

CHAPTER 1

BASIC CONCEPTS

Question 1

Explain briefly the following with reference to Central Excise Act 1944:-

- (a) *Excisable goods*
- (b) *Assessee*

Answer

- (a) As per section 2(d) of the Central Excise Act, 1944, "excisable goods" means goods specified in the First Schedule and Second Schedule to the Central Excise Tariff Act, 1985 as being subject to the duty of excise and includes salt.

By Finance Act, 2008 w.e.f. 10-05-2008 an explanation has been added which clarifies that "goods" include 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. Thus, the **concept of deemed marketability** is introduced by this amendment.

- (b) Rule 2(c) of the Central Excise Rules, 2002, states that '**assessee**' means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an **authorized agent** of such person.

Question 2

Explain briefly with reference to the provisions of the Central Excise Act the term "Deemed Manufacture".

Answer

As per **section 2(f)** of the Central Excise Act, 1944 "manufacture" includes any process-

- (i) incidental or ancillary to the completion of a manufactured product; and
- (ii) which is specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, or
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word "manufacturer" shall be construed accordingly and shall include not only a person who

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employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

The processes that qualify to be manufacture as per clause (ii) and (iii) of section 2(f) are termed as deemed manufacture.

Thus, if any process which is specified in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture is carried out, goods will be deemed as manufactured. For instance, Note 2 of Chapter 9 provides that in case of tea, or tea waste, blending, sorting, packing or re-packing into smaller containers shall amount to manufacture. Similarly, if any of specified processes (like re-packing, re-labelling, alteration of retail sale price etc.) is being carried out on goods covered in Third Schedule to the Central Excise Act, 1944, the process will be deemed to be as that of manufacture.

Question 3

Briefly explain any two of the following with reference to the provisions of Central Excise Act, 1944:

- (i) *Wholesale dealer*
- (ii) *Factory*
- (iii) *Dutiability of waste and scrap*

Answer

- (i) As per **section 2(k)** of the Central Excise Act, 1944, **wholesale dealer** means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture and **includes a broker or commission agent** who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.
- (ii) As per **section 2(e)** of the Central Excise Act, 1944, **factory** means any premises, **including the precincts thereof**, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.
- (iii) The issue relating to dutiability of waste and scrap was settled by the Supreme Court by its decision in ***Khandelwal Metal & Engineering Works Vs Union of India 1985 20 ELT 222*** by holding that notwithstanding that process waste and scrap arose as intermediate products or by-products out of final products, such process waste and scrap, if marketable, would be chargeable to duty in view of the incorporation of the specific sub-headings in various chapters of the tariff. The Apex court has held that process waste

and scrap is a commercially distinct and identifiable product and has commercial value. Hence, such waste and scrap is chargeable to duty if covered in the Tariff.

Therefore, the position as it currently stands is that all process waste and scrap if incorporated in the Tariff and if marketable would be chargeable to duty. It is important to note here that as the excise duty is on manufacture, **the waste and scrap actually generated in the course of manufacture alone is chargeable to duty and the waste and scrap generated without any process is not liable to excise duty.**

Question 4

When a person shall be deemed to be a related person for the purpose of valuation under the Central Excise Act?

Answer

Section 4(3)(b) of the Central Excise Act, 1944 states that persons shall be deemed to be related if:

- (i) they are inter-connected undertakings;
- (ii) they are relatives;
- (iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
- (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

“Inter-connected undertakings” shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 and **“relative”** shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956.

Question 5

WM Ltd. is manufacturing a product which is captively consumed to produce a final product, which is exempt from the payment of excise duty. The intermediary product is having a distinct market of its own. The Company is of the view that since the final product is exempt; no duty liability arises on intermediary product also. The Department objected the view of the assessee.

Discuss, with reference to a decided case law, if any, whether the view of company is justifiable?

Answer

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

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consumed and the final product is not dutiable as it has a distinct market of its own and is marketable.

The Supreme Court expressed similar view in the case of **White Machine Vs. CCEx Delhi 2008(224) ELT 347**. In the above case, the assessee manufactured C.I. Castings which were captively consumed for production of C.I Chilled Rolls. These Chilled Rolls were exempt from duty. The Apex Court opined that since the final product was exempt, the C.I Castings would become dutiable if they satisfied the marketability condition.

Therefore, the company's view is not justifiable and the Department's view is acceptable.

Question 6

Briefly explain the following with reference to the provisions of the Central Excise Act, 1944:

- (i) *Adjudicating authority*
- (ii) *Excisable goods*

Answer

- (i) Section 2(a) of the Central Excise Act, 1944 defines adjudicating authority to mean any authority competent to pass any order or decision under this Act. However, it **does not include** the following:
 - (a) CBEC constituted under the provisions of Central Board of Revenue Act, 1963;
 - (b) Commissioner of Central Excise (Appeals);
 - (c) Appellate Tribunal.
- (ii) Excisable goods have been defined vide section 2(d) of the Central Excise Act, 1944. It means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to duty of excise and includes salt. An explanation has been added in this definition with effect from 10.5.2008 which states that for the purposes of this clause "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.

Question 7

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.*

Answer

- (i) Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.
- (ii) **Section 3(1A)** of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, **excise duty will be payable on goods manufactured by, or on behalf of, the Government (both Central & State) also.**

Question 8

Differentiate between "non-excisable goods" and "non-dutiable goods".

Answer

Section 2(d) of the Central Excise Act, 1944 defines '**excisable goods**' as goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt.

Goods which are not listed in Tariff or goods which are mentioned in Tariff, but the column of rate of duty is blank are **non-excisable** goods, **e.g. water (there is no entry in Tariff)**. Excise law is not applicable on non excisable goods.

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

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

Question 9

State briefly whether the following circumstances would constitute "manufacture" for purposes of section 2(f) of the Central Excise Act, 1944:

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

Answer

- (i) 'Manufacture' is bringing into being the goods known in the market having distinctive name, character or use and separate and identifiable function. Once a new commodity having a definite and distinct commercial identity in market is produced and the same has

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been specified in the tariff, it is exigible to duty. It is irrelevant whether the new article falls into the same tariff heading as the duty paid raw material from which it is manufactured or belongs to a separate tariff heading.

It was held in **CCEx. v. Kapri International (P) Ltd. (2002) 142 ELT 10 (SC)** that if manufacture takes place, the commodity is dutiable even if the raw material and the resultant product fall under the same tariff heading. It was subsequently followed in **CCEx., Jaipur v. Mahavir Aluminium Ltd. (2007) 212 ELT 3 (SC)**, wherein it was held that converting aluminium ingots (7601.10 – old entry) into aluminium billets (7601.10 – old entry) is ‘manufacture’, because they have separate, distinct and identifiable marketability and saleability.

- (ii) As held in **CCEx. v. Markfed Vanaspati (2003) 153 ELT 491 (SC)**, mere change in tariff does not mean there is ‘manufacture’. It was confirmed in **CCEx. v. S R Tissues (2005) 186 ELT 385 (SC)** that just because raw material and finished product fall in different tariff headings it cannot be presumed that process of obtaining finished product from such raw material automatically constitutes ‘manufacture’.

Therefore, manufacturing is not only about a process and a product but it is about a new identity that must emerge out of the given process. Mere mention of process in tariff entry is not sufficient, it must be specifically stated that a particular process ‘amounts to manufacture’ – **Shyam Oil Cake Ltd. v. CCEx. (2005) 174 ELT 145 (SC – 3 members bench)**.

Question 10

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.

Answer

The facts of the given case are similar to the case of **Board of Trustees v. CCE 2007 (216) ELT 513 (SC)**. The Supreme Court held that in order to constitute “goods”, twin tests have to be satisfied, namely, process constituting manufacture and secondly marketability. In the present case, the second test of marketability was in issue.

In this case, armour blocks, in prismoid form, were made to order and were of certain specifications. **They were harbour or location specific.** It would depend on the water level required to be maintained in the harbour. **There was no evidence to show that these blocks could be used in any other harbour.** Moreover, the Department failed to prove marketability

of the impugned goods. Therefore, assessee's contention, that goods are not capable or being bought and sold in the market, has to be accepted. Therefore, Department's stand is not correct and no duty is payable on the goods.

Question 11

M/s. SYL purchases film from the manufacturer thereof on payment of appropriate central excise duty. They undertake the processes of lamination/metallisation of the said film. The Department directs them to pay central excise duty as the processes undertaken by them amount to manufacture. Please offer your comments with the help of decided case law.

Answer

The issue in the problem has been considered by the Supreme Court in the case of **Meltex (I) Pvt. Ltd. v. C.C.E. 2004 (165) E.L.T. 129 (S.C)** wherein it has held that **laminating/metallising of duty paid films does not amount to manufacture** as:

- (i) no new and distinct product comes in to existence, and
- (ii) the product which is a film at the onset remains a film, even after lamination or metallisation.

Therefore, applying the ratio of the abovementioned decision to the present problem, it can be inferred that the stand taken by the Department is not tenable in law.

Question 12

"Mere selling of a commodity does not mean it is marketable". Elucidate.

Answer

Unless the goods are capable of being marketed, they cannot be charged to duty. Marketability is the capability of a product of being put into the market for sale. Supreme Court in **Union of India v. Delhi Cloth and General Mills Case – 1977 (1) ELT (J199)** has held that in order to become goods, it is necessary that an article must be something which can ordinarily come to the market to be bought and sold.

However, the Apex Court in **UOI v Indian Aluminium Co. Ltd. 1995 (77) ELT 268** has held that dross and skimmings are not marketable commodity even if they can be sold to recover some metal as everything which is sold is not necessarily a marketable commodity as known to the commerce and which, it may be worthwhile to trade in. The dross and skimmings arising during the manufacture of aluminium are nothing but waste or rubbish which is thrown up in the course of manufacture. They are not metal in the same class as waste or scrap. It may be possible to recover some metal from them and therefore they can be sold.

This view has been reiterated by the Supreme Court in **CCEx v. Tata Iron and Steel Co. Ltd. 2004 (165) E.L.T. 386 (S.C.)** wherein the Apex Court has held that the dross and skimming

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are merely the refuse, scum or rubbish produced during the process of manufacture. The Supreme Court has held that merely because the dross and skimming are sold to customers, it cannot be inferred that they are marketable commodity as even rubbish can be sold. However, that does not make rubbish a marketable commodity. Mere selling of a commodity does not mean that it is marketable since a commodity can also be sold as rubbish. Marketability means selling of a commodity which is known to the commerce and which may be worthwhile to trade in.

In view of these decisions it can be **inferred that in order to be marketable an item should be capable of being bought and sold. However, the item should be something which is worthwhile to trade in and not just refuse, scum or rubbish.**

Question 13

Explain in detail the meaning of term “deemed manufacture.”

Answer

As per section 2(f) of the Central Excise Act, 1944 "manufacture" includes any process-

- (i) incidental or ancillary to the completion of a manufactured product; and
- (ii) which is specified in relation to any goods in the **Section or Chapter Notes of the First Schedule** to the Central Excise Tariff Act, 1985 as amounting to manufacture, or
- (iii) which, in relation to the goods **specified in the Third Schedule**, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

The processes that qualify to be “manufacture” as per clause (ii) and (iii) of section 2(f) are termed as deemed manufacture.

Thus, if any process which is specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture is carried out, such goods will be deemed as manufactured even if as per judicial decisions, the process may not amount to manufacture. For instance, Note 4 of Chapter 73 provides that in case of articles of iron and steel falling under Chapter 73, the process of galvanization shall amount to manufacture. Similarly, if any of specified processes (like re-packing, re-labelling, alteration of retail sale price etc.) is being carried out on goods covered in Third Schedule to the Central Excise Act, 1944, the process will be deemed to be as that of manufacture.

The constitutional validity of the concept of deemed manufacture has been upheld in (*Ujagar Prints etc. v. UOI-(1988) 38 ELT 535 (SC)*).

CHAPTER 2

CLASSIFICATION OF EXCISABLE GOODS

Question 1

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 value 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 decided case law, whether the stand taken by the Department is correct.

Answer

A similar question had come up for consideration before the Supreme Court in the case of **CCEx., Delhi v. M/s Frick India Ltd. 2007 (216) ELT 497 (S.C)**. In the instant case, 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 do not provide guidelines for valuation of excisable goods because they decide the classification, and valuation is different from classification.

Thus, the Supreme Court held that the **parts and accessories could not be classified as 'compressors' and therefore, were independently classifiable** under respective headings applicable to them. The **concept of 'classification' is different from that of 'valuation'**. Therefore, the **contention of the Department is not correct in law**.

Question 2

M/s. Khan Ltd. is a small scale unit manufacturing plastic name plates for motor vehicles as per specifications provided to them by their customers, who are vehicle manufacturers. For purposes of classification under the first schedule to the Central Excise Tariff Act, 1985 the assessee has claimed that the plastic name plates are "parts and accessories of motor vehicles". The Central Excise Department has proposed classification as "other plastic products" in respect of these plastic name plates. The department's view is that the motor

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vehicle is complete without the affixation of name plates and cannot be treated as a part of the motor vehicle. Write a brief note on whether the stand taken by the department is correct in law.

Answer

No, the stand taken by the Department is not valid in law. The plastic nameplates should be classified as parts and accessories of motor vehicles on following grounds:

- (i) name plates are solely and exclusively used for motor vehicles.
- (ii) classification as parts and accessories of motor vehicles is **more specific** while the classification as other plastic products is residuary and **more general in nature**.

The Department has examined only whether the name plates can be considered 'parts' of motor vehicles, it has not at all considered whether these name plates can be considered 'accessories' of motor vehicle – An 'accessory' by its very definition is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product.

In a similar case of **Pragati Silicons Pvt. Ltd. v. CCEx. Delhi (2007) 211 ELT 534 (SC)**, the Apex Court, applying the test laid down in the case of **Mehra Bros. v. Joint Commercial Officer (1991) 51 ELT 173 (SC)**, has held that name plates add to convenient use of motor vehicle and give an identity to it. They add effectiveness and value to vehicle and are at very least accessories of vehicles. Thus, even if there was any difficulty in the inclusion of the name plates as 'parts' of the motor vehicles, they would most certainly have been covered by the broader term 'accessory' as car seat covers and upholstery etc.

Question 3

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 Harmonized 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.

Answer

No, the Department's plea is not valid in law. **Central Excise Tariff is based upon HSN, but it is not a copy of HSN.** In case of **Camlin Ltd. v. CCEx. Mumbai (2008) 230 ELT 193 (SC)**, the Supreme Court ruled that when the entries in HSN and the Excise Tariff are not aligned, **reliance cannot be placed upon HSN for the purposes of classification** of goods. Central Excise Tariff of India should be followed in such cases. It should be appreciated that since the

entries under the HSN and the entries under the said Tariff were completely different, the Department could not base its decision on the entries in the HSN.

Question 4

Does the maxim "Latter the Better" apply in classifying the excisable goods?

Answer

The Central Excise Tariff Act, 1985 incorporates six Rules of Interpretation. Rule 3(c) of the Rules for the Interpretation provides that when goods cannot be classified by reference to rule 3(a) or rule 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

Thus, the maxim "**Latter the Better**" applies in determining the classification of the excisable goods.

VALUATION OF EXCISABLE GOODS

Question 1

Write a note on the valuation of goods on the basis of retail sale price under section 4A of the Central Excise Act, 1944.

Answer

The provisions of **section 4A** are as follows:

- (a) Excisable goods are valued on the basis of retail sale price when they are packaged and it is required under Standard of Weights and Measures Act, 1976 or Rules or under any other law to declare on such packages the retail sale price thereof. The **Government may notify** the products for the purpose of this section.
- (b) The **assessable value** shall be deemed to be the **retail sale price declared on the package less amount of abatement**. Abatements can be given by the Central Government through notifications after taking into account the amount of duties and taxes payable on such goods.
- (c) The **retail sale price** has been defined to mean the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer inclusive of all taxes and expenses and price is the sole consideration for such sale.

However, if the provisions of the Act, rules or other law as referred to in (a) above require the retail sale price to exclude any taxes, local or otherwise, the retail sale price shall be construed accordingly.

- (d) Where there is **more than one retail sale price**, the maximum of such retail sale price will be deemed to be the retail sale price for the purpose of this section.
- (e) Where **different retail sale prices are declared on different packages for different areas**, each such retail price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.
- (f) The excisable goods shall be **confiscated and the retail sale price will be ascertained in the manner** prescribed by the Central Government if the manufacturer:
 - ◆ tampers, alters or obliterates the retail sale price declared on the package of goods after their removal, or
 - ◆ removes such goods without declaring the retail sale price on the packages or declares a retail sale price which is not the retail sale price as required to be

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declared under the provisions of the Act, rules or other law as referred to in (a) above.

- (g) If the retail sale price declared on the package of goods at the time of removal is **altered to increase the retail sale price**, such altered retail sale price shall be deemed to be the retail sale price.

Question 2

State the procedure for valuing excisable goods that are to be sold from depot/branch or premises of a consignment agent under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Answer

As per **rule 7** of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as 'such other place') from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, **the value shall be the normal transaction value of such goods sold from such other place at or about the same time** and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

Question 3

Write short note on "Place of Removal".

Answer

As per **section 4(3)(c)** of the Central Excise Act, 1944, '**place of removal**' means:

- (i) **a factory** or any other place or premises of production or manufacture of the excisable goods;
- (ii) **a warehouse** or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- (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 the factory; from where such goods are removed.

Question 4

The assessee was a manufacturer of I.C. engine parts like piston and gudgeon pins. He used to procure from the market piston rings and circlips and supply them along with the items that he had manufactured, to the buyers. He was also selling these procured items separately. The department contended that those bought-out items, supplied along with the manufactured

items, were part of piston assembly and therefore, their value should be included in the value of the piston assemblies cleared by the manufacturer. But the assessee contended that the piston rings and circlips were all different parts of I.C. engine and therefore they were not to be considered as parts of another item. Decide whether the contention of the department is correct or not.

Answer

This problem is based on the case of **Goetze (India) Ltd. v. CCE, Chandigarh 2004 (169) ELT 274 (Tri.-Del.)**. The case was decided in favour of the assessee. The Tribunal observed that the trading practice made it clear that each of the item was bought and sold separately and not as parts of one item. The fact that they were assembled together in an I.C. engine or that each part had an integral function in an assembly was not sufficient to hold that one item formed part of another item.

The Tribunal reiterated the well settled law that excise duty was a levy on manufacture and a manufacturer would be **liable to pay duty on the goods manufactured by him and not on all the goods supplied by him**. Therefore, it was decided by the Tribunal that value of such items would not be included in the assessable value of the manufactured goods.

In view of the abovementioned decision, the contention of the department is not correct.

Question 5

Determine the total amount of excise duty payable under section 4 of the Central Excise Act, 1944 from the following information:

Particulars	Rs.
(i) Price of machinery excluding taxes and duties	5,50,000
(ii) Installation and erection expenses	21,000
(iii) Packing charges (primary and secondary)	11,500
(iv) Design and engineering charges	2,000
(v) Cost of material supplied by buyer free of charge	8,500
(vi) Pre-delivery inspection charges	500

Other information:

- Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.
- Bought out accessories supplied along with machinery valued at Rs. 6,000.
- Central excise duty rate 10% and educational cess as applicable @ 3%.

Make suitable assumptions as are required and provide brief reasons.

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Answer

Determination of excise duty payable:

Particulars	Rs.
Price of machinery	5,50,000
Packing charges (Note 6)	11,500
Design and engineering charges (Note 7)	2,000
Cost of material supplied by buyer (Note-3)	8,500
Pre-delivery inspection charges (Note-4)	500
Total	5,72,500
Less : 2% cash discount on price of machinery=550,000 x 2 % (Note-5)	11,000
Assessable value	5,61,500
Excise duty @ 10.30%	57834.50
Excise duty[rounded off] payable	57834

Notes :

While computing the assessable value:-

1. installation and erection expenses will not be included [Circular No. 643/34/2002 dated 01.07.2002].
2. bought out accessories, supplied along with the machinery, will not be included.
3. cost of material supplied by buyer free of charge will form part of assessable value as it is the additional consideration flowing from buyer to seller.
4. pre-delivery inspection charges are includible [Circular No. 643/34/2002 dated 01.07.2002].
5. cash discount will be allowed as deduction if actually passed on to the buyer and if transaction is on principal to principal basis [Circular No. 643/34/2002 dated 01.07.2002].
6. amount charged from the buyer in relation to packing, whether primary or secondary, shall be included [Circular No. 354/81/2000 dated 30.06.2000].
7. design and engineering charges shall be included as such payment is 'in connection with sale'.

Question 6

Determine the total amount of excise duty payable on a machine using the details given below:

	Rs.
(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	5,000
(iv) Design and development charges paid by buyer on behalf of seller to a third party	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

Answer**Computation of total amount of excise duty payable:**

Particulars	Rs.
Sale price of the machine excluding taxes and duties	2,00,000
Add : Design and development charges (Note-3)	20,000
Add: Warranty charges (Note-4)	5,000
Less : Cost of durable and returnable packing (Note-2)	<u>5,000</u>
Assessable value	<u>2,20,000</u>
Excise duty @ 10%	22,000
Education cess @ 3% on Excise Duty	<u>660</u>
Total excise duty payable on the machine	<u>22,660</u>

Notes:

- Sales Tax** is not included since the definition of transaction value as per section 4 specifically excludes sales tax paid or payable on the goods.
- Cost of Durable and Returnable packing** shall not form a part of transaction value.
- Design and Development charges** are essential for the purpose of manufacture and to make the product marketable. Hence, they have to be included in the assessable value, since payment is 'in connection with sale'.
- If the **Warranty Charges** are charged separately and are not considered as "price" of the goods by the assessee, then warranty charges will be includible in the transaction value forming basis of the valuation [Circular No. 354/81/2000-TRU dated 30.06.2000].

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Question 7

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.

Answer

There is **no specific rule** covering such a situation. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per section 4(1), transaction value is to be determined for each removal. For sales to unrelated buyers, valuation will be done as per section 4(1)(a) and for sales of the same goods to related buyers, recourse will have to be taken to the residuary rule 11 read with rule 9 (or 10). **Rule 9** cannot be applied in such cases directly since it covers only those cases where all the sales are made to related buyers only [**Circular No. 643/34/2002 dated 01.07.2002**]. Further, Rule 9 & 10 do not apply when there is sale to both the related and unrelated persons as has been pronounced in **Sanjay Bahadur Vs CCE (2009) 240 ELT 282**.

Question 8

Compute the assessable value and amount of excise duty payable under the Central Excise Act, 1944 and rules made thereunder from the following information:

	Particulars	No. of units	Price at factory per unit	Price at depot per unit	Rate of duty ad valorem
(i)	Goods transferred from factory to depot on 8 th February	1,000	Rs. 200	Rs. 220	10%
(ii)	Goods actually sold at depot on 18 th February	750	Rs. 225	Rs. 250	8%

Answer

According to **Rule 7** of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, in cases where the goods are not sold at factory gate, but they are transferred by the assessee to his depot, the assessable value for the goods cleared from factory and sold from depot shall be **normal transaction value of such goods at the depot at or about the same time** at which the goods being valued are removed from the factory.

Assessable Value = 1,000 units x Rs. 220 = Rs. 2,20,000

Calculation of Central excise duty:-

Basic excise duty @ 10% (Rs. 2,20,000 × 10%)	22,000
Education cess @ 2%	440
Secondary and higher education cess @ 1%	<u>220</u>
Total duty payable	<u>22,660</u>

Note: It has been assumed that the price at depot on 8th February is the normal transaction value for sale to independent buyers

Question 9

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 as 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

Answer

Computation of assessable value of the excisable goods:-

Contracted sale price	Rs.9,00,000
Less:	
Excise duty (Note – 1)	Rs.1,11,200
VAT (Note – 1)	Rs.37,000
Octroi (Note – 1)	Rs.9,500
Actual freight from "place of removal" to buyer's premises (Note – 2)	<u>Rs.42,300</u>
	<u>Rs.2,00,000</u>
Assessable value	<u>Rs.7,00,000</u>

Notes : In the given question, for the purpose of determining the assessable value of the excisable goods:-

- the duty of excise, sales tax and other taxes, if any, actually paid or payable on the excisable goods shall be excluded [Section 4(3)(d) of the Central Excise Act, 1944].

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2. the cost of transportation from the place of removal up to the place of delivery of the excisable goods shall be deducted [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
3. the cost of transportation, worth Rs. 20,000, from the factory to the place of removal shall not be excluded [Explanation 2 to rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
4. cost of packing, Rs. 3,000 and Rs. 7,000 shall not be deducted. In this regard, it has been clarified that as per section 4 of the Central Excise Act, 1944, packing charges shall form part of the assessable value whether packing is ordinary or special, or primary or secondary. Any charges recovered for packing are the charges recovered in relation to the sale of the goods under assessment and, hence, will form part of the transaction value of the goods [**Circular no. 354/81/2000 dated 30/6/2000**].

Question 10

Comment on the following

- (i) *Excise department cannot challenge the reasonability of MRP printed on the package.*
- (ii) *If any excisable goods are exempted from duty of excise absolutely, the manufacturer of such goods will be bound to avail the exemption.*

Answer

- (i) True. The Central Excise Department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form [**ITC Ltd. v. CCEx., New Delhi 2004 (171) ELT 433 (SC)**].
- (ii) True. As per section 5A(1A) of the Central Excise Act, 1944, if any excisable goods is exempt from duty of excise absolutely, the manufacturer of such goods will be bound to avail the exemption.

Question 11

An assessee sold certain goods to PQR Company Limited for Rs.20,000 on 09.09.2010. The buyer is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. The buyer did not sell the goods but used it as intermediary product. The cost of production of the goods was Rs.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.

Answer

The **proviso to Rule 9 of the Central Excise Valuation (Determination of Excisable Goods) Rules, 2000** lays down that in a case where the related person does not sell the

goods but uses or consumes such goods in the production or manufacture of articles, the value thereof shall be determined in the manner specified in **Rule 8**.

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

Therefore, when the goods are sold to a related person, the assessable value shall be 110% of Rs.16,000 (Rs.16,000 + Rs.1,600) i.e., Rs.17,600. However, when the goods are sold to unrelated buyer, the assessable value will be Rs.20,000.

Question 12

I 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 litres 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 litres 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. (5 Marks)

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.

Answer

The issue is covered by a decision of the Supreme Court in the case of **Jayanti Food Processing (P) Ltd. v. CCE 2007 (215) ELT 327**. It was held that the product was not covered by the provision of section 4A of the Central Excise Act, 1944.

The Supreme Court held that **firstly**, the assessee could not be said to be “retail dealer” because four litre pack of ice-cream was not being sold directly to the consumer, but to the intermediary i.e. hotels.

Secondly, four litre pack of ice-cream could have been covered under the definition of “retail package” only if such package had been intended for retail sale for consumption by an individual or a group of individuals. However, the package specifically displayed that “the pack was not meant for retail sale”. Moreover, hotel could not be covered in term of ‘individual or a group of individuals’. Hence, the ice-cream package could not be termed as “retail package”. Therefore, the assessee was not required under Standards of Weight and Measures Act and the rules there under to print the MRP on the package.

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Lastly, the Apex Court agreed with the contention of the assessee that they were entitled to exemption under Rule 34 which exempts the product from requirement of affixing maximum retail price on the pack. Rule 34 of the Standard of Weights and Measures (Packaging Commodity) Rules, 1977 exempts the package specially packed for the purpose of servicing any industry. Supreme Court **concluded** that the sale of pack of ice-cream to the retail industry was squarely covered in the term "servicing any industry".

Hence, it could be inferred that, since, the requirement of affixing maximum retail price is a pre-condition for application of section 4A of the Central Excise Act, 1944, assessment under section 4 is correct. In other words, stand taken by the Department is not correct in law.

Question 13

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.

Answer

No, the stand taken by the Department is not valid in law. Section 4A(2) of the Central Excise Act, 1944 stipulates that value of the goods notified by the Central Government under section 4A(1) of the Act shall be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow. For the purpose of valuation under section 4A of the Central Excise Act, 1944, there should be requirement under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law to declare the retail price of such goods on the package.

With effect from 14.01.2007, Standards of Weights and Measures (Packaged Commodity) Rules, 1977 have been amended to provide *inter alia* that MRP is not required to be printed in case of sale to institutional consumers. Institutional consumers have been defined as those consumers who buy packaged commodities directly from the manufacturers/packers for service industry like airways, railways etc. Thus, Speed Airways, being an institutional consumer, package of mineral water bottles meant for them is not

required to bear any MRP. Hence, **in the present case, the goods are to be valued under section 4 and not under section 4A** of the Central Excise Act, 1944.

Question 14

What are the situations where transaction value under section 4 of the Central Excise Act does not apply?

Answer

As per section 4 of the Central Excise Act, assessable value shall be the transaction value if the following conditions are fulfilled –

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

If any one of the above conditions is not satisfied, the transaction value will not be taken as the assessable value. The value in such a case shall be determined **on the basis of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000** notified under section 4(1)(b) of the Central Excise Act.

Question 15

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.

As per rule 10A of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000, the assessable value of the goods in question would be the price at which the manufacturer ultimately sells them to the consumer, i.e. Rs. 1,800 in the given case.

Question 16

Define retail sale price in the light of provisions of section 4A of Central Excise Act, 1944.

Answer

Retail Sale Price: **Explanation 1 to section 4A** of the Central Excise Act, 1944 defines the retail sale price as the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and **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.

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However, in case the provisions of the Central Excise Act, rules or Standards of Weights and Measures Act, 1976 or the Rules made thereunder or under any other law for the time being in force require to declare on the package, the retail sale price **excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.**

Question 17

What are the conditions under which MRP based valuation shall apply under Central Excise?

Answer

The provisions relating to valuation of excisable goods based on MRP are dealt with in section 4A of the Central Excise Act, 1944. The conditions under which the MRP based valuation shall apply are as follows:

- (a) the excisable goods to be valued are covered under Standards of Weights and Measures Act, 1976 or related rules or under any other law and such law requires to declare on the package the retail sale price thereof; and
- (b) the Central Government has notified the said goods as goods in relation to which the payment of excise duty shall be on the basis of the MRP less such deductions/abatements as it may allow in the notification. However, it must be noted that if the goods have been so notified, Standards of Weights and Measures Act or the rules made thereunder must require a declaration of the retail sale price on the package of such goods.

Question 18

What legal/penal actions can be taken in case the retail sale price is not mentioned or is unduly tampered after the removal?

Answer

If the retail sale price is not mentioned on the excisable goods or is unduly tampered after the removal, then

- (i) such goods shall be liable to confiscation and
- (ii) the retail sale price of such goods shall be ascertained in the manner prescribed by the Central Government and such price shall be deemed to be the retail sale price.

Question 19

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:

Valuation of Excisable Goods

	Rs.
<i>Cost of raw material supplied</i>	30,000
<i>Job worker's charges including profit</i>	10,000
<i>Transportation charges for sending the raw material to the job worker</i>	3,000
<i>Transportation charges for returning the finished packets to Asha Ltd.</i>	3,000

Answer

As the product is under MRP scheme, the duty shall be payable only as per the provisions of section 4A of the Central Excise Act i.e. on the basis of MRP less abatement and not as per rule 10A of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000.

Section 4A overrides section 4 of the Central Excise Act.

Hence, assessable value in this case shall be determined as under:-

	Rs.
Retail sale price of 5000 packets	= 5000 x 20 = 1,00,000
Less: Abatement @ 40%	<u>40,000</u>
Assessable Value	<u>60,000</u>

CHAPTER 4

CENVAT CREDIT

Question 1

Briefly explain any two of the following with reference to the provisions of Cenvat Credit Rules, 2004 :

- (i) Exempted goods
- (ii) Final products
- (iii) First stage dealer.

Answer

- (i) As per **Rule 2(d)** of the Cenvat Credit Rules, 2004, “**exempted goods**” means goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to “Nil” rate of duty.
- (ii) As per **Rule 2(h)** of the Cenvat Credit Rules, 2004, “**final products**” means goods manufactured or produced from input or using input service.
- (iii) As per **Rule 2(ij)** of the Cenvat Credit Rules, 2004 “**first stage dealer**” means a dealer who purchases the goods directly from, -
 - (a) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or
 - (b) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice

Question 2

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:

Particulars	Rs.
Raw steel	22,000

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Water pipe making machine	18,000
Spare parts for the above machine	7,500
Grease and oil	2,800
Office equipment	20,000
Diesel	12,000

Provide explanation for treatment of various items.

Answer

CENVAT credit admissible to XYZ Co. for the month of May, 2009:-

Particulars	Rs.
Raw Steel	22,000
Water pipe making machine (Rs. 18,000 × 50%) (Note-1)	9,000
Grease and Oil	2,800
Spare parts for the machinery (Rs. 7,500 × 50%) (Note-1)	<u>3,750</u>
CENVAT credit admissible	<u>37,550</u>

Notes :

In respect of:-

1. water pipe making machine and spare parts, being capital goods, only 50% of CENVAT credit is available [Rule 4(2) of the CENVAT Credit Rules, 2004].
2. office equipment, no credit is available since the definition of capital goods under **rule 2(a)(A)** of the CENVAT Credit Rules, 2004 specifically excludes any equipment/appliance used in an office.
3. diesel, no credit is available since the definition of input under **rule 2(k)(i)** of the CENVAT Credit Rules, 2004 specifically excludes it.

Question 3

With reference to CENVAT Credit Rules, 2004, discuss giving reason whether the following statements are true or false:

- (i) Credit of duties of excise on inputs can be availed irrespective of whether payment is made or not against the invoice, whereas credit of service tax on input services can be availed only after making payment of the invoice.
- (ii) An input service distributor is comparable to a dealer under the CENVAT scheme of inputs and capital goods.
- (iii) The manufacturer shall not be allowed to transfer unutilized input credit in case of transfer of ownership of the factory by way of sale along with the inputs and capital goods.
- (iv) A manufacturer availing CENVAT credit on inputs wrongly is liable to a penalty.

Answer

- (i) **True.** Credit of input services can be availed only after the output service provider makes payment of input services and the service tax payable on it, as shown in the invoice [Rule 4(7)]. However, in case of excise duty, credit is available as soon as the goods are received in the factory [Rule 4(1)].

The **reason** for the differential treatment is that a manufacturer (input supplier) can clear the inputs from his factory only after paying the applicable duty irrespective of the time at which he receives the payment against the invoice while the input service provider pays the service tax only after he realizes the payment for taxable services (as the service tax is due upon realization only).

- (ii) **True.** The invoice issued by a **dealer** is acceptable under the CENVAT Credit Rules, 2004 as an eligible document for availing credit. In order to pass on the credit, the dealer has to obtain registration and file quarterly returns with the Superintendent of Central Excise. Likewise, the document/invoice issued by an **input service distributor** is also acceptable under the CENVAT Credit Rules, 2004 as an eligible document for availing credit. Similarly, in order to pass on the credit, the input service distributor too has to obtain service tax registration, comply with **rule 4A** of Service Tax Rules, 1994 and file half yearly statement giving details of credit received and distributed, with the Superintendent of Central Excise.
- (iii) **False.** The manufacturer shall be allowed to transfer the credit lying unutilized in his accounts provided the transfer takes place with **specific provision for transfer of liabilities of such factory [Rule 10(1)]** and the said inputs and capital goods are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise. **[Rule 10(3)]**
- (iv) **True.** Where the CENVAT credit in respect of **inputs or capital goods** is taken wrongly or in contravention of the provisions of these rules, then all such goods shall be liable to confiscation and such person shall be liable to a penalty not exceeding duty on the inputs in question or Rs.2,000/- whichever is greater as per provisions of section 15(1) of CCR 2004 as amended w.e.f 27-02-2010.

Question 4

I Ltd. was a manufacturer of 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

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used for generation of electricity as it was used within 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 wanted 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 was not used in relation to manufacture of the final product. Examine, with the help of a decided case law, if the stand of the Department is correct in law.

Answer

The facts of this case are similar to the case of ***M/s Indorama Synthetics (I) Ltd. v. CCEx. (2008) 226 ELT A181(SC)***. In this case, the Supreme Court **maintained the judgment of the Bombay High Court** wherein it was held that the CENVAT credit of the duty paid on furnace oil used in the generation of electricity in turn used in the residential complex was not allowable. The assessee submitted that "factory" under section 2(f) of the Central Excise Act, 1944 is wide enough to cover precincts thereof, even if the manufacturing is carried out only in a part of such premises. Therefore, the electricity supplied to the residential complex situated within the factory premises must be covered within the meaning of the word 'for any other purpose' set out in the **erstwhile rule 57(B)(w) of the Central Excise Rules, 1944** [similar to present **Rule 2(k) of the CENVAT Credit Rules, 2004**]. The assessee's submission was rejected by the High Court observing that credit of duty would be available on inputs used in the generation of electricity, provided the electricity is used for manufacture of final products or for any other purpose connected with or related to manufacture of final products. In other words, the **use of electricity must have nexus with the goods manufactured in the factory**. The mere fact that the residential complex is situated within the licensed premises would not entitle the assessee to avail the credit of duty paid on the furnace oil used in the manufacture of electricity supplied to the residential complex. Thus, the **stand taken by the Department of disallowing the CENVAT credit is correct in law**.

In addition, the case of ***CCE V Solaris Chemtech (2007) 214 ELT 481(S.C.)*** may also be quoted wherein also it was held that CENVAT Credit will not be available to the extent the electricity is consumed in residential colony of workers.

Question 5

With reference to CENVAT Credit Rules, 2004, discuss giving reason whether the following statements are true or false:

- (i) *Credit of duties of excise on inputs will not be available if inputs are used in intermediate product, which is exempt from duty, even though the final product is dutiable.*
- (ii) *A manufacturer can sell the inputs on which CENVAT credit has already been availed of, as they are, provided he pays the amount equal to the credit availed.*
- (iii) *A manufacturer is eligible for CENVAT credit in the cases stated below:*
 - (1) *Inputs used in trial runs;*
 - (2) *Materials used for maintaining factory building.*

Answer

- (i) **False.** It was held in **CCEx. v. Hindustan Sanitaryware 2002 (145) ELT 3 (SC)** that CENVAT credit would be available in respect of duty paid on inputs even if intermediate product is exempt from duty but the final product is dutiable. Further, the Central Board of Excise and Customs has clarified vide *Clarification No. B-4/7/2000-TRU, dated 03.04.2000* that the CENVAT credit shall not be denied if the inputs are used in any intermediate product of the final product even if such intermediate product is exempt from payment of duty so long as the final product is dutiable. The **basic idea** is that CENVAT credit should be admissible so long as the inputs are used in or in relation to the **manufacture of dutiable final products**, whether directly or indirectly.
- (ii) **True.** Rule 3(5) of CENVAT Credit Rules, 2004 *inter alia* provides that a manufacturer of the final products can remove inputs on which CENVAT credit has been taken, as such, from the factory **if he pays an amount equal to the credit availed** in respect of such inputs and such removal is made under the cover of an invoice referred to in rule 9 of the CENVAT Credit Rules, 2004.
- (iii) 1. **True.** Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are considered to have been used in or in relation to the manufacture of final product [**Fertiliser Corporation of India v. CCE 1990 (50) ELT 494 CEGAT**].
2. **False.** Materials used for maintaining factory building **only facilitate manufacture and are not integrally used in or in relation to manufacture of final products** and hence are not eligible for CENVAT Credit.

Question 6

Discuss briefly the validity of the following statements with reference to the CENVAT Credit Rules, 2004:

- (i) *Basic excise duty credit can be utilized for payment of basic excise duty and education cess and secondary and higher education cess.*
- (ii) *CENVAT credit on inputs lying in stock or in process or contained in the final product shall be reversed when the final product is subsequently exempted unconditionally in terms of an exemption notification issued under section 5A of the Central Excise Act, 1944.*

Answer

- (i) **Correct.** There is no restriction in the said rules on utilization of CENVAT credit of basic excise duty (BED) for payment of education cess (EC) and secondary and higher education cess (SHEC). Rule 3(4) of the said rules provides that credit of BED can be utilized for **payment of any duty of excise on any final product**. Since EC and SHEC

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are 'duties of excise' as per statutory provisions, hence, credit of BED can be utilized for payment of cesses.

- (ii) **Correct.** As per **Rule 11(3)** of CENVAT Credit Rules, 2004 when final product has been exempted absolutely under section 5A of the Central Excise Act, CENVAT credit on inputs, lying in stock or in process or contained in final product shall be reversed. The balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product or for payment of service tax on any output service.

Question 7

M/s Smart Ltd. manufactures certain excisable goods that are exempt from duty in terms of a notification, provided CENVAT credit of duty paid on input is not taken by the manufacturer. M/s Smart Ltd. had taken the credit of duty paid on inputs, but reversed the same before its utilization. The department denied the benefit of exemption on the ground that once the credit is taken it is immaterial whether the same is reversed before or after utilisation of such credit. State briefly whether the action of the department is correct under the Central Excise Act and rules made thereunder with reference to decided case law, if any.

Answer

The case is similar to **CCEx. v. Bombay Dyeing & Mfg. Co. Ltd. (2007) 215 ELT 3 (SC)**, wherein it was held by the Apex Court that since the entry for credit was reversed before utilizing the same, it would amount to not taking of credit.

Hence, in view of this decision, M/s Smart Ltd. is **entitled to claim the benefit of exemption notification** and thus the Department's action is not correct.

Question 8

M/s. XYZ Ltd. shifted its factory from Sitapura to Rampur and transferred all the available inputs and capital goods to the new site. The inputs, capital goods and the balance of unutilised CENVAT credit were duly received and accounted for in the registers of the new unit. The said balance of unutilised CENVAT credit transferred was Rs.8,00,000. However, the quantum of CENVAT credit attributable to the inputs and capital goods so transferred to the new site was Rs.6,00,000 only. The Department raised the plea that the assessee was entitled to transfer only Rs.6,00,000 of CENVAT credit and not the entire balance of unutilized credit of Rs.8,00,000. Explain, with the help of a decided case law, if any, whether Department's plea is justified in law?

Answer

As per Rule 10 of the CENVAT Credit Rules, 2004, if a manufacturer of the final product shifts his factory to another site with the specific provision for transfer of liabilities of such factory, he shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to the new site if the stock of inputs as such or in process, or the capital goods is also transferred along with

the factory or business premises and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of Central Excise.

The Madras High Court in the case of **CCE, Pondicherry vs. CESTAT 2008 (230) ELT 209 (Mad.)** has also affirmed this position. In this case, the High Court has held that erstwhile Rule 8 of the CENVAT Credit Rules, 2002 (new rule 10 of the CENVAT Credit Rules, 2004) does not provide that the assessee could transfer the CENVAT credit corresponding only to the quantum of inputs or capital goods transferred to the new factory.

Thus, the plea of Department is not justified presuming that M/s. XYZ Ltd. shifted its factory from Sitapura to Rampur with the specific provision for transfer of liabilities of such factory and the inputs or capital goods on which credit has been availed of are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of the Central Excise.

Question 9

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?

Answer

Capital goods removed after being used: As per second proviso to sub-rule (5) if the capital goods, on which the CENVAT credit has been taken, are removed after being used, the manufacturer/output service provider shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT credit, namely:-

S.No.	Type of capital goods	Percentage points calculated by straight line method	
		For each quarter in	Percentage
1.	Computers and computer peripherals	Year 1	10 %
		Year 2	8 %
		Year 3	5 %
		Year 4 & 5	1 %
		2.5% for each quarter	
2.	Other capital goods	2.5% for each quarter	

Question 10

Following transactions took place in the factory of JKA Ltd:

- (i) *An imported consignment of raw materials was received vide bill of entry dated 02.09.2010 showing the following customs duty payments:*

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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 03.09.10 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 15.11.10 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.

Answer

- (i)** As per **rule 3(1)(vii)** of the CENVAT Credit Rules, 2004, CENVAT credit of the **additional duty** leviable under section 3 of the Customs Tariff Act, 1975 viz., **Countervailing Duty (CVD)** shall be allowed to a manufacturer or producer of the final products. Thus, credit can be availed in respect of Rs.20,000 paid as additional duty (CVD).
- (ii)** **Rule 2(k)** of CENVAT Credit Rules, 2004 *inter alia* provides that input means all goods used in or in relation to the manufacture of final products, whether directly or indirectly. Thus, **the inputs lost before being issued for production cannot be termed as “used in or in relation to manufacture of final product”**. Hence, CENVAT credit in respect of 50 kg of inputs will not be available but CENVAT credit of Rs.9,500 on balance 950 kg of inputs can be availed.
- (iii)** **Clause (iv) of rule 9(1)(a)** of the CENVAT Credit Rules, 2004 provides that CENVAT credit shall be taken by manufacturer on the basis of an invoice issued by a first/second stage dealer. Further, as per rule 9 of Central Excise Rules, 2002, a **first/second stage dealer requires registration**. Thus, in the given case, CENVAT credit can be claimed against dealer's invoice since the dealer is registered with Central Excise Authorities.

However, CENVAT credit in respect of capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [**Rule 4(2)** of CENVAT

Credit Rules, 2004]. Hence, CENVAT credit of Rs.12,000 will be available in the current financial year. Balance credit of Rs.12,000 can be availed in any subsequent year.

- (iv) Rule 9 of CENVAT Credit Rules, 2004 states that the CENVAT credit can be availed on the basis of invoice issued by a manufacturer. Thus, the credit can be availed on any copy of the invoice i.e., whether it is the invoice marked as “original for buyer” or “duplicate for transporter” as it is still an invoice issued. However, a **certified photocopy is not an invoice** issued by the manufacturer. Thus, credit cannot be availed on the basis of a certified copy.

Question 11

Write a brief note on Cenvat monthly return of information relating to principal inputs in Form ER 6.

Answer

ER-6 is a monthly return of receipt and consumption of each of principal inputs. It is to be submitted, by the assessee by 10th of the following month. **Only those assesseees who are required to submit ER-5 return are required to submit ER-6 return [Rule 9A(3) of the CENVAT Credit Rules, 2004].**

Question 12

X, a manufacturer purchased 500 kgs of inputs on 1.10.2010. Total assessable value of inputs was Rs. 10,000 and excise duty of 10% and 3% of excise duty as education cess was paid on the input. On the day of receipt itself, inputs were sent to the job worker. Job worker sent back 50% of the inputs on 1.4.2011 and balance 50% on 31.5.2011. 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 2010-11 and 2011-12.

Answer

As per **Rule 4(5)** of CENVAT Credit Rules, 2004, a manufacturer or output service provider is entitled to claim CENVAT credit on the inputs that are cleared to a job worker for further processing, testing, repair, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose **provided** the goods are **returned back** in the factory **within 180 days of their being sent to the job worker**. In case inputs are not returned within 180 days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

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	Rs.
CENVAT credit that can be taken on 1.10.2010 (Rs. 10,000×10.30%)	1,030
CENVAT credit that should be reversed on 30.3.2011 i.e. immediately after the expiry of 180 days from the date of sending goods to job worker	1,030
CENVAT credit availed and reversed in financial year 2010-11	1,030
CENVAT credit that can be taken on 1.4.2011 (50% of Rs. 1,030)	515
CENVAT credit that can be taken on 31.5.2011 (50% of Rs. 1,030)	515
CENVAT credit availed in financial year 2011-12	1,030

Question 13

M/s ABC Ltd. was 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 / spares for 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 can not be considered as material handling system within the factory premises. Examine, with the help of a decided case law, whether the stand taken by the Department is correct in law.

Answer

Rule 2(a) of CENVAT Credit Rules, 2004, *inter alia*, provides that capital goods means goods “used in the factory of the manufacturer of final products”. The Department's contention is that ropeway is used for transporting raw material from mines located 4-5 kms away and hence it can not be said to have been used in the factory.

The facts of the given case are similar to the case of **M/s. Birla Corporation Ltd. v. CCE 2005 (186) ELT 266 (SC)**. In the instant case, the Apex Court followed the principle laid down in case of **J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II 2001 (130) E.L.T. 996** wherein the same question arose for consideration and the facts were almost identical. It was held in aforementioned case that the assessee was entitled to the CENVAT credit of the spares of the ropeway system because the ropeway system, used to bring the crushed lime stone from the mines to the factory, could be covered under the expression ‘precincts of the premises’ in the definition of the factory under section 2(e) of the Central Excise Act, 1944. Thus, ropeway system is used within the factory. Therefore, parts/spares for ropeway system are covered under the definition of capital goods. The same ruling was also given in the following cases:-

- (i) Manikgarh Cement Ltd. V CCE (2004) 168 ELT 331 (CESTAT)
- (ii) Ultratech Cement V CCE(2009) 243 ELT 575 (CESTAT)

Hence, the stand of the Department is not correct.

Question 14

M/s. AJ imported some inputs and paid basic customs duty Rs.5 lakh, 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?

Answer

M/s. AJ can take credit of Rs.1,00,000 i.e. of additional duty of customs (CVD). **Rule 3(1)** of CENVAT Credit Rules, 2004 allows the credit of additional duty of customs imposed under section 3 of the Customs Tariff Act, 1975. The credit of other two duties i.e. basic custom duty and the surcharge on customs duty is not allowed.

It will not make any difference if the assessee is a service provider as credit of additional duty of customs (CVD) can be availed both by the manufacturers and the service providers alike.

Note: It has been assumed that the additional duty of customs (CVD) referred to in the question is not the additional duty of customs (CVD) leviable under section 3(5) of the Customs Tariff Act, 1975 as in that case the service provider will not be entitled to avail the CENVAT credit.

Question 15

M/s TCCL, providing management consultancy to its client, does not maintain any separate accounts and have paid Rs.1,00,000 as service tax and excise duty towards input services and input material/capital goods used by them. It is assumed for the sake of simplicity that out of aforementioned Rs. 1,00,000 they have used the inputs for exempted and taxable services to the extent of Rs. 40,000 & Rs. 60,000 respectively. They are now providing the output services amounting to Rs. 14,00,000 and exempted services amounting to Rs. 7,00,000. How much credit out of Rs.1,00,000 can be availed by them for paying output service tax liability, if they do not maintain any separate accounts?

Answer

Rule 6(3) of the CENVAT Credit Rules, 2004 *inter alia* provides that where common input/input services are used for providing taxable as well as exempted services and **separate accounts are not maintained**, the output service provider has the following options at his disposal:-

- (i) either pay 6% on the value of exempted services; OR
- (ii) Reverse the CENVAT credit attributable to the inputs and input services used for providing exempted services

Accordingly, in the present case if the above options are applied then:-

- (i) M/s TCCL has to pay Rs. 42,000/- (6% on Rs. 7,00,000) on value of exempted services. After making aforementioned payment, it can take entire CENVAT Credit of Rs. 1,00,000

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available to it.

- (ii) Alternatively, TCCL has to reverse CENVAT Credit attributable to inputs and input services used for providing exempted services which works out to be Rs. 40,000/-

Question 16

What action can be taken by the Department in case of misuse of service tax credit?

Answer

W.E.F. 27-02-2010 the following actions can be taken by the Department in case of misuse of service tax credit:

- (i) Penalty not exceeding Service Tax on such services or Rs.2,000, whichever is greater can be levied if a person has taken CENVAT credit in respect of input service wrongly [Rule 15(1) of the CENVAT Credit Rules, 2004];
- (ii) Penalty prescribed under section 78 of the Finance Act, 1994 shall also be levied on the output service provider if the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of these Rules or Finance Act or the rules made thereunder with an intent to evade payment of service tax [Rule 15(3) of the CENVAT Credit Rules, 2004];
- (iii) The **special audit**, in cases where credit of duty availed or utilized is not within the normal limits etc., prescribed under **section 14AA of the Central Excise Act, 1944** can be ordered in case of misuse of service tax credit.

Question 17

Whether a manufacturer of excisable goods, who has paid service tax on freight, can himself take credit of service tax paid, if such transportation service is in relation to the manufacture and clearance of his final products?

Answer

Credit of service tax paid on freight is eligible in case of the manufacturer who pays service tax for inward transportation and satisfies the statutory definition of 'input service' as given in section 2(l) of CENVAT Credit Rules 2004. For outward freight, credit is admissible only upto the place of removal.

Question 18

The goods manufactured by a company got destroyed by fire. The payment of duty was ordered to be remitted. Is the company required to reverse the CENVAT credit taken on input services used in manufacture of such destroyed goods?

Answer

As per **Rule 3(5C)** of the CENVAT Credit Rules, 2004, where on any goods manufactured by

an assessee, the payment of duty is ordered to be remitted under **rule 21 of Central Excise Rules 2002**, the credit taken on inputs used in the manufacture or production of said goods shall be reversed. Thus, there is **no requirement for the reversal of CENVAT credit taken on input services used** in the manufacture of such goods.

Question 19

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 does 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.

Answer

- (a) **Calculation of service tax and total amount payable under rule 6(3)(i) of the CENVAT Credit Rules, 2004:**

Particulars	Rs.
Service tax payable on taxable services (Rs. 70,00,000 × 10%)	7,00,000
Education cess @ 2% (Rs. 7,00,000 × 2%)	14,000
Secondary and higher education cess @ 1% (Rs. 7,00,000 × 1%)	7,000
Amount payable on exempt services under rule 6(3)(i) (Rs. 30,00,000 × 6%) [Note (1)]	<u>1,80,000</u>
Total	<u>9,01,000</u>

Particulars	Service tax and amount payable under rule 6(3)(i)	Education cess	Secondary and higher education cess
Amount payable (A)	Rs. 7,00,000 + Rs. 1,80,000 = Rs. 8,80,000	Rs. 14,000	Rs. 7,000
Less: CENVAT credit (B)	Rs. 6,00,000	Rs. 6,00,000 × 2% = Rs. 12,000	Rs. 6,00,000 × 1% = Rs. 6,000
Net amount payable = (A) - (B)	Rs. 2,80,000	Rs. 2,000	Rs. 1,000

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Amount payable by GAR-7 challan=Rs. 2,80,000 + Rs. 2,000 + Rs. 1,000=**Rs. 2,83,000**

Notes :

- (1) Education cess & secondary and higher education cess are not payable on 'amount' payable @ 6% of the value of exempt services under rule 6(3)(i) of the CENVAT Credit Rules, 2004.
- (2) Credit of education cess and secondary and higher education cess on input services can be utilized only for the payment of education cess and secondary and higher education cess payable on output services (or on excisable goods) respectively [**First and second proviso to rule 3(7)(b)** of the CENVAT Credit Rules, 2004].

Question 20

Ascertain whether the refund of service tax paid on input services can be claimed in the following case:

Total credit of service tax on input services	Rs. 6,000
Total turnover of output service	Rs.30,000
Output service exported	Rs.20,000

Answer

Rule 5 of CENVAT Credit Rules, 2004 *inter alia* provides that the CENVAT credit in respect of the input services used in providing output services which are exported shall be allowed to be utilized towards payment of service tax on taxable output services. However, where such adjustment is not possible, the refund of credit shall be allowed.

In this case the service tax liability on taxable services of Rs.10,000 (Rs.30,000 -Rs.20,000) is Rs.1030 @10.3%. Therefore, there is an excess credit of Rs.4,970 (Rs.6,000 – Rs.1,030) which can not be utilized. Thus, the refund of such credit can be claimed. However, the refund will be restricted to the extent of ratio of export turnover to the total turnover for the given period, i.e. Rs.4,000 [Rs.6,000 x (Rs.20,000/Rs.30,000)].

Question 21

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?

Answer

No, if a manufacturer manufactures various products, he has to avail CENVAT for all items or opt for exemption for all products.

This view has been upheld in **CCE v. Ramesh Foods Products (2004) 174 ELT 310 (SC)**, where it has been held that simultaneous availment of CENVAT credit on some products and exemption on some other products is not permissible.

Question 22

State the provisions relating to confiscation and penalty under CENVAT Credit Rules, 2004.

Answer**Rule 15 - Confiscation and penalty****1. Wrongful availment/utilization of CENVAT credit on inputs, capital goods or input services [Sub-rule (1)]**

If any person, takes or utilises CENVAT credit in respect of input/capital goods/input services,

wrongly or in contravention of any of the provisions of these rules,
then:-

- (a) all such goods shall be liable to confiscation and,
- (b) such person, shall be liable to a penalty not exceeding:-
 - (i) the duty or service tax on such goods or services, as the case may be,
or
 - (ii) Rs. 2,000
whichever is greater.

2. Wrongful availment/utilization of CENVAT credit by reason of fraud etc. with the intent to evade the payment of duty [Sub-rule (2)]

Where the CENVAT credit in respect of input/capital goods/input services has been taken or utilised wrongly **by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent 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.

3. Wrongful availment/utilization of CENVAT credit by reason of fraud etc. with the intent to evade the payment of service tax [Sub-rule (3)]

Where the CENVAT credit in respect of input/capital goods/input services has been taken or utilised wrongly **by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax** then, the provider of output service shall also be liable to pay penalty in terms of the provisions of **section 78** of the Finance Act.

4. Principle of natural justice [Sub-rule (4)]

Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.

GENERAL PROCEDURES UNDER CENTRAL EXCISE

Question 1

Briefly explain the term “daily stock account” with reference to the Central Excise Rules, 2002:

Answer

As per **Rule 10** of the Central Excise Rules, 2002, there is a specific requirement about maintenance of ‘**Daily Stock Account**’. Such account should be maintained on daily basis, in a legible manner, indicating the particulars regarding:

- (a) description of the goods produced or manufactured,
- (b) opening balance, quantity produced or manufactured,
- (c) inventory of goods,
- (d) quantity removed,
- (e) assessable value,
- (f) the amount of duty payable; and
- (g) particulars regarding amount of duty actually paid [**Rule 10(1)**]

The **first page and last page of such account books shall be duly authenticated** by the producer or manufacturer or his authorized agent [**Rule 10(2)**]. All such records shall be **preserved for a period of five years** immediately after the financial year to which such records pertain [**Rule 10(3)**].

Question 2

What is Personal Ledger Account or PLA? How is it maintained?

Answer

Personal ledger Account is an account with the Central Government, which is utilized for payment of duty of excise.

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(a) Account current

Assessee may pay duty through account current. It is popularly known as PLA (Personal Ledger Account). Any assessee who has obtained 15 digit ECC number from uperintendent can operate a current account.

(b) Debits and credits in PLA

The PLA is credited when duty is deposited in bank by GAR-7 challan. Thereafter, the duty is required to be paid by making a debit entry in the PLA on monthly basis. PLA and CENVAT credit should be used only for payment of excise duty and not for other payment like rent, lines, penalties etc.

(c) PLA to be maintained in triplicate

PLA has to be maintained in triplicate using indelible pencil and both sided carbon. Two copies of PLA and zerox copy of GAR-7 (earlier TR-6) receipted challans shall be submitted along with monthly/quarterly ER-1/ER-3 return.

(d) CENVAT credit only of inputs received upto end of month

Duty can be paid through PLA and/or CENVAT credit. Excise duty is payable on monthly basis. CENVAT credit available at the end of the month can be availed, even if duty is payable by 5th/6th of following month.

CENVAT credit of all inputs and 50% duty paid on capital goods is available as soon as goods enter the factory, even if book entry is made later. Thus, CENVAT credit is available in respect of all goods received upto end of the month, even if book entry is made later.

Question 3

Briefly mention the four categories of persons who are exempted from obtaining registration under rule 9(2) of the Central Excise Rules, 2002.

Answer

Central Board of Excise and Customs, as per the power given under **rule 9(2) of the Central Excise Rules, 2002, vide Notification No.36/2001-CE. (NT) dated 26.06.2001**, has exempted the following specified categories of persons from obtaining registration:

- (i) Persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification subject to the declaration to be made in a specified form.
- (ii) Small scale units having the slab exemption based on value of clearances under a notification. However, they have to give the declaration when their clearances touch Rs. 90 lakh.

- (iii) In respect of final products falling under chapter 61 or 62, the job-worker need not get registered if the principal manufacturer undertakes to discharge the duty liability. If the job worker undertakes to pay the duty, the principal manufacturer need not get registered.
- (iv) Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962 subject to certain prescribed conditions.
- (v) The person who carries on whole sale trade or deals in excisable goods except first and second stage dealer, as defined in the CENVAT Credit Rules, 2004.
- (vi) A hundred percent Export Oriented Undertaking or a unit in EPZ or a unit in SEZ licensed or appointed; as the case may be under the Customs Act, 1962 if they do not procure excisable goods from Domestic Tariff Area or do not remove excisable goods to Domestic Tariff Area.
- (vii) Persons who use excisable goods for any purpose other than the processing or manufacture of goods availing benefit of concessional duty exemption notification.
- (viii) Person who gets his goods manufactured on his account from any other person subject to the conditions that the said person authorizes the person actually manufacturing or fabricating the said goods, to comply with all procedural formalities under the Central Excise Act, 1944 and the rules made there under and to furnish information in order to enable the determination of value of the said goods.

Question 4

With reference to the Central Excise Act, 1944 and the rules thereunder, explain briefly whether the following persons require registration or not?

- (i) *Persons, who manufacture excisable goods chargeable to 'nil' rate of duty;*
- (ii) *Central Government undertakings manufacturing excisable goods;*
- (iii) *100% EOU.*

Answer

- (i) No, because manufacturers of goods which are chargeable to 'NIL' rate of duty are **exempt from registration provided a declaration is filed.**
- (ii) Yes, as the provisions of section 6 of the Central Excise Act, 1944 read with rule 9 of Central Excise Rules, 2002 apply in respect of every person who manufactures or produces excisable goods (**including Central/State Government Undertakings or undertakings owned or controlled by autonomous corporations**) in India.
- (iii) No, as 100% EOU is deemed to be registered under Rule 9. However, such unit shall be required **to get itself registered if it removes excisable goods to domestic tariff area (DTA) or procure excisable goods from DTA.**

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Question 5

Mention the last date of filing the following returns under the Central Excise Rules, 2002:

- (i) ER-4 for the financial year 2009-10
- (ii) ER-7 for the financial year 2009-10

Answer

- (i) ER-4 for the preceding financial year to which it relates is filed annually by 30th November of the succeeding year **[Rule 12(2) of the Central Excise Rules, 2002]**. Therefore, the last date for filing ER-4 for the financial year 2009-10 shall be 30.11.2010.
- (ii) ER-7 for the financial year to which it relates is filed by the 30th April of the succeeding financial year **[Rule 12(2A) of the Central Excise Rules, 2002]**. Therefore, the last date for filing ER-7 for the financial year 2009-10 shall be 30.04.2010.

Question 6

Annual Financial Information Statement (ER-4) is required to be submitted by the assessee paying duty of Rs. 4 crores or above per annum through PLA. Discuss the validity of the statement.

Answer

The statement is invalid. Annual Financial Information Statement (ER- 4) is required to be submitted latest by 30th November of succeeding financial year by the assessee paying duty of Rs.1 crore or above per annum either through PLA or CENVAT Credit or both together.

Question 7

Whether provisional assessment can be initiated by the Department of excise?

Answer

Rule 7 of the Central Excise Rules, 2002 gives an option to the assessee to make a request to the Assistant Commissioner/Deputy Commissioner of Central Excise for provisional assessment in case he is unable to determine the value of excisable goods or the rate of duty applicable thereto. Rule 7 does not give power to the Department to order provisional assessment on its own. Thus, **the Excise Department cannot suo motu issue directions for resorting to provisional assessment.**

Question 8

What is the remedy available with the Department in case assessing officer does not find the self assessment filed by the assessee in order?

Answer

Where the central excise officers during scrutiny or otherwise find that self-assessment is not in order, they may **ask the assessee for all necessary documents, records or other information** for issue of duty demand for differential duty, if any, after conducting inquiry.

If the assessee fails to provide such records or information, the Department may raise the demand based on collateral evidences. In such a case, the burden will be on the assessee to provide information for appropriate re-determination of duty.

Question 9

With reference to rule 12(2) of the Central Excise Rules, 2002, explain in brief the main provisions of the return in form E.R.-4, to be filed with the Central Excise Department by an assessee. What is the maximum penalty leviable for non-submission or late submission of E.R.-4 return?

Answer

Every assessee paying duty of Rs.1 crore or more per annum [either through PLA or CENVAT Credit or both together] is required to file **Annual Financial Information Statement** for the preceding financial year to which the statement relates by 30th November of the succeeding year in **Form E.R.4**. The main contents of the return are as under (all information is to be in Rs.lakhs) –

- (i) Financial year to which it relates
- (ii) Registration Number
- (iii) Name of the Assessee
- (iv) Details of Expenditure
- (v) Details of Income
- (vi) CENVAT credit details

The maximum penalty for non-submission or late submission can be Rs.5,000 under **rule 27** of the Central Excise Rules, 2002.

Question 10

Briefly explain the term 'large taxpayer' with reference to the Central Excise Rules, 2002:

Answer

As per **Rule 2(ea)** of the Central Excise Rules, 2002 '**large taxpayer**' means a person who

- (a) has one or more registered premises under the Central Excise Act, 1944; or
- (b) has one or more registered premises under Chapter V of the Finance Act, 1994;

and is an assessee under the Income-tax Act, 1961, who holds a Permanent Account Number issued under section 139A of the said Act, and satisfies the conditions and observes the procedures as notified by the Central Government in this regard.

The following persons have been **notified to be eligible to opt as large taxpayer**:

- (i) Any person engaged in the manufacture or production of goods, except the goods falling

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under chapter 24 or pan masala falling under chapter 21 of the First schedule of the Central Excise Tariff Act, 1985, or

(ii) a provider of taxable service,

who has paid during the financial year 2004-05 or during the financial year preceding the year of filing of application for large tax payer-

(a) duties of excise of more than Rs.500 lakhs in cash or through account current; or

(b) service tax of more than Rs.500 lakhs in cash or through account current; or

(c) advance tax of more than Rs.1000 lakhs, under the Income Tax Act, 1961,

and is presently assessed to income tax or corporate tax under the Income Tax Act, 1961, under the jurisdiction of prescribed income tax authorities.

Question 11

ABC, an assessee availing the SSI exemption scheme, paid central excise duty of Rs.10,000 for the goods cleared in the quarter ended on March 31st, 2010 on April 15, 2010. Discuss whether any interest will be charged from ABC for late payment of duty. If yes, what will be the interest liability?

Answer

The second **proviso to rule 8(1)** of the Central Excise Rules, 2002 lays down that where an assessee is availing the exemption under a Notification based on the value of clearances in a financial year, the duty on goods cleared during a calendar month shall be paid by the 15th day of the following month. However, in case of goods removed **during the month of March the duty shall be paid by the 31st day of March.**

Sub-rule (3) of rule 8 provides that if the assessee fails to pay the amount of duty by the due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification under section 11AB of the Central Excise Act on the outstanding amount. Such interest shall be paid for the period starting from the first day after the due date till the date of actual payment of the outstanding amount. The rate of interest has been specified as 13% vide *Notification No. 66/2003 CE(NT) dated 12.09.2003*.

Therefore, since ABC has paid the duty for the quarter ended on March 31st, 2010 on 15th April, it will have to pay the duty with interest for the delay of 15 days.

The amount of interest shall be computed as follows:

$$\begin{aligned} &= \text{Rs.}10,000 \times 13/100 \times 15/365 = \text{Rs.}53.42 \\ &= \text{Rs.}53.00 \end{aligned}$$

Question 12

Explain special procedure and facilities made available to large tax payer under rule 12BB of Central Excise Rules, 2002 in respect of intermediate goods.

Answer

Rule 12BB of Central Excise Rules, 2002 provides that a large tax payer may remove excisable intermediate goods from any of his registered premises to his other registered premises for further use in the manufacture of other excisable goods (subject goods).

For this purpose, he should satisfy the following conditions:

1. Either of the following conditions must be satisfied:-
 - (i) Subject goods should be manufactured out of the intermediate goods and cleared on payment of excise duties **within six months** from the date of receipt of intermediate goods, or
 - (ii) The subject goods should be manufactured out of the intermediate goods and exported out of India, under a bond or letter of undertaking, **within six months** from the date of receipt of intermediate goods.
2. **Removal** should be made under a **transfer challan/invoice**.
3. **Transfer challan** should be serially numbered and should contain details of registration number, name, address, description, classification, time and date of removal, mode of transport, vehicle number and name of consignee unit and registration number.
4. If goods manufactured out of intermediate goods are **not cleared/exported** out of India within six months, **duties on intermediate goods are required to be paid** with interest under section 11AB of the Central Excise Act, 1944.
5. If intermediate goods are **used in exempted subject goods**, recipient unit has to pay duty on intermediate product along with interest under section 11AB.

Question 13

What are the circumstances under which the certificate of registration can be revoked or suspended under Central Excise?

Answer

The certificate of registration under the Central Excise Act, 1944, can be suspended or revoked by the Deputy Commissioner or the Assistant Commissioner of Central Excise under the following circumstances.

- (i) when the assessee or any person under his employment has committed any breach of any condition of the Central Excise Act or any rules made there under.
- (ii) the assessee or a person under his employment has been convicted of an offence under Section 161 read with section 109 or section 116 of the Indian Penal Code.

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Question 14

Distinguish between compounded levy scheme and duty based on annual production capacity under central excise.

Answer

Compounded levy scheme: Under compounded levy scheme, the manufacturer has to pay the prescribed duty for a specified period on the basis of certain factors relevant to production, like size of equipment employed, production capacity or some other criteria [Rule 15 of Central Excise Rules, 2002].

Compounded levy scheme is presently applicable to stainless steel pattas/patties and aluminum circles. It is an **optional** scheme, i.e. the manufacturer can opt to pay duty as per normal rules.

Duty based on production capacity: In case of certain products, Central Government, by notification, can specify that duty on such notified products will be levied and collected on the basis of annual production capacity of the factory. [Section 3A(1) of the Central Excise Act, 1944 which has been inserted w.e.f. 10-05-2008].

Excise duty on pan masala and gutkha is payable on the basis of annual production capacity under section 3A. The scheme is **compulsory**.

Question 15

Explain briefly the following with reference to the provisions of the Central Excise Rules, 2002 and relevant notification issued thereunder with regard to e-payment of duty:

- (i) *The threshold limit for mandatory e-payment of duty;*
- (ii) *How and in what manner the time of payment would be reckoned under the e-payment system?*
- (iii) *The due dates for payment of duty under the e-payment scheme in respect of an assessee.*

Answer

- (i) With effect from 01.04.2010, e-payment of excise duty has been made mandatory for all assessees who have paid excise duty of Rs.10 lakh or more in previous year (either by cash or through CENVAT Credit). For others, it is optional.
- (ii) This is a 24 x 7 facility. Payment can be made anytime from anywhere. All payments effected upto 8 p.m. will be accounted for the day as that day's receipt.
Payments effected after 8 p.m. will be accounted as the next working day's receipt.
- (iii) For payment of excise duty by electronic means, the due date will be **6th of the succeeding month**. For assessees availing SSI exemption, the due date will be **6th of the following quarter**. For the quarter ending in the month of March, the due date will be 31st March.

Question 16

State briefly the procedure to be adopted for clearance of 'prototypes' which are sent for trial or development test from the factory in terms of the Central Excise Rules, 2002.

Answer

As per CBEC's Central Excise Manual of Supplementary Instructions 2005, if a prototype is to be sent out for trial purpose by actually putting them to effective use after conducting certain test to ensure that it meets with certain standard/specific norm, **clearance has to be made on payment of duty**. Its subsequent return to the factory is regulated in terms of rule 21 of the Central Excise Rules, 2002.

Rule 16C prescribing a special procedure for removal of excisable good for carrying out certain processes does not apply to 'prototypes'.

Question 17

Write short note on duty drawback under section 37 of the Central Excise Act, 1944.

Answer

Under **duty drawback scheme**, excise and customs duties paid on inputs is given back to the exporters of finished products. **Section 37** of Central Excise Act, 1944 empowers the Central Government to make rules to carry into effect the purpose of the Act.

The Central Government, in exercise of powers conferred by section 37 of the Central Excise Act, 1944, section 75 of the Customs Act, 1962 and section 93A read with section 94 of the Finance Act, 1994 has made the **Customs, Central Excise Duties and Service Tax Drawback Rules, 1995**.

Under these rules, drawback is allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government.

The **All Industry Rates of Drawback** are given separately i.e., when CENVAT credit has been availed of and when such credit facility has not been availed of.

Question 18

Briefly explain the procedure for removal of goods by a unit which is an 100% EOU for Domestic Tariff Area.

Answer

Rule 17 of the Central Excise Rules, 2002 provides that where any goods are removed from a 100% EOU to domestic tariff area, such removal shall be made **under an invoice as per the procedure specified in rule 11** of the Central Excise Rules, 2002. Further, removal shall be made only after **payment of appropriate duty** by debiting the account current maintained for this purpose or by utilizing the CENVAT credit.

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Such unit is required to **maintain appropriate accounts** related to production, description of goods, quantity removed and the duty paid in the prescribed form.

Such unit is required to **submit a monthly return in Form E.R-2** within 10 days from the end of the month to which the return relates in respect of the excisable goods manufactured in and receipt of inputs and capital goods in the unit. The return should be submitted to the Superintendent of Central Excise.

Question 19

Is there any exception to the rule that central excise duty is payable by a producer or manufacturer of goods on removal thereof from the factory and duty is payable by someone else?

Answer

As per **rule 4(1)** of the Central Excise Rules, 2002, excise duty is payable by a person who produces or manufactures excisable goods, or who stores such goods in a warehouse. However **sub-rule (2) of Rule 4** lays down that **in respect of molasses produced in a khandsari sugar factory**, the person who procures such molasses, whether directly from such factory or otherwise, pays duty leviable on such molasses in the same manner as if such molasses have been produced by him.

Question 20

What are the dates for determination of rate of central excise duty under Central Excise Rules, 2002?

Answer

The dates for determination of rate of duty have been prescribed in **Rule 5 of Central Excise Rules, 2002** as under:

- (i) in case of **excisable goods other than khandsari molasses**, the relevant date for determination of rate of duty shall be the date when goods are removed from the factory.
- (ii) in case of **khandsari molasses**, the relevant date for determination of rate of duty shall be the date of receipt of molasses in the factory of the procurer.
- (iii) in case of excisable goods being **used within the factory**, the relevant date for determination of rate of duty shall be the date on which goods are issued for such use.

Question 21

Please discuss the manner of payment of duty under Central Excise Rules, 2002. [Rule 8 only]

Answer

Rule 8 of the Central Excise Rules, 2002 prescribes the manner of payment of duty as under:

- (i) The duty on the goods shall be paid by the 5th day of the month following the month of removal except for the month of March. However, in case of e-payment, the duty is to be paid by the 6th day of the month following the month of removal except for the month of March.
- (ii) In case of removal of goods during the month of March, the duty shall be paid by the 31st day of March.
- (iii) SSI Unit is required to pay excise duty on quarterly basis by 5th of the month following the quarter (by 6th of month in case of e-payment) by virtue of second proviso to rule 8(1). However, SSI Unit is also required to pay duty by 31st March for the month of March.
- (iv) The duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date.
- (v) If the assessee deposits the duty by cheque, the date of presentation of the cheque in the bank designated by the Central Board of Excise & Customs for this purpose shall be deemed to be the date on which the duty has been paid subject to the realisation of that cheque.

CHAPTER 6

EXPORT PROCEDURES

Question 1

Under what circumstances, the rebate of excise duty paid on exported goods can be granted in case of export of good to Nepal?

Answer

Rebate of excise duty paid on goods exported to Nepal shall be granted to the Government of Nepal subject to the following conditions:

- (a) rebate shall not, in each case, exceed the aggregate of the duty of Customs and additional duty of Customs levied by His Majesty's Government of Nepal on such goods when they are imported into Nepal from any country other than India;
- (b) the excisable goods shall be exported after payment of duty, directly from a factory or warehouse except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;
- (c) the excisable goods shall be **exported within six months** from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;
- (d) when the goods are **exported by land**, the export shall take place through any of the prescribed land customs stations or such other check-post as may be specified by the Central Board of Excise and Customs.

Question 2

Mention briefly the provisions regarding export under bond to Nepal where payment of duty is in freely convertible currency.

Answer

Export to Nepal under bond where payment is in freely convertible currency is governed by **Notification No. 45/2001-C.E. (N.T.) dated 26.6.2001 as amended**. The provisions are as under:

- (1) The importer in Nepal before the export of goods takes place shall:

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- (i) make full payment to the exporter by furnishing Foreign Inward Remittance Certificate from any bank authorized to deal in foreign exchange by Reserve Bank of India, or
 - (ii) open an irrevocable letter of credit in favour of the exporter in India.
- (2) This condition does not apply if the excisable goods other than consumer goods but excluding motor vehicles, are exported without payment of duty as:
- (a) supplies to projects financed by any United Nations Agency, the International Bank for Reconstruction and Development, International Development Association, the Asian Development Bank or any other multilateral agency of like nature;
 - (b) to all diplomatic missions in Nepal provided the Indian Embassy or the Ministry of External Affairs certifies that the import is for the personnel of the diplomatic community.
- (3) The exporter shall furnish a bond before the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory, warehouse, or the approved premises or such other officer as authorised by the Board on this behalf from where the goods are removed, for export to Nepal.
- (4) Where the export is against an irrevocable letter of credit, the exporter shall furnish a certificate from the Reserve Bank of India or any other bank authorized to deal in foreign exchange by the Reserve Bank of India showing that full payment has been received in freely convertible currency.
- (5) On receipt of such a certificate and on the satisfaction that the goods have been exported in terms of bond, the bond accepting authority shall discharge the exporter of his liabilities under the bond.

Question 3

Write a short note on the procedure in respect of exported goods subsequently re-imported and returned to factory.

Answer

Exported excisable goods, which are re-imported for carrying out repairs, reconditioning, refining, remaking or subject to any similar process, may be returned to the factory of manufacturer for carrying out the said processes and subsequent re-export.

Notification No. 42/2001-CE (NT) as amended prescribes the procedure in respect of exported goods subsequently re-imported and returned to the factory as under:

- (i) The manufacturer shall **maintain separate account** for return of such goods in the daily stock account and shall make suitable entry in the said account after the goods are processed, repaired, reconditioned, refined or remade.

- (ii) Such re-import and re-export shall be governed by the provisions of the Customs Act, 1962.
- (iii) Any **waste or refuse arising as a result of the said processes shall be removed from the factory after the payment of appropriate duty or destroyed** after informing the proper officer in writing at least 7 days in advance and after observing such conditions and procedure as may be specified by the Commissioner of Central Excise.
- (iv) Thereafter, the duty payable on such waste or refuse may be remitted by the said Commissioner of Central Excise.

Question 4

Answer in brief the following questions relating to export without payment of duty other than to Nepal and Bhutan under Rule 19 of the Central Excise Rules, 2002:

- (i) *What is the type of bond to be executed? Who is exempted from furnishing such bond?*
- (ii) *What is the export document for export clearance? How many copies are required to be prepared for it?*
- (iii) *Is it necessary to prepare an invoice also? If yes, how should it be prepared?*
- (iv) *What will be the duty payable, if goods are not exported within six months after clearance?*

Answer

Procedures and conditions for export without payment of duty to all countries except Nepal and Bhutan are specified in **Notification No.42/2001 C.E. (N.T.) dated 26.6.2001**. Part-wise answers to the questions are given below:

- (i) A bond in Form B-1 is required to be executed by a **merchant exporter** in case of export without payment of duty. The bond should be at least equal to the duty chargeable on the goods, with such surety or security as the excise officer may approve. **Manufacturer-exporter** is exempted from furnishing such bond. He can furnish an annual Letter of Undertaking (LUT) in Form UT-1.
- (ii) **ARE-1** is the export document for export clearance which shall be prepared in **five copies (quintuplicate)**. The fifth copy is the optional copy which the assessee can use for claiming other export incentives.
- (iii) Yes, the goods have to be cleared from the factory under **an invoice** which shall be prepared in terms of rule 11 of the Central Excise Rules, 2002. The invoice should be prominently marked as "FOR EXPORT WITHOUT PAYMENT OF DUTY".

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- (iv) Goods must be exported within 6 months from the date of clearance for export, unless extension is granted by Assistant Commissioner/Deputy Commissioner. If goods are not exported within 6 months from the date of clearance for export, the exporter **should deposit the applicable excise duty on such goods along with the interest**. As per **rule 5** of the Central Excise Rules, 2002, the applicable duty shall be computed **as per the rate and tariff value applicable on the date of removal of such goods from the factory**.

CHAPTER 7

BONDS

Question 1

What is CT-1 certificate?

Answer

CT-1 certificate is the document on the basis of which a **merchant-exporter can procure excisable goods for export without payment of duty**. Such a certificate has to be obtained from the Superintendent of Central Excise. CT-1 forms are issued to the merchant-exporter in lots of 25 covering a period of 1 to 3 months depending on his track record. The merchant-exporter has to send the CT-1 form to the manufacturer from whom the goods are to be procured for exports and should specify the estimated amount of duty liability in the said certificate. CT-1 is valid for one year from the date of issue.

CT-1 contains the details of bond amount, quantity of goods to be received, value and duty involved.

DEMAND, ADJUDICATION AND OFFENCES

Question 1

What is the difference between short levy and short payment?

Answer

Short levy: Short levy arises when the charge itself is done at a lower rate. It may arise out of wrong classification.

Short payment : Short payment arises out of a short levy or short payment of a correct levy. It is a case of less payment of excise duty than what is due.

Question 2

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.

Answer

Proviso to section 11A(1) of the Central Excise Act, 1944 stipulates that the extended period of limitation can be invoked **only in case** of short payment of duty by reason of fraud, collusion, or willful mis-statement or suppression of facts with the intention to evade the payment of duty.

Similar view was expressed by the Apex Court in case of ***Padmini Products v. CCE (1989) 43 ELT 195 (SC)***, wherein it was held that failure to pay duty might not necessarily be due to fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of the Act. If facts of the case revealed that the appellant had acted bona fide, such act would not attract the penal provisions under section 11A of the Act. If the facts were otherwise, then the penalty would be levied.

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In the given case, there was no requirement for the assessee (processor) to verify the correctness of the declaration filed by the principal (suppliers). Further, **there was no allegation that the assessee was a party to such mis-declaration** by the principal supplier. Therefore, extended period of limitation could not be invoked against the assessee. **Thus, the action taken by the Department is not valid in law.**

Question 3

Which reasons shall not be considered as special and adequate for awarding sentence of imprisonment for a term of less than six months as per section 9(3) of the Central Excise Act, 1944?

Answer

As per **section 9(3) of the Central Excise Act, 1944**, for the purposes of section 9(1) or 9(2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:

- (i) the fact that the accused has been convicted for the first time for an offence under this Act;
- (ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;
- (iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;
- (iv) the age of the accused (too young or too old)

Question 4

With reference to the Central Excise Act, 1944 and the rules made thereunder, write a brief note on the circumstances when personal penalty could be imposed on a director of a company or a partner of a firm or an employee or a transporter.

Answer

As per **rule 26(1) of the Central Excise Rules, 2002** 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 reasons to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or Rs.2,000 whichever is greater.

Section 9(1)(bbb) of the Central Excise Act also contemplates punishment for such dealings by any person. Thus a director, partner, employee or transporter or trader will be personally liable to penalty if he is personally involved in clandestine removal etc.

Further, penalty can be imposed on such persons if they issue any duty invoice without delivery of the goods or abet in making such invoice **[Rule 26(2)(i)]**.

Penalty is also imposable on such persons if they issue any other document or abet in making such document on the basis of which, user of such document takes any ineligible benefit such as CENVAT credit or refund [Rule 26(2)(ii)].

Question 5

Will omission on the part of the assessee to provide correct information constitute 'suppression of facts' for purpose of the proviso to section 11A of the Central Excise Act, 1944. Write a brief note with reasons.

Answer

Omission on the part of the assessee to provide correct information does not constitute suppression of facts as the expression 'suppression of facts' used in the proviso to section 11A of Central Excise Act is accompanied by very strong words as 'fraud' and 'collusion' and, therefore, has to be construed strictly. 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.

Supreme Court in the case of **Continental Foundation Joint Venture v. CCEx. (2007) 216 ELT 177 (SC)** elaborated that mere omission to give correct information is not suppression of facts unless it was deliberate to evade the payment of duty.

Question 6

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?

Answer

Provisional attachment of property can be done for a **period of 6 months [Section 11DDA (2)]**.

This period can be extended with written permission of Chief Commissioner of Central Excise. However, total period of extension cannot be more than two years **[First proviso to section 11DDA(2)]**.

However, if the assessee has made an application to the Settlement Commission, that period will be excluded for the purpose of calculating the time limit of two years **[Second proviso to section 11DDA(2)]**.

Question 7

Write a note on "interest under section 11AB."

Answer

Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty shall, in addition to the duty, be liable to pay interest. The interest shall be payable at a rate **not below 10% p.a and not exceeding 36%p.a**. The Central Government may fix the rate of interest by notification in the

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Official Gazette. **Notification No.66/2003 dated 12.09.2003** has specified such rate as 13% per annum.

The interest shall be paid from the first date of the month succeeding the month in which the duty ought to have been paid, or from the date of such erroneous refund, as the case may be, till the date of payment of such duty.

However, in such cases where the duty becomes payable consequent to issue of an order, instruction or **direction by the Board under section 37B**, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, **no interest shall be payable**. The duty should be paid within 45 days from the date of issue of such order, instruction or direction, as the case may be. In other cases, the interest shall be payable on the whole of the amount, including the amount already paid.

However, if in the appeal, the duty demand is increased or decreased, the interest is accordingly increased or decreased.

Question 8

State briefly the provisions of the Central Excise Act, 1944 relating to arrest of a person.

Answer

Any Central Excise Officer not below the rank of Inspector may arrest any person whom he has reason to believe to be liable to punishment under the provisions of the Central Excise Act or rules made thereunder. Such arrest can be made only with the **prior approval of the Commissioner** of Central Excise [**Section 13** of Central Excise Act].

As per **section 19** of the Act, every person arrested under the Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or if there is no such Central Excise Officer within a reasonable distance, to the officer-in-charge of the nearest police station.

The arrest should be made as per the provisions of the Code of Criminal Procedure [**Section 18** of the Central Excise Act].

Question 9

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.

Answer

The demand of interest by Revenue is justified, but penalty cannot be levied in the present case. The Apex Court, in a similar case of **CCEx. v. SKF India Ltd. 2009 (239) E.L.T. 385 (S.C.)**, has noted that section 11A, relating the recovery of duties, can be divided in two parts-

- (i) *Where the non-payment or short payment etc. of duty is **not intentional and for a reason other than deceit**, such cases are dealt with under sub-section (2B) of section 11A.*
- (ii) *Where the non-payment or short payment etc. of duty is **intentional, deliberate and/or by deceitful means**, such cases are dealt with under sub-section (1A) of section 11A.*

The Apex Court, over ruling the Tribunal's decision in the said case, held that the present case clearly falls under the provision of sub-section (2B) of section 11A of the Central Excise Act, 1944. Further, from the combined reading of explanation 2 to section 11A(2B) and section 11AB, it can be concluded that the person who has paid the duty under sub-section (2B) of section 11A, shall, in addition to the duty, be **liable to pay interest. However, no penalty is attracted.**

Question 10

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. Explain the validity of the statement with reference to the Central Excise Laws, as amended.

Answer

Yes, the statement is valid as per **rule 24A** of the Central Excise Rules, 2002 inserted w.e.f. 7.7.2009.

Question 11

Briefly discuss, the residual penalty under rule 27 of the Central Excise Rules, 2002.

Answer

Rule 27 of the Central Excise Rules, 2002 stipulates that where no other penalty is provided in the rules therein or in the Act, a breach of these rules shall be punishable with a **penalty which may extend to Rs. 5,000 and with confiscation of the goods** in respect of which the offence is committed.

Question 12

Describe power to summon persons under the Central Excise Act.

Answer

Section 14 of the Central Excise Act deals with the **power to summon persons**. As per this section any Central Excise Officer empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary for:

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- (i) giving evidence, or
- (ii) producing a document or any other thing in any enquiry which he is making for any of the purposes of this Act.

All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct. Further, these persons shall be bound to state the truth upon any subject in respect of which they are examined and produce documents and other things as may be required. Exemptions under sections 132 and 133 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section. **Every inquiry under this section shall be deemed to be a “judicial proceeding”** within the meaning of section 193 and section 228 of the Indian Penal Code.

Question 13

State the various circumstances where goods are liable for confiscation under the Central Excise Law. Can the assessee get back the confiscated goods and if so how?

Answer

Under **rule 25** of the Central Excise Rules, 2002, the excisable goods shall be liable for confiscation if any producer, manufacturer, registered person of a warehouse or registered dealer -

- (i) removes any excisable goods in contravention of Central Excise Rules/Notifications; or
- (ii) does not account for any excisable goods produced or manufactured or stored by him; or
- (iii) contravenes any of the provisions of Rules/Notification with an intent to evade payment of duty; or
- (iv) engages in the manufacture or production or storage of any excisable goods without registration of the factory.

Section 34 of the Central Excise Act provides that whenever confiscation is adjudged under the Central Excise Act or the rules made thereunder, the officer adjudging it, shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. Therefore, the assessee can get the confiscated **goods back by paying redemption fine as prescribed** in the order of the officer adjudging such confiscation.

CHAPTER 9

REFUND

Question 1

Write a short note on the principle of "unjust enrichment" under Central Excise Law.

Answer

If the manufacturer has charged excise duty to his buyer, it is clear that he has passed on the burden to the buyer and has already recovered duty from his customer. In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him. It will not be equitable to refund the duty to him as he will get double benefit—first from the customer and again from the Government. This is called “unjust enrichment”. Refund of duty should, therefore, be paid to the customer who has **borne the burden of duty**. Since it is practically not feasible to identify such customers on individual basis, the amount of refund is credited to **Consumer Welfare Fund** in accordance with Section 12C of Central Excise Act 1944.

Question 2

Write a note on duty payment 'Under protest' with reference to the Central Excise Act, 1944 and the rules made thereunder

Answer

Duty payment “under protest”:-Section 11B of the Central Excise Act, 1944 provides that the time limit of one year for claiming refund of central excise duty shall not apply where the duty has been paid under protest.

As per the **Supplementary Instructions** issued by Central Board of Excise and Customs, any assessee who desires to pay duty under protest, may do so by following the procedure mentioned below:

- (i) The assessee shall inform the Superintendent or Inspector of Central Excise in writing giving reasons for paying duty under protest and a dated acknowledgement shall be given to him.
- (ii) The assessee shall mark invoices or monthly/quarterly returns indicating the goods on which duty is paid 'under protest'. If it is a lump-sum duty payment in respect of past demand, he may record the fact of duty payment under protest in the Personal Ledger Account, CENVAT Account and the Daily Stock Account.

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- (iii) If a case is appealed against by the assessee or where the appeal period for further appeal is available, he may continue to pay duty under protest. However, if decision is not in his favour and he exhausts the appellate remedy or does not appeal within stipulated period, he shall not have any right to pay duty under protest.

Question 3

M/s MM & Co., a machinery manufacturer, effected clearances from its factory with effect from 1.4.2010 by payment of duty under protest and had also filed an appeal against the order for payment of duty. On 15.5.2010, one of its customers, M/s BB & Co., purchased the machines from M/s MM & Co. On 23.5.2011, the appeal filed by M/s MM & Co. was decided in favour of M/s MM & Co. Pursuant to the said order in the appeal filed by M/s MM & Co., its customer M/s BB & Co. filed a refund claim on 1.6.2011 claiming refund of duty suffered by M/s BB & Co. This claim for refund of duty was rejected by the Department on the ground of 'unjust enrichment' as well as on the ground of 'limitation'. Explain briefly with reference to section 11B of the Central Excise Act, 1944 whether the action of the Department is correct in law.

Answer

Section 11B provides that every claim of refund shall be made within 1 year from the relevant date. Though the time limit is not applicable when duty is paid under protest [Second proviso to section 11B(1)], **such benefit is available only to the manufacturer, who has paid duty under protest and not to the purchaser** as decided in the case of **Allied Photographics 2004 (166) ELT 3 (SC)**. The Apex Court, in the said case, explained that the claim of refund by the manufacturer and the buyer are different. Under section 4, every payment by manufacturer, whether under protest or otherwise, is on its own account. It cannot be said that after the buyer has borne the incidence of duty, it has stepped into the shoes of manufacturer. Thus, the benefit of no limitation period in case of protest cannot be extended to the buyer.

Thus, in the given question, **since the refund claim filed by M/s. BB & Co., the purchaser, was not within a period of one year from the date of purchase, being 15.05.2010**, the same is barred by period of limitation. Thus, the Department's action is correct in law.

Question 4

Discuss the provisions of the Central Excise Act relating to collection of amount by a person from his buyer in excess of the duty assessed or determined and paid on any excisable goods.

Answer

Section 11D of the Central Excise Act governs the provisions relating to collection of amount by a person from a buyer in excess of the duty assessed or determined and paid on any excisable goods in the following manner:

- (1) Every person who is liable to pay duty and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods from the buyer of such goods in any manner as representing duty of excise, **shall forthwith pay the amount so**

collected to the credit of the Central Government. This provision is notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the regulations made there under.

- (2) The Central Excise officer may serve on the person who is liable to pay the amount under sub-section (1) a notice if such amount has not been paid to the credit of the Central Government. The **notice requires such person to show cause** why he should not pay the amount, as specified in the notice to the credit of the Central Government.
- (3) The Central Excise officer shall, after considering the representation, if any, made by the person on whom the notice is served, **determine the amount due from such person (not being in excess of the amount specified in the notice)**. Thereupon such person shall pay the amount so determined.
- (4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (3) shall be **adjusted against the duty payable** by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in sub-section (1).
- (5) Where **any surplus** is left after the adjustment made under sub-section (4), the amount of such surplus shall either be **credited to the Fund or**, as the case may be **refunded to the person who has borne the incidence of such amount**, in accordance with the provisions of section 11B. Such person may make an application under section 11B in such cases **within six months from the date of the public notice** to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.

Question 5

Deputy Commissioner of Central Excise passes an adjudication order classifying the goods manufactured by MTZ under heading 8542 and charges duty @ 10% ad valorem. MTZ pays the duty without challenging the adjudication order. After 4 months, they realise that partial exemption under a notification was available to goods manufactured by them. They file a claim for refund of duty paid in excess on the ground that benefit of exemption can be claimed at any time. Are MTZ entitled to the refund of duty claimed in time? (Note: Presume that principle of unjust enrichment does not apply).

Answer

It has been held by the Supreme Court in the case of **CCE v. Flock India Ltd. 2000 (120) E.L.T. 285 (S.C)** that where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal **it is not open to the party to question the correctness of the order of the adjudicating authority subsequently** by filing a claim for refund. If this position is accepted then the provisions for adjudication and appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant.

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In the given question, the classification dispute has been decided by the Deputy Commissioner after passing an adjudication order and no appeal has been filed thereafter. Therefore, the order has attained finality. Thus, applying the ratio of the above decision, **MTZ cannot claim refund by filing a claim for the same.**

Question 6

Does the bar of unjust enrichment apply to all types of refunds? Does the refund of penalty attract such bar?

Answer

No, the bar of unjust enrichment does not apply to all types of refunds. Only when the burden of the duty has been shifted by the manufacturer to the buyer, the refund gets hit by such bar.

No, refund of penalty does not attract bar of unjust enrichment [**CCE Chandigarh v. Shivalik Agro Poly Products Ltd. 2004 (173) ELT 64 (Tri-Del.)**].

Question 7

What is Consumer Welfare Fund? How is this fund utilized?

Answer

The Consumer Welfare Fund is established by the Central Government under **section 12C** of the Central Excise Act, 1944 wherein the following amounts are credited:-

- (i) the refund of duty of excise/customs, which is not to be granted to the applicant.
- (ii) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

Utilisation of Fund: This fund is to be utilized for making payment to following:-

- (a) Any agency or organisation engaged in consumer welfare activities for a period of three years, registered under any law, including village/samiti level cooperatives of consumers specially women, scheduled castes and scheduled tribes consumer association OR
- (b) Any industry, engaged in viable and useful research activity in formulation of standard mark of products or mass consumption.
- (c) Consumer for reimbursement of legal expenses incurred by him/her.

A standing committee consisting of Secretary, Department of Consumer Affairs as Chairman has been formed for making recommendations for grant of Consumer Welfare Fund for above purposes. The eligible applicant is required to submit the application to the said committee in prescribed form 'A-1'.

CHAPTER 10

APPEALS

Question 1

To whom should the matter be referred in a case where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise and how will the matter be settled under section 35E(1) of the Central Excise Act, 1944?

Answer

Proviso to section 35E(1) of Central Excise Act 1944 provides that where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise. In such a case, the Committee shall state the point or points on which it differs and make a reference to the Board which after considering the facts of the order, if it is of the opinion that the decision or order passed by the Commissioner of Central Excise is not legal or proper may direct such Commissioner or any other Commissioner to apply to Appellate Tribunal for determination of such points arising out of decision or order.

Question 2

M/s Raj Fibres had filed an appeal to the High Court on Aug. 11, 2010 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, 2010. 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.

Answer

W.e.f 19-08-2009, sections 35G as well as 35H have been amended **with retrospective effect from 01-07-1999** to provide that High Court can condone delay in filing appeal or cross objection, if sufficient cause is shown to the High Court.

Hence, the High Court could condone the delay in presenting the appeal as urged by M/s. Raj Fibres.

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Question 3

Write a brief note on power of rectification of mistakes given to Appellate Tribunal under section 35C(2) of the Central Excise Act, 1944. Whether the power of rectification includes the power to review the order also?

Answer

Under **section 35C(2)** of the Central Excise Act, 1944, the Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it. Such a rectification shall be made when the Commissioner of Central Excise or the other party to the appeal brings the mistake to the notice of the Tribunal. Where such an amendment has the effect of increasing the liability of the other party then such an amendment shall be made only after issuing a notice and giving a reasonable opportunity of being heard to the party concerned.

The Appellate Tribunal u/s 35C is not empowered to review an order passed by it. The power of review is not an inherent power and must be expressly granted – CCE v. Steel Co. Gujarat Ltd. 2004 (163) ELT 403 (SC).

Question 4

Can the Department file an appeal in respect of same assessee, if in respect of some years, no appeal was filed involving identical dispute?

Answer

It has been held by the Supreme Court in the case of **C.K Gangadharan v. CIT, Cochin, 2008 (228) ELT 497 (SC)** that merely because in some cases Revenue has not preferred an appeal that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher Court when divergent views are expressed by the different High Courts. However, the Supreme Court has given a **conflicting decision** in the case of **CIT vs. J.K. Charitable Trust 2008 (232) ELT 769 (SC 3 members bench)** wherein it has held that if in respect of some years, in respect of same assessee, no appeal was filed involving an identical dispute, revenue can be precluded from filing an appeal if the fact situation in subsequent years remains the same.

Question 5

Explain the validity of the following statement with reference to the Central Excise Laws, as amended:

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.

Answer

Yes, the statement is valid as per amendment made by the Finance (No.2) Act, 2009, i.e. sub-section (2A) inserted after sub-section (2) of section 35G and sub-section (3A) inserted after

sub-section (3) of section 35H, **thereby empowering the High Court to condone the delay in filing appeal and cross objections** filed under sections 35G and 35H of the Central Excise Act, 1944 after the expiry of the prescribed period.

Question 6

In what circumstances additional evidence can be produced by an appellant before the Commissioner (Appeals) of Central Excise?

Answer

Rule 5 of the Central Excise (Appeals) Rules, 2001 provides that the appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, in addition to evidence produced by him during the course of the proceedings before the adjudicating authority. However, **additional evidence can be produced in the following circumstances –**

- (1) where the adjudicating authority has refused to admit evidence which ought to have been admitted, or
- (2) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by adjudicating authority, or
- (3) where the appellant was prevented by sufficient cause from producing, before the adjudicating authority any evidence which is relevant to any ground of appeal, or
- (4) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

The Commissioner (Appeals) has to record the reasons for admitting the additional evidence in writing. Further, the adjudicating authority or an officer authorized by the said authority has to be allowed a reasonable opportunity:

- (1) to examine the evidence or document or to cross examine any witness produced by the appellant; or
- (2) to produce any evidence or any witness in rebuttal of the additional evidence.

The **power of the Commissioner (Appeals)** to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal **is independent** of the above provisions relating to additional evidence and his powers will not be affected by the said provisions.

Question 7

What are the orders that are appealable to Supreme Court under the Central Excise Act 1944?

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Answer

As per section 35L of the Central Excise Act, 1944, an appeal shall lie to the Supreme Court from:-

- (a) any judgment of the High Court delivered -
 - (i) in an appeal made under section 35G or
 - (ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003 or
 - (iii) on a reference made under section 35H

if the High Court certifies the case to be fit for appeal to the Supreme Court. The High Court can certify any case on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the judgement.

- (b) any order of the Appellate Tribunal having relation to the determination of rate of duty or value of goods, among other things.

Further, by Special Leave Petition (SLP) under Article 136 of Constitution of India 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, an appeal can be filed before S.C.

CHAPTER 11

REMISSION OF DUTY AND DESTRUCTION OF GOODS

Question 1

What are the situations in which duty can be remitted under rule 21 of Central Excise Rules, 2002?

Answer

Rule 21 of the Central Excise Rules, 2002 provides that where it is shown to the satisfaction of Commissioner, empowered to remit the duty, that:-

- (i) Goods have been lost or destroyed by **natural causes** or,
- (ii) Goods have been lost or destroyed by **unavoidable accident** or
- (iii) the goods have become **unfit for consumption or for marketing**.

at any time before removal, he may remit the duty payable on such goods.

Question 2

Explain briefly, with reference to rule 21 of the Central Excise Rules, 2002 relating to remission of duty, the following:

- (i) *Can remission of duty be granted on goods cleared from the factory after payment of duty, but which were destroyed by fire in transit?*
- (ii) *Upon grant of remission of duty, the CENVAT credit on inputs used in final product has to be reversed.*

Answer

- (i) Remission of duty is granted when the goods are lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption, **at any time before removal**.

Hence, in this case remission of duty cannot be granted under rule 21 of the Central Excise Rules, 2002 as **goods have already been cleared** from the factory after payment of duty.

- (ii) As per sub-rule (5C) of rule 3 of the CENVAT Credit Rules, 2004 inserted vide *Notification No. 33/2007 CE (NT) dated 07.09.2007*, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21

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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.

Question 3

Discuss whether remission of duty shall be granted or not, in the following cases, under the Central Excise Rules, 2002:

- (i) *Excisable goods manufactured in the factory are claimed by the manufacturer as unfit for consumption or for marketing.*
- (ii) *Duty paid goods were damaged due to breakage in handling.*
- (i) *Finished goods entered in Daily Stock Account (DSA) were stolen from the factory.*

Answer

Rule 21 of the Central Excise Rules, 2002 *inter alia* provides that where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer **as unfit for consumption or for marketing, at any time before removal**, the Commissioner may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing. With reference to the said rule, the cases under consideration are discussed as follows:-

- (i) Remission of duty shall be granted as the goods have been claimed as unfit for consumption or for marketing by the manufacturer.
- (ii) Remission cannot be granted on duty paid goods as there is no provision for granting remission of duty after removal of the goods.
- (iii) Remission of duty in case of theft is not allowed as the goods are available for consumption somewhere else **[Chapter 18 Part I Para 2.6 of CBE&C's Central Excise Manual, 2001]**.

CHAPTER 12

WAREHOUSING

Question1

How can the goods kept in a warehouse for the purpose of export be diverted for home consumption? Explain briefly.

Answer

The goods kept in a warehouse for being exported can be diverted for home consumption in the following manner:

- (i) With the permission of the Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice prepared under rule 8 on payment of duty, interest and any other charges on GAR-7 challans. Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.
- (ii) Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse.
- (iii) Goods can also be diverted for home consumption even after clearance of goods from warehouse under ARE- 1. The documents will be cancelled as per **Notification No. 46/2001 CE (NT) dated 26.6.2001** as amended. The intimation of such cancellation is to be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.
- (iv) The exporter has to pay an **interest @ 24% p.a** on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.

CHAPTER 13

EXEMPTION BASED ON VALUE OF CLEARANCES (SSI)

Question 1

Small & Company, a small scale industry, provides the following details. Determine the eligibility for exemption based on value of clearances for the financial year 2010-11 in terms of Notification No. 8/2003-CE dated 1.3.2003 as amended:

	Particulars	Rs. (Lakhs)
(i)	Total value of clearances during the financial year 2009-10 (including VAT Rs. 50 lakhs)	870
(ii)	Total exports (including for Nepal and Bhutan Rs. 200 lakhs)	500
(iii)	Clearances of excisable goods without payment of duty to a unit in Software Technology Park	20
(iv)	Job work under Notification No. 84/94-CE dated 11.4.94	50
	Job work under Notification No. 214/86-CE dated 25.3.86	50
(v)	Clearances of excisable goods bearing brand name of Khadi and Village Industries Board (sic).	200

Make suitable assumptions and provide brief reasons for your answers where necessary.

Answer

Calculation of value of clearances during financial year 2009-10:-

Particulars	Rs. (in lakhs)
Total value of clearances during the financial year 2009 - 10	870
Less : VAT included in above	<u>50</u>
	820
Less : 1. Exports excluding exports to Nepal and Bhutan Rs. (500-200) lakh	300
2. Clearances of excisable goods without payment of duty to a unit in Software Technology Park	20
3. Job work done under Notification No. 84/94-CE dated 11.04.94 and under Notification No. 214/86-CE dated 25.3.86 i.e. Rs. (50 + 50) lakh	<u>100</u>
Value of clearances during the financial year 2009-10	<u>400</u>

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In order to claim the benefit of exemption under *Notification No. 8/2003 – C.E.* in a financial year, the total turnover of a unit **should not exceed Rs.400 lakh in the preceding year**. For the purpose of computing the turnover of Rs. 400 lakh:-

1. export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as “clearance for home consumption”.
2. job work under *Notification No. 214/86 - CE* and *Notification No. 84/94-CE* is not to be taken into consideration.
3. clearances of excisable goods without payment of duty to a unit in Software Technology Park are to be deducted.
4. clearances of excisable goods bearing brand name of Khadi and Village Industries Commission are includible.

Since the value of clearances in the previous financial year 2009-10 does not exceed Rs. 400 lakh, the Small & Company is eligible to claim the benefit of *Notification No. 8/2003 dated 1st March, 2003* in the financial year 2010-11.

Question 2

CTL Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2009-10, 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 2010-11.

Answer

In order to claim the benefit of exemption under *Notification No. 8/2003 – C.E.* in a financial year, the total turnover of a unit should not exceed Rs.400 lakh in the preceding year. For the purpose of computing the turnover of Rs. 400 lakh:-

- (i) **Turnover of non-excisable goods** has to be excluded. Therefore, clearances of non-excisable goods of worth Rs. 50 lakh shall be excluded.

Exemption based on Value of Clearances (SSI)

- (ii) **Clearances exempted under job work notifications** should not be considered. Therefore, exempted clearances of Rs.50 lakh under job work notification will be excluded.
- (iii) **Export turnover** has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as "clearance for home consumption". Therefore, clearances worth Rs.75 lakh exported to USA will be excluded while clearances worth Rs.25 lakh exported to Nepal will be included.
- (iv) **Value of intermediate products manufactured** has to be included if the final product is exempt under any notification other than Notification No. 8/2003-CE dated 1-3-2003*. Therefore, clearances worth Rs 50 lakh which were used captively to manufacture finished products exempt under notifications other than Notification No. 8/2003 will be included.
- (v) **Clearances of excisable goods** of Rs.200 lakh in the normal course will be considered.

Therefore, for the year 2010-11, the turnover of CTL Ltd. for claiming the SSI exemption will be:-

$$= \text{Rs.450 lakh} - (\text{Rs.50 lakh} + \text{Rs.50 lakh} + 75 \text{ lakh}) = \text{Rs.275 lakh}$$

Since the turnover is less than Rs 400 lakh, CTL Ltd. will be eligible for exemption under Notification No. 8/2003 – CE.

***Note** - It is assumed that the value of clearances of final products manufactured from such intermediate products is not included in the total turnover of Rs.450 lakh of the unit.

Question 3

M/s. RKR manufactures footwear bearing the brand name "Lotus" which is owned by M/s. Lotus Industries Ltd. for manufacture of detergent powder. When the Department disallowed the benefit of small scale exemption under Notification No. 8/2003-C.E. on the ground that their goods are bearing brand name of another person, M/s. R.K.R. contended that M/s. Lotus Industries Ltd. owns brand name 'Lotus' only for detergent power and not for footwear. Decide the case with reasons and mention case law, if any.

Answer

Notification No. 8/2003 denies the benefit of the exemption for clearances done on products which bear a brand name of another person. This means that such clearances would attract normal rate of duty. Brand name or trade name is defined in Explanation to Notification as any mark, symbol, monogram, label, signature or inventor word or writing which may or may not be registered. This brand or trade name must indicate a connection in the trade between the goods and the person using such mark or name.

Further, Supreme Court has held in the case of **CCEx, v. Bhalla Enterprises 2004 (173) E.L.T. 225 (S.C)** that:

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- (i) clause 4 of the Notification read with Explanation (A) clearly debars those persons from the benefit of the SSI exemption who use someone else's name in connection with their goods, either with the intention of indicating, or in a manner so as to indicate a connection between their goods and such other person;
- (ii) **there is no requirement for the owner of the trade mark using the name or mark with reference to any particular goods;**
- (iii) The object of the Notification is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name.

In other words, **if brand name of another person is used even in respect of goods of other class or kind (different from the nature of the goods of the owner of brand name), benefit of SSI exemption shall not be available.**

In view of the aforementioned provisions, M/s RKR will not be entitled to the SSI exemption as their goods bear the brand name "LOTUS" owned by M/s. Lotus Industries Ltd. The fact that M/s. RKR uses the brand name on footwear while the same is being used by M/s. Lotus Industries Ltd. on detergent powder will have no relevance.

Question 4

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. during the year 2009-10. Determine the value of the first clearances of the unit and duty liability on the basis of data given below:-

	Rs.
(1) Total value of clearances of goods with own brand name	75,00,000
(2) Total value of clearances of goods with brand name of other parties	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)	35,00,000

Normal rate of excise duty - 10%

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.

Answer**Computation of the value of first clearances and the duty liability:-**

	Particulars	Rs.
1.	Value of clearances of goods with own brand name	75,00,000

Exemption based on Value of Clearances (SSI)

2.	Value of clearance of goods with brand name of other parties (Note-1)	<u>90,00,000</u>
	Total value of first clearances	<u>1,65,00,000</u>
	Value on which duty is chargeable (Rs. 1,65,00,000 – 1,50,00,000) = Rs. 15,00,000	
	Excise duty payable @ 10% (Rs. 15,00,000 × 10%)	1,50,000
	Education cess payable @ 3% (Rs. 1,50,000 × 3%)	<u>4,500</u>
	Total excise duty liability	<u>1,54,500</u>

Notes:

1. SSI units in **rural areas** are eligible to clear goods **with other's brand name** availing the exemption as per Notification No. 8/2003.
2. Notification No. 8/2003 also provides that value of clearances of **goods totally exempt under other notifications** need not be taken into account for calculation of aggregate value of first clearances.

Question 5

M/s. Silver Enterprises is manufacturing packing material namely printed cartons of paper and paper board with brand name of another company. Its turnover for the year 2009-10 was Rs.2 crore and in the year 2010-11 it is expected to increase by 50%.

The firm has approached you as a consultant whether it is eligible for concession under Notification No. 8/2003 dated 01.03.2003 as amended. Is exemption available to the firm? If yes, what is the limit of turnover, for which the exemption is available for both the years, i.e. 2009 -10 and 2010 -11?

Answer

Yes, the SSI exemption will be available to M/s. Silver Enterprises as **Notification No. 8/2003 CE dated 01.03.2003** has been amended w.e.f. 01.09.2008 to provide that SSI exemption will be available to packing material including printed cartons of paper or paper board affixed with brand name of another company. It has been presumed that the turnover of M/s. Silver Enterprises for the year 2007-08 was less than Rs.400 lakh.

Since, in the year 2009-10, the turnover of M/s. Silver Enterprises is Rs. 2 crore which is less than Rs.400 lakh, it is eligible for small scale exemption in the year 2010-11. For the year 2010-11, turnover upto Rs.150 lakh will be fully exempt, if M/s. Silver Enterprises does not avail CENVAT on inputs.

Question 6

Mahesh Ltd., which is engaged in manufacturing of excisable goods, started its business on 1st June, 2010. It availed SSI exemption during the financial year 2009-10. The following are the details available to you:

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		Rs
(i)	12,500 kg of inputs purchased @ Rs. 1,190.64 per kg (inclusive of Central excise duty @ 10.30%)	1,48,83,000
(ii)	Capital goods purchased on 31.5.2010 (inclusive of excise duty @ 10.30%)	80,09,400
(iii)	Finished goods sold (at uniform transaction value throughout the year)	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 2010-11. Rate of duty on finished goods sold may be taken as 10.30% 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.

Answer

Computation of the excise duty payable by M/s. Mahesh Ltd. during the financial year 2010-11:-

Excise duty on dutiable clearances:-

Particulars	Amount (Rs.)
Clearances of finished goods made during the year	3,00,00,000
Less : Exemption of Rs. 150 lakh under Notification No. 8/2003 dated 01-03-2003	<u>1,50,00,000</u>
Dutiable clearances	<u>1,50,00,000</u>
Excise duty @ 10.30% (Rs. 1,50,00,000 × 10.30%)	<u>15,45,000</u>

CENVAT credit available on inputs:

(Used in the manufacture of dutiable clearance. No CENVAT credit will be available in respect of exempt clearances)

% of dutiable goods in the finished goods sold = $\frac{1,50,00,000}{3,00,00,000} \times 100$	50%
Excise duty paid on the value of inputs consumed in manufacture of dutiable clearances = $(148,83,000 \times 10.30) / 110.30 \times 50\%$ (Since output input ratio is fixed)	6,94,900

CENVAT credit available on capital goods:-

(CENVAT credit will be available @ 50% of total excise duty in current financial year 2010-11; balance credit to be availed during the next financial year 2011-12)

Exemption based on Value of Clearances (SSI)

Particulars	Amount (Rs.)
(50% of Rs. 80.094 lakh) $\times 10.30/110.30$ CENVAT credit can be availed on capital goods, but can be utilized only in respect of duty payable on clearances after first clearances of Rs. 150 lakhs	Rs. 3,73,966

Excise duty payable

Particulars	Amount (Rs.)
Excise duty on dutiable goods	15,45,000
Less: CENVAT credit available on inputs	6,94,900
Less: CENVAT credit available on capital goods	<u>3,73,966</u>
Excise duty payable	<u>4,76,134</u>

Question 7

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?

Answer

No, if a manufacturer manufactures various products, he has to avail CENVAT for all items or opt for exemption for all products.

This view has been upheld in **CCE v. Ramesh Foods Products (2004) 174 ELT 310 (SC)**, where it has been held that simultaneous availment of CENVAT credit on some products and exemption on some other products is not permissible.

Question 8

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 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 for the financial year 2010-11.

Indirect Tax Laws

Answer

A SSI unit shall be eligible for benefit of exemption notification only if value of clearances during **preceding financial year does not exceed Rs.400 lakhs.**

The item wise treatment shall be as under -

1. Clearance to 100% EOU shall be excluded for calculating the limit of 400 lakhs.
2. Clearance under *Notification No. 214/86* shall be excluded for calculating the limit of 400 lakhs.
3. Export to Nepal & Bhutan is considered as home consumption and thus, it shall be included for computing limit of 400 lakhs.
4. The turnover of goods manufactured in rural area with the brand name of the others shall be included for computing limit of Rs.400 lakhs.

Calculation of clearances during financial year 2009-10:

Total value of clearances		475 lakhs
Less: Clearance to 100% EOU	120 lakhs	
Clearance under <i>Notification No. 214/86</i>	<u>75 lakhs</u>	<u>195 lakhs</u>
		<u>280 lakhs</u>

As the value of clearances for home consumption in financial year 2009-10 does not exceed Rs. 400 lakhs, the benefit of exemption shall be available to the SSI unit during financial year 2010-11.

ADVANCE RULING

Question 1

Explain the validity of the following statement with reference to the Central Excise Laws, as amended:

Authority of Advance Ruling under the Income Tax Act, 1961 will be authority for purposes of Central excise also.

Answer

Yes, the statement is valid as per the amendment made by the Finance (No.2) Act, 2009 which has substituted the definition of authority by a new definition [Section 23A(e)].

Question 2

Explain whether an application from an NRI for advance ruling under section 23C, regarding determination of whether a certain process would amount to manufacture, is maintainable?

Answer

As per **section 23C** of the Central Excise Act, 1944, advance ruling can be sought **only** in respect of the following matters:

- (i) classification of any goods under the Central Excise Tariff Act, 1985.
- (ii) notifications issued in respect of excise duty under the Central Excise Act, the Central Excise Tariff Act and duty chargeable under any other law for the time being in force.
- (iii) applicability of exemption notification issued under section 5A having effect on rate of duty.
- (iv) principles to be adopted for determination of value of goods.
- (v) admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of the excisable goods.

Thus, a person cannot obtain an advance ruling to decide whether a process would amount to manufacture or not **as such a matter is not covered by section 23C**. Further, it was held in ***Shonkh Technologies International Ltd. (AAR)*** that **an application for advance ruling cannot be maintained in respect of determination of a question as to whether a process amounts to manufacture or not.**

CHAPTER 17

EXCISE AUDIT

Question 1

Write short note on Desk review under Excise Audit, 2000.

Answer

Desk Review is the first step in Excise Audit, 2000. Upon assignment of an audit, the auditor is required to be sufficiently prepared before the visit to the unit. For this purpose, the auditor reviews all the information available about the unit, its operations, and reasons for selection for audit and possible issues that can be identified at desk review stage. Perusal of assessee's profile, annual report, trial balance, cost audit report and income-tax audit report is involved in desk review.

Department has also decided to take help of **practicing chartered/cost accountants in desk review** of Excise Audit 2000

Question 2

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.

Answer

'Risk factors' under Excise Audit, 2000 means that the assessees who have a **bad track record** are taken up for audit on priority as opposed to those who enjoy a clean track record.

For example:

- (i) assessee having past duty evasion cases
- (ii) late payment of duty/late filling returns
- (iii) major audit objections against them
- (iv) no cash payment of duty (all CENVAT adjustment)
- (v) past duty dues, etc

Note : Any two examples may be given.

Question 3

Explain the validity of the following statement with reference to the Central Excise Laws, as amended:

Special audit under sections 14A and 14AA can be done by a cost accountant only.

Indirect Tax Laws

Answer

No, the statement is not valid. As per amendment made by the Finance (No.2) Act, 2009, **Chartered Accountants, in addition to** cost accountants, are also eligible for special audits under sections 14A and 14AA of the Central Excise Act, 1944.

Question 4

Explain briefly the provisions relating to 'Special Audit' in certain cases under section 14A of the Central Excise Act, 1944.

Answer

Special Audit u/s 14A of CEA:-If at any stage of enquiry, investigation or any other proceedings before him, any Central Excise Officer not below the rank of an Assistant/Deputy Commissioner of Central Excise having regard to the nature and complexity of the case and the interest of revenue, is of the **opinion that the value has not been correctly declared or determined** by a manufacturer or any person, he may, with the previous approval of the Chief Commissioner of Central Excise, direct such manufacturer or such person to get the accounts of his factory, offices, depots, distributors or any other place, as may be specified by the said Central Excise officer, audited by a Cost Accountant or Chartered Accountant, nominated by the Chief Commissioner of Central Excise in this behalf.

The Cost Accountant or Chartered Accountant shall submit the audit report duly signed and certified to the said Central Excise Officer within the period specified by him or the period further extended on an application made to him. However, in any case the aggregate of the original and extended period cannot exceed 180 days. The expenses of audit and audit fees for special audit shall be paid by excise department.

The manufacturer shall be given **an opportunity of being heard** in respect of any material gathered on the basis of audit and proposed to be utilized in any proceedings under the Central Excise Act or Rules. This special audit can be conducted notwithstanding that the accounts of the manufacturer or the person have been audited under any other law for the time being in force or otherwise.

SETTLEMENT COMMISSION

Question 1

Briefly examine the provisions relating to 'Settlement Commission' under the Central Excise Act, 1944.

Answer

The various provisions in respect of Settlement Commission are briefly discussed as under:-

- (i) **Application only if a 'case' is pending:** Application to Settlement Commission can be made only when a 'case' is pending before adjudicating authority on date of application in accordance with section 32E(1) read with section 31(c) of the Central Excise Act. The term '**case**' means any proceeding under Central Excise Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under section 32E(1) is made.
- (ii) **Amendment of section 32E putting certain restrictions:** No application can be made, in case of clandestine removal of goods. The additional amount of duty accepted by the applicant as payable **shall be more than Rs.3 lakh**. The appellant is required to pay duty admitted to be payable by him along with interest.
- (iii) **Bar on subsequent Application for settlement in certain cases:** As per section 32-O, a person shall not be entitled to apply for settlement under section 32E in relation to any other matter in the certain specified cases.
- (iv) **Cases involving classification or valuation can not be taken:** According to third proviso to section 32E(1) applications involving interpretation of the classification of excisable goods under Central Excise Tariff Act 1985 can not be taken by Settlement Commission.
- (v) **Application 180 days after seizure:** If any excisable goods or books of account or other documents have been seized, application for settlement can be made only 180 days after such seizure.

Question 2

The assessee's premises were 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.

Indirect Tax Laws

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.

Answer

The dismissal order is valid in law. In the case of **Cus. & C.Ex. Settlement Commission v. Mars Therapeutics & Chem. Ltd 2008 (223) ELT 363 (AP)**, the High Court held that an application made under section 32E of the Central Excise Act, 1944 could be admitted and proceeded with only when Settlement Commission was satisfied that the applicant had made a full and true disclosure of duty liability and the manner in which same was arrived at. The assessee's plea that obligation to make truthful disclosure of duty liability would arise after application was admitted and not before and that Revenue was required to first establish the stand taken in show cause notice, was not acceptable.

HC further clarified that it was only when the Settlement Commission was satisfied that the applicant had made a full and true disclosure, the application could be admitted and proceeded with. This was for the reason that the object behind the enactment of the provisions relating to settlement was the creation of a forum for self-surrender. The Settlement Commission was constituted as an extraordinary measure for providing an opportunity to such persons to make a **true confession** and to have matters settled once for all. The **Settlement Commission was not a forum for challenging the legality of orders passed under the provisions** of the Act. The Settlement Commission, in the case on hand, having found that the applicant-petitioner did not fully satisfy the mandatory requirements of full and true disclosure of its liability, was justified in rejecting the application. Thus, the **validity of the dismissal order was upheld by the Court.**

Question 3

Discuss in brief the powers of Settlement Commission to grant immunity from prosecution.

Answer

The Settlement Commission, subject to certain provisions, has the power to grant immunity from prosecution in respect of the case covered by the settlement, if the applicant has **co-operated with the Commission** and has made **full and complete disclosure**. If the payment is not made as per the settlement order or any particulars are concealed or any false evidence is given, the immunity is withdrawn [**Sub-sections (2) and (3) of section 32K of Central Excise Act 1944**].

Immunity can be granted only in respect of prosecution for any offence under the Central Excise Act and not in respect of prosecution for any offence under the Indian Penal Code or any other Central law. However, the immunity from prosecution for any offence under the

Indian Penal code or any other central law can be granted in cases filed upto 31-05-2007 [Section 32K(1)].

If prosecution has already been launched before submission of application for settlement, the immunity cannot be granted [Proviso to section 32K (1)].

Question 4

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.

Answer

The applicant is not correct. The matter of the case is similar to the case of **Customs & Central Excise Settlement Commission v. Mars Therapeutics & Chemicals Ltd. 2008 (223) ELT 363 (HC)**. The High Court held that the application made under section 32E of the Central Excise Act, 1944 could be admitted and proceeded with only when Settlement Commission is satisfied that the applicant has made true and full disclosure of the duty liability and the manner in which the same was arrived at.

The High Court clarified that the onus is on the applicant to make full and true disclosure of the duty liability and the manner in which the same was arrived at. And the Settlement Commission will admit the application only when the Commission is satisfied on the true and full disclosure of the duty liability and the manner it was arrived at. The High Court also clarified that the **object behind the enactment of the provisions of Settlement Commission is the creation of a forum of self surrender and true confession and to have matter settled once for all**. The Settlement Commission is not a forum to challenge the legality of the order passed under the provisions of the Act. The Settlement Commission, in the case on hand, having found that the applicant did not fully satisfy the mandatory requirements of full and true disclosure of its duty liability, can reject the application.