What is 'relevant date' for determination of duty rate and tariff valuation for imported goods ? **(c)** Discuss various export incentives available for manufacturers for export of goods. **(d)** explain the provisions relating to valuation of goods sold through depots / godowns under the Central Excise Act, 1944. **(e)** Define and explain 'document of title to goods'. (4 x 5 = 20 marks)

Q 2 (a) Briefly explain the procedure to be observed by the manufacturer under rule 57G in order to avail of MODVAT credit of inputs. **(b)** Rule 173B requires every manufacturer of goods to make declaration of goods manufactured or produced. Discuss. **(c)** 'Tax planning is certainly possible in excise'. Explain the statement with reference to the areas / avenues for tax planning and the precautions to be taken in planning for central excise. (5+3+8 = 16 marks)

Q 3 (a) Having regard to provisions of section 4 of the Central Excise Act, 1944, compute the assessable value of excisable goods and the duty amount, given the following information - (i) cum-duty wholesale price (inclusive of sales tax Rs 3,000) - Rs 16,000 (ii) Normal secondary packing cost - Rs 1,000 (iii) Cost of special secondary packing - Rs 2,000 (iv) Cost of durable and returnable package - Rs 1,000 (v) Freight (outward) - Rs 750 (vi) Insurance on freight - Rs 300 (vii) Trade discount (as per normal practice) - Rs 900. (viii) The rate of central excise duty as per the central excise tariff is 15%. **(b)** Bansen & Co., a retail trader, supplies raw material (grey fabrics) of Rs 1,400 to Nagpal, a processor of cloth. *Nagpal processes the grey cloth and, after bleaching, dyeing, printing etc. supplies the finished product to Bansen & Co. *Nagpal charges Rs 400 which includes Rs 300 as expenses and Rs 100 as profit. The transport cost from the place of trader to the place of job worker is Rs 50 and transport cost from the place of job worker to the place of trader is Rs 60. Bansen & Co. sells the finished goods at Rs 2,400. Given the rate of duty at 10%, compute the Assessable Value (AV) and the duty payable. (10+6 = 16)

Q 4 (a) Discuss whether the MODVAT credit will be available in the cases stated below - (i) Packing materials are lost or destroyed in store room of the factory (ii) Inputs are used in trial runs (iii) Detergent used for washing glass bottles, before filling aerated water, by soft drink manufacturer in his bottling plant (iv) Cement and paints used for maintaining factory building **(b)** Write a short note on tariff value under the Central Excise Act, 1944 (12+4 = 16 marks)

Q 5 Write short notes on any four of the following - **(a)** Additional duty other than CVD **(b)** Goods under the Customs Act **(c)** Un-accompanied Baggage **(d)** Stores **(e)** Tariff Value under the Customs Act. (4X4 = 16 marks)

Q 6 (a) Discuss the provisions and procedures relating to claim refund of Customs Duty. **(b)** Discuss the salient points in the important judgement in the case of Government of India v Madras Rubber Factory Ltd. [1995(77) ELT 433 (SC)] relating to valuation of excisable goods. (8=8 = 16 marks)

Q 7 (a) What is 'taxable turnover' under the Central Sales Tax Act, 1956? What are the deductions available for the determination of taxable turnover ? **(b)** Write short notes on (i) Power to take samples under section 1444 of the Customs Act. (ii) Penalties for contravention etc. not expressly provided under the Customs Act. [8+8 = 16 marks]

Q 8 (a) What is 'warehousing without warehousing' under the Customs Act. **(b)** What is 'brand rate' for drawback of duty on export under the duty drawback scheme ? **(c)** A dealer effected the following sales during the first quarter of 1997-98 (April to June) - (i) Invoice No 1171 dt 2.4.97 for Rs 26,000 plus tax @ 4%. (ii) Invoice No 1172 dt 19.4.97 for Rs 70,000 plus tax @ 4%. (iii) Invoice No 1173 dt 2.5.97 for Rs 52,000 (inclusive of tax). (iv) Invoice No 1174 dt 4.6.97 for Rs 12,200 plus tax @ 4%. (v) Invoice No 1175 dt 25.6.97 for Rs 20,000 plus tax @ 4%. (vi) Goods worth Rs 6,100 (exclusive of tax) against invoice No 1174 were returned on 28.6.1997 (vii) Goods worth Rs 5,200 (inclusive of tax) sold on 25.12.1996 were returned on 30.6.1997. All the goods were made in the course of inter state trade. Calculate the turnover and sales tax payable if the rate of tax is 4%. (4+4+8 = 16 marks).

New syllabus of ICWAI final is effective from December 2008. The name of paper is 'Indirect and Direct Tax Management'. Questions relating to indirect taxes are given below.

ICWAI – FINAL EXAMINATION New Syllabus – December 2010

(Only questions relating to indirect tax covered)

Answer Question No. 1 which is compulsory and any five questions from the rest.

Q 1(a) (iv) A service provider, whether registered or not, providing taxable services under brand name//trade name of others _____ (will/will not) be eligible for availing threshold limit of Rs. 10 lakhs available to small service providers. (v) Where excise duty has been paid on provisional basis, refund claim should be filed within _____ (one year/two years) after duty has been adjusted in final assessment (vi) A sale or purchase of goods is deemed to be in the course of import, *inter alia*, if such sale or purchase _____ the import of such goods (occasions/follows) (vii) Certificate of registration under Central Sales Tax Act is to be issued by the registration authority in the prescribed Form _____ (B/G). (viii) An EOU is required to execute a bond in form _____ (B22/B17) for issue of a certificate on strength of which goods will be cleared from Customs without payment of duty. (ix) If raw material is supplied to a job worker on principal to principal basis the supplier is _____ (manufacturer/not manufacturer) under Central Excise Law (xi) Anti dumping and countervailing duties are imposed under the _____ Act (Customs/Central Sales Tax). (xii) The form for bill of entry for _____ (warehousing/home consumption) is printed on yellow paper. (xiii) The demand of duty can be raised within _____ (one/five) years, in case of fraud, collusion, willful misstatement and suppression of facts or contravention of any provision of Central Excise Act or Rules with intent to evade payment of duty made by a manufacturer (xiv) An importer importing under an authorization or EPCG is required to execute _____ (a bond/a bond with guarantee), when he has export obligation. (xv) Transaction Value _____ (includes/does not include) receipts/recoveries or charges incurred or expenses provided for in connection with manufacturing, marketing, selling of excisable goods to be part of the price payable for goods sold (1 mark each)

Q1(b) Answer the following questions in brief : (i) What is a Large Tax Payer Unit? (ii) What is the basic distinction between VAT & Sales Tax? (iii) Is *mens rea* essential for imposing penalty under Central Excise Act/Customs Act? (2 marks each)

Q 2(d) TRAI EXPORTERS imported some goods in January 2010 and the goods were cleared from Paradeep Port for warehousing on 8th January, 2010 after assessment. Assessment was completed at the exchange rate \$ 1 = Rs. 47.50. The rate of duty on that date was 20% (no other additional duty is payable). The goods were warehoused at Cuttack and were cleared from Cuttack warehouse on 5th March, 2010 when rate of duty was 15% and exchange rate was \$1 = 47.00. What is the rate of duty and exchange rate applicable on the date of removal of goods from Cuttack warehouse (4 marks)

Q3(c) What will be the Central sales Tax leviable to registered and unregistered dealer in following situations? Rate of CST applicable is 2%. (i) If local VAT is 1%. (ii) If VAT is 2%. (iii) If VAT is 4%. (iv) If VAT is 12.5% (4 marks) (d) M/s Link Ltd. a service provider engaged in providing advertising agency services deposited Rs. 2 lakhs as service tax for the month of April, 2009 on 5th May, 2009 with a designated bank by cheque. The check was cleared on 10th May, 2009. The department alleging that the service tax for the month of April, 2009 has not been deposited in due rate for which interest @ 13% p.a. would be levied. (i) Is the action of the department right on levy of interest? Give reasons in support of your answer. (ii) Will the situation be different if the cheque deposited could not be realized due to insufficient funds (3 marks)

Q4 (a) State briefly whether the following services are taxable services under the Service Tax: (i) Services provided in the State of Rajasthan by a person having a place of business in Jammu and Kashmir (ii) Service provided from outside India and received in India by an individual otherwise than for the purpose of use in business or commerce (6 marks) (b) M/s. Y Consultants are engaged in the

business of supply of manpower to M/s Z Enterprises. They charge to the principal employer for the wages of their labour which amounts to Rs. 1,50,000 plus their service charges of Rs. 30,000, What is the amount of service Tax payable? (2 marks) (c) (i) is e-filing of service tax return permitted? (ii) Should service tax be paid even if not collected from the client or service receiver? (4 marks) (d) M/s Y rendered taxable service to a client. A bill for Rs. 40,000 was raised. No service tax was separately charged in the bill. What is the value of taxable service and the service tax payable? (3 marks)

Q5 (a) State the objectives of Central Sales Tax Act (b) State whether the following are goods under CST Act: (i) Patent (ii) Lottery Tickets (iii) Old newspapers (iv) Cheque (4 marks) (c) State whether the following are includible in 'Sale Price'- (i) Excise Duty (ii) Packing materials and Packing charges (iii) Insurance charges (iv) Weighment charges paid for goods (2 marks) (d) A registered dealer of Bikaner (Rajasthan) sold goods worth Rs. 4,36,000 (including tax @ 9%) to an unregistered dealer in Gujarat. Calculate the amount of Central Sale Tax payable, if the sales tax rate on such goods in Rajasthan is 9% and surcharge @ 15% is also payable on it (4 marks)

Q8. (a) What are the essential ingredients of interstate sale - Elucidate (6 marks) (b) State whether sale by VPP is liable to CST (3 marks) (c) What are the exceptions to section 3 of CST Act? (4 marks) (d) Give four instances of Goods of special importance in Interstate Trade or Commerce u/s 14 of CST Act (2 marks)

ICWAI FINAL EXAMINATION June 2010 (New Syllabus)

Indirect and Direct Tax Management

Answer Question No. 1 which is compulsory and any five questions from the rest.

(Only questions relating to indirect tax covered)

Q1 (a) Fill up the blanks: (1 mark each)

(ii) A unit is entitled to SSI concessions under excise provisions if its turnover in the earlier year does not exceed Rupees

(iii) Parts used during warranty period for repairs or replacement (are/are not) excisable.

(iv) CVD (is/is not) payable on anti-dumping duty.

(v) Customs value of excisable goods is determined, *inter alia*, under section of the Customs Act, 1962.

(vi) Section 18 of the Customs Act, 1962 provides for of duty.

(vii) All items other than those which are restricted/prohibited can be imported (freely/subject to nominal import duty of 10% on assessable value).

(viii) Where advance authorization has been obtained, export obligation should be fulfilled within from the date of

(ix) Forms received from branches for stock transfers should be submitted to CST authorities on basis.

(x) Under the Central Sales Tax Act, 1956, sale price means the amount payable to dealer as consideration for sale of goods and (includes/does not include) CST whether shown separately or not.

(xv) In service tax matters, an eligible appeal should be filed within from the date of receipt of order appealed against.

Q1(b) State with reasons, whether the following statements are True or False (mere conclusion will not deserve any credit; for a 'True' conclusion, the question should not be merely repeated, but reasoning should be given): (2 marks each) - (ii) Import manifest is required to be submitted at the customs station within twelve hours of arrival of aircraft or vessel. (v) Where taxable services are provided by a person not residing in India and are utilized in India, the agent of the non-resident residing on India is liable to collect and pay the service tax on behalf of the non-resident.

Q2.(a) Is it correct to say that mandatory levy of penalty under section 11 AC of the Central Excise Act, 1944 is not applicable to every case of non-payment or short-payment of duty? (5 marks) (b) LMN Aluminium 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, weighment 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) (c) Who are the persons not eligible for compounding of offence as per the provisions of the Central Excise Act, 1944? (4 marks)

Q3.(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) (b) What is the quantum of CENVAT credit that can be availed in respect of inputs and capital goods cleared on or after 07.09.2009 from an EOU or by a unit in electronic hardware technology park or in a software technology park? (5 marks) (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)

Q4(a) State the cases where the import duty shall be refunded to the person who has paid such duty, as laid down in section 26A of the Customs Act, 1962 (5 marks) (b) Mr. Bhar imported goods on 14.1.2010, Bill of entry was presented on 15.1.2010, Assessable value (in Euro) 50,000. Goods were removed to warehouse. Order permitting the deposit of goods in bonded warehouse issued on 19.1.2010. Mr. Bhar neither obtained permission of time for the warehousing period, nor cleared the goods within the permitted warehousing period of 18.4.2010. Only after a notice was issued under section 72 demanding duty and other charges, Mr. Bhar removed the goods from the warehouse, on 15th May, 2010. Assuming that no additional duty or SAD is payable, on the basis of following information, compute the amount of duty payable by Mr. Bhar while removing the goods (i) Rate of exchange (1 Euro =) 65 (on 15.1.2010), 66 (on 18.4.2010) and 67 (on 15.5.2010) (ii) Basic customs duty 12% (on 15.1.2010), 15% (on 18.4.2010) and 18% (on 15.5.2010) (5 marks).

Q4(c) M/s. Nigamanth Cables are engaged in the business of providing cable TV and high speed internet services in Salem, Tamil Nadu. For their business requirements, they imported Optic Fibre Cables (OFC) and classified them under Heading 85-44 of the Customs Tariff. This was not accepted by the Revenue and according to them, the goods should be classified under Heading 9001. The assessee's stand was accepted by Commissioner of Customs (Appeals). The matter was carried in appeal before CESTAT against the said order, which has yet not been decided. Meanwhile, the customs authorities (DRI officers) had seized the consignment of OFC imported and permitted Nigamanth Cables to clear the goods on payment of duty assessed under Heading 9001 and forced Nigamanth Cables to pay the differential duty between Headings 85-44 and 9001 by threat and coercion. You are required to consider the validity of the aforesaid action of the customs authorities in the light of judicial pronouncements (5 marks)

Q5(a) M/s. DPC & Co., a consulting engineering firm, has provided consulting engineering services to NFD Ltd. in connection with construction of power plant during the financial year 2009-10, for a value of Rs. 50 lacs, excluding service tax. While providing the services, DPC & Co. appointed Mr. X, sub-consultant, to provide services to the extent of Rs. 11 lacs, inclusive of all expenses and taxes, if any. A show cause notice has been served on Mr. X, requiring them to pay services of Rs. 11 lacs rendered by it to DPC & Co., who have utilised the same in providing the services to NFD Ltd. Mr. X is of the opinion that he is not liable to service tax since DPC & Co. have paid the service tax on the entire contract of Rs. 50 lacs. In the light of these facts, state (i) Whether the ground taken by Mr. X for non-payment of service tax is correct. (ii) If the answer is in the negative, what is the service tax payable, assuming that Mr. X has crossed threshold limit, (iii) How payment of service tax by Mr. X is beneficial to DPC & Co. (4 marks) (b) With

reference to business auxiliary services, examine whether service tax liability is attracted in following cases - (i) Manufacture of an excisable goods on behalf of the client, which is exempt from duty, (ii) Business auxiliary service provided by a service provider to any other person (service receiver) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver (6 marks) (c) Compute the net VAT liability of Janak from the under-mentioned information: (i) Raw material purchased from foreign market (including duty paid on imports @ 20%) - Rs 47,000 (ii) Raw material purchased from local market (including VAT charged on the material @ 1 %) – Rs 10,100 (iii) Raw material purchased from another State (excluding CST) – Rs 20,000 (iv) Storage, transportation cost and insurance – Rs 3,000 (v) Other manufacturing expenses incurred – Rs 600. - - Janak sold the goods to Prem adding margin of profit @ 10% on the selling price. VAT rate on sale of such goods is 10% (5 marks)

Q6(a) What are the reasons for setting up of Export Promotion Councils? Write a brief note on their responsibilities and types of Councils in India in the context of foreign trade policy. Should an exporter compulsorily register himself as a member of such Export Promotion Council? (5 marks) (b) Briefly explain the different types of Drawback rates (7 marks) (c) While importing goods under Duty Free Import Authorisation (DFIA), should any customs duty be paid? Is the DFIA transferable? (3 marks)

December 2009

Indirect and Direct Tax Management

(Only questions relating to indirect tax covered)

Q1 (a) Fill up the blanks: (ii) Ownership of raw materials is _____ (relevant/not relevant) for excise duty. (iii) Customs duty is levied under section _____ of the Customs Act, 1962 (iv) Stock transfer to branch is not treated as inter-state sale when Form _____ is submitted (v) An authorized dealer in foreign exchange has the option to pay service tax at _____ % of the gross amount of currency exchanged, instead of paying service tax at the usual rate (vi) Duty drawback _____ (is/is not) available in respect of goods manufactured by EOU/SEZ unit. (vii) Application for IEC number must be made to _____. (One mark each)

Q1(b) State with reasons, whether the following statements are true or false (answer without any reasoning will not deserve any credit): (i)Waste and scrap are always treated as excisable goods (ii) Importers can store imported goods without payment of duty in public warehouse or private warehouse (iii) Security demanded from dealer under the Central Sales Tax Act, 1956 can be satisfied in the form of surety bond (v) Duty drawback rate is fixed by the Central Government in consultation with the Board (2 marks each)

Q1(c) Provide brief answers - (i) On 18.06.2009, Mr. Sakti discovers a mistake in the service tax refund pertain up to the half year ended 31.03.2009, filed on 23.04.2009. Can he rectify the mistake? (ii) As per the White Paper on State-level VAT, is a trader eligible for refund if VAT credit of input tax available cannot be utilized for any reason (iii) Enumerate any four matters covered by Foreign Trade Policy (2 marks each).

Q2 (a) State the transactions which have been excluded from levy of central sales tax and those in respect of which central sales tax leviable is Nil (b) You have been appointed as Cost Auditor to conduct special audit of Cenvat credit under section 14AA of Central Excise Act, 1944. Discuss major areas where you will concentrate while conducting your audit (c) Question on income tax (8+5+2 = 13 marks)

Q3 (a) State the basic principle of VAT (b) Question on income tax (c) Mr. and Mrs. Bose visited Canada and brought following goods while returning to India on 9th February, 2009 (i) Their personal effects like cloths, etc., valued at Rs. 40,000/- (ii) A personal computer bought for Rs. 36,000/- (iii) A laptop computer bought for Rs. 98,000/- (iv) Two litres of liquor bought for Rs. 2,000/- (v) A new camera bought for Rs. 38,000/-. What is the amount of customs duty payable by Mr. Bose? (6+6+3 = 15 marks)

Q4(a) (i) Is 'Duty Free Import Authorization (DFIA)' transferable? (ii) Is any value addition required for the same? (iii) What are the conditions relating to issue of DFIA? (b) State the provisions relating to best judgment assessment in the context of service tax (c) Examine the validity of the following statements with regard to service tax - (i) The service provided by a consulting engineer engaged in providing consultancy in the discipline of computer software engineering shall be exempt under the category "Consulting engineer's service". (ii) Some transporters undertake door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Such 'Express Cargo Service' is covered under 'courier agency service.' (7+4+4 = 15 marks)

Q5(a) Durga Steel Industries imported certain goods and kept them in warehouse. However, the goods were not removed from the warehouse at the expiration of statutory time period during which such goods were permitted under section 61 to remain in a warehouse. Durga Steel Industries sought to relinquish the title to such goods under the *proviso* to section 68 of the Customs Act, 1962. However, the Department contended that since the goods were deemed to be improperly removed from the warehouse (considering the over-stay of such goods in the warehouse) under section 73(1)(b), the case would not fall under section 68 and thus *proviso* to section 68 could not be invoked. It was submitted that before invoking the *proviso* to section 68, the conditions of section 68 must be fulfilled which was not done in the instant case. The Department further contended that the relinquishment is subject to discretion of proper officer and the same cannot be done where the importer has the ability to pay the impugned duty. Durga Steels contends that this relinquishment absolves the importer from total liability. Examine the correctness of the rival contentions (b) Illustrate the points of differences between pilferage of goods under section 13 and loss/destruction of goods under section 23 of the Customs Act, 1962 (c) The value of clearance from four units of Janak Corporation Limited (JCL) during 2008-09 are as follows: (in Rs lakhs) - Units situated at - 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 2009-10. You are required to indicate your advice in this context (6+5+4 = 15 marks)

Q7 (b) M/s ABC Services Ltd. a service provider for the first time made an agreement on 22nd May, 2008 with XYZ Ltd. to provide different services covered under Business Auxillary Services at a price of Rs. 80 lakhs (inclusive of service tax) per annum. They are not providing any other services except as above. As per terms of contract executed by ABC Services Ltd., an advance of 15% of contract price has been received for the services to be provided which would be adjusted against final bill in the end of the year. The bills raised and amount received (in Rs lakhs) are given as follows – (1) Advance 15% of Contract price for service to be provided - Bill dated 01.06.2008 for Rs 12 lakhs – Amount received Rs 12 lakhs on 01.06.2008 - 12 lakhs (2) 1st Bill for June 2008 for service provided - Bill dated 08.07.2008 for Rs 25 lakhs. Amount received on 20.07.2008 Rs 12 lakhs (3) 2nd Bill for July 2008 for service provided – Bill dated 05.08.2008 – Rs 12 lakhs –Amount received on 18.08.2008 – Rs 25 lakhs. Service tax due as per provision has been deposited in due time. Total gross value of services provided was Rs. 37 lakhs after which the contract was terminated with mutual consent. On closure of the contract amount of advance of Rs. 12 lakhs has been refunded to M/s XYZ Ltd. Please explain the following assuming service tax payable is 10.3% (and figures are expressed in Rs. in lakhs)

-(i) What action should be taken by ABC Services Ltd. on execution of agreement on dated 22nd May, 2008? (ii) Can ABC Services Ltd. avail threshold limit for the year 2008-09, if so what is the amount? (iii) Service tax payable on the advance of Rs. 12 lakhs for which no service has been provided. How much advance is taken for computation of service tax? (iv) What is the value of services taken for computation and the amount of service tax paid through designated branches and on which dates? (v) What will happen to the service tax, if any, excess deposited for which no service was provided due to termination of contract and refund of the amount thereof? (9 marks)

Q7(c) Please specify the relevant date for determination of rate of customs duty in respect of following goods imported/exported: (i) In the case of entry for export under section 50 of the Customs Act, 1962. (ii) If bill of entry is presented before the date of entry inward of Vessel. (iii) In case of goods imported by Postal Parcel (3 marks)

Q8(a) M/s XYZ Ltd. sold machinery to Mr. K at a price of Rs. 5 lakhs on 15th June, 2008 and the same was removed from the factory at Kolkata. The rate of excise duty applicable is 10.3% 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 Rs. 6 lakhs with effect from 16th June, 2008. The machinery as refused by Mr. K. has been sold on 20th June 2008 to Mr. L at the revised price of Rs. 6 lakhs. The excise duty including education cess is 12.36% applicable with effect from 10th June, 2008. Explain the following with reasons: (i) What is the value to be taken as assessable value? (ii) What is the rate of excise duty applicable and duty payable on above transaction? (iii) The Central Excise Officer is demanding duty on the price of Rs. 6 lakhs at the time of sale to Mr. L. Is he right in his approach? (iv) Does cost of production have any bearing on the assessable value? (8 marks)

INDIRECT AND DIRECT TAX MANAGEMENT June 2009 Final

Question No. 1 is compulsory. Answer any five from the rest. (Portion relating to indirect taxes)

Q 1(a) Fill up the blanks (iv) Where a service provider renders taxable as well as exempt service and some input services are used partially for the taxable services, one of the options available to the service provider is that he pays an amount equal to _____% value of exempted services (v) Simple labeling or relabeling without any repacking _____ (is/is not) "deemed manufacture" for central excise purposes (vi) The term "excisable goods" for central excise purposes _____ (will/will not) include articles capable of being sold (vii) The customs duty payable on project imports is _____%. (viii) The maximum amount of penalty leviable under section 117 of the Customs Act, 1962 is Rs. _____. (ix) In the bill raised on the client, the service provider _____ (is/is not) bound to show the service tax separately (1 each)

Q 1(b) State with reasons, whether the following statements are true or false (mere conclusion will not deserve any credit): (iii) Service tax on GTA will have to be paid by cash/cheque/e-payment only, and not through Cenvat Credit (iv) The Central Government is authorized to issue notification specifying that excise duty in respect of certain notified products is leviable on the basis of production capacity of the factory (v) No anti-dumping duty is payable by EOUs under the Customs Act, 1962, even where the goods imported are used for manufacture of goods sold in India. (vi) As per section 8(2) of the Central Sales Tax Act, 1956 in respect of inter-State of goods not falling under section 8(1), the CST rate applicable is the State Sales tax (or VAT) rate. (vii) Abatement of 30% is allowed from the gross amount charged in case of services provided in relation to chit, by whatever named called. (viii) There is no scheme for furnishing a service tax return through Service Tax Return Preparers (2 marks each).

Q 3 (a) M/s. Abanti Associates is a registered dealer engaged in the manufacturing of steel in the State of Maharashtra. During the year 2008-09 the firm has procured raw materials of Rs. 25,50,320 (VAT @ 4%) and purchased plant and machinery of Rs. 20,00,000 (VAT @ 4%) and Rs. 5,00,000 (CST @ 2%) for use in the manufacturing of steel. Sales of steel materials made during the year is Rs. 40,00,000/- (VAT @ 4%) and inter-State sale is Rs. 5,29,000 (@ 2% CST). Besides above, branch transfer of Rs. 3,20,000 was made to Kolkata. Calculate the following as per White Paper on VAT Law in India. (i) Output tax (ii) Input tax credit to be availed during the year: (iii) Balance tax payable; and (iv) Input tax credit, if any, to be carried forward (b) Is a single declaration form in Form C sufficient to cover all the transactions between two dealers in a financial year under the Central Sales Tax Act, 1956? (c) Can PQR Ltd., providing taxable services from different locations and billing the clients from each location, opt for a centralized service tax registration? Explain. (d) State briefly the provisions relating to rate of exchange applicable for customs valuation [6+2+2+5 = 15 marks]

Q 4 (a) M/s 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 Rs. 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 – Rs. 30,000/- , Payment made to job workers including profit – Rs. 10,000/- , Transportation charges for sending the raw material to B Ltd. – Rs. 5,000/- Transportation charges for returning the finished products factory – Rs. 5,000/- Who is liable to pay excise duty in the above situation? (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? (c) XYZ Ltd. has availed Cenvat Credit as soon as goods enter the factory premises during 2007-08. The same has been written off fully in the books of accounts during the year 2008-09 due to obsolescence - (i) What would be the impact of such write off of inputs? (ii) What will happen if goods are subsequently used in the manufacturing of goods? (d) Discuss briefly about Cenvat Credit on exempted final products/output services. (5+3+3+4 = 15 mark)

Q 5 (a) M/s Khusub, a SSI unit, can avail full benefit of exemption from payment of duty up to turnover of Rs. 150 lakhs and exercised the option to get the benefit of exemption for the year 2008-09 on 15th August, 2008. You are required to answer the following. (i) To get exemption benefit, the turnover of what will be taken? (ii) What will happen if M/s. Khusub has more than one factory? (iii) M/s. Khusub cleared goods of Rs. 90 lakhs up to 15th August, 2008. On 16th August, 2008, they cleared goods and issued invoice of Rs. 100 lakhs. Can they claim exemption of balance amount Rs. 60 lakh as a part of invoice? (b) How is the value of goods supplied by the buyer treated in customs valuation for customs duty? (c) XYZ Ltd. supplied tools, dies and moulds costing Rs. 2,00,000 to M/s Hooks Ltd., China for issue in the manufacture of goods imported. The tools, dies and moulds etc. are expected to produce 10,000 units of goods. First shipment is made for 5,000 units. How will the same be treated while arriving at transaction value for arriving at value for imposition of duty? (d) Mr. Nirvan Ltd. has imported 10,000 units of materials through Kolkata Port. The ship arrived on 15th January, 2009. After completion of customs formalities, goods were cleared for home consumption. It is found that: (i) 500 units are pilfered when they are in custody of port authorities (ii) 200 units are found deteriorated in such a condition that the goods are abandoned and right relinquished. Explain with provisions, how the above attract customs duty [5+4+2+4 = 15 marks]

Q 6 (a) Discuss in brief about the options available to an exporter to procure goods from indigenous source against advance release order or back to back inland letter of credit (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? (c) -(d) - (5+4+3+3 = 15 marks)

Q 7 (a) Write a brief note on Import/Export Authorisation (b) Under the Foreign Trade Policy of India, state the restriction on exports relating to : (i) Export of warranty spares, and (ii) SCOMET items. (c) Thilagam Turbines Ltd. manufactured a steam turbine for Mr. Prem, who supplied special steel purchased by him from wholesale market (Cost Rs. 10,00,000 plus Central Excise Rs. 1,33,000). The normal price of such material is Rs. 12,00,000 plus Central Excise Rs. 1,48,320. Mr. Prem is eligible to claim Cenvat Credit. Janak Turbines Ltd. incurred manufacturing cost of Rs. 23,00,000. What is assessable value of the turbine? Briefly touch upon the issues involved (7+4+4 = 15 marks)

Q 8 (a) What type of goods are eligible for purchase at concessional rate in inter-State sales? Should any document be submitted in this regard? (b) What are the various bonds which are required to be executed for Central Excise purposes? State briefly the purpose of each bond. (c) M/s. Niran & Associates, a firm of Cost Accountants, raised an invoice for Rs. 39,326 (Rs. 35,000 + service tax of Rs. 4,326) on 12th February, 2008. The client paid lump sum of Rs. 36,000 on dated 2nd April, 2008 in full and final settlement: (i) How much service tax M/s. Niran & Associates have to pay and what is the due date for payment of service tax? (ii) What will be the liability if the client refuses to pay service tax and pays only Rs. 35,000? (4+6+5 = 15 marks)

INDIRECT AND DIRECT TAX MANAGEMENT Dec 2008 Final

Question No. 1 is compulsory. Answer any five from the rest.

Q 1 (a) Provide brief answers to the following : (i) Hema Polymers Pvt. Ltd. has paid excise duty of Rs. 45 lakhs during the year ended 31.03.2008. During the current year, duty payments are expected to be Rs. 70 lakhs. Should the company make only e-payment of duty during the current year i.e. financial year 2008-09? (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? (iii) Vasudha Spinners Ltd., supplies yarn to a job worker for dyeing. The cost of yarn is Rs. 2,000. Dyeing charges are Rs. 300/- After receipt of dyed yarn from job worker, the finished product is sold at Rs. 2,500/- excluding VAT. The rate of duty is 14%. Find out the assessable value and duty payable. (iv) Vivitha Telecom Ltd. imported an equipment, which reached Indian territorial waters on 20.02.2008. The rate of customs duty on imports was 10% then. The equipment was cleared from bonded warehouse on 28.03.2008. The customs duty on the said date is 12%. What is the rate of customs duty payable? (v) On 18.06.2008, Vasudevan discovers a mistake in the service-tax return pertaining to the half-year ended 31st March, 2008 filed on 23.04.2008. Can he rectify the mistake? (vi) Hema Transformers Ltd. has imported 12,000 units of raw material under Advance Authorization. 11,000 units of the same were consumed to manufacture 14,000 units of finished products. 13,200 units of finished goods were exported to meet the export obligation. Can the 1,000 units of raw materials and 800 units of finished goods remaining after export, be disposed off? (vii) to (x) – questions on direct taxes [2 marks each]

Q 1(b) Fill up the blanks - (iii) For delay in payment of service tax, interest is chargeable at ___% , for the period for which payment is delayed. (iv) Application for CST registration should be furnished within ___ days from the date when the dealer ___. (vii) If Central Excise duty is short paid or not paid or erroneously refunded, show cause notice can be issued under section 11A(1) of Central Excise Act within ___ from relevant date. (viii) "Exclusive economic Zone" extends to ___ nautical miles from the base line under the Customs Act. (ix) SSI unit availing concession on the basis of annual turnover has to file return on quarterly basis within ___ days from the close of quarter in Form ER-3. (x) Where subsequent to the provisional assessment, higher amount of customs duty is

found payable in final assessment, interest on differential amount will be payable at the rate prescribed under section _____ of the Customs Act [1 mark each]

Q 2(a) Durga Steel is denied the benefit of a notification under which excise duty exemption is granted to steel rod manufacturers (subject to monetary limit), if no Cenvat Credit of duty paid on inputs is taken. Durga Steel erroneously took Cenvat Credit on inputs first, but prior to utilization, reversed the same. Is the action of Department justified? Can penalty be levied? (b) For certain taxable services rendered by Prem, VAT as well as service tax is leviable. The following bill was raised by Prem on Vignesh (service receiver) on 20-3-2008 - Amount of bill - Rs. 40,000, Vat – Rs. 400. Total - Rs. 40,400. On 31.03.2008, Prem received a sum of Rs. 30,000 in full settlement. What is the service tax payable? You are informed that Vignesh has incurred hotel bills of Rs. 3708/- on behalf of Prem. Clearly indicate the provisions considered in arriving at the service tax payable (c) Direct tax question [4+6+4 = 14 marks]

Q 3(a) Enumerate the cases where Cenvat Credit will have to be reversed. (b) Direct tax question (c) Is the material imported under Duty Free Import Authorization (DFIA) transferable? Is value addition required in respect of DFIA? Is Cenvat Credit available in respect of the inputs? (d) At the last minute, Pankaj, an Indian resident, cancels his journey from Singapore to Chennai. However, his baggage is allowed to be sent to Chennai without him accompanying it. Is general free allowance under the Customs Act available in respect of this baggage at Chennai? [6+ +3+2 marks]

Q 4(a) Direct tax question (b) Kimanshu Inc. of Tokyo operates through an agency at Chennai. ERP implementation support services are provided to Chennai unit. Is the Chennai agency liable to pay service tax? (c) Prem Granites Ltd. appealed against excess levy of customs duty on a machinery imported and used for captive use, after paying the disputed amount under protest. Though appeal was decided in its favour, the Department refuses to grant refund on the ground that doctrine of unjust enrichment applies. Is the Department correct? Will your answer be different if the assessee reverses Cenvat Credit taken on input and agitates the matter? (d) Briefly discuss about provisions applicable to EOU for available credit of excise duty paid on inputs and service tax paid on input services [- +4+4+3 marks]

Q 5(a) What are the items of turnover which are required to be included while calculating the excise duty exemption limits for SSI units? (b) Examine the liability of principal and agent under the Customs Act, 1962 (c) and (d) – direct tax questions [5+4 marks]

Q 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? (b) and (c) direct tax questions (d) Can an exporter replace free of cost and without any authorization, spares related to a product exported earlier and found to be defective, within the warranty period? Can the entire product exported earlier be replaced? Can it be so done after the warranty period also? [4+4 marks]

Q 7(a) Hema Pipes Ltd. a manufacturer of PVC pipes, removed goods from its factory from 01.06.2007 onwards after payment of excise duty under protest. Raghu Pipes, a sole trader and a customer of Hema Pipes Ltd. had purchased goods on 15.06.2007; in the sale bill issued to Raghu Pipes excise duty was charged. Hema Pipes Ltd., have appealed against the levy of excise duty on 25.06.2007 on 1st June, 2007. Hema Pipes Ltd. informs Raghu Pipes about the factum of their having filed appeal. On the same day, Raghu Pipes seek your 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. (c) Briefly list the distinctions between 'Zero rate sale' and 'exempt sale' as per White Paper on VAT laws in India [4+5 marks]

Q 8(a) Where from bulk packing, repacking 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? (b) Mr. Datey, Cost Accountant rendered taxable service to Vishwa Cement Ltd. In this regard the company sent 200 cement bags free of cost, for the house construction of Mr. Datey. Explain how the value of the taxable service will be determined in this case. Will your answer be different if the service had been rendered free of charge? (c) direct tax question [3+5 marks]

Old Syllabus

Final ICWAI

ICWA Final December 2007 – Strategic Tax Management

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered. *Only questions relating to Indirect Taxes are given below -*

Q 1 (a) State with reasons, where necessary, if the following are True or False: (iv) S.T. is leviable on sale of stocks, shares and securities traded by a dealer in shares. (v) Hides and skins are "declared goods". (2 marks each) (b) Fill in the gaps. (iii) The State from which _____ commences shall be the ____ State empowered to assess, collect and enforce payment of CST. (iv) Clearance in relation to any imported goods (cargo) means _____. (2 marks each)

Q 2(a) State some important factors affecting management decisions in regard to making a product (part of a component), or buy it from manufacturers, for its existing unit (8 marks)

Q 4 Write short notes on the following (a) Computerization of invoices for central excise purposes (b) Supplementary invoice for differential central excise duty (c) Value of goods and tooling supplied by buyer under the Customs Act (4 marks each).

Q 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 Rs. 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 Rs. 30,000/- * Job worker's charges including profit Rs. 10,000/- * Transportation charges for sending the raw material to the job worker Rs. 3,000/- * Transportation charges for returning the finished packets to Big Ltd. Rs. 4,000/- (b) List the 'capital goods' which are eligible for purpose of availment of Cenvat credit (c) Explain restrictions on availing depreciation in respect of capital goods on which Cenvat credit has been availed (6+7+3 = 16 marks)

Q 7 An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds. Other details are as follows: (a) Freight from UK to Indian port was 700 pounds. (b) Insurance was paid to insurer in India: Rs. 6,000. (c) Design and development charges of 2,000 UK pounds were paid to a consultancy firm in UK. (d) The importer also spent an amount of Rs. 50,000 in India for development work connected with the machinery. (e) Rs. 10,000 were spent in transporting the machinery from Indian port to the factory of importer. (f) Rate of exchange as announced by RBI was : Rs. 68.82 = one UK pound. (g) Rate of exchange as announced by CBE&C (Board) by notification under section 14(3)(a)(i): Rs. 68.70 = One UK pound. (h) Rate at which bank recovered the amount from importer Rs. 68.35 = One UK pound. (i) Foreign exporter have an Agent in India. Commission is payable to the agent in Indian Rupees @ 5% of FOB price. Customs duty payable was 10%. If similar goods were produced in India, excise duty payable as per tariff is 24%. There is an excise exemption notification which exempts the duty as is in excess of 16%. Education cess is 2% and Secondary and Higher Education Cess is 1%. Find customs duty payable. How much Cenvat can be availed by importer, if he is manufacturer? (16 marks)

Q 8 (a) What are the goods eligible for registration by a dealer under Central Sales Tax. A certificate in prescribed form is required to be given by registered dealer to avail the concessional rate of CST. Name any two such forms (b) A registered dealer was eligible to purchase certain goods at concessional rate of CST. However, through oversight, the goods were not included in his registration certificate. He issued C form for purchase of the goods. State the consequences. (7+3 = 10 marks)

ICWA Final June 2007 – Strategic Tax Management

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered. *Only questions relating to Indirect Taxes are given below -*

Q 1(b) Specify the correct answer: (i) Sale under CST Act includes a transaction in the nature of delivery of goods on _____. (A) job work (B) hypothecation (C) hire purchase (D) pledge (ii) CST is not chargeable on the following as it is not sale of goods _____. (A) business (B) copyright (C) trade mark (D) advance license (iii) The following item is normally included (not excluded) in determining assessable value under central excise : (A) erection charges (B) notional interest on security deposit (C) transport charges after place of removal (D) optional after sales service charges. (iv) A SEZ (Special Economic Zone) unit has to submit the following forms to the manufacturer to obtain goods without CST from him _____. (A) Z form (B) S form (C) H form (D) I form (v) In case of sale to registered dealers and Government agencies which issue C/D forms the maximum rate of CST tax is _____. (A) 0% (B) 1% (C) 4% (D) 12%. (2 x 5 = 10 marks)

Q 4(a) Prithvi Computer Ltd., sells computers to its customers, with a branded operating system software pre-loaded therein. The Department contends that in ascertaining the transaction value for excise duty purposes, cost of operating system software should also be added, since a computer cannot function without an operating system. Is this contention correct? (b) XYZ Pharma Ltd. wishes to distribute free samples of medicines routinely manufactured to leading hospitals. How should they be valued? What will be the case if it is a newly developed produce? (c) X receives raw materials from Y, an outsider merchant manufacturer, on which job work is done. How should valuation be done for excise purposes? Will the answer differ if X and Y are related persons? (6+4+6 = 16 marks)

Q 7(a) Explain briefly the procedure for fixing anti-dumping duty on a product. (b) Explain in brief the procedure for assessment and clearance of imported goods from customs port (8+8 = 16 marks)

Q 8. (a) Discuss the binding nature of a Court's decision "*sub silentio*" and judgment "*per incuriam*". (b) Write a note on 'Declared Goods' under CST Act (8+8 = 16 marks)

ICWA Final December, 2006 – Strategic Tax Management

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered. *Only questions relating to Indirect Taxes are given below -*

Q 1.(b) Specify the Correct Answer: (i) Immovable property located in the border areas is treated under the CST Act as (a) goods, (b) not goods, (c) declared goods, (d) prohibited goods.

(ii) The unutilised CENVAT credit can be carried forward (a) upto 6 years, (b) upto 8 years, (c) without any time limit, (d) up to 16 years.

(iii) A manufacturer availed himself of input services for his business – (1) Mobile phones used by sales executives, (2) Audit fees paid to Auditors. Cenvat credit of service tax is available in respect of the excise duty on the final product (a) on mobile phones, (b) on Audit fees, (c) on all these, (d) on none of these.

(iv) CST is not payable on (a) sale of lottery tickets, (b) sale of newspaper, (c) lease of machinery, (d) sale of steel goods.

(v) Goods returned are not liable to CST if they are returned (a) at any time during the financial year in which these were sold, (b) within 6 months from the end of the said financial year, (c) within 6 months of sale, (d) none of these. (2 x 5 = 10 marks)

Q 2. (b) Mr. Gupta, a practising cost accountant has been appointed Cost Auditor of X Ltd. for a fee of Rs. 6 lakh, out of which he received an advance of Rs. 4 lakh on 18th February, 2006 and the balance fees on 16th August, 2006. What are the service tax implications for both the payments? (4 marks)

Q 3. (a) B, a trader, buys artsilk yarn and gives it to C, a job work contractor for further processing. The cost of the artsilk yarn supplied to C is Rs 12,000. C bills B at Rs. 3,000 which comprises of process charges Rs. 2,500 and profit Rs. 500. Cost of carriage for moving goods to C's place is Rs. 100 and for moving these back to B, after processing, is Rs. 90. B sells the final product for Rs. 16,200. What is the assessable value of the goods under section 4 of the CE Act? (b) Under the CE Act, when can two persons be said to be inter-related? (c) What is the assessable value of goods under section 4 of the Central Excise Act? (7+4+5 = 16 marks).

Q 6. (a) VP Ltd. purchases edible groundnut oil and deodorises the same and refines it. The company is advised that there is no manufacture, as the item comes under Chapter 15 of the First Schedule to CE Tariff, there being no Section note or Chapter Note to the effect that refining of vegetable oil amounts to manufacture. Give your opinion. (b) PX Ltd. manufactures coffee makers at their plant in Bangalore from where these are moved to various depots. The goods are packed in plain white cartons at the factory as a protection during transit. At the depots these cartons are discarded and replaced by printed cartons before effecting sales. The company claims that the cost of the plain white cartons is not includible in the assessable value under the CE Act, 1944. Whether the company's claim is tenable? (c) X availed of Cenvat Credit of Rs. 42,000 for manufacture of dutiable goods, which were lying in the factory till 28.2.2006. From 1.3.2006, the final product was made exempt from duty. How would you deal with the Cenvat credit? (6+5+5 = 16 marks).

Q 7 B cleared his manufactured final product in July 2005. The duty payable was - Basic Rs. 49,000, NCCD Rs. 1,000 and other duties and education cess were payable as applicable. During the month, B received various inputs on which the suppliers had paid duty as bellow: Basic Rs. 40,000, SED Rs. 4,000, Education cess Rs. 880, Service Tax Rs. 8,000 plus education cess. How much duty will B have to pay through account current for the month of July, 2005? (16 marks)

June 2006

Strategic Tax Management [Portion relating to indirect taxes]

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered. *Only questions relating to Indirect Taxes are given below -*

Q 1 Specify the correct answer giving brief reasons where necessary (2 marks each).

(f) In order to attract CE duty, the goods must be - - (i) excisable, movable and marketable (ii) manufactured or produced in India (iii) all of these (iv) none of the above.

(g) The amounts not includible in the transaction value for the purpose of CED are - - (i) packing charges (ii) design and engineering charges (iii) loading and handling charges within the factory (iv) none of the above.

(h) Tourists visiting India have been defined in the Baggage Rules as persons coming to India for legitimate - - (i) non-immigration purpose like touring, recreation, study etc. (ii) immigration purpose such as settling down in India (iii) non-immigration purpose other than religious pilgrimage (iv) non-immigration purpose other than health reasons.

(i) Inter-State sale is defined in Section 3 of CST Act as a sale or purchase that occasions movement of goods from - - (i) One State to another (ii) one country to another (iii) One State Government to another (iv) One district in one State to another district in the same State through another State.

(j) Which one of the following is incorrect? - - (i) Form C can be issued by a registered dealer (ii) CST is collected in the State in which the goods are delivered (iii) Sale in the course of export are exempt from CST (iv) Electricity is chargeable to CST.

Q 5 B Ltd. manufactures two products, viz. Eye Ointment E and Skin Ointment S. S is a specified product u/s 4A of the CE Act, 1944. The sales prices of E and S are Rs. 43 and Rs. 33 per unit. These prices include 16% excise duty as BED, 8% excise duty as SED and education cess of 2%, as also CST of 4%. Additional information available - Units cleared: E- 1,00,000 units, S - 1,50,000 units;

Deduction permissible u/s 4A: 40%. Calculate the total excise duty liability on each products (16 marks).

Q 6 (a) (i) M/s. A Ltd., Mumbai sells iron rods to M/s B Ltd. in Vijaywada, both being registered dealers, for a value of Rs. 10,00,000 including 4% CST. The local sales tax on iron rods in Mumbai is 3%. Ascertain the CST payable. (ii) If B Ltd. is unable to submit form 'C' being an unregistered dealer, what will be the CST liability, if the local sales tax rate is 12%? N.B. – Iron rods are not declared goods (b) Explain what are the essentials of a valid sale. What is a deemed sale? [5+5+6 = 16 marks]

Q 7 An importer imported raw materials @ 25,000 US \$ FOB. The goods were packed for which packing charges of 600 US \$ were charged extra. Goods were stuffed in a returnable container, the price of which is 2,000 US dollars. Insurance and sea freight were 250 US \$ and 800 US \$. Brokerage paid by importer is 500 US dollars. Customs duty is 20%, Education Cess is 2%. Excise duty on similar goods in India is 16%. Find the duty payable (1 US \$ = Rs 42.38). How much Cenvat can be availed of by importer, if he is manufacturer? (16 marks).

December 2005

Strategic Tax Management [Portion relating to indirect taxes]

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered.

Q 1 (c) In order to attract excise duty under the Central Excise Act, 1944 goods must be (i) Movable (ii) Movable or immovable (iii) Immovable (iv) Neither (d) Notional interest on security deposit/advance received by manufacturer from buyer is includible in the transaction value if (i) Price is the sole consideration for sale (ii) If there is evidence that selling price is lowered due to such advance/deposit (iii) The transaction is at arms length (iv) In all cases (h) Which of the following is not liable to sales tax under CST Act? (i) Lottery tickets (ii) Newspapers (iii) Sim Cards (iv) Trade Licenses (i) Goods returned are not liable to sales tax if they are (i) Returned by the buyer at any time in the financial year in which sale takes place (ii) within six months of the end of the financial year in which sale takes place (iii) Within six months of sale (iv) Within six months of sale but not later than three months from end of the relevant financial year in which sale took place (2 marks each)

Q 2 (b) Mr. Bharghava had filed an appeal against higher collection of provisional antidumping duty and the issue is decided in his favour on 12-04-2004, the amount levied in excess being Rs. 2.3 lacs. The refund is issued after ten months from the date of finalization of duty. The authorities refuse to grant interest on the ground that the claim for refund was filed belatedly. Discuss.(c) Nayandhara Granites Ltd. obtained a chemical in Netherlands for an exceptionally low price. Whilst the market price was an equivalent of INR 200 per kg., they got it at a low price of INR 160 per kg. In determining the customs valuation, the authorities contend that price to be adopted should be INR 160 (should be 200) per kg, even though the purchase is *bona fide* and supported by genuine purchase bill. Is this correct? (3+4 = 7 marks)

Q 4. Briefly discuss in 3-4 sentences about the validity of the following statements: (c) X Ltd., having its head office at Raipur, dispatched goods to its branch in Chennai for Rs. 10 lacs. Sales Tax authority under the CST Act contends that since Form F is not received, CST of 10% is payable. (d) Mr. A has imported an equipment from Poland for 20,000 USD (CIF value). The rates prevailing on the date of presentation of bill of entry are (a) Bank realisation rate of the bill Rs. 46.50 (b) Rate notified by the Government under section 14(3) Rs. 46.70 (c) R.B.I. floor rate Rs. 46.30. The assessable value for customs purposes is taken as Rs. 93,400. (e) Ram imports machinery. He pays fee for transfer of technology to the importer, and also training charges. These items are includible in ascertainment of "price" for purposes of section 14(1) of the Customs Act. (f) 1000 units of Rs. 50 each raw material are purchased by Ram on which duty at 16% i.e. Rs. 8,000 has been paid. Ram avails Cenvat credit thereafter. Since these inputs are subsequently not required, he sells them for Rs. 55 each. On the date of clearance, the duty rate is 10%. The excise authorities contend that Rs. 8,000, being the duty at the first instance, should be paid. (g) 2,000 units of raw material were purchased on which duty paid was Rs. 32,000. 20 units were damaged during the course of

unloading, rendering them unfit for consumption or sale. Cenvat credit can be claimed in respect of all the units (2 marks each).

Q 5. (a) Assessable Value of an imported machinery falling under chapter heading 84 is Rs. 2,00,000. Rate of customs duty is 20%. Excise duty payable on the machinery, if manufactured in India, is 16%. There is an exemption notification, which provides that if the manufacturer does not avail Cenvat credit of inputs, the excise duty payable will be 8%. Education cess is 2%. Calculate the customs duty payable, if machinery is imported by a manufacturer for his own use. How much Cenvat credit will be available to the manufacturer? What are the restriction on availment of the Cenvat credit? (12 marks)

Q 6. (a) A major step was initiated in Budget 2004 for integration of goods and service tax. Explain highlights of the provisions (10 marks)

Q 7 (a) Explain distinguishing features between provisions of 'pilferage' and 'loss or destruction of goods' under Customs Act (b) What is 'captive consumption' under Central Excise? How the goods are valued in case of captive consumption? (8+8 = 16 marks)

Q 8 (a) Explain provisions of valuation for excise purposes on basis of MRP printed on the product. (b) Discuss provisions for classification of Mixture or Combinations in Central Excise Tariff (10+6 = 16 marks).

ICWA Final
June 2005

Strategic Tax Management [Portion relating to indirect taxes]

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered.

Q 1 Answer any ten of the following, giving brief reasons not exceeding 3 or 4 sentences. [2 x 10 = 20 marks] (f) SSI units are exempt from excise duty, if their turnover is less than Rs 100 lakhs. While calculating the limit, state whether following turnover is includible or not includible – (i) Goods manufactured with other's brand name (ii) Export through merchant exporter under bond. (g) Explain provisions regarding depreciation on capital goods when Cenvat credit is availed on excise duty paid on capital goods. Illustrate with an example. (h) Fill in the blanks :- A single member bench of CESTAT can hear the case when duty or penalty involved does not exceed Rs _____ lakhs. However, a single member bench cannot decide an issue if the dispute is relating to _____

(i) State correct or wrong :- (i) CST is not payable if goods are supplied to a unit in Special Economic Zone (ii) Countervailing duty is payable on Assessable Value plus basic customs duty plus anti-dumping duty. (j) X had dispatched goods from UP to Haryana. While goods were moving from one UP to Haryana, X made a sale to Y by transfer of documents. Later, Y sold the goods to Z by endorsing documents in favour of Z. Now, Y is claiming that the subsequent sale is exempt from CST. State which forms are required to be submitted by him to substantiate his claim and which form he will have to submit to Z and X ? (k) Fill in blanks - Imported goods can be kept in customs bonded warehouse upto _____ days without payment of any interest. Beyond that period, interest payable is _____ %. Interest upto Rs 2 crores can be waived by _____

Q 2 (a) You have been appointed as Cost Auditor to conduct special audit of Cenvat credit under section 14AA of Central Excise Act. Discuss major areas where you will concentrate while conducting your audit [8 marks]

Q. 3 (a) Goods can be cleared from factory for export without payment of duty. However, it is possible to clear goods on payment of duty and then claim refund of duty. State when the procedure of paying duty and claiming refund may be beneficial to assessee (b) (Income tax question) (c) A manufacturer of cement was excavating limestone from mines and using it for manufacture of cement. The mine was located 10 kilometers away from factory. The limestone excavated was brought in the factory by ropeway, which was connecting mine and the factory. Manufacturer was using explosives for blasting in mines. Manufacturer intends to claim Cenvat credit of excise duty paid on the explosives. Advise him about eligibility of Cenvat credit [6+5+5 = 16 marks]

Q 4 (a) Income Tax question (b) Prestige Internationals Ltd. manufacture coffee makers, from their plant at Bangalore from where the products are moved to various depots. The company packs them in plain white carton from the factory, for protecting the goods during transportation. At the depots, the plain cartons are discarded and put inside a printed carton before effecting sales. The company includes the value of printed carton in the assessable value, but not the cost of plain white cartons. Is the same correct under the Central Excise Act, 1944? (c) X availed Cenvat credit of Rs. 42,000 for manufacture of an item chargeable to duty. These goods were lying in his factory till 28-02-2005, from 1.3.2005, the final product was made exempt from duty. Now, when the final goods are cleared, should the Cenvat credit of Rs. 42,000 availed earlier be reversed? (8+5+3 = 16 marks)

Q 5. (a) Mr. Ram furnishes the following information pertaining to inter-state sales effected by him:

	Products		
	L	M	N
Local State Sales tax	12%	8%	3%
Total sales value	7,84,000	5,40,000	4,12,000

Additional information (i) In respect of product L sold in May, 2004, goods of total sales value of Rs. 67,200 were returned in July, 2004 and Rs. 44,800 in December, 2004: Rs. 56,000 were rejected and returned in January, 2005. (ii) Buyer of product N did not produce C forms. (iii) Buyer of product M for total sale value Rs. 43,200 did not furnish C form as the product was not covered in his registration certificate. - - Compute the taxable turnover and the sales tax liability of the three products L, M and N, for the financial year 2004-05 (b) Income Tax Question (c) Discuss whether inter-State sales of computer readable floppy discs containing standard computer software attract CST. Will your answer be different if the floppy contains customized software developed for a customer specifically? (9+3+4 = 16 marks)

Q 6. (a) M/s Srivastava Heavy Electricals Ltd. manufactures industrial boilers, which are normally loaded openly on a containerised truck. A company having a unit in Kodaikanal Hills has ordered a boiler with special plastic packing as a safeguard to boiler during hazardous mountain climbing. Briefly discuss whether the cost of plastic packing should be included in the assessable value under section 4 of the Central Excise 1944. (b) An importer realised that he had paid excess customs duty at the time of import. These goods were not sold to customers but had been used for manufacture of other goods. Is his claim for refund of the excess duty paid, valid under the Customs Act? (c) Discuss the provisions relating to claim of refund under the Central Excise Act, where the refund arises due to Cenvat credit being in excess. (5+3+8 = 16 marks)

December 2004

Strategic Tax Management [Portion relating to indirect taxes]

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered.

Final ICWAI

Q 1 Answer any ten of the following, giving brief reasons not exceeding 3 or 4 sentences [2 x 10 = 20 marks]

Q. 1(c) – State whether there is manufacture in the following process for the purpose of Central Excise – (i) Adding water, perfume and colour to liquid soap (ii) Pineapple fruit is canned, removing the inedible portion, slicing edible portion and adding sugar to preserve it.

Q. 1(d) – State correct or wrong – (i) Trees when severed from earth are ‘goods’ under the Central Sales Tax (ii) A person who manufactures gold ornaments with the gold supplied by the customer is not a dealer under CST Act.

Q. 1(g) – Some inputs were brought on which duty paid was Rs 8,000. These were used in the manufacture of final products. Discuss the eligibility of Cenvat Credit if – (i) Final product is exempt from duty (ii) Final product is dutiable, but duty payable on it is only Rs 3,000.

Q. 1(h) – An Indian resident comes back to India after visiting Germany. He brings on return – (i) Personal effects valued at Rs 20,000 (ii) 1 litre liquor of value Rs 1,500. What is the customs duty payable?

Q. 1(i) – S Mills Ltd., Salem, Tamil Nadu, has its own depot at Ichalkaranji in Maharashtra. Yarn is dispatched to that depot and then it is sold from there. Is there any liability to CST? State reason for your answer.

Q 2 (a) Distinguish between tax planning and tax management (b) Discuss tax considerations with reference to specific management decision regarding 'make' or 'buy'. [8+8 = 16 marks]

Q 4 (c) A Ltd. is engaged in the activity of conversion of grey cloth into embroidered dyed cloth. In the course of the various activities, it gets the sizing done by S and dyeing by D. The cost of grey cloth is Rs 40 per metre. S charged Rs 5 per metre for sizing and D charges Rs 20 per metre. The finished product is sold by A Ltd. for Rs 75 per metre. In the context of C. E. Act, 1944, is there any manufacture involved? Who will be regarded as the manufacturer in this situation? (d) Mr. Bhattacharjee purchased some raw materials from X Ltd., a SSI unit. The duty paid was at a concessional rate (70% of normal rate of 20%). The assessable value was Rs 20,000. Due to technical reasons, he had to sell the goods for Rs 19,000. What is the duty payable? [5+2 = 7]

Q 6 (a) - (b) ABC Co. Ltd. wanted a stainless steel tank for their manufacturing process. Since the tank was huge size, they decided to fabricate the same in their own factory to save problems of transportation. The contract of fabrication was given to XYZ Co. Ltd. who are experts in specialized stainless steel tank designing, manufacture and welding. The tank was fabricated at site as designed by XYZ Co. Ltd. Stainless steel sheets required for manufacture of tank were supplied by ABC Co. Ltd. The tank was affixed to ground with bolts but could be removed without dismantling. No excise duty was paid on the tank. Excise department wants to issue show cause notice demanding duty. Whether duty is payable? If duty is found to be payable, whether demand notice should be issued to ABC Co. Ltd. or XYZ Co. Ltd.? [6 marks]

Q. 7(a) Central Sales Tax Act provides that in respect of certain aspects, provisions of General Sales Tax Law of each State will apply to persons liable under CST Act. What are those aspects where provisions of local tax laws apply to persons liable under CST Act. (b) A demand of duty was raised on an assessee for previous five years, alleging suppression of facts with intention to evade duty. Assessee stated that there was no reason for him to avoid payment of duty as the buyer was in a position to avail Cenvat credit. There was no loss to him, even if he had paid higher duty. Hence, charge of suppression of facts with intention to evade duty is not sustainable. Is his stand sustainable? (c) A manufacturer purchased a machinery falling under chapter heading 84 from supplier 'X Co'. The invoice was for Rs 23,200, comprising of price of goods as Rs 20,000 and Rs 3,200 as excise duty. Pass journal entry in accounts book to record the purchase transaction. Explain how the balance will appear in Balance Sheet. [6+4+6 = 16 marks]

Q. 8 (a) A manufacturer in Gujarat has a depot in Bangalore. His factory gate price is Rs 9,000. Transport charges from Gujarat to Bangalore are Rs 500 per piece. The manufacturer's Karnataka depot price is Rs 10,000 exclusive of excise duty and Karnataka Sales Tax. Karnataka Sales Tax on the goods is 10%. As per Karnataka Sales Tax Law, sales tax is payable on selling price plus excise duty. The manufacturer is planning to make direct sale to Bangalore buyers from his Gujarat factory, instead of selling from depot. Bangalore dealers want that their present cum-duty invoice price (excluding Karnataka Sales Tax) should remain unaffected even if goods are sold from Gujarat. The reason they are giving is that if goods are directly sold to them from Gujarat, they will have to pay Karnataka Sales Tax. The Bangalore dealers are registered under CST Act and are in a position to issue C form for their purchases. The manufacturer has agreed to the request of dealers. You are required to calculate the assessable value and excise duty and CST payable if goods are sold directly from Gujarat, assuming that dealers' request is accepted. The product is leviable to excise duty @ 16%. If the product is sold in Gujarat State, the sales tax rate is 8%. (b) State provision in respect of 'burden of proof' in respect of goods covered under section 123 of Customs Act. [12+4 = 16 marks]

June 2004

[Portion relating to indirect taxes]

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered.

Q 1 Answer any ten of the following, giving brief reasons not exceeding 3 to 4 sentences.
[2 x 10 = 20 marks]

(a) State where the following forms are used – (i) EA-1 (ii) ER-2 (iii) Form H (iv) SC(C)-1

(b) State true or false – (i) If inputs are written off in books of account as obsolete, Cenvat credit will be reversed even if the inputs are lying in store room (ii) Credit of Additional Excise Duty (Goods of Special Importance) can be utilized only for payment of Additional Excise Duty (Goods of Special Importance).

(c) An assessee had procured machinery in April 2000 for Rs 10 lakhs. Duty paid on machinery was Rs 1,60,000. It was commissioned in June 2000. Assessee had availed 50% Cenvat credit of Rs 80,000 in 2000-01, and Rs 80,000 (balance 50% credit) in 2001-02. He sold the capital goods after use, in May 2004 as second hand goods for Rs 3,00,000. How much excise duty or 'amount' is payable while clearing the machinery ?

(d) A product which is covered under section 4A provisions has MRP of Rs 25 printed on the carton. It is cancelled by drawing two lines across the price, but the price is easily readable. Below that price, MRP price of Rs 21 is shown to indicate the saving which will be made by buyer. The abatement available is 40% on MRP. Excise duty rate is 16%. Calculate the excise duty payable.

(e) State whether following processes would be 'manufacture' for purpose of Central Excise – (i) Recording of cassette (ii) Making wire from wire rod (iii) Changing of MRP on product (iv) Printing of colour and logo on glass bottle

(f) State true or false – (i) While classifying goods, if there is conflict between title of chapter and a chapter note, the title of chapter prevails (ii) If an article equally merits classification under two headings in Customs Tariff, the heading that appears later in the Tariff prevails.

(g) Fill in the blanks – Method of calculating the Assessable Value in case of job work is based on decision of Supreme Court in While calculating assessable value in case of job work, inward transport charges of raw material are (includible/not includible) and Notional profit of 10% is (includible/not includible).

Q 2 (a) What is 'slump sale' ? Explain provisions in Income Tax Act relating to slump sale (b) Would the slump sale be liable for sales tax ? (c) How the buyer can avail Cenvat credit of capital goods and stock as on date of sale ? [8+4+4 = 16 marks]

Q 3 (a) A company manufacturing consumer durables has factory in Tamilnadu. It has a depot in Maharashtra. Its product 'A' is dispatched to its depots in Maharashtra and sold from the depot to its dealers in Maharashtra. The depot administration expenses are Rs eight lakhs per annum. These do not include transport charges from Tamilnadu to Maharashtra. The dealers in Maharashtra are registered under CST Act. The present price for sale from Maharashtra Depot is Rs 22,500, inclusive of transport charges from Tamilnadu to Maharashtra. Actual transportation charges from Tamilnadu to Maharashtra are Rs 1,000 per piece. The depot price is inclusive of applicable excise duty @ 16%, but exclusive of Maharashtra sales tax. Sale from Maharashtra depot of product A are 2,000 pieces per annum. As an economy measure, it is proposed to close the depot in Maharashtra and make direct sale from Tamilnadu to dealers in Maharashtra. Marketing department has stated that if goods are sold from Tamilnadu, total amount payable by dealers in Maharashtra should remain unaltered. Otherwise, sales will be badly affected. Taxation department argues that this will reduce the profitability of the product, as the CST payable will have to be borne by the company. Finance department is of the view that this extra tax burden will get offset by reduction in depot expenses and slight reduction in excise duty. Evaluate the financial implications to decide whether it will be economical to close the depot in Maharashtra and advise Management about desirability or otherwise of closing the depot. Ignore effect of Maharashtra Sales Tax, if any. (b) Name the Cost Accounting Standard which is to be used while calculating cost of production for valuation for captive consumption under Central Excise. Is the standard mandatory ? As per that standard, which of the following costs are includible/not includible in 'cost of production' – (i) Research & Development Cost (ii) Interest on capital borrowed (iii) Lay off wages to workmen (iv) Packing cost [12+4 = 16 marks]

Final ICWAI
December 2003

[Portion relating to indirect taxes]

Answer Question No. 1 which is compulsory and any five from the rest. Total six questions are to be answered.

Q 1 Answer any ten of the following, giving brief reasons not exceeding 3 to 4 sentences. [2 x 10 = 20 marks] (a) Assessee manufacturing cement had mines 20 kms away from factory. He was using explosives in mines. Use of explosives is necessary for manufacture of his final product i.e. cement. Can he avail Cenvat credit of duty paid on the explosives (b) An exemption notification stated that the exemption is available only if manufacturer uses inputs on which appropriate duty has already been paid. The inputs were exempt from duty. Assessee claimed that Nil duty is also a duty and hence he is entitled to exemption, as he has paid required duty. Is he entitled to exemption ? (c) An assessee was under impression that his product is exempt from excise duty and hence sold the goods @ Rs 100 per piece without charging excise duty. Later, it was found that actually, the product was dutiable @ 16%. Department claimed that since goods were removed without duty, assessable value should be Rs 100 and duty is payable accordingly. Assessee contended that price of Rs 100 should be taken as cum-duty price and actual duty payable should be calculated by back calculations. Determine the correct duty payable per piece. (d) State correct or wrong – (i) Settlement Commission cannot entertain cases pending with the appellate Tribunal or any Court. (ii) Settlement Commission cannot entertain application involving classification of excisable goods (iii) No CST is payable if goods are supplied to an EOU unit (iv) Countervailing duty is payable on safeguard duty also. (e) A manufacturer purchased inputs from supplier 'ABC Co'. The invoice was for Rs 11,000, comprising of price of goods as Rs 10,000 and Rs 1,000 as excise duty, which is available as Cenvat credit to the manufacturer. Pass journal entry for the purchase of goods. (f) State whether following are includible in Value for purpose of levy of customs duty – (i) Technical know how related to imported machinery (ii) Erection charges for erecting machinery in India (iii) Special introductory high discount offered to new buyer in India by foreign supplier

Q 2 (a) Explain the meaning of 'normal value', 'margin of dumping' and 'injury margin'. How would you determine 'normal value' in case of import from non-market economy countries? What are the restrictions on levy of dumping duty in respect of imports from WTO countries. (b) State the conditions for accepting 'transaction value' as 'assessable value' for purpose of Valuation under Central Excise [10+6 = 16 marks]

Q 3 (a) - An assessee availed Cenvat credit of duty paid on all the inputs. His clearances comprised of following – (i) Part of his final products was exported directly without payment of excise duty (ii) Part of his final products were sold to another manufacturer. The manufacturer used them in his manufacture and then exported his final product. The goods were cleared under bond without payment of duty. (iii) Some of the inputs were used in manufacture of final products which were exempt from duty. Assessee has not maintained separate account of inputs used in such exempted final products. (iv) Balance quantity of his final products was used for home consumption on payment of excise duty at normal rates. - - Discuss provisions in respect of Cenvat credit which he had availed on inputs used in final products which were exported [8 marks] (b) Question relates to Income Tax and hence not reproduced here

Q 4 (a) State the doctrine of unjust enrichment in case of refunds under Central Excise and Customs. Discuss applicability of this doctrine in case of (i) Goods captively consumed by importer and not sold (ii) Goods cleared under Provisional Assessment. [8 marks] (b) Question relates to Income Tax and hence not reproduced here

Q 5 (a) Distinguish between tax avoidance and tax evasion (b) State the main ingredients which make tax planning a legitimate exercise [4+4 = 8 marks]

Final ICWAI
June 2003

[Portion relating to indirect taxes]

Q 1 Reproduce the correct answer in the following cases. Give reasons for your answer in 3-4 sentences. (i) Sales tax payable on product 'A' if sold within State of Punjab is 2%. If the product is sold in inter-State sale, what will be the Central Sales Tax payable if (a) Buyer furnishes C form (b) Buyer does not furnish any form (c) Buyer furnishes H form (d) Buyer furnishes D form. (j) An exemption notification under Customs Act was issued on 2nd January, 2003, published in Official Gazette on 3rd January and was made available for sale on 4th January. State the date when the notification will be effective.

Q 6 (a) - A small scale industry is not eligible for exemption from duty if it manufactures goods bearing brand name of other person. Discuss the provisions in respect to (i) Original Equipment (OE) parts manufactured by SSI with 'BHEL' mark for use by BHEL (Bharat Heavy Electricals) in their equipment (ii) Soap manufactured bearing brand name of 'Hotel Tajmahal' to be kept in hotel rooms for use by occupants (iii) Foreign Brand name (iv) Goods manufactured in rural area (b) What are the offenses in Central Excise for which penalty can be imposed under rule 25(1) of Central Excise Rules. What is the maximum penalty that can be imposed under this rule [10+6 = 16 marks]

Q 7(a) What are the essential requirements of 'penultimate sale for export' under Central Sales Tax Law ? Can packing material be purchased without payment of CST for packing goods to be exported ? [10 marks]

Q 8(a) - A consignment is imported by air. CIF price is 2,000 Euro. Air freight is 550 Euro and Insurance cost is Euro 50. Exchange rate announced by CBE&C as per customs notification is 1 Euro = Rs 47.10. Basic Customs duty payable is 30%. Excise duty on similar goods produced in India is 16%. Special Additional Duty (SAD) is payable at normal rates. Find Value for customs purposes and total customs duty payable. (b) State briefly provisions of EPCG scheme. [10+6 = 16 marks]

CA Integrated PCC and Accountant Technician

IPCC November 2010

(Only questions on service tax and Vat covered)

Q 1(c) Smart & Express Co. is providing taxable information technology software services. The firm furnishes the following information relating to the services rendered, bills raised, amount received pertaining to this service, for the financial year ended on 31st March, 2010 as under - (i) Amount received being 10% of the assignment fees on 31st March, 2010 for the upgradation and enhancement of software services to be rendered during the financial year 2010-11- Rs 6,00,000 (ii) Services provided to UNICEF, an International Organisation in Gandhinagar, for analysis, design and programming of latest information technology software – Rs 5,00,000 (iii) Services billed to client – Rs 3,00,00,000 (In one of the bill amounting to Rs. 3,00,000, service tax was not charged due to conflicting nature and in another bill, the firm failed to recover the service tax from the client, which was charged separately, due to insolvency of the client, the bill details are as under - Being the charges for right to use IT software – Rs 8,00,000 plus Service tax @10% Rs 80,000 plus Education cess @ 2% Rs 1,600 plus Secondary & Higher education cess @1% Rs 800 – Total Rs 8,82,400) (iv) Amount received for services rendered during current financial year (excluding payment for 2 bills in item (iii) above for which payment received during current financial year) - Rs 1,04,78,500. - - Service tax and education cess have been charged separately in all the bills except wherever mentioned when it is not so charged separately. - - Compute the value of total taxable services and service tax payable thereon for the year ended 31-03-2010, assigning reason in brief to the treatment of all items (5 marks)

Q 1(d) Mr. Rajesh is a registered dealer and gives the following information. You are required to compute the net tax liability and total sales value under Value Added Tax. Rajesh sells his products to dealers in his State and in other States. The profit margin is 15% of cost production and VAT rate is 12.5% of sales (i) Intra State purchases of raw material Rs. 2,50,000 (excluding VAT @ 4%) (ii) Purchases of raw material from an unregistered dealer - Rs. 80,000 (including VAT @ 12.5%) (iii) High seas purchases of raw material are Rs. 1,85,000 (excluding custom duty @ 10% of Rs. 18,500) (iv) Purchases of raw materials from other States (excluding CST @ 2%) - Rs. 50,000 (v) Transportation charges, wages and other manufacturing expenses excluding tax - Rs. 1,45,000 (vi) Interest paid on bank loan Rs. 70,000 (5 marks)

Q2 (b) How can an assessee adjust the excess payment of service tax against his liability of service tax for subsequent periods? What is the basic condition for it? (4 marks)

Q2(c) What record should be maintained under VAT system by a registered dealer? (4 marks)

Q.3(b) Write a note in brief on provisional payment of service tax (4 marks)

Q3(c) State the Variants of VAT. Present them in schematic diagram and explain each one briefly (4 marks).

Q. 4(b) How will a taxable service be valued when the consideration thereof is not wholly or partly in terms of money? (4 marks)

Q4(c) State with reasons in brief whether the following statements are correct or incorrect with reference to the provision of Value Added Tax. (i) It is permitted to issue 'tax invoice' inclusive of VAT i.e. aggregate of sales price & VAT. (ii) A registered dealer is compulsorily required to get its books of accounts audited under VAT Laws of different states irrespective of limit of turnover (4 marks)

Q5(b) What do you mean by e-filing of returns? Is there any facility of e-filing of service tax returns? If yes, then which of the services are eligible for this facility? (4 marks)

Q5(c) What are the conditions to be fulfilled by the dealer accepting the composition scheme under the Value Added Tax? (4 marks)

Q6(b) State with reasons in brief whether the following statements are correct or incorrect with reference to the provisions of Service Tax – (i) The scope of taxable service shall include any service provided or to be provided to business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law including service provided by way of appearance before any court, tribunal or authority (ii) Service tax provisions are not applicable in Jammu and Kashmir because State Government concurrence was not obtained in respect of Finance Act, 1994

Q6(c) Mention the purchases which are not eligible for input tax credit (any eight items) under Value Added Tax (4 marks)

Q7(b) Shashwat Hotels Pvt. Ltd. has given the following information for F.Y.2009-10. You are required to compute the taxable services under Service Tax Act and the tax thereon for FY 2009-10 without assigning any reason for the treatment - (i) Reception room and vehicle parking space were let out for a film shooting for 3 months. The charges received for this Rs. 5 Lacs (ii) The conference hall was let out to a Gujarati Samaj Trust for a week for a music competition for Rs. 50,000 (iii) The hotel was booked by a customer for 3 days for a marriage function. The room booking charges were received in advance (excluding service tax) in the same year of Rs. 50,000. The electricity charges separately billed Rs. 20,000, hire charges including catering charges for 3 days billed of Rs. 3,25,000 after deducting the advance (iv) During the year, the conference hall was let out to MNO Ltd. The charges received were as under - Hall rent Rs. 4 Lacs, computer & projector systems charges Rs. 25,000, electricity charges Rs. 30,000. Hall rent includes charges for snacks and cold drinks Rs. 50,000 (v) The hotel garden was let out to a political party for 2 days for a meeting. The charges received Rs. 25,000. - - The hotel charges 10% service charges which are later distributed as tips to employees. - - The above charges are excluding service tax. All the charges have been received in FY 2009-2010. The hotel has already been registered under Service Tax Act in F.Y. 2008-09 (4 marks)

Q7(c) Compute the VAT amount payable by Mr. Shyam, who purchased goods from a manufacturer on payment of Rs. 4,16,000 (including VAT) and earned 20% profit on purchase price. VAT rate on both purchases and sales is 4% (4 marks)

CA-IPCC May 2010 and AT

(Only questions on service tax and Vat covered)

Q 5 Provide brief answer to the following questions on Service tax: (a) Is Service tax payable in respect of services provided in the Indian territorial waters? (b) Is Service tax leviable on fee collected by Public authorities while performing statutory functions under the provisions of law? (c) Can an assessee file a revised Service tax return? (d) Explain the term “Commercial training or Coaching centre” **(Marks 4 x 2 =8)**

Q 6(a) X & Co., a partnership firm, is providing taxable legal consultancy services, for the second consecutive assessment year. The firm furnishes the following information relating to the services rendered, bills raised, amount received relating to this service, for the year ended 31.03.2010: **I** -Free Service rendered to poor people (Value of the services computed on comparative basis – Rs 40,000. **II** - Advances received from clients for which no taxable service has been rendered so far – Rs 5,00,000 **III** - Services billed to clients Gross amount (service tax has been charged separately in all the bills; the firm follows mercantile system of accounting – Rs 12,00,000 **IV** - The firm has received the following amounts during the year: Relating to taxable services rendered in March, 2009 (excluding service tax at applicable rates and TDS under section 194-J of the IT Act, 1961 to the Tune of Rs.45,320) – Rs 5,44,680 **V** - Relating to taxable services rendered in current year 2009 (excluding Service tax at applicable rates and TDS under section 194-J of the IT Act, 1961 to the tune of Rs.1,20,000) – Rs 9,80,000 (includes Rs.50,000 for

appearance fee before Labour Court received from another firm). Service tax has been separately received for applicable items in (IV) above. You are required to compute the value of taxable services for the year ended 31.3.2010 and the Service tax payable, briefly explaining the treatment of each item above **(Marks 8)**

Q 6(b) Answer the following questions on Service Tax: (i) What is the scope of taxable service in respect of membership of Clubs or Associations? State the exception to the same. (ii) Does a service provider have an option to pay Service tax at a rate different from the general rate applicable on gross value of taxable services, in the case of purchase and sale of foreign currency? (iii) What is the late fee payable for delay in furnishing the Service tax return? Can the same be waived? **(Marks 3 x 3 =9)**

Q 7 Answer the following questions on VAT: **(a)** What are the items aggregated in the Addition method to calculate the VAT payable? When is this method mainly used? **(b)** Is any threshold exemption limit fixed for dealers to obtain VAT registration, as per the White Paper? If yes, why is the same provided? **(c)** Is the VAT chain continued when a purchasing dealer opts for VAT composition scheme? What is the loss to the seller and buyer opting for the composition scheme, and the subsequent buyers? **(d)** Can it be said that VAT brings about certainty to a great extent in the matter of interpretational issues? If so, how **(Marks 4 x 2 =8)**

Q8(a) Mr.X, a dealer in Mumbai dealing in consumer goods, submits the following information pertaining to the Month of March, 2010: **(i)** Exempt goods 'A' purchased for Rs.2,00,000 and sold for Rs.2,50,000. **(ii)** Goods 'B' purchased for Rs.2,25,000 (including VAT) and sold at a margin of 10% profit on purchases (VAT rate 12.5%); **(ii)** Goods 'C' purchased for Rs.1,00,000 (excluding VAT and sold for Rs.1,50,000 (VAT rate 4%) **(iii)** His unutilized balance in VAT input credit on 01.03.2010 was Rs.1,500. Compute the turnover, Input VAT, Output VAT and Net VAT payable by Mr. X **(Marks 8)**.

Q 8(b) Answer the following questions on VAT – **(i)** What are the merits of VAT in the context of tax evasion, neutrality and transparency? **(ii)** State the importance of VAT invoice/ tax invoice in administering VAT **(iii)** Discuss the tax consequences of Stock transfer under the VAT scheme **(Marks 3x3=9)**

CA IPCC/AT November 2009

Q5. Answer the following : (a) Should Service tax be paid even, if it is not collected from the client or Service Receiver ? (b) Mr. Raju is a multiple service provider and files only a single return. State with reasons whether he can do so ? (c) Explain the term "Vocational Training Institute" under the provisions of Service tax. (d) State with reason in brief whether the following statement is true or false with reference to the provisions of Service Tax - Mr. Salim, an architect has received the fees of Rs. 4,48,500 after the deduction of Income Tax of Rs. 51,500. The Service Tax is payable on Rs. 4,48,500. (2 x 4 = 8 marks).

Q 6. (a) Rosy Tours Co. has arranged three package tours during F Y 2008-09. The particulars of the Services and Charges are as under : (i) Tour 1: April, 2008 – Charges received Rs. 3.5 Lacs The package includes transportation, accommodation, food, tourist guide and entry fees for monuments (ii) Tour 2 : October, 2008 – Charges received Rs. 6.5 Lacs. The package includes transportation and accommodation for stay (iii) Tour 3 : December, 2008 – Charges received Rs. 4 Lacs. The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not mention it clearly that the charges are solely for arranging the accommodation for stay. All the charges are excluding service tax. The rate of service tax is 12% Education cess. Compute the taxable services and tax thereon (8 marks)

Q 6(b) Answer the following: (i) Whether export service provided by Service Provider is excluded for the purpose of Payment of Service Tax ? (ii) List the documents to be submitted alongwith the First Service Tax Return. (iii) What is the due date for payment in case of e-payment of Service Tax ? (3 x 3 = 9 marks)

Q 7. Answer the following : (a) What are the Different rate under VAT system ? (b) Under what circumstances registration can be cancelled under VAT ? (c) Briefly explain the income variant of VAT (d) State with reasons in brief whether the following statements is true or false with reference to the provision of Value Added Tax. - The Vat Rate on sale of Lottery Ticket is 4% (2 x 4 = 8 marks)

Q 8(a) Mr. X, a manufacturer sells goods to Mr. B, a distributor for Rs. 2,000 (excluding of VAT). Mr. B sells goods to Mr. K, a wholesale dealer for Rs. 2,400. The wholesale dealer sells the goods to a retailer for Rs. 3,000, who ultimately sells to the consumers for Rs. 4,000. Compute the Tax Liability, input credit availed and tax payable by the manufacturer, distributor, wholesale dealer and retailer under Invoice method assuming VAT rate @ 12.5% (8 marks)

Q8(b) Answer the following : (i) What are the different stages of VAT? Can it be said that entire burden fall on the final consumer? (ii) Discuss filing of Return under VAT (iii) List out six purchases which are not eligible for input tax credit (3 x 3 = 9 marks).

CA PCC November 2009

Q 6. Ms. Priyanka, a proprietress of Royal Security Agency received Rs 100,000 by an account payee cheque, as advance while signing a contract from proceeding taxable services; she receive Rs. 5,00,000 by credit card while providing the service and another Rs.5,00,000 by a pay order after completion of service on January 31, 2009. All three transactions took place during financial year 2008-2009. She seek your advice about her liability towards value of taxable service and the service tax payable by her (5 marks)

Q 7 Mr. Goenka, a trader selling raw materials to a manufacturer of finished products. He imports his stock in trade as well as purchases the same from the local markets. Following transaction took place during financial year 2008-09 - (1) Cost of imported materials (from other State) excluding tax - Rs 1.00.000 (2) Cost of local materials including VAT – Rs 2.25.000 (3) Other expenditure includes storage, transport, interest and loading and unloading and profit earned by him - Rs 87.500. Calculate the VAT and invoice value charged by him to a manufacturer. Assume the rate of VAT @12.50% (5 marks)

Q 8.Answer the following (a) Ms. Amrapali, a registered Service Provider did not render any services during the financial year 2008-09. Whether she is required to file service tax return ? (b) VAT would increase the working capital requirements and the interest burden. Discus. (c) Mr. Bharat is a registered Service Provider. He transfers his business to Mr. Rakesh on 31st July, 2008. Explain the requirement to be complied with by Mr. Bharat and Mr. Rakesh on such transfer under the provisions of Service tax. (d) Write the provisions on liability for payment of Services provided abroad. (e) Which Act and Rule governs the levy of Service tax in India ? (5 x 3 = 15 marks)

CA PCC June 2009

Q6. Answer any five of the following : (a) Mr. X, a service provider who pays service tax regularly, was of the opinion that a particular service was not liable for service tax. He, therefore, did not charge service tax in his bill. He received the bill amount without service tax. How will service tax liability of Mr. X be determined in such case? (b) Whether service tax return can be furnished after the due date? (c) How can the excess payment of service tax be adjusted? (d) Discuss the accountability of an “input service distributor” who may not be liable to pay service tax. (e) Discuss the word “Transparency” in the context of VAT system (f) When does a small service provider require to register under the Service Tax Act, but not liable to collect and pay Service Tax? (10 marks).

Q 7 (a) Compute the VAT amount payable by Mr. A who purchases goods from a manufacturer on payment of Rs. 2,25,000 (including VAT) and earn 10% profit on sale to retailer? VAT rate on purchase and sale is 12.5%. (b) An unregistered “Service provider” provides following details in respect of taxable services provided during the Financial Year 2008-09 - * 30/06/2008 – Advance received from a customer – Rs.1,00,000/- * 30/09/2008 – Part payment received against a bill of Rs. 9,50,000 raised on a customer - Rs. 5,00,000 * 31/12/2008 – Money received against taxable services provided during December, 08 – Rs. 3, 00,000 * 31/01/2009 – Taxable services rendered during January, 09 – Rs. 1,00,000 * 31/03/2009 – Taxable services provided during March, 09 – Rs. 2,00,000. The service tax provider complies with the provisions of registration and collection of service tax as per service tax laws. He gets registered during the year. He received the money against the bills raised during the months January and March 2009. Compute the service tax liability of service provider for the year 2008-09 considering the rate of service tax @ 12.36% (3+3 = 6 marks)

Q 8. Answer any three of the following – (a) How the value of taxable services determined when the consideration against taxable services is received in other than monetary terms? (b) What are the sources of Service Tax Law? (c) How can an auditor play role to ensure that the tax payers discharge their tax liability properly under the VAT system? (d) Discuss the ‘Subtraction method’ for computation of VAT (3 x 3 = 9 marks).

CA PCC May, 2008

Q6) Answer any five of the following: (a) Briefly explain the nature of the service tax (b) A particular service has been brought into service tax net with effect from 1/6/2007. Mr. Vignesh has provided this service on 20/5/2007, the payment for the same was received on 10/6/2007. Is the service tax payable on the same? (c) Mr. Saravanan has collected sum of Rs. 15000 as a service tax from a client mistakenly, even though no service tax is chargeable for such service. Should the amount so collected be remitted to the credit of the central Government? (d) Who are the persons liable to file service tax return? (e) Briefly explain the income variant of VAT (f) What are the demerits of VAT from the view point that it is form of consumption tax? (2 x 5 = 10 marks)

Q7) Ms Priya rendered taxable services to a client. A bill of Rs. 40000 was raised on 29/4/2007. Rs. 15000 was received from a client on 1/5/2007 and the balance on 23/5/2007. No service tax was separately charged in the bill. The questions are: (a) Is Ms Priya liable to pay service tax, even though the same has not been charged by her? (b) In case she is liable, what is the value of taxable services and the service tax payable? (2+4 = 6 marks)

Q8) Answer any three of the following: (a) Briefly explain the charge of service tax (b) Mr. Vasudevan has rendered freely, a service to a client which is taxable, but has not charged or received any fee from a client. Is service tax payable on such free services? (c) What are the different stages of VAT? Can it be said that the entire burden falls on the final consumer? (d) Briefly explain, how VAT helps in checking tax evasion and in achieving neutrality (3 x 3 = 9 marks)

CA – PCC November 2007

Q 6 Answer the following : (a) Where a service provider maintains books of account on mercantile basis relating to taxable services provided by him, will service tax be payable on accrual basis? (b) What are the documents to be submitted alongwith service tax return ? (c) What are the due dates for filing of service tax returns? (d) Is a service provider allowed to pay service tax on a provisional basis ? (e) Does the VAT system bring certainty to a great extent ? (f) Can VAT be said to be non-beneficial as compared to single stage- last point system ? (2 marks each)

Q 7 (a) J.C. Professionals, a partnership firm, gives the following particulars relating to the services provided to various clients by them for the half-year ended on 30.09.06: (i) Total bills raised for Rs. 8,75,000 out of which bill for Rs. 75,000 was raised on an approved International Organisation and payments of bills for Rs. 1,00,000 were not received till 30.09.06. (ii) Amount of Rs. 50,000 was received as an advance from XYZ Ltd. on 25.09.06 to whom the services were to be provided in October, 06. You are required to work out the : (a) taxable value of services (b) amount of service tax payable. (3 marks)

Q 7 (b) Compute the invoice value to be charged and amount of tax payable under VAT by a dealer who had purchased goods for Rs. 1,20,000 and after adding for expenses of Rs. 10,000 and of profit Rs. 15,000 had sold out the same. The rate of VAT on purchases and sales is 12.5% (3 marks)

Q 8 Answer the following : (a) Who is liable to pay service tax in relation to services provided by a goods transport agency? (b) What are the due dates for payment of service tax ? (c) Briefly explain the Invoice method of computing tax liability under the VAT system. What are its other names ? (d) What are the different variants of VAT, and how is deduction available for tax paid on inputs including capital inputs? (3 marks each)

ICSI Professional Examination

June 2010

Choose the most appropriate answer – Non-dutiable goods means — (a) The product not given in the Tariff Act (b) The product given in the Tariff Act (c) The product given in the Tariff Act with rate of duty (d) The product given in the Tariff Act with zero rate of duty (CS Professional June 2010)

Choose the most appropriate answer – At the time of manufacture of Product-X, the rate of basic excise duty (BED) was 14% while at the time of removal the rate of duty was 9%. The duty applicable for the Product-X will be — (a) 14% (b) 9% (c) 11.5% (d) None of the above (CS Professional June 2010)

Choose the most appropriate answer – Excisable goods can be removed for export without payment of duty by using — (a) B-3 bond (b) B-2 bond (c) B-4 bond (d) B-7 bond (CS Professional June 2010)

Choose the most appropriate answer – Registration under the central excise law is not required if the turnover of an

SSI unit is — (a) Less than Rs.150 lakh (b) Less than Rs.90 lakh (c) Less than Rs.10 lakh (d) Less than Rs.100 lakh (CS Professional June 2010)

Choose the most appropriate answer – In the case of Excise Audit, 2000, selection of the assessee is based on — (a) Risk factor (b) Value of goods (c) Merit of the assessee (d) Any other factor (CS Professional June 2010)

Choose the most appropriate answer – Yearly audit is applicable where excise duty paid in cash is more than — (a) Rs.3 crore (b) Rs.1.5 crore (c) Rs.1 crore (d) Rs.4 crore (CS Professional June 2010)

Choose the most appropriate answer – Deemed export means — (a) Export through agent (b) Sale of goods to UN agencies (c) Local sale to a foreigner (d) None of the above (CS Professional June 2010)

Choose the most appropriate answer – As per Rule 7 of the drawback rules, the special brand rate of duty drawback

should be applied — (a) Within 90 days from the date of exports (b) Within 60 days from the date of exports (c) Within 30 days from the date of exports (d) Within 45 days from the date of exports (CS Professional June 2010)

Fill up the blanks – Excisable goods consumed within the factory for manufacture of final product is called _____. (CS Professional June 2010)

Fill up the blanks – Goods included in the _____ schedule of the Central Excise Act, 1944 are the same on which excise duty is payable under section 4A (CS Professional June 2010)

Fill up the blanks – MRP provisions are not applicable for packaged commodities meant for _____. (CS Professional June 2010)

Fill up the blanks – Duty rebate is not allowed if the rebate amount is less than _____. (CS Professional June 2010)

Fill up the blanks – As per section 2(38) of the Customs Act, 1962, 'stores' means goods for use in a _____. (CS Professional June 2010)

Fill up the blanks – Anti-dumping duty is imposed when export price is _____ than normal price in the exporting country (CS Professional June 2010)

Fill up the blanks – As per section 27 of the Customs Act, 1962, interest on delayed refund is payable after expiry of _____ months from the date of receipt of such order (CS Professional June 2010)

Following particulars are available in respect of consignment of goods imported - (i) Cost at the factory of the exporter : US\$ 20,000 (ii) Carriage/freight/insurance upto the port of shipment in the exporter's country : US\$ 400 (iii) Charges for loading on to the ship at the shipping port : US\$ 100 (iv) Freight charges of the ship for transport upto the Indian port : US\$ 1,200. Compute the assessable value for the purpose of levy/payment of customs duty (CS Professional June 2010)

Determine the basis of valuation under section 4 or section 4A of the Central Excise Act, 1944 in the following cases, citing case law wherever available — (i) Packaged products with MRP

printed/marked thereon, exported to Nepal (ii) A packaged commodity covered under MRP notification and also the Standard of Weights and Measures Act, 1976 unpacked and shown to the customer, tested and then sold to the customer (iii) Chocolates distributed as free gift along with his bottles of soft drinks (iv) Ice creams sold in bulk to hotels (v) Telephone instruments supplied in bulk to a service provider with MRP duly marked and the purchaser (*i.e.*, the service provider) lent the instruments to its customers/subscribers retaining ownership (CS Professional June 2010)

Examine the powers of the Central Government to exempt partly or wholly any goods subject to customs duty, and also whether the withdrawal thereof would come under the purview of the doctrine of estoppel. Cite relevant case law, if available (CS Professional June 2010)

What is the theory of 'unjust enrichment' ? What are statutory provisions to stop such practices ? (CS Professional June 2010)

Discuss the circumstances under which no custom duty is levied (CS Professional June 2010)

A small scale manufacturer has achieved turnover of Rs.1.52 crore during financial year 2009-10. Normal duty payable on the product is 10% plus education cess. Compute the excise duty payable by SSI unit — (i) If the unit wants to avail CENVAT credit; and (ii) If the unit wants to avail exemption and CENVAT credit (*Note : The turnover is without taxes and duties.*) (CS Professional June 2010)

What is 'importer exporter code' (IEC) number ? What is the procedure for obtaining IEC number ? (CS Professional June 2010)

When does e-payment of duty become mandatory under the Central Excise Act, 1944 ? (CS Professional June 2010)

Differentiate between 'Excise audit under section 14A' and 'special audit under section 14AA' of the Central Excise Act, 1944 (CS Professional June 2010)

Differentiate between 'Preferential rates of customs duty' and 'lower customs duty under trade agreements' under the Customs Tariff Act, 1975 (CS Professional June 2010)

Differentiate between 'Transit of goods without payment of duty' and 'transshipment of goods without payment of duty' under the Customs Act, 1962 (CS Professional June 2010)

Compare and contrast 'Rule 8' and 'Rule 9' of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (CS Professional June 2010)

What are the provisions of CENVAT credit on capital goods ? Explain with relevant case law (CS Professional June 2010)

December 2009

Which of the following does not fall under the State List as stipulated in the Article 246 read with Schedule VII of the Constitution of India — (a) Excise on alcoholic liquors and narcotics (b) Taxes on consumption and sale of electricity (c) Taxes on advertisements in newspapers (d) Taxes on advertisements other than those contained in newspapers (CS Professional December 2009)

Choose the most appropriate answer — For the purpose of central excise, the following is a 'manufacture' — (a) Filtration/purification of commercial grade castor oil (b) Cutting and polishing of diamonds (c) Testing and quality control (d) Making coffee beans from raw coffee berries (CS Professional December 2009)

Choose the most appropriate answer — Under the central excise law, the following are not 'goods' — (a) Immovable iron and steel structures (b) Structures like bridges, lock gates, towers, trusses and column frames in

their movable state (c) Plates, rods, angles, sections, section tubes and the like in their pre-assembled or disassembled state (d) PSC girders manufactured in casting yard and not at site and then taken for launch on sub-structure (CS Professional December 2009)

Choose the most appropriate answer — Levy of excise duty in respect of the following does not fall within the exclusive powers conferred on the Parliament/Union Government by the Constitution of India — (a) Tobacco and other goods (b) Medicinal and toilet preparations (c) Medicinal and toilet

preparations containing alcoholic liquor, opium or narcotics (d) Alcoholic liquors for human consumption, opium and narcotic drugs (CS Professional December 2009)

Choose the most appropriate answer – In determination of the value of imported goods, the following costs are not to be added if they are not already included in the invoice price – (a) Commission and brokerage (b) Cost of containers which are treated as being one with the goods for customs purpose (c) Buying commission (d) Cost of packing whether labour or materials (CS Professional December 2009)

Choose the most appropriate answer – The form for ‘bill of entry’ for warehousing is printed on – (a) White paper (b) Yellow paper (c) Green paper (d) Light pink paper (CS Professional December 2009)

Choose the most appropriate answer – For offences committed under sections 132 to 135 of the Customs Act, 1962,

a court shall take cognizance – (a) Suo motu (b) When it is brought to the notice of a court by anybody (c) With the previous sanction of the Commissioner of Customs (d) None of the above (CS Professional December 2009)

Choose the most appropriate answer – An ad hoc exemption from customs duty to non-government organisation will be issued subject to condition – (a) That the imported goods will not be put to any commercial use (b) That the imported goods will not be sold, gifted or parted by the importer in any manner (c) That (a) and (b), as above, alongwith prior permission of the Ministry of Finance (d) None of the above (CS Professional December 2009)

Fill in the blanks – As per the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the term ‘produced’ includes _____. (CS Professional December 2009)

Fill in the blanks – Under section 13 of the Customs Act, 1962, duty is not payable on pilfered goods only in case where the goods are pilfered after the unloading and before the issue of _____. (CS Professional December 2009)

Fill in the blanks – Section 18 of the Customs Act, 1962 provides for _____ of duty (CS Professional December 2009)

Fill in the blanks – Any goods on which import duty has not been paid and which are entered for exportation under section 74 of the Customs Act, 1962 shall be liable to _____ under section 113 of the Act (CS Professional December 2009)

Fill in the blanks – It follows from the definition of ‘excise duties’ that for anything to be liable to excise duties it must be goods and _____ and it must be produced or manufactured in India (CS Professional December 2009)

Fill in the blanks – Recording of sound or other phenomena on audio or video tape _____ under excise law (CS Professional December 2009)

Fill in the blanks – If the raw material is supplied on principal to principal basis (e.g. Bata Ltd. supplies raw materials to job workers), the supplier is _____ under excise law. (CS Professional December 2009)

Fill in the blanks – Under section 35(1), any person aggrieved by any decision or order passed under the Central Excise Act, 1944 by an officer lower in rank than a Commissioner may appeal to the Commissioner (Appeals) by filing an appeal within _____ from the date of communication of the order contested (CS Professional December 2009)

Discuss the essential ingredients of the concept of ‘manufacture’ under the Central Excise Act, 1944 and as outlined by the Supreme Court in Union of India vs. Delhi Cloth and General Mills and others (CS Professional December 2009)

In the following events, state when does the taxable event occur in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of Garden Silk Mills Ltd. Vs. Union of India; and Kiran Spinning Mills Vs. CC :(i) Unloading of imported goods at the customs port; (ii) Date of entry into Indian territorial waters (iii) Date on which the goods cross the customs barrier and (iv) Date of presentation of bill of entry (CS Professional December 2009)

Discuss in brief the essential features of the following under central excise law and give one example of each : (i) Specific rates of duty; (ii) Tariff values; and (iii) Duty based on MRP (CS Professional December 2009)

An excisable product is covered under the provisions of the Standards of Weights and Measures Act, 1976 and falls in the category of 'specified goods' subject to excise duty on the basis of retail sale price. Following particulars are made available : MRP printed on the package is Rs.10,894 per unit. The price is inclusive of excise duty of 14% and education and secondary and higher education cess at the currently applicable rates as per the Finance Act, 2008. Compute the assessable value, excise duty and cess payable if it is eligible for an abatement of 38% (CS Professional December 2009)

Distinguish between conditions for availing CENVAT credit in respect of 'duty paid on inputs' and 'duty paid on capital goods' (CS Professional December 2009)

Write a note on 'compounded levy scheme' under the central excise law (CS Professional December 2009)

"Circulars of the Central Board of Excise and Customs cannot prevail over law laid down by the Apex Court." Examine the statement, considering the relevant provisions of the Central Excise Act, 1944 read with Article 141 of the Constitution of India and the relevant case(s) decided by the Apex Court (CS Professional December 2009)

"With the advent of VAT regime, the multiplicity of rates prevalent till then has been reduced to four broad categories." Elucidate (CS Professional December 2009)

Following particulars are available in respect of certain goods imported into India: FOB price : US\$30,000, Exchange rate : Notified by RBI Rs.50 = US\$1 Notified by CBEC Rs.48 = US\$1. Compute the assessable value as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CS Professional December 2009)

A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available : CIF value of the consignment : US\$25,000, Quantity imported : 500 kgs, Exchange rate applicable : Rs.50=US\$1

Basic customs duty : 20%, Education and secondary and higher education cess as applicable as per the Finance Act, 2008. As per the notification, the anti-dumping duty will be equal to the difference between the cost of commodity calculated @ US\$70 per kg. and the landed value of the commodity as imported. Appraise the liability on account of normal duties, cess and the anti-dumping duty. Assume that only 'basic customs duty' (BCD) and education and secondary and higher education cess are payable (CS Professional December 2009)

Anand Ltd. has imported certain goods which were confiscated on the grounds that the appellant had mis-declared some goods in terms of value and some were found mis-declared in terms of description, value and quality and that personal penalty was imposed on the company and its directors. Critically examine the above facts and the justifiability of the action taken, having regard to relevant recent judicial rulings (CS Professional December 2009)

June 2009

Choose the most appropriate answer - The exemption notification issued under section 5A of the Central Excise Act, 1944 is not applicable in respect of DTA clearance, unless specifically provided in the notification by — (a) SSI unit (b) EOU unit (c) Both (a) and (b) (d) None of the above (CS Professional June 2009)

Choose the most appropriate answer - Under the central excise law, any article, material or substance, capable of being bought and sold for a consideration shall be deemed to be — (a) Goods (b) Manufactured (c) Marketable and hence excisable (d) Produced (CS Professional June 2009)

Choose the most appropriate answer - Questions arising out of orders made by CESTAT are appealable to High Court except those relating to — (a) Classification and valuation (b) Duty drawback (c) Refund of excise duty (d) Advance ruling (CS Professional June 2009)

Choose the most appropriate answer - Value of export goods under the Customs Act, 1962 is not determined by — (a) Transaction value (b) Residual method (c) Computed value (d) Market value (CS Professional June 2009)

Choose the most appropriate answer - The term 'authorised representative' under section 35Q of the Central Excise Act, 1944 includes, among others — (a) All Company Secretaries (b) Company Secretaries with 10 years post qualification experience (c) Company Secretaries with certificate of practice (d) Physics graduates (CS Professional June 2009)

Choose the most appropriate answer - Under the Customs Act, 1962, an appeal before tribunal against the order of Commissioner shall be filed within — (a) 30 Days (b) 3 Months (c) 45 Days (d) None of the above (CS Professional June 2009)

Choose the most appropriate answer - Smuggled goods are liable to confiscation — (a) Only when they are in the same form (b) Even when the form has changed or mixed with other goods (c) Both (a) and (b) (d) None of the above (CS Professional June 2009)

Fill in the blanks - In case of fraud, collusion, willful mis-statement and suppression of facts, or contravention of any provision of the Central Excise Act, 1944 or Rules with intent to evade payment of duty, demand for duty can be raised _____. (CS Professional June 2009)

Fill in the blanks - Rules made by the Central Government and regulation made by the Central Board of Excise and Customs (CBE&C) can provide for penalty upto Rs. _____ on any person who violates any provision of rules or regulations (CS Professional June 2009)

Fill in the blanks - Persons claiming refund of excise duty under section 11B have to make an application within _____ from the 'relevant date' (CS Professional June 2009)

Fill in the blanks - Under the Customs Act, 1962, duty, interest, penalty or fine to be rounded off to _____. (CS Professional June 2009)

Fill in the blanks - The person from whom documents are seized is entitled to take _____ therefrom in presence of customs officer (CS Professional June 2009)

Fill in the blanks - Under section 46, an importer has to file a _____ for home consumption or warehousing (CS Professional June 2009)

Fill in the blanks - Assessee paying duty of Rs.1 crore or more per annum through personal ledger account (PLA) are required to submit annual financial information statement for each financial year by 30th November of succeeding year in prescribed form _____. (CS Professional June 2009)

Fill in the blanks - _____ can be granted in the case of lost, destroyed or abandoned goods under section 23 of the Customs Act, 1962 (CS Professional June 2009)

Explain briefly the term 'import manifest' (CS Professional June 2009)

A manufacturing company has imported certain second-hand machinery for its use and declared its value on the basis of the 'transaction value'. Can the declared value be rejected by the authorities and, if so, when and how? What are the details which the importer must submit in support of its claim? (CS Professional June 2009)

Under section 37B of the Central Excise Act, 1944 and section 151A of the Customs Act, 1962, the Central Board of Excise and Customs (CBE&C) issues various orders, instructions and directions to its officers from time to time. What is their binding effect? Are they binding on all departmental authorities including quasi judicial authorities like Commissioner (Appeals)? Are there any restrictions on such powers? Can they have retrospective effect? (CS Professional June 2009)

Hetal manufactures hair dye. It is packed in pouches, each pouch containing 3 grams, 3 pouches (sachets) are sold in one packet. The net weight of each pouch, as also the net weight of the commodity in 3 pouches and the maximum rate is printed on the pouches. Examine whether the provisions of section 4A of the Central Excise Act, 1944 will apply for the valuation purpose (CS Professional June 2009)

Commissioner of Central Excise can review the order but cannot issue fresh notice extending period of limitation. Comment (CS Professional June 2009)

What are the options available, in the context of CENVAT credit rules, to a manufacturer manufacturing both exempt and dutiable goods or service-provider providing taxable as well as exempt services, in respect of inputs/input services used partly for manufacture of dutiable goods/taxable services and partly for exempted goods/services ? (CS Professional June 2009)

Under certain circumstances, the central excise law allows an assessee to approach the Central Government with a request to revise appellate orders passed by the departmental authorities. Indicate the circumstances where such a possibility exists and the powers of the Central Government in this regard (CS Professional June 2009)

Write a note on excise concession on export of excisable goods (CS Professional June 2009)

Pranav and Parul, the petitioners, were engaged in the business of import in trading of textiles and some other consumable goods. During search, the statements of both the petitioners were recorded and the petitioners were arrested for the offence under sections 132 and 135 of the Customs Act, 1962 on account of alleged false declaration, false documents and evasion of customs duty. Simultaneously, adjudication proceedings were also initiated under the Act. The accused persons were exonerated by the competent authority/tribunal in the adjudication proceedings. Criminal proceedings were carried on simultaneously and petitioners were alleged to have committed offences punishable under sections 132 and 135(1)(b). Whether the criminal prosecution can be permitted to continue against both when the adjudication proceedings are in favour of them ? Discuss (CS Professional June 2009)

Eva Offshore Ltd. is engaged in drilling operations for exploration of offshore oil, gas and other related activities under contracts. The drilling operations are carried out at oil rigs/vessels which are situated outside the territorial waters of India. Until around November, 1993, the company was permitted to transship stores to the oil rigs without levy of any customs duty regardless of the fact whether oil rigs were operating within a designated area or non-designated area. Whether oil rigs engaged in operations in the exclusive economic zone/continental shelf of India, falling outside the territorial waters of India, are 'foreign going vessels' as defined by section 2(21) of the Customs Act, 1962, and are entitled to consume imported stores thereon without payment of customs duty in terms of section 87 of the Customs Act 1962 ? (CS Professional June 2009)

Arpit Alloys Ltd. imported a consignment of metal bars during July, 2008 by sea, weighing 5,300 tons from U.K. A bill of entry for home consumption was filed and an order for clearance was passed by the Assistant Commissioner. The company paid the applicable duty. Thereafter, delivery was taken and on examination by the company's representatives; it was found that only 5,000 tons of metal bars were available at the dock though duty was paid for the entire lot of 5,300 tons. Since there was no short landing of the cargo, the short delivery of 300 tons was also supported by the weightment certificate issued to the company by the port trust authorities. The company made a representation to the customs department for appropriate relief under the Customs Act, 1962. Examine (CS Professional June 2009)

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Answer Q No. 1 and 5 out of remaining six questions.

Q1(a) Determine the assessable value for purpose of excise duty under the Central Excise Act, 1944 in the following cases: (i) An assessee sells his excisable goods for Rs. 120 per piece and does not charge any duty of excise in his invoice. Subsequently it was found that the goods were not exempted from excise duty but were liable at 20% ad valorem. (ii) Certain excisable goods were sold for Rs. 120 per piece and 20% ad valorem is the rate of excise duty. Subsequently it was found that the price cum duty was in fact Rs. 140 per piece as the assessee had collected Rs. 20 per piece separately. (iii) The cum duty price per piece was Rs. 120 and the assessee had paid duty at 20% *ad valorem*. Subsequently it was found that the rate of duty was 30% *ad valorem* and the assessee had not collected anything over and above Rs.120 per piece (5 marks)

Q1(b) T Ltd. imported some goods from LMP Inc. of United States by air freight. You are required to compute the value for purposes of customs duty under the Customs Act, 1962 from the following particulars: CIF value – US \$ 6,000, Freight paid – US \$ 2,000, Insurance cost – US \$ 700. The bank had received payment from the importer at the exchange rate of US \$ 1 = Rs. 46 while the CBEC notified exchange rate on the relevant date was US \$ 1 = Rs. 45.50 (Make suitable assumptions where required and provide brief explanations to your answer.) (5 marks)

Q1(c) From the following particulars arrive at the VAT liability for the month of January 2010 and also determine the amount of input tax credit to be carried forward for the next month: (i) Input tax rate 5% and output tax rate is 15% in the State. (ii) Inputs purchased in the month from within the State- Rs. 48,00,000. (iii) Output sold to buyers within the State during the month – Rs 15,00,000. (iv) Output sold during the month to buyers as interstate sales – Rs. 3,00,000. (CST rate 2% against C Form) (v) Inputs purchased from other States as interstate purchases against C Form @2% - Rs. 2,00,000. (Provide suitable explanations where required with appropriate assumptions if necessary.) (5 marks)

Q1(d) X Bank Ltd., furnishes the following information relating to services provided and the gross amount received : (Figures in Rs lakhs) * Merchant Banking Services 8 * Asset Management (including portfolio management) 3 * Service charges for services to the Government of India 1.5 * Interest on overdraft and cash credits 2 * Banker to the issue 5 * Locker rent 2. Repayment of financial lease made by the customer to the bank Rs. 80 lakhs which includes a principal amount of Rs. 50 lakhs. Compute the value of taxable service under “Banking and other financial services” under the Finance Act, 1994 and the service tax liability of X Bank Ltd., considering the rate of service tax at 10.3% (5 marks)

Q2(a) XYZ Co. engaged in the service of over burden removal in mines had acquired some tipper trucks and taken CENVAT credit to the extent of the excise duty paid on the said trucks acquired by them. Subsequently on becoming aware that the said trucks do not qualify as capital goods or inputs under the CENVAT Credit Rules, 2004, the said XYZ Co. reversed the credit taken, all of which had remained unutilized. The Department has issued a show cause notice that interest under Section 11AB on the amount of credit taken but not utilized should be paid. Write a note whether the action of the Department is correct in law (2 marks)

Q2(b) “Pure & Lovely” are manufacturers of ‘hair oil’ falling under Chapter 33 of the Central Excise Tariff (CET). Disputes arose in respect of two other categories ‘edible oil’ or ‘coconut oil’. The Department contends that the coconut oil falling under these two categories are meant for sale as hair oil and should be classified under Chapter 33 of CET. The manufacturers contend that they are not printing the specific use of such oil as ‘hair oil’ and this should be classified as vegetable oil under Chapter 15 of the CET irrespective of its use by the consumer. Chapter Note 2 of Chapter 33 prescribes a condition that Heading No. 3305 (which covers hair oil) applies to products put up in packing of a kind sold by retail for such use. Section Note 2 to Section VI provides that goods falling in Heading 3305 by reason of being put up for retail sales are to be classified in the said Heading.

Briefly discuss whether coconut oil packed in larger packs generally used by consumers for edible purposes would merit classification under Chapter 15 (4 marks)

Q2(c) Sona Ltd. purchased a lathe machine at a cum-duty price of Rs. 18,63,680. The excise duty rate charged on the said machine was 16% plus education cess 2% plus secondary and higher education cess 1%. The machine was purchased on 1-7-2007 and was disposed of on 30-09-2009 for a price of Rs. 10,00,000 in working condition as second hand machine. Calculate the amount of CENVAT credit allowable for the financial years 2007-08 and 2008-09 and also specify the amount payable towards CENVAT credit already taken at the time of disposal of the machinery in the year 2009-10 (5 marks).

Q2(d) Y Ltd. (raw material supplier) supplies raw material to a job worker (manufacturer) Z Ltd. The job worker after completion of the job delivers 5,000 packets of finished goods to Y Ltd. In all these packets retail sale price (maximum) of Rs. 30 per packet is marked. The product in packaged form is subject to excise duty on the basis of MRP under Section 4A of the Central Excise Act, 1944 and in respect of the same 30% abatement has been prescribed. Determine the assessable value for purpose of excise duty after considering the following particulars : Cost of raw material supplied Rs. 45,000, Job charges including profit Rs. 15,000, Transport charges for dispatch to job worker Rs. 4,000, Transport Charges for return of finished product Rs. 4,000 (Provide brief explanation and make assumptions where required) (5 marks)

Q3(a) Write a brief note on whether input tax credit of the VAT paid on purchases of goods that are stock transferred is available (2 marks)

Q3(b) X Ltd. is having a manufacturing unit at Faridabad. In the financial year 2008-09 the value of total clearances from the unit was Rs. 850 lakhs as per the following details: (i) Exports to USA : Rs. 100 lakhs; to Nepal: Rs. 50 Lakhs (ii) Clearances to a 100% export oriented unit : Rs. 75 lakhs (iii) Clearances as loan licensee of goods carrying the brand name of another upon full payment of duty: Rs. 200 lakhs (iv) Clearances exempted *vide* Notification No. 214/86-C.E. dated 25-3-86 : Rs. 125 lakhs. (v) Balance clearances of goods in the normal course: Rs. 300 lakhs. You are required to state with reasons whether the unit is entitled to the benefit of exemption under Notification No.8/2003-C.E.dated 1-3-2003 as amended for the financial year 2009-10 (4 marks)

Q3(c) Briefly explain the documents required for filing claim of rebate of duty on export of goods under Rule 18 of the Central Excise Rules, 2002 (5 marks)

Q3(d) An assessee had cleared goods without payment of excise duty. However on coming to know from his sources that a show cause notice demanding duty on such clearances is likely to be issued but before actual issue of such notice the assessee made full payment of excise duty with interest. A show cause notice was issued subsequently as to why the assessee should not be subject to mandatory penalty equal to the excise duty sought to be evaded under Section 11AC of the Central Excise Act, 1944. Briefly examine with a note the conditions for levy of penalty under Section 11AC and state whether there is any discretion to reduce such penalty (5 marks)

Q4(a) D & Co. is engaged in the services of site preparation and clearance, excavation earth moving and demolition services. The gross amount received during the quarter ended 30-06-2009 for the services provided by them are given below : (Figures in Rs) - Core extraction services for construction 1,80,000, Land reclamation work 80,000, Services in relation to agriculture 2,00,000, Renovating or restoring water sources 3,50,000, Horizontal drilling of passage of cables or drain pipes 1,00,000, Soil stabilization 90,000, Construction of transport terminals 55,000. Calculate the value of taxable services under "Site preparation and clearance, excavation, earth moving and demolition services" under the Finance Act, 1994 and the service tax payable at 10.3%. (Provide brief explanations where required.) (4 marks)

Q4(b) State with reference to the provisions of the Finance Act, 1994 whether service tax is leviable in the following cases: (i) Taxable services rendered in the Special Economic Zone and consumed therein. (ii) Services provided in the Continental Shelf of India and Exclusive Economic Zone of India (4 marks)

Q4(c) Write a brief note with reference to the Service Tax Rules, 1994 in the following cases : (i) Advance payment of service tax . (ii) Time limit for preservation of records (4 marks)

Q4(d) S Ltd. provides management consultancy services that are subject to service tax under the Finance Act, 1994. In respect of the services rendered during the month of December, 2009 the service tax of Rs. 15 lakhs was remitted to Government treasury on January 20, 2010. Arrive at the penalty under Section 76 of the Finance Act, 1994 which is leviable in this case (4 marks)

Q5(a) Write a brief note on the deficiencies of the VAT system (4 marks)

Q5(b) A private agency has built a canal system on build-own-operate-transfer basis under a contract with the State Government. User charges at commercial rates are levied by the private agency and the revenue so generated is utilized for servicing and repayment of the capital investment. Briefly write a note with reference to 'commercial or industrial construction service' under the Finance Act, 1994 whether the user charges collected by the private agency is liable to service tax (4 marks)

Q5(c) Briefly explain the provisions under the Service Tax Rules, 1994 regarding late fee for delayed filing of returns (4 marks)

Q5(d) State briefly with reference to Section 66A of the Finance Act, 1994 who is liable to pay service tax for services provided from outside India (4 marks)

Q6 Answer any four of the following :

Q6(a) Discuss with a brief note the provisions of Section 129E of the Customs Act, 1962 regarding deposit of duty and interest or penalty levied pending appeal (4 marks)

Q6(b) Write a brief note on sanctioning of refund of customs duty under Section 27(2) of the Customs Act, 1962 under which refunds will not be credited to the consumer welfare fund (4 marks)

Q6(c) Write a brief note with specific reference to Rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975 (4 marks)

Q6(d) Certain goods were brought to the export shed on 5-10-2009. The goods were examined and 'let export order' was issued on the same day by noting of the shipping bill. Computer processed shipping bill was issued on 6-10-2009. DEPB rate was lowered on 6-10-09 and the Department allowed DEPB at the rate prevailing on 6-10-2009. The goods were permitted for clearance and loading on 5-10-2009. It is assessee's case that under the Customs Act, 1962 they are entitled for the higher rate of DEPB prevailing on 5-10-2009. Write a brief note whether the assessee's stand is correct in law (4 marks)

Q6(e) Briefly explain the provisions relating to transshipment of goods without payment of duty under Section 54 of the Customs Act, 1962 (4 marks)

Q7(a) UPT Ltd., are manufacturers of electrical transformers, switch gears falling under Chapter Heading 85042200 and Chapter Heading 85352121 of the Central Excise Tariff. The manufacturers cleared excisable goods valued at Rs. 30 lakhs against Served from India Scheme Certificate (SFIS) at nil rate of duty availing the exemption by way of debit to SFIS under Notification No. 34/2006-CE dated 14-06-2006. As separate accounts for purpose of sub-rule (3) of Rule 6 of the Cenvat Credit Rules, 2004 were not maintained by the assessee (M/s UPT Ltd.) they were required to pay 5% of the value of the exempted goods of Rs. 1.5 lakhs (Rs. 30 lakhs @ 5%) on the basis that the goods cleared under SFIS scheme are to be treated as exempted goods. Discuss with reference to the definition of exempted goods under Rule 2(d) of the Cenvat Credit Rules, whether the stand taken by the Department is correct. (Assume that debit to SFIS is a method of payment of appropriate duty.) (4 marks)

Q7(b) Briefly state the provisions of the Central Excise Rules, 2002 relating to electronic payment of excise duty and electronic filing of returns (4 marks)

Q7(c) Hand blender manufactured by the assessee was cleared as gift along with each unit of juicer, mixer and grinder (JMG). The MRP of Rs. 750 though printed on the 'hand blender box' contains clear indication that it is supplied free of cost. The package of JMG also shows this. The hand blender is not sold separately. The Department has issued a show cause notice that duty should be paid on the hand blender. Write a brief note with reference to Section 4A of the Central Excise Act, 1944 whether the notice is sustainable in law (4 marks)

Q7(d) State briefly with reference to the provisions of the Finance Act, 1994 whether the following services are liable to tax: (i) Permanent transfer of intellectual property rights. (ii) Services provided in relation to handling storage and warehousing of empty containers under storage and warehousing service (4 marks)

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SECTION – A

Q1(a) Compute the assessable value and amount of excise duty payable under the Central Excise Act, 1944 and rules made there under from the following information (i) Goods transferred from factory to depot on 8th February - 1,000 Nos. On that day, price at factory was Rs 200 per unit and price at depot was Rs 220 per unit. Rate of duty was 10% *ad valorem* (ii) Goods actually sold at depot on 18th February -750 Nos. On that day, price at factory was Rs 225 per unit and price at depot was Rs 250 per unit. Rate of duty was 8% *ad valorem*. (5 marks)

Q1(b) M/s Royal Industries started its production activities on 15th March, 2010. In the month of March, 2010, 1,000 units of raw material were purchased at Rs. 150 per unit, paying excise duty @ 8%. 800 units of raw material were consumed in manufacturing process and finished output was sold for Rs. 1,40,000 (excluding excise duty @ 8%). For simplification, you may ignore the conversion cost and assume the rates of excise duty to be inclusive of education cess. Pass the Journal entries in the books of the assessee and show the balances in Balance Sheet as on 31.3.2010 (5 marks).

Q1(c) Mahesh Ltd., which is engaged in manufacturing of excisable goods started its business on 1st June, 2009. It availed SSI exemption during the financial year 2009-10. The following are the details available to you : (i) 12,500 kg of inputs purchased @ Rs. 1,190.64 per kg (inclusive of Central excise duty @ 8.24%) – Rs 1,48,83,000 (ii) Capital goods purchased on 31-5-2009 (inclusive of Excise duty @ 14.42%) – Rs 80,09,400 (iii) Finished goods sold (at uniform transaction value throughout the year) – Rs 3,00,00,000. – - You are required to calculate the amount of excise duty payable by M/s Mahesh Ltd. in cash, if any, during the year 2009-10. Rate of duty on finished goods sold may be taken @12.36% for the year and you may assume the selling price exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Output input ratio may be taken as 2 : 1 (5 marks).

Q2.(a) An assessee classified his product as per Central Excise Tariff subject to nil rate of duty. The Department contended that when the entries in the Harmonised System of Nomenclature (HSN) and the Central Excise Tariff are not aligned, reliance should be placed upon HSN for the purpose of classification of goods under the said Tariff. Relying upon the HSN for the purpose of classification of the impugned product, the Department classified it under another heading attracting 8% duty. Do you think that Department's plea is valid in law? Discuss briefly, with reference to a decided case law, if any (5 marks).

Q2(b) M/s Evasions Unlimited, manufacturing excisable goods, paid the differential duty, *suo motu*, to the Department as the prices of the said goods were revised with retrospective effect. The Revenue took the view that the assessee was liable to pay interest on differential duty under Section 11AB of the Central Excise Act, 1944 and penalty thereof. The assessee replied that there was no question of charging interest and penalty as the payment of differential duty was made by it at the time of issuing supplementary invoices to the customers. Discuss, with reference to a decided case law, if any, whether the view taken by the Revenue is justifiable (5 marks).

Q2(c) An assessee made an application under Section 32E of the Central Excise Act, 1944 to the Settlement Commission. The settlement commission was not satisfied saying that the applicant had not made a true and full disclosure of his duty liability and the manner in which same was arrived at was also not correct and 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

before that. Is plea taken by the assessee acceptable in law? Explain in brief, with the help of a decided case law, if any (5 marks).

Q3(a) Differentiate between "non-excisable goods" and "non-dutiable goods" (3 marks).

Q3(b) Under Excise Audit, 2000, the selection of unit for audit is based on 'risk factors'. Explain in brief the term 'risk factors' giving any two examples (3 marks).

Q3(c) Explain the validity of the following statements with reference to Central Excise Laws, as amended : (i) Records seized by department during investigation but not relied upon in the show cause notice should be returned within 30 days of issue of show cause notice (ii) Special audit under Section 14A and 14AA can be done by a cost accountant only (iii) Authority of Advance Ruling under the Income-tax Act, 1961 will be authority for purposes of Central excise also (iv) High Court is empowered to condone delay in filing appeal and cross objection filed under Sections 35G and 35H of the Central Excise Act, 1944, beyond the prescribed period (4 marks).

SECTION – B

Q4(a) Mr. Happy, a service provider, has provided services of Rs. 1,00,00,000. Out of this, Rs. 70,00,000 are taxable output services and Rs. 30,00,000 are exempt output services. Mr. Happy has opted not to maintain separate inventory and accounts and pay prescribed amount on value of exempt output services. Service tax paid on his input services, excluding education cess and secondary and higher education cess (EC & SAHEC) is Rs. 6,00,000 which do not include any service specified in rule 6(5) of the CENVAT Credit Rules, 2004. Rate of service tax, excluding EC and SAHEC, is 10%. Calculate the total amount payable including Service tax, EC and SAHEC by Mr. Happy by GAR-7 challan (5 marks).

Q4(b) The particulars regarding sale, purchase etc. of Shubham Udyog for the last quarter of the year 2009-10 are as under : (1) Purchases of raw material within the state - (i) taxable @ 1% - Rs 40,00,000 (ii) taxable @ 4% - Rs 60,00,000 (iii) taxable @ 12.5% - Rs 10,00,000 (2) Sale of goods manufactured from raw material purchased @ 4% tax rate (i) Taxable sale within the State (tax rate 4%) – Rs 20,00,000 (ii) Exempted sale within the state – Rs 10,00,000 (iii) Sale in the course of Inter-State trade or Commerce (tax rate 4%) – Rs 10,00,000 (3) Sale of raw material purchased @ 1% tax rate – Rs 44,00,000 (4) Goods manufactured from the raw material purchased @ 12.5% tax rate were given on lease. The deemed sale Price of such goods is Rs. 12,00,000, taxable @ 12.5%. - - You may assume that input tax credit of tax on raw material used in manufacture of leased goods is available immediately. Compute the amount of Value Added Tax (VAT) payable by M/s Shubham Udyog for the relevant quarter. There was no opening or closing inventory. How can he utilise the balance of input tax credit available, if any? (5 marks).

Q5(a) The term 'business auxiliary service' was inserted by Finance Act, 2003 which came into force on 1.7.2003. The Parliament by Finance Act, 2008 inserted an *explanation* in the relevant sub-clause (ii) Section 65(19) stating that for the purpose of this sub-clause – "Service in relation to promotion or marketing of service provided by the client includes any service provided in relation to marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo." Discuss, whether the *explanation* appended to sub-clause (ii) of Section 65(19) is clarifactory in nature so as to be construed having retrospective effect and retroactive operation. You may take help of a decided case law, if any (5 marks).

Q5(b) Mr. Yes is the owner of a collection centre with facilities and trained employees for collection of human blood, urine and stool samples for biological testing. He sends the samples collected to its principal lab for actual test to be done. The assessee received 25% of the price charged by the principal lab. as commission for work of collection etc. The Revenue wants to charge service tax on such collection service as it amounts to promotion or marketing of services provided by its principal lab. Mr. Yes seeks your advise in this regard with reference to a decided case law, if any (5 marks).

Q6(a) State, with reasons in brief, whether the following services are taxable, under the provisions of the Finance Act, 1994 relating to Service Tax : (i) Services in relation to production of alcoholic

liquor on job work basis (ii) Service of transport of goods in container by Government Railway (4 marks).

Q6(b) Whether the value of material supplied by the contractee to the contractor for use in the execution of the works contract shall be included in the value of works contract for payment of Service tax under the composition scheme? What is the present rate of service tax under this scheme? Can the service provider avail CENVAT credit also? (4 marks).

Q6(c) What is the general exemption available to small service providers? Who are the persons excluded from this exemption? (4 marks).

Q6(d) Explain in brief the disadvantages of composition scheme available for small dealers under VAT system (4 marks).

Q6(e) What is VAT invoice ? What are the mandatory provisions to be complied with while issuing a VAT invoice by a registered dealer? (4 marks).

SECTION – C

Q7(a) Miss Priya imported certain goods weighing 1,000 kgs. with CIF value US \$ 40,000. Exchange rate was 1 US \$ = Rs. 45 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and education cess as applicable. There is no excise duty payable on these goods, if manufactured in India. As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US \$ 60 per kg. and 'landed value' of goods. You are required to compute custom duty and anti-dumping duty payable by Miss Priya (5 marks).

Q7(b) M/s Marwar Industries imported finishing agents, dye-carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for Additional duty of customs (CVD) leviable under Section 3 of the Customs Tariff Act, 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the 'same factory' for manufacture of textile articles. The Department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the 'same factory'. You are requested to comment upon the contention of Department, with reference to a decided case law, if any (5 marks).

Q8(a) Explain in brief the duty exemption to baggage under Section 79(1) of the Customs Act, 1962 (3 marks).

Q8(b) Can an application be withdrawn in the following cases ? If yes, state the time limit for withdrawal of such application - (i) application for advance ruling (ii) application for settlement (3 marks).

Q8(c) Clearly mention the relevant date in the following cases of goods warehoused under bond - (i) Rate of exchange, when goods are removed for home consumption (ii) Rate of duty, when goods are removed for home consumption (iii) Rate of duty if the goods are not removed from warehouse within the permissible period (4 marks).

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SECTION-A

Q1(a) Determine the total amount of excise duty payable under Section 4 of the Central Excise Act, 1944 from the following information: (I) Price of machinery excluding taxes and duties – Rs 5,50,000 (II) Installation and erection expenses – Rs 21,000 (III) Packing Charges (primary and secondary) – Rs 11,500 (IV) Design and engineering charges – Rs 2,000 (v) Cost of material supplied by buyer free of charge – Rs 8,500 (VI) Pre-delivery inspection charges – Rs 500. Other information: (a) Cash discount @2% on price of machinery was allowed as per terms of Contract since full payment was received before dispatch of machinery. (b) Bought out accessories supplied along with machinery

valued at Rs. 6,000. (c) Central Excise duty rate 16% and educational cess as applicable @3%. Make suitable assumptions as are required and provide brief reasons (5 marks).

Q1(b) XYZ Co. is engaged in the manufacture of water pipes. From the following details for the month of May, 2009 compute the available Cenvat credit under the Cenvat Credit Rules, 2004: Cenvat paid on purchases as detailed below: Raw steel – Rs 22,000 Water pipe making machine – Rs 18,000 Spare part for the above machine – Rs 7,500 Grease and oil – Rs 2,800 Office equipment – Rs 20,000 Diesel – Rs 12,000 Provide explanation for treatment of various items (5 marks).

Q1(c) Small and company a small scale industry provides the following details. Determine the eligibility for exemption based on value of clearances for the Financial year 2009-10 in terms of Notfn.No.8/2003-CE dated 1.3.2003 as (I) Total value of clearances during the financial Year 2008-09 (including VAT Rs. 50 lakhs) Rs 870 lakhs (II) Total exports (including for Nepal and Bhutan Rs. 200 lakhs) Rs 500 lakhs (III) Clearances of excisable goods without payment of duty to a Unit in software technology park Rs 20 lakhs (IV) Job work under Notfn.No.84/94-CE dated 11.4.94 50 Job work under Notfn.No.214/86-CE dated 25.3.86 Rs 50 lakhs (v) Clearances of excisable goods bearing brand name of Khadi and Village Industries board Rs 200 lakhs. Make suitable assumptions and provide brief reasons for your answers where necessary (5 marks).

Q2.(a) I Ltd. Is a manufacturer excisable goods such as polyester yarn. A ground Plan of the factory was provided by the assessee to the jurisdictional Central Excise officer and the same was approved. The ground plan showed the area In which the manufacturing is carried out as also the areas occupied for Purpose of storage. Godowns, cycle sheds, canteen as well as the housing Complex for staff and workers. The assessee had a captive power plant in the Approved area. The electricity generated was supplied to the housing complex as well as for use in the manufacturing activity. I Ltd. Claimed Cenvat credit on the duty paid on furnace oil used for generation of electricity as it was used with in the factory and was covered by the expression “for any other purpose” in Rule 2(K) of the Cenvat Credit Rules, 2004. The Central excise department wants to deny the Cenvat credit on the duty paid on furnace oil for generation of electricity which in turn is supplied to the housing complex on the ground that it is not used in relation to manufacture of the final product. Examine with the help of decided case Law if the stand of the department is correct I Law.

Q2(b) The assessee manufactured compressors and filters and removed them as “stand alone” items. He also manufactured and removed safety valves and Filters on payment of duty. The assessee also supplied bought out items like V belts, motor, pulley etc. to their buyers. The Excise department relying on Rule 2(a) of the general Interpretative rules for classification has decided to include the value of safety valves and filters together with valve of bought out items in the value of compressors for purposes of duty under Section 4 of the Central Excise Act, 1944. Write a brief note with any decide case law whether the stand taken by the department is correct.

Q2(c) The assessee’s premises was searched by the Anti Evasion wing of the excise Department. A show cause notice was issued alleging that the assessee had Cleared goods without the cover of duty paid invoice and without accounting the same in the stock register. The assessee was required to pay the duty demanded with interest. The assessee filed an application before the Settlement Commission to put an end to the litigation and buy peace. The application was dismissed by the Settlement Commission on the ground that the petitioner in its petition had not admitted the entire duty liability. The assessee’s contention is that department is yet to substantiate the allegations made in the show Cause notice and the dismissal order is not correct in law. Briefly discuss with a note whether the action of the settlement commission is correct in law.

Q3(a) Explain briefly the concept of “excisable goods’ as amended by the Finance Act, 2008 (2 marks).

Q3(b) Explain briefly, how the value of goods will be ascertained for purpose of Excise duty where the assessee sells the goods partly to a related person and the balance to unrelated third parties (2 marks).

Q3(c) Write a brief note on Cenvat monthly return of information relating to principal Inputs in from ER-6 (2 marks).

Q3(d) Briefly mention any four categories of persons who are exempted from obtaining Registration under Rule 9(2) of the Central Excise Rules, 2002 (2 marks).

Q3 (e) Write a short note on the principle of “unjust enrichment” under Center Excise law (2 marks).

SECTION-B

Q4(a) Determine the taxable turnover, input tax credit and net VAT payable by a Works contractor from the details given below on the assumption that the Contractor maintains sufficient records to quantify the labour charges Assume Output VAT at 12.5%: (I) Total contract price (excluding VAT) Rs 100 lakhs (ii) Labour charges paid for execution of the contract Rs 35 lakhs (iii) Cost of consumables used not involving transfer of Property in goods Rs 5 lakhs (iv) Material purchased and used for the contract taxable at 12.5% VAT (VAT included) Rs 45 lakhs. The contractor also purchased a plant for use in the contract for Rs. 10.4 Lakhs. In the VAT invoice relating to the same VAT was charged at 4% separately and the said amount of Rs.10.4 lakhs in inclusive of VAT. Assume 100% input credit on capital goods. Make suitable assumption wherever required and show the working notes.

Q4(b) Calculate the value of taxable service under service under Cargo handling services of Cargo Ltd., providing brief reasons where required with suitable assumptions based on the following information for the months of April ,2009: (i) Total amount charged for all services Rs 40 lakhs (ii) Receipts for services in relation to export cargo and Handling of passenger baggage including in (i) above Rs 13 lakhs (iii) Charges for storage and cleaning of empty containers of Shipping lines included in (i) above Rs 10 lakhs (iv) Charges for packing and transport of Cargo included in (i) above Rs 3 lakhs (v) Charges for handling of agricultural produce included in (i) above Rs 2 lakhs (vi) Charges for transportation of Cargo included in (i) above Rs 5 lakhs (5 marks)

Q5(a) M/s M Construction Ltd. constructs builds and sells premises/flat in a building. During the cause of development and construction of building it enters into a flat purchases agreement in terms of which the buyers are allotted flats in the building. The buyers pay the consideration to M/s M Construction in Instalments. The said ‘flat purchases agreement’ reflects the entire consideration For the purchases of flat. This agreement is registered and advance payments in instalments are collected. The contention of M/s M Construction is that the consideration is for the purchase and sale for the entire flat/premises and the Company does not carry out any construction activity. Examine with a brief note whether the company is liable to pay service tax in terms of the finance Act, 1944.

Q5(b) Good Luck Agencies is engaged in the purchase of lottery tickets in bulk from the state government and sell them subsequently on behalf of the Government. However no service tax is paid on the said activity. The Department has sought to levy service tax under the category of ‘Business auxiliary service’ Section 65(19) as service in relation to promotion or marketing of

service Provided by the client. Discuss briefly with a note and decided case law if any, whether the action of the department is correct in law.

Q6(a) Briefly explain whether the following are chargeable to service tax under the provisions of the Finance Act, 1994: (i) Service provided by a person to another person in relation to information technology software for use in course or furtherance of business or commerce (ii) Transaction allowing another person to use goods without giving legal right of possession and control to the user of the goods (2 x 2 = 4 marks).

Q6(b) Write a brief note explaining to circumstances under which expenditure or Costs incurred by a service provider as a pure agents of the recipients of service Shall be excluded from the value of taxable services under the Service Tax (determination of value)Rules, 2005 (4 marks).

Q6(c) Briefly explain the provisions in the Service Tax Rule, 1994, relating to furnishing of list of records at the time of filling of return for the first time (4 marks).

Q6(d) Briefly explain the following with reference to the service Tax rule, 1944 and the Finance Act, 1994: (i) Gross amount charged (ii) e-payment of service tax (4 marks).

Q6(e) Briefly explain the importance of VAT invoice (4 marks).

SECTION-C

Q7 Compute the duty payable under the Customs Act, 1962 for an imported equipment Based on the following information: (i) Assessable value of the imported equipment US \$ 10,100. (ii)Date of Bill of Entry 25.4.2009 basic customs duty on this date 20% and exchange rate notified by the central Board of Excise and customs US \$ 1=Rs.65. (iii)Date of Entry inwards 21.4.2009 basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US \$ 1= Rs. 50. (iv) additional duty payable under Section 3(1) and (2) of the Customs Tariff Act, 1975: 15%. (v) Additional duty under Section 3(5) of the Customs Tariff Act, 1975: 4%. (vi) Educational cess @ 2% in terms of the Finance Act (No. 2), 2004 and secondary and higher educational cess @ 1% in terms of the Finance act, 2007. Make suitable assumptions where required and show the relevant working and round off your answer to the nearest Rupee (5 marks).

Q8. The assessee had imported capital goods under a licence with a condition to fulfill an export obligation within a certain time limit. The assessee failed to discharge the export obligation within the said time limit. Consequently the department invoked the bank guarantee and realized the amount. However, subsequently the assessee was able to fulfill the export obligation and the department cancelled the bank guarantee. The assessee thereafter filed a refund claim for the amount realized by invocation of the bank guarantee by the department. The department rejected the refund claim on the ground that it was barred in terms of section 27(1)(b) of the Customs Act, 1962 as the assessee had not been able to establish that the incidence of duty had not been passed on by him to any other person. Examine briefly with the help of any decided case law whether the stand taken by the department is correct in law (5 marks).

Q9(a) Explain briefly the expression 'person-in charge' under the Customs Act,1962 (2 marks).

Q9(b) Explain briefly the provisions of the Customs Act, 1962 relating to the powers Vested in the customs officers to take samples (2 marks).

Q9(c) Explain with a brief note how the duty is arrived under the Customs Act, 1962 where the imported goods consist of articles liable to different rates of Duty (2 marks)

Q9(d) write a brief note on the 'residual method' of determination of value of imported goods under the Customs Valuation (determination of value of imported goods) Rules, 2007 (2 marks).

Q9(e) Briefly state the rights of the owner of warehoused goods under the Customs Act, 1962 (2 marks).

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Answer to Question Nos. 1, 6 and 9 are compulsory. In addition thereto, answer any two questions from Part-A and any one question from Part-B.

Section A (Excise)

Q1(a) Determine the total amount of Excise duty payable on a machine using the details given below : (i) Sale price of the machine excluding taxes and duties 2, 00,000 (ii) Sales tax 20,000 (iii) Cost of durable and returnable packing included in the sale price given at (i) above – Rs 5,000 (iv) Design and Development charges paid by buyer on behalf of seller to a third party Rs 20,000 (v) Warranty charges charged separately by the seller 5,000. Rate of Excise duty 16%. Education cess 3%. Calculations should be supported by notes wherever, required.

Q1(b) X, a manufacturer purchased 500 kgs of inputs' on 1.10.2007. Total assessable value of inputs was Rs. 10,000 and Excise duty of 16% and 3% of Excise duty as Education cess was paid on the inputs. On the day of receipt itself inputs were sent to the job worker. Job worker sent back 50% of the inputs on 1.4.2008 and balance 50% on 31.5.08. X received back the processed the inputs on the same day. Calculate the Cenvat credit required to be reversed or that can be availed on relevant dates and net availment and reversal in the financial years 2007-08 and 2008-09.

Q1(c) Y & Co. is a Small Scale unit located in a rural area and is availing the benefit of Small Scale exemption under Notification No. 8/2003-C.E. in the year 2007-08. Determine the value of the first clearance and duty liability on the basis of data given below: (1) Total value of clearances of goods with own brand name – Rs 5,00,000 (2) Total value of clearances of goods with brand name of other parties – Rs 90,00,000 (3) Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances) – Rs 35,00,000. Normal rate of Excise duty—16%. Education cess @ 3% of Excise duty. Calculations should be supported with appropriate notes. It may be assumed that the unit is eligible for exemption under Notification 8/2003.

Q2(a) M/s ABC Ltd. is a Cement manufacturer. The company used ropeway system for bringing crushed limestone from the mines located 4-5 kms away from the factory. A part of ropeway system was installed in the factory and the system was controlled from the factory. M/s ABC Ltd. availed Cenvat credit on parts of ropeway system treating the same as capital goods. The Central Excise Department denied Cenvat credit on the ground that ropeway is used for transporting raw materials from the mines to the factory and cannot be considered as material handling system within the factory premises. Examine with the help of decided case law, whether the stand taken by the department is correct in law.

Q2(b) A Port Trust used cement concrete armour units in the harbour for keeping water calm. Each unit weighed about 50 tons and is like a tripod and keeps water calm and tranquil. These units are essentially in prismoid form and were made to order. They are harbour or location specific. The Central Excise Department contended that the armour units are excisable goods and chargeable to duty. Examine the validity of the Department's contention in the light of decided case law.

Q2(c) Scream Ltd. is engaged in manufacture of ice-cream falling under sub-heading 2105 of the Central Excise Tariff Act, 1985. The company supplied the ice cream in four liters pack to catering industry or hotels, who sell the same in scoops. The pack contained a declaration that the pack was not meant for retail sale. The Department contended that packs have to be assessed on the basis of value arrived at as per the provision of Section 4-A of Central Excise Act, 1944, which provides for assessment based on M.R.P. and not under Section 4 of the Central Excise Act, 1944. Assessee contended that the ice-cream pack sold was a bulk pack of 4 liters which was not meant to be sold in retail and they were not required to print the Maximum Retail Price and hence the transaction was a wholesale transaction and assessment under Section 4 of the Central Excise Act, 1944 was correct. Further contention of the assessee was that they are entitled to exemption under Rule 34 of the Standard of Weights and Measures (PC) Rules, which exempts packs meant for industrial use. Examine whether the stand taken by the Department is correct in the light of decided case law.

Q3(a) Explain special procedure and facilities made available to Large Tax Payer (LTU) under Rule 12-BB of Central Excise Rules, 2002 in respect of intermediate goods.

Q3(b) What are the provisions relating to the payment of Excise Duty on used capital goods cleared by an assessee on which Cenvat credit has been availed?

Q3(c) What are the situations in which duty can be remitted under Rule 21 of Central Excise Rules, 2002.

Section B – Vat and Service tax

Q4(a) Purchases by S & Co. for the month of December are as follow: (1) Rs. 1,00,000 at 4% VAT (2) Rs. 5,00,000 at 12.5% VAT. Sales of S & Co. for the month of December are as follows – (1) Sales of Rs. 3,00,000 at 4% VAT (2) Sales of Rs. 3,00,000 at 12.5% VAT. Compute eligible input tax credit and VAT payable for the month.

Q 4(b) Calculate the value of taxable service of "X" Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. No freight is received from any of the specified category of Consignor/Consignee. Suitable assumptions may be made wherever required. X does not avail Cenvat credit. (1) Total freight charges received by 'X' during the year – Rs 13,50,000 (2) Freight charges received for transporting fruits - Rs 1,25,000 (3) Freight collected for transporting small consignment for persons who paid less than Rs. 750 for each consignment - Rs 75,000 (4) Freight collected for transporting goods in small vehicles for persons, who paid less than Rs 1500 per trip - Rs 1,50,000.

Q5(a) The assessee owned a collection centre, which was engaged in drawing of human blood, urine and stool samples on behalf of the principal Laboratory in a metro city for conducting pathological tests. The assessee sent the samples through courier and received commission for such service. Department demanded Service tax on the ground that the activity amounted to promotion or marketing of the service provided by the principal and hence, covered under business auxiliary service. With reference to legal provisions and case law, examine the stand taken by the department.

Q5(b) The assessee used to finance the purchase of vehicles manufactured by a leading automobile company which used to sell the vehicles through its distributors. Assessee financed part of the vehicle cost to the purchaser of vehicle after getting an agreement with the purchaser providing the right of repossession of the vehicle in case buyer of the vehicle defaulted in paying installment. Immediately on sale, purchaser of the vehicle became the owner and vehicle was registered in his name. The Department seeks to levy service tax in the category of "Banking and other Financial Services." Examine whether Department's stand is correct in terms of legal provisions and case law.

Q6(a) What are the purchases not eligible for input tax credit of VAT paid ?

Q6(b) What are the provisions relating to best judgment assessment under Service Tax Law?

Q6(c) State whether the following services are taxable under the provisions of the Finance Act, 1994 relating to Service tax: (i) A practicing Chartered Accountant representing a client before Income-Tax Officer in assessment proceeding. (ii) Royalty received from the publisher by an author of a text-book for printing and publishing his book.

Q6(d) Give FOUR ILLUSTRATIONS to explain the scope of service rendered by a consulting engineer.

Q6(e) List out ANY FOUR SERVICES brought under the Service tax net by the Finance Act, 2008.

Section C (Customs)

Q7 From the following particulars determine the ASSESSABLE VALUE of the imported equipment giving explanation for each item: (1) FOB cost of equipment (Japanese Yen) - 2,00,000 Yen (2) Freight charges in Japanese Yen - 20,000 Yen (3) Charges for development connected to equipment paid in India - Rs. 60,000 (4) Insurance charges paid in India for transportation from Japan Rs. 15,000 (5) Commission payable to agent in India - Rs. 15,000. - - Exchange rate as per RBI is 1 Yen = Rs. 0.45 Exchange rate as per CBEC is 1 Yen = Rs. 0.50. Landing charges: 1% of CIF cost.

Q8. ABC imported a vessel 'WATERLOO' for the purpose of breaking from XYZ Ltd. of U.K. A memorandum of understanding was signed between the buyer and seller on 2nd June, 1997 and ABC took delivery of the vessel on 4th June, 97. Vessel drifted and landed in the yard of B in a damaged condition on 9th June, 97. On 24th June, 97, ABC filed application to concerned Assistant Commissioner for extension of time to file bill of entry, which was granted on 12th Aug, 97. ABC paid Rs. 24 crores to XYZ Ltd. towards the purchase price of the vessel. Thereafter ABC sold the vessel to B for Rs. 12 crores (reduced price) and B filed bill of entry on 12th Sep, 97. Assessing authority assessed the ship taking the value as Rs. 24 crores and ship was taken over by B after assessment order was passed. 'B' argues during appellate proceedings that assessable value should be taken as Rs. 12 crores since the vessel was damaged because of the storm which made the vessel drift. No application for abatement of duty was made before the assessing authority by ABC or B. Examine whether benefit of relief under Section 22 of Customs Act, 1962 to reduce the value and thereby duty can be extended to B under the above circumstances. The assessment order in respect of bill of entry was passed on 23rd Dec. 1997.

Q9(a) Is a person entitled to inspect or obtain copies of report made by any Officer to the Settlement Commission? Can the settlement commission furnish copies of such report?

Q9(b) Under what circumstances provisional assessment under Section 18 of the Customs Act, 1962 can be made?

Q9(c) Explain briefly legal provisions relating to pilfered goods under Customs Act, 1962.

Q9(d) Explain briefly legal provisions relating to power to summon persons under Customs Act, 1962.

Q9(e) Define Customs Area.

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Answer all questions

PART - A

Question 1(a) How will the assessable value under the subject transaction be determined under section 4 of the Central Excise Act, 1944? Give reasons with suitable assumptions where necessary. Contracted sale price for delivery at buyer's premises - Rs. 9,00,000. The contracted sale price includes the following elements of cost - (i) Cost of drawings and designs Rs. 4,000 (ii) Cost of primary packing Rs. 3,000 (iii) Cost of packing at buyer's request for safety during transport Rs. 7,000 (iv) Excise duty Rs.1,11,200 (v) VAT (Sales tax) Rs. 37,000 (vi) Octroi Rs. 9,500 (vii) Freight and insurance charges paid from factory to 'place of removal' Rs. 20,000 (viii) Actual freight and insurance from 'place of removal' to buyer's premises Rs. 42,300 (4 marks).

Q 1(b) Following transactions took place in the factory of JKA Ltd: (i) An imported consignment of raw materials was received vide bill of entry dated 2.12.07 showing the following customs duty payments: Basic customs duty Rs. 25,000; Additional duty (CVD) Rs. 20,000; Special additional duty Rs. 5,800. (ii) A consignment of 1,000 kg of inputs was received. The excise duty paid as per the invoice was Rs. 10,000. While the input was being unloaded, 50 kg were damaged and were found to be not usable. (iii) A vehicle containing machinery was received. The machinery was purchased through a dealer and not from the manufacturer. The dealer's invoice no. 925 dated 3.4.07 marked 'original for buyer' certified that the excise duty paid by the manufacturer of machinery was Rs. 24,000. The dealer is registered with the Central Excise Authorities. (iv) Some inputs for final product were received. These were accompanied by a certified Xerox copy (photo copy) of invoice no. 286 dated 15.1.08 indicating that excise duty of Rs. 6,400 had been paid on inputs. The original or duplicate copy of invoice was not traceable. Indicate the eligibility of CENVAT credit, in each case, under the CENVAT Credit Rules, 2004 with explanations where necessary (4 marks).

Q1 (c) CTL Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2006-07, the total value of clearances from the unit was Rs. 450 lakh. The break up of clearances is as under: (i) Clearances worth Rs. 50 lakh of certain non-excisable goods manufactured by it (ii) Clearances worth Rs. 50 lakh exempted under specified job work notification (iii) Exports worth Rs. 100 lakh (Rs. 75 lakh to USA and Rs. 25 lakh to Nepal) (iv) Clearances worth Rs. 50 lakh which were used captively to manufacture finished products that are exempt under notifications other than Notification No. 8/2003-CE dated 1.3.2003 as amended. (v) Clearances worth Rs. 200 lakh of excisable goods in the normal course. Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1.3.03 as amended for the year 2007-08 (7 marks).

Question 2(a) M/s Ganga Marketing supplies 12 bottles of mineral water in a single package to Speed Airways (airline company). Maximum retail price was printed on the package. However, individual bottle of 200 ml each did not carry such maximum retail price (M.R.P) as these were to be distributed to the passengers by the airline company and not intended for resale. M/s Ganga

Marketing pays duty of excise assessing the goods under section 4 of the Central Excise Act, 1944. The Department has taken a view that the package of 12 bottles is not a wholesale package. The airline company itself is the ultimate consumer. Hence, the package of 12 bottles itself is a 'retail package' and duty is payable on the basis of MRP under section 4A of the Central Excise Act, 1944. Examine briefly, with the help of decided case law, if any, whether the stand taken by the Department is correct in law (5 marks)

Q2 (b) M/s Om Processors, a job worker, was engaged in the processing of manmade fabrics received from the principal supplier. The job worker (assessee) had undertaken to discharge all the duty liabilities under the Central Excise Act, 1944. The assessee received manmade fabrics on declaration from the principal supplier that the said fabrics had polyester content below 70%; processed the same and cleared the processed fabrics claiming the benefit of concessional rate of duty available to manmade fabrics containing polyester below 70%. On the basis of chemical examination by the Department, it was found that the fabrics contained polyester in excess of 70% and thus would attract higher rate of duty. A show cause notice was issued invoking the extended period of limitation under section 11A of the Central Excise Act, 1944 demanding differential duty and penalties on the ground of mis-declaration on the part of the assessee. Briefly discuss, with reference to decided case law, whether the stand taken by the Department is correct in law. (5 Marks)

Q2(c) M/s Raj Fibres had filed an appeal to the High Court on Aug. 11, 2008 under section 35G of the Central Excise Act, 1944 aggrieved by an order passed by the Appellate Tribunal. The order appealed against was received by the assessee on Jan. 1, 2008. The High Court dismissed the appeal petition on the ground that the same had been filed beyond the period provided for filing an appeal under section 35G of the Act and the court had no power to condone the delay. M/s Raj Fibres urged before the High Court that the provisions of the Limitation Act, 1963 should be made available and the delay in presenting the appeal ought to be condoned. State briefly, with reference to decided case law, if any, whether the High Court could condone the delay in presenting the appeal pursuant to the provisions of the Limitation Act, 1963 as urged by M/s Raj Fibres. (5 Marks)

Question 3(a) Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases (i) in the State of Jammu and Kashmir (ii) by or on behalf of the Government (b) What is the period of provisional attachment of property during the pendency of any proceeding under section 11A or section 11D of the Central Excise Act, 1944? (c) Under what circumstances, the rebate of excise duty paid on exported goods can be granted to the exporter in case of export of good to Nepal? Note - Rebate of excise duty paid on exported goods is granted to Government of Nepal (d) If a manufacturer manufactures various products, can he avail CENVAT credit on some products and exemption under Notification No. 8/2003-CE dated 1.3.03 on some other products? (e) Briefly discuss, the residual penalty under rule 27 of the Central Excise Rules, 2002 (2 x 5 = 10 marks)

PART - B

Q4 (b) Calculate the net service tax payable under the provision of rule 2A of the Service tax (Determination of Value) Rules, 2006 relating to determination of value of services in the execution of a works contract from the following particulars: (i) Gross amount for the works contract (excluding VAT) Rs 1,00,000 (ii) Value of goods and materials sold in the execution of works contract Rs. 70,000 (iii) CENVAT credit on (ii) above Rs. 1,000 (iv) Service tax paid on input services Rs. 1,000 (v) CENVAT credit on capital goods issued in the provision of works contract service – Rs 1,000 (vi) Service tax rate 12.36%. Make suitable assumptions and provide explanations where required (5 marks)

Question 5(a) XYZ Co. was involved in the services of unloading of coal from wagon tipping system, stacking/reclaiming of coal to stacker reclaimer system and feeding of coal to boiler bunkers through conveyer system. The Department had taken a view that the charges received by XYZ Co. for such activity were taxable under the category of 'cargo handling services' in terms of section 65(105) (zr) read with section 65(23) of the Finance Act, 1994. M/s XYZ Co. claimed that the services rendered by it cannot be brought under 'cargo handling service' as it is engaged only in the handling of coal from railway wagons to the required destination of the thermal power station wherein machines are used with the aid of some manpower. Briefly explain, with reference to relevant provisions and case law, if any, whether the stand taken is correct in law. (5 Marks)

Q5(b) M/s Krishna Computer Colour Lab. is in the business of developing and printing of colour photographic films. It develops the negatives supplied by the customer and provides positive prints as per the order placed by the customer. The Department has demanded service tax on the entire amount charged from the customers without deduction of any amount towards cost of materials. The assessee's contention is that no service tax could be charged on the material content since service tax is only a tax on services and not on goods. Therefore, the assessee has sought to bifurcate the gross receipts on account of processing of photographs into the portion attributable to goods and those attributable to services so that service tax could be paid with respect to the value of service alone in their case. Briefly explain, with regard to decided case law, if any, whether the stand taken by M/s Krishna Computer Colour Lab. is correct in law. (5 Marks)

Question 6 (a) State whether the following are taxable under the provisions of the Finance Act, 1994 relating to service tax:- (i) Services provided in connection with the management of an organization by a management consultant having no professional qualification. (ii) Advance payment received from the service recipient by a person rendering construction services under section 65(105) (zzzh) of the Act. (4 Marks)

Q 6(b) State briefly, whether the following persons are liable to apply for registration under the Finance Act, 1994 and the Service Tax (Registration of Special Category of Persons) Rules, 2005 and if so, from which date: (i) An input service distributor who starts his business with effect from 1st January, 2008. (ii) A provider of taxable service under an unregistered brand name of another person. Aggregate value of taxable services was Rs. 6,00,000 up to 31.3.08. (4 Marks)

Q6(c) Write a brief note to explain the impact of VAT on lease transactions. (4 Marks)

Q6 (d) Illustrate with an example, whether inter-State purchases liable to central sales tax are eligible for input credit and explain the effect of the same on inter-State transactions (4 Marks)

Q6(e) Who are not eligible for composition scheme under the VAT regime? Discuss briefly. (4 Marks)

PART - C

Question 7 A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin: (1) Quantity imported (tonnes) 20 at Unit price 260 USD CIF (2) Quantity imported (tonnes) 100 at Unit price 220 USD CIF (3) Quantity imported (tonnes) 500 at Unit price 200 USD CIF (4) Quantity imported (tonnes) 900 at Unit price 175 USD CIF (5) Quantity imported (tonnes) 400 at Unit price

180 USD CIF (6) Quantity imported (tonnes) 780 at Unit price 160 USD CIF . The rate of exchange on the relevant date was 1 US \$ = Rs. 43.00 and the rate of basic customs duty was 15% ad valorem. There is no countervailing duty or special additional duty. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required. (5 Marks)

Question 8 M/s IES Ltd. (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e. at US \$20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, viz transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any.(5 Marks)

Question 9 (a) Explain briefly, the significance of Indian customs waters under the Customs Act, 1962. (b) Section 14 of the Customs Act, 1962, with effect from 10.10.2007, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are now fully compatible. Explain with a brief note (c) Can warehoused goods be transferred from one warehouse to another under the Customs Act, 1962? (d) What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 made under section 75 of the Customs Act, 1962? Explain with a brief note. (e) Briefly discuss, the procedure for confiscation of goods or imposition of penalty under section 124 of the Customs Act, 1962. (2 x 5=10 Marks)