

INTERMEDIATE EXAMINATION

(REVISED SYLLABUS - 2008)

GROUP - II

Paper-10 : APPLIED INDIRECT TAXATION

Q1. As per the Central Excise Act, 1944:

- (a) Define "Manufacture"**
- (b) Define "Place of removal"**
- (c) Define "Time of Removal"**
- (d) Define Transaction Value.**

Answer 1.

- (a)** As per Sec.2(f) "Manufacture" includes any process —
 - (i) incidental or ancillary to the completion of manufactured product;
 - (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 goods specified in Third Schedule to the CEA, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to 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.

[Clauses (ii) and (iii) are called deemed manufacture]. The definition of 'manufacture' is inclusive and not exhaustive.
- (b)** As per Sec.4(3)(c), 'Place of removal' means —
 - (i) a factory or any other place or premises of production or manufacture of the excisable goods from where such goods are removed
 - (ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty from where such goods are removed
 - (iii) A depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from factory; from where such goods are removed.
- (c)** As per Sec.4(3)(cc), "Time of removal", in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory.
- (d)** As per Sec.4(3)(d), 'Transaction value' means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

Q2. Discuss the Rules for Classification of Excisable Goods.**Answer 2.****The rules of classification of Excisable Goods are:**

General Rules for Interpretation of Schedule to Central Excise Tariff and Customs Tariff are given in First Schedule to the Tariff. The rules are same for excise and customs. The highlights of rules are given below.

Rule	Brief contents
1	Classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or Notes do not otherwise require, according to other provisions of the rules
First part of rule 2(a)	Any reference to complete goods also includes incomplete or un-finished goods, if such incomplete or un-finished goods have the essential characteristic of finished goods.
Second part of rule 2(a)	Heading will also include finished goods removed un-assembled or disassembled i.e. in SKD or CKD packs.
2(b)	Any reference in heading to material or substance will also include the reference to mixture or combination of that material or substance with other materials or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in rule 3.
3	When by application of sub-rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as given in rule 3(a), 3(b) or 3(c).
3(a)	The heading which provides most specific description shall be preferred to heading providing a general description.
3(b)	If Mixture and Composite goods consisting of different materials or different components cannot be classified based on above rule i.e. rule 3(a), it should be classified as if they consisted of the material or component which gives it their essential character.
3(c)	If two or more headings seem equally possible and the dispute cannot be resolved by any of the aforesaid rules, if both the headings appear equally specific, the heading which occurs last in numerical order is to be preferred (i.e. latter the better).
4	If the classification is not possible by any of the aforesaid rules 1, 2 and 3, then it should be classified under the heading appropriate to goods to which they are most akin. [This is only a last resort and a desperate remedy to resolve the classification issue]
5	cases for camera, musical instruments, drawing instruments, necklaces etc. specially shaped for that article, suitable for long term use will be classified along with that article, if such articles are normally sold along with such cases. Further, packing materials and containers are also to be classified with the goods except when the packing is for repetitive use (This provision is obviously made to ensure that the packing and the goods are charged at same rate of duty).
6	Classification of goods in sub-headings shall be determined in terms of those sub-headings. Only sub-headings at the same level are comparable

Q3. State the rules of Valuation of Excisable Goods**Answer 3.**

The important rules of Central Excise Valuation Rules, 2000

Rule No.	Brief Contents
2(b)	“Normal transaction value” means the transaction value at which the greatest aggregate quantity of goods are sold. If goods are not sold at the time of removal, then value will be based on the value of such goods sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments.
5	Some times, goods may be sold at place other than the place of removal e.g. in case of FOR delivery contract. In such cases, actual cost of transportation from place of removal upto place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis.
6	If price is not the sole consideration for sale, the ‘Assessable Value’ will be the price charged by assessee, plus money value of the additional consideration received. The buyer may supply any of the following directly or indirectly, free or at reduced cost. (i) Materials, components, parts and similar items (ii) Tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used (iii) Material consumed, including packaging materials (iv) Engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of the goods. In such cases, value of such additional consideration will be added to the price charged by assessee to arrive at the ‘transaction value’. [explanation 1 to Rule 6].
Explanation to rule 6	Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods.
7	When goods are sold through depot, there is no ‘sale’ at the time of removal from factory. In such cases, price prevailing at depot (but at the time of removal from factory) shall be the basis of Assessable Value. The value should be ‘normal transaction value’ of such goods sold from the depot at the time of removal or at the nearest time of removal from factory.
8	In case of captive consumption, valuation shall be done on basis of cost of production plus 10% (Cost of production is required to be calculated as per CAS 4)
9	If entire production is sold to ‘related person’ other than inter-connected undertakings, the assessable value will be ‘normal transaction value’ at which the related person sells the goods to unrelated buyers.
Proviso to rule 9	If assessee sales goods to ‘related person’, but related person uses them in captive consumption (and not sell them), valuation will be done on basis of cost of production plus 10%, as per rule 8.

10	If entire production is sold to 'related person' who are inter-connected undertakings, the assessable value will be as follows – (a) If they are 'related person' as defined in other clauses or is a holding or subsidiary company of assessee, 'normal transaction value' at which the related person sells the goods to unrelated buyers (b) In other cases, the value will be as if they are not 'related person'
10A	In case of job worker manufacturing goods on behalf of Principal Manufacturer, value will be the value at which the Principal Manufacturer sales goods to unrelated buyer. 'Job worker' means a person engaged in manufacture or production of goods on behalf of a principal manufacturer, from any inputs or capital goods supplied by the said principal manufacturer or by any other person authorised by him.
11	Residuary method - If value cannot be determined under any of the foregoing rules, value shall be determined using reasonable means consistent with the principles and general provisions of section 4 and Valuation Rules.

Q4. (a) State the conditions for levy of excise duty.

(b) Define Manufacturer

(c) Value based on Retail Selling Price

(d) Duty on ad valorem basis

Answer 4.

(a) Conditions for levy of excise duty - Basic excise duty is levied under section 3 of Central Excise Act at rates specified in First Schedule and Second Schedule to Central Excise Tariff Act, 1985 (Other duties and cesses are levied under different provisions of law). Section 3 of Central Excise (which is the 'charging section') clearly signifies that there are four basic conditions for levy of Central Excise duty. · The duty is on goods.

- The goods must be excisable.
- The goods must be manufactured or produced
- Such manufacture or production must be in India.

(b) Manufacturer

- Manufacturer is the person who actually brings new and identifiable product into existence.
- Duty liability is on manufacturer in most of the cases.
- Mere supplier of raw material or brand name owner is not 'manufacturer'.
- Loan licensee is not 'manufacturer'. Loan licensee can be treated as manufacturer only if the manufacture is carried out by use of his own raw material under his own supervision by hiring the premises and equipment shift-wise or otherwise.

(c) Value based on Retail Sale Price

Section 4A of CEA empowers Central Government to specify goods on which duty will be payable based on 'retail sale price'.

The provisions for valuation on MRP basis are as follows -

- (a) The goods should be covered under provisions of Standards of Weights and Measures Act or Rules [section 4A(1)].

- (b) Central Government has to issue a notification in Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Government can permit reasonable abatement (deductions) from the 'retail sale price' [section 4A(2)].
- (c) While allowing such abatement, Central Government shall take into account excise duty, sales tax and other taxes payable on the goods [section 4A(3)].
- (d) The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc. If under certain law, MRP is required to be without taxes and duties, that price can be the 'retail sale price' [Explanation 1 section 4A].
- (e) If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered [Explanation 2(a) to section 4A]. If different MRP are printed on different packages for different areas, each such price will be 'retail sale price' for purpose of valuation [Explanation 2(c) to section 4A].
- (f) Removing excisable goods without MRP or wrong MRP or tampering, altering or removing MRP declared on a package is an offence and goods are liable to confiscation [section 4A(4)] If price is altered, such increased price will be the 'retail sale price' for purpose of valuation [Explanation 2(b) to section 4A].

For example, Government had issued a notification to the effect that excise duty on 'cosmetics and toilet preparations' will be payable on the basis of MRP printed on retail carton after allowing abatement of 40%. In such case, if MRP printed on carton is Rs. 200 and if the duty on 'cosmetics & toilet preparations' is 16% plus education cess of 2% plus SAH education cess of 1%, the duty @ 16% will be payable on Rs. 120 (i.e. after allowing 40% abatement on MRP of Rs. 200). Thus duty payable per pack will be Rs. 19.20, plus education cess Rs. 0.38 plus SAH education cess of Rs. 0.19.

(d) Duty on ad valorem basis

If a product Central Excise is payable on the basis of value. This is called "**ad valorem duty**". The 'assessable value' is arrived at on the basis of Section 4 of the Central Excise Act and duty is payable on the basis of such value. Assessable Value (AV) is the '**Value**' on which duty is payable as a percentage.

- When duty is payable on ad valorem basis, it is payable on assessable value as defined in section 4 of CEA.
- 'Transaction Value' is taken as Assessable Value if goods are sold at the time and place of removal, buyer is unrelated and price is sole consideration.
- Transaction value is the price paid or payable for the goods 'by reason of, or in connection with sale'.
- Transaction value does not include duty of excise, sales tax and any other taxes on goods.
- If goods are cleared without payment of duty, the price is taken as 'cum duty' price and tax payable should be calculated by back calculations.

Q5. (a) State the items to be included in Assessable Value
(b) Refund of Excise Duty

Answer 5.

- (a) Inclusions in assessable value
- An amount charged is includible in assessable value if it is by reason of or in connection with sale of such goods.
 - Duty is payable on packing charges and design charges related to manufacture.
 - Duty is payable in case of price escalation after clearance, but not when price was final at the time of clearance.
 - Trade discount is allowable as deduction from assessable value.
 - Transport charges upto place of removal are includible in assessable value.
 - Notional interest on advances is includible only if there is evidence that it has depressed the selling price.

Q6. (a) Refund of Excise Duty
(b) Exemption from Duty

Answer 6.

- (a) **Refund of excise duty**
- Assessee can claim refund of duty within one year from relevant date u/s 11B, in Form R.
 - Refund is subject to doctrine of unjust enrichment, i.e. refund will be available only if the amount was not recovered from buyer. These are overriding provisions.
 - Doctrine of unjust enrichment applies to captive consumption, provisional assessment and also when duty was paid under protest.
 - If refund is delayed beyond three months, interest is payable @ 6% p.a.
- (b) **Exemption from Duty**
- Section 5A(1) of Central Excise Act and section 25(1) of Customs Act empower Central government to exempt any excisable goods from duty, by issuing notification in Official Gazette.
 - Such exemption may be partial or full, conditional or unconditional.
 - Absolute i.e. unconditional exemption is compulsory, while conditional notification is at option of assessee.
 - Central Government can also grant exemptions in exceptional cases u/s 5A(2).
 - An exemption notification should be strictly construed, but purposeful construction is permissible.
 - Principle of promissory estoppel can apply to an exemption notification.

Q7. (a) Exemption granted to SSI.
(b) Define Captive Consumption

Answer 7.

(a) Exemption to SSI

- SSI are eligible for exemption from duty under Notification No. 8/2003-CE dated 1-3-2003. The SSI unit need not be registered with any authority.

- Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, Power driven pumps for water not confirming to BIS, products covered under compounded levy scheme etc. are specifically excluded, even when these can be manufactured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible for SSI exemption, but anyway, these are beyond capacity of SSI unit to manufacture.
- Unit whose turnover was less than Rs. 4 crores in previous year are entitled to full exemption upto Rs. 150 lakhs in current financial year.
- SSI units manufacturing goods with brand name of others are not eligible for exemption, unless the goods are manufactured in rural area.
- Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit.
- Clubbing is also possible if two units are sham or bogus or if there is unity of interest and practically they are one.

While calculating limit of Rs. 400/150 lakhs -

- Turnover of Exports, deemed exports, turnover of non-excisable goods, goods manufactured with other's brand name and cleared on full payment of duty, job work done under notification No. 214/86-CE, 83/94-CE and 84/94-CE, processing not amounting to manufacture, strips of plastics used within factory is to be excluded.
- Value of intermediate products (when final product is exempt under notification other than SSI exemption notification), branded goods manufactured in rural area and cleared without payment of duty, export to Nepal and Bhutan and goods cleared on payment of duty is to be included.
- Value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of Rs. 400 lakhs, but excluded for limit of Rs. 150 lakhs.

(b) Captive consumption

- Excise duty is payable on goods manufactured and used within the factory.
- The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit or (b) Used for in or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. [Notification No. 67/1995 dated 16-3-1995].
- Duty is payable only if intermediate goods are marketable.
- If duty is payable on intermediate products, valuation will be on basis of cost of production plus 10%.
- Cost of production should be calculated on basis of CAS-4.

Q8. (a) Discuss the Job work under Central Excise

(b) Discuss Excise Audit

Answer 8.

(a) Job work under Central Excise

- Since excise duty is on manufacture, duty will be payable even if goods are manufactured on job work basis.

- Job Work means processing or working upon of raw materials or semi-finished goods supplied to job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process – Explanation I to Notification No. 214/86-CE dated 25-3-86 – same definition in rule 2(n) of Cenvat Credit Rules.
- As per rule 10A of Valuation Rules inserted w.e.f. 1-4-2007, duty is payable on the basis of price at which raw material supplier sales the final product in the market.
- If product is covered under MRP, duty is payable as per section 4A.
- Job work is exempt if material is sent to job worker under Cenvat Credit Rule 4(5)(a).
- Job work is exempt if material was sent under Cenvat provisions or under notification No. 214/86-CE. The supplier of raw materials or semi-finished goods has to give an undertaking that he will discharge the duty on final product.
- Service tax is payable on Job work if (a) Activity is not manufacture or (b) Material is not sent under Cenvat provisions.

(b) **EA 2000 Excise Audit**

An Audit section is attached to each Commissionerate. Audit of assessee's factory is carried out by visit by 'audit party'. The Audit Party usually consist of 2/3 inspectors and a Deputy Office Superintendent, headed by a Excise Superintendent. The audit system is termed as 'EA-2000' [Excise Audit 2000]

The frequency of audit will be on basis of excise duty paid annually. The 'duty paid' means paid by cash plus through Cenvat credit. The frequency is as follows, as per CBE&C letter No. 381/145/2005 dated 6-6-2006 –

- Units paying duty more than Rs. three crores – every year.
- Units paying duty between Rs. one crore and Rs. 3 crores – once every two years.
- Units paying duty between Rs. 50 lakhs and Rs. one crore – once every five years.
- Units paying duty below Rs. 50 lakhs – 10% of units every year.

CERA audit - In addition to departmental audit, C&AG carries out selective audits, which is termed as 'CERA' (Central Revenue Audit').

Q9. Discuss the procedures followed in Central Excise.

Answer 9.

Some procedures are basic, which every assessee is required to follow. Besides, some procedures are required to be followed as and when required.

Basic Procedures

- (1) Every person who produces or manufactures excisable goods, is required to get registered, unless exempted. [Rule 9 of Central Excise Rules]. If there is any change in information supplied in Form A-1, the same should be supplied in Form A-1.
- (2) Manufacturer is required to maintain Daily Stock Account (DSA) of goods manufactured, cleared and in stock. [Rule 10 of Central Excise Rules]
- (3) Goods must be cleared under Invoice of assessee, duly authenticated by the owner or his authorised agent. In case of cigarettes, invoice should be countersigned by Excise officer. [Rule 11 of Central Excise Rules]

- (4) Duty is payable on monthly basis through GAR-7 challan / Cenvat credit by 5th/6th of following month, except in March. SSI units have to pay duty on monthly basis by 15th/16th of following month. Assessee paying duty through PLA more than Rs. 50 lakhs per annum is required to make e-payment only [Rule 8].
- (5) Monthly return in form ER-1 should be filed by 10th of following month. SSI units have to file quarterly return in form ER-3. [Rule 12 of Central Excise Rules] - - EOU/STP units to file monthly return in form ER-2 – see rule 17(3) of CE Rules
- (6) Assessee paying duty of Rs. one crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4 [rule 12(2) of Central Excise Rules].
- (7) Specified assesseees are required to submit Information relating to Principal Inputs every year before 30th April in form ER-5, to Superintendent of Central Excise. Return for 2004-05 was required to be submitted by 31-12-2004 [rule 9A(1) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Any alteration in principal inputs is also required to be submitted to Superintendent of Central Excise in form ER-5 within 15 days [rule 9A(2) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Only assesseees manufacturing goods under specified tariff heading are required to submit the return. The specified tariff headings are – 22, 28 to 30, 32, 34, 38 to 40, 48, 72 to 74, 76, 84, 85, 87, 90 and 94; 54.02, 54.03, 55.01, 55.02, 55.03, 55.04. Even in case of assesseees manufacturing those products, only assesseees paying duty of Rs. one crore or more through PLA (current account) are required to submit the return.
- (8) Assessee who is required to submit ER-5 is also required to submit monthly return of receipt and consumption of each of Principal Inputs in form ER-6 to Superintendent of Central Excise by tenth of following month [rule 9A(3) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Only those assesseees who are required to submit ER-5 return are required to submit ER-6 return.
- (9) Every assessee is required to submit a list in duplicate of records maintained in respect of transactions of receipt, purchase, sales or delivery of goods including inputs and capital goods, input services and financial records and statements including trial balance [Rule 22(2)].
- (10) Inform change in boundary of premises, address, name of authorised person, change in name of partners, directors or Managing Director in form A-1. [Refer Instructions given below form A-1]

These are core procedures which each assessee has to follow. There are other procedures which are not routine.

Non-core procedures - The non-core procedures are as follows -

- (a) Export without payment of duty or under claim of rebate [Rules 18 and 19 of Central Excise Rules]
- (b) Receipt of goods for repairs / reconditioning [Rule 16 of Central Excise Rules]
- (c) Receipt of Goods at concessional rate of duty for manufacture of Excisable Goods.
- (d) Payment of duty under Compounded Levy Scheme
- (e) Provisional Assessment [Rule 7 of Central Excise Rules]
- (f) Warehousing of goods.
- (g) Appeals and settlement.

Q10. (a) State the requirements for removal of final products.

(b) State the Export Procedures

(c) Procedure to be followed if the goods are brought for repairs.

Answer 10.

(a) Invoice for removal of final products

Rule 11(1) of Central Excise Rules provides that excisable goods can be removed from factory or warehouse only under an 'Invoice' signed by owner or his authorised agent. In case of cigarettes, invoice shall be counter-signed by Inspector. Invoice should bear serial number and should be in triplicate.

As per Rule 11(2) of Central Excise Rules, Invoice shall contain –

- (a) Registration Number
- (b) Address of jurisdictional Central Excise Division.
- (c) Name of consignee
- (d) Description and classification of goods
- (e) Time and date of removal
- (f) Mode of transport and vehicle registration number
- (g) Rate of duty
- (h) Quantity and Value of goods
- (i) Duty payable on the goods.

(b) Export Procedures

- Exports are free from taxes and duties.
- Goods can be exported without payment of excise duty under bond under rule 19 or under claim of rebate of duty under rule 18.
- Excisable Goods should be exported under cover of Invoice and ARE-1 form.
- Merchant exporter has to execute a bond and issue CT-1 so that goods can be cleared without payment of duty. Manufacturer has to issue Letter of Undertaking.
- Export to Nepal /Bhutan are required to be made on payment of excise duty.
- EOU has to issue CT-3 certificate for obtaining inputs without payment of excise duty.

(c) Bringing goods for repairs, re-making etc.

- Duty paid goods can be brought in factory for being re-made, refined, reconditioned or for any other reason under rule 16.
- The goods need not have been manufactured by assessee himself.
- Cenvat credit of duty paid on such goods can be taken, on basis of duty paying documents of such goods.
- After processing/repairs, if the process amounts to 'manufacture', excise duty based on assessable value is payable.
- If process does not amount to manufacture, an 'amount' equal to Cenvat credit availed should be paid [rule 16(2)].
- If some self manufactured components are used, duty will have to be paid on such components.

- Buyer/recipient of such goods can avail Cenvat credit of such amount/duty.
- If the above procedure cannot be followed, permission of Commissioner is required [rule 16(3)].

Q11. State the different forms to be filled by an assessee under Central Excise Act.

Answer 11.

The returns to be filed are:

Form of Return to file	Description	Who is required	Time limit for filing return
ER-1[Rule 12(1) of Central Excise Rules]	Monthly Return by large units	Manufacturers not eligible for SSI concession	10th of following month
ER-2[Rule 12(1) of Central Excise Rules]	Return by EOU	EOU units	10th of following month
ER-3[Proviso to Rule 12(1) of Central Excise Rules]	Quarterly Return by SSI	Assessee availing SSI concession	20 th of next month of the quarter
ER-4[rule 12(2) of Central Excise Rules]	Annual Financial Information Statement	Assessee paying duty of Rs.one crore or more per annum through PLA	Annually by 30th November of succeeding year
ER-5 [Rules 9A(1) and 9A(2) of Cenvat Credit Rules]	Information relating to Principal Inputs	Assessee paying duty of Rs.one crore or more per annum through PLA and manufacturing goods under specified tariff headings	Annually, by 30th April for the current year (e.g. return for 2005-06 is to be filed by 30-4-2005).
ER-6 [Rule 9A(3) of Cenvat Credit Rules]	Monthly return of receipt and consumption of each of Principal	Inputs Assessee required to submit ER-5 return	10th of following month

Q12. (a) State the procedure to be followed for raising demand of excise duty.

(b) State the adjudication powers.

Answer 12.

(a) Demands of Excise Duty

- If duty is short paid or not paid or erroneously refunded, show cause notice can be issued u/s 11A(1) of CEA within one year from 'relevant date'.
- In case of allegation of suppression of facts, wilful misstatement, fraud or collusion, the show cause notice can be issued within five years.
- Show cause notice is to be issued by authority who is empowered to adjudicate the case.
- Adjudicating authority is required to follow principles of natural justice. He has to pass orders with reasons
- In case of delay in payment of duty, interest @ 13% is payable u/s 11AB(1) of CEA.
- Property of person to whom show cause notice has been issued can be attached provisionally during adjudication, to protect interest of revenue.

(b) Adjudication powers - The adjudication powers are as follows -

Authority	Issue of SCN and Demand of duty	Remission of duty for loss of goods	Other powers
Commissioner	Without limit	Without limit	
Additional Commissioner	Between Rs.20 lakhs to 50 lakhs	Rs. 5,00,000	Cases relating matters under proviso to section 35B(1) i.e. export under bond or under claim of rebate, loss of goods during transit to warehouse - without upper monetary limit
Joint Commissioner	Between Rs. 5 lakhs to 50 lakhs	Rs. 5,00,000	Cases relating matters under proviso to section 35B(1) i.e. export under bond or under claim of rebate, loss of goods during transit to warehouse - without upper monetary limit
Deputy/ Assistant Commissioner	Upto Rs. 5 lakhs	Rs. 1,00,000	(1) Issue registration certificate (2) Refund claim without limit
Superintendent	No powers	U p t o Rs.10,000	

Note (1) Demand of duty or differential duty may be relating to * determination of valuation and / or classification or * Cenvat credit cases or * duty short paid or not paid or erroneously refunded for any reason. Such demand may or may not contain for allegation of fraud, suppression of facts etc. (in other words, whether or not there is allegation of fraud/suppression of facts etc., the monetary limit of adjudication remains same.

Note (2) As per CBE&C circular No. 809/6/2005-CX dated 1-3-2005, in case of refund claim, AC/ DC can pass order without any monetary limit. However, claims of Rs.5 lakhs and above will be subject to pre-audit at level of jurisdictional Commissioner

Note (3) It has been clarified that value of goods/conveyance, plants, machinery, land, building etc. liable to confiscation will not alter the powers of adjudication as the powers solely depend upon the amount of duty/Cenvat credit involved on the offending goods].

Q12. Discuss the duty liability of:

- (a) Software and unbranded software**
- (b) Books on CD**
- (c) Unbranded software is service**

Answer 12.

(a) Software is 'goods', but unbranded software is service

In *Tata Consultancy Services v. State of Andhra Pradesh* (2005) 1 SCC 308 = 141 Taxman 132 = 271 ITR 401 = AIR 2005 SC 371 = 2004 AIR SCW 6583 = 137 STC 620 = 178 ELT 22 (SC 5 member Constitution bench), it has been held that canned software (i.e. computer software packages sold off the shelf) like Oracle, Lotus, Master-Key etc. are 'goods'. The copyright in the programme may remain with originator of programme, but the moment copies are made and marketed, they become 'goods'. It was held that test to determine whether a property is 'goods' for purpose of sales tax, is not whether the property is tangible or intangible or incorporal. The test is whether the concerned item is capable of abstraction, consumption and use, and whether it can be transmitted, transferred, delivered, stored, possessed etc. Even intellectual property, once it is put on a media, whether it be in form of books or canvas (in case of painting) or computer discs or cassettes and marketed would become goods. In all such cases, intellectual property has been incorporated on a media for purpose of transfer. The buyer is purchasing the intellectual property and not the media, i.e. the paper or cassette or discs or CD. — There is no distinction between 'branded' and 'unbranded' software. In both cases, the software is capable of being abstracted, consumed and used. In both the cases, the software can be transmitted, transferred, delivered, stores, possessed etc. Unbranded software when marketed/sold may be goods. However, Supreme Court did not express any opinion because in case of unbranded software, other questions like situs of contract of sale and/or whether the contract is a service contract may arise. Hence, in case of unbranded software, the issue is not yet fully settled. [SC upheld decision of AP High Court reported in *Tata Consultancy Services v. State of AP* (1997) 105 STC 421 (AP HC DB)].

In *Bharat Sanchar Nigam Ltd. v. UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 145 STC 91 = 282 ITR 273 (SC 3 member bench), following extract from decision in case of *Tata Consultancy Services v. State of Andhra Pradesh* was quoted with approval and adopted, 'A 'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold and (c) capable of being transferred, delivered, stored and possessed. If a software, whether customised or non-customised satisfies these attributes, the same would be goods'.

Earlier also, in *Associated Cement Companies Ltd. v. CC* 2001(4) SCC 593 = 2001 AIR SCW 559 = 128 ELT 21 = AIR 2001 SC 862 = 124 STC 59 (SC 3 member bench), it was held that computer software is 'goods' even if it is copyrightable as intellectual property.

In *State Bank of India v. Municipal Corporation* 1997(3) Mh LJ 718 = AIR 1997 Bom 220, it was held that 'computer software' is 'appliance' of computer. It was held that it is 'goods'

and octroi can be levied on full value and not on only value of empty floppy. [In this case, it was held that octroi cannot be levied on license fee for duplicating the software for distribution outside the corporation limits].

Excise duty on software - All software, except canned software i.e. software that can be sold off the shelf, is 'exempt' under notification No. 6/2006-CE dated 1-3-2006.

Para 138 of Finance Minister's speech dated 28-2-2006 reads as follows, 'I propose to impose an 8 per cent excise duty on packaged software sold over the counter. Customized software and software packages downloaded from the internet will be exempt from this levy'.

Meaning of 'software' - 'Information Technology Software' is defined in Supplementary Note of chapter 85 of Central Excise Tariff (and also Customs Tariff) as follows - 'For the purpose of heading 8523, 'Information Technology Software' means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine'.

In CCE v. Pentamedia Graphics (2006) 198 ELT 164 (SC), it was held that 'motion picture animation file' recorded in a machine readable format and capable of being manipulated by automatic data processing machine is software – referred in Padmini Polymers v. CCE (2007) 215 ELT 392 (CESTAT), where it was held that multimedia application software on CD ROM is exempt. In this case, Cook Books and games which were interactive were held as 'software'. Reference was made to CBE&C circular No. 7/98-Cus dated 10-2-1998 where it was clarified that encyclopedia, games, books will be 'software' if these satisfy the interactivity criterion.

The SC decision was also followed in Gayatri Impex v. CC (2007) 215 ELT 397 (CESTAT) and Adani Exports v. CCE (2007) 210 ELT 443 (CESTAT). However, from the decision, it is not clear what was exactly imported.

There is no requirement that to qualify as software, it must work without any operating system preloaded on computer. Any programme which requires another programme like operating system will also be treated as software – Contessa Commercial Co. P Ltd. v. CC (2007) 208 ELT 299 (CESTAT). In this case, the importer had imported educational programmes and games.

- (b) **Books on CD** - In case of encyclopedia and books, there is hardly any 'interactivity', except that search engine helps in locating particular information. Further, search engine, which can be termed as 'software' forms insignificant part of the whole goods. Applying the criteria of 'essential character' in case of mixture of goods, in my view, these cannot be termed as 'software'. These have to be classified as books.

Note 2 to chapter 49 reads as follows, 'For the purpose of Chapter 49, the term 'printed' also means reproduced by means of a duplicating machine, produced under the control of an automatic data processing machine, embossed, photographed, photocopies, thermocopied or typewritten. Hence, it can be argued that a book can be 'printed' on CD since it is produced under the control of an automatic data processing machine.

As per item Sr. No. 26 of Notification No. 6/2006-CE dated 1-3-2006, CD-ROMs containing books of an educational nature, journal, periodicals (magazines) or newspaper are fully exempt from excise duty. Thus, a book can be on CD has been recognised in law.

(c) Unbranded software is service

Though Supreme Court has held that tailor made software is also goods, Finance Bill, 2008 has imposed service tax on tailor made i.e. unbranded software.

“Information technology software” means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment [proposed section 65(53a) of Finance Bill, 2008].

Any service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including,— (i) development of information technology software, (ii) study, analysis, design and programming of information technology software, (iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software, (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software (v) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products (vi) acquiring the right to use information technology software supplied electronically, is a taxable service [proposed section 65(105)(zzzz) of Finance Bill, 2008]

Q13. State whether the followed are “Goods” as per Central Excise Act, 1944:

- (a) Plant and machinery assembled at site
- (b) Articles marketable before erection
- (c) Goods produced in SEZ in India.
- (d) Dutiability of Steel and concrete Structures
- (e) Structure for pre-fabricated building
- (f) Fabrication of steel structure at site

Answer 13.**(a) Plant and machinery assembled at site**

Plant and Machinery assembled and erected at site cannot be treated as ‘goods’ for the purpose of Excise duty, if it is not marketable and movable. [It may be noted that even if goods are held as ‘excisable’, they will be exempt if manufactured within factory of production. See case law under ‘Captive Consumption’ in later chapter].

The word ‘goods’ applies to those which can be brought to market for being bought and sold, and it is implied that it applies to such goods as are movable. Goods erected and installed in the premises and embedded to earth cease to be goods and cannot be held to be excisable goods. - *Quality Steel Tubes (P.) Ltd. v. CCE* 75 ELT 17 (SC) = (1995) 2 SCC 372 = 6 RLT 131 = 1995 AIR SCW 11 —in this case, it was held that tube mill and welding head erected and installed in the premises and embedded in the earth for manufacture of steel tubes and pipes are not ‘goods’. [followed in *Mittal Works v. CCE* (1997) 1 SCC 203]

= 1996 (88) ELT 622 (SC) = 106 STC 201 - quoted with approval in *Thermax Ltd. v. CCE* 1998(99) ELT 481 (SC) - same view in *Triveni Engineering v. CCE* AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC) * *CCE v. Damodar Ropeways* 2003(151) ELT 3 = 54 RLT 125 (SC 3 member bench).

In *Municipal Corporation of Greater Bombay v. Indian Oil Corporation* AIR 1991 SC 686 = 1991 Supp (2) SCC 18, it was held that if the chattel is movable to another place in the same position (condition?), it is movable property. If it has to be dismantled and re-erected at later place, it is attached to earth and is immovable property.

Assembly at site is not manufacture, if immovable product emerges — In *Mittal Engg Works v. CCE* 1996 (88) ELT 622 = 17 RLT 612 = 106 STC 201 = (1997) 1 SCC 203, it was held that if an article has to be assembled, erected and attached to the earth at site and if it is not capable of being sold as it is, without anything more, it is not 'goods'. Erection and installation of a plant is not excisable - followed in *CCE v. Hyderabad Race Club* 1996 (88) ELT 633 (SC), where it was held that an article embedded in the earth was not 'goods' and hence excise duty is not leviable – followed in *TTG Industries v. CCE* 2004 AIR SCW 3329 = 167 ELT 501 (SC) – same view in case of storage cabinets, kitchen counters etc. erected at site in *Craft Interiors P Ltd. v. CCE* 2006 (203) ELT 529 (SC) – same view in respect of refrigeration plant, air conditioning plant and caustic soda plant in *CCE v. Viridi Brothers* 2007 (207) ELT 321 (SC).

Capital Goods manufactured within factory of production are exempt even if manufactured by third party — It may be noted that capital goods manufactured within the factory and used within the factory are exempt from excise duty vide notification No. 67/1995-CE dated 16.3.1995. The exemption is available even when the capital goods are manufactured in the factory of production by third party. [see case law under 'Captive Consumption'].

Assembly is manufacture only if machinery can be removed without dis-assembly — In *Triveni Engineering v. CCE* AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC), it was observed, 'The marketability test requires that the goods as such should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. [Thus, if machine has to be dis-assembled for removal, it is not 'goods' and duty cannot be levied].

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

Present legal position in respect of machinery erected at site — The latest judgment on the issue is of *Triveni Engineering* judgment dated 8-8-2000, which has been practically accepted by Board vide its circular dated 15-1-2002. Hence, the present legal provision is, as decided in *Triveni Engineering*, i.e. 'The marketability test requires that the goods **as such** should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. Thus, if machinery has to be dismantled before removal, it will not be goods. Following is also clear - (a) Duty cannot be levied on immovable property (b) If plant is so embedded to earth that it is not possible to move it without dismantling, no duty can be levied (c) If machinery is superficially attached to earth for operational efficiency, and can be easily removed without dismantling, duty is leviable (d) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.

(b) Article can be 'goods' if marketable before erection - An article will be liable to duty if its manufacture is complete before it is fastened to earth. Similarly, if 'machinery' is in marketable

condition at the time of removal from factory of manufacture, duty will be leviable, even if subsequently, it is to be fastened to earth.

(c) Goods produced in SEZ in India is exempted from tax.

(d) Dutiability of Steel and concrete Structures

Following are covered in 'iron and steel structure' as defined in tariff heading 7308 – (i) big structures like bridges, transmission towers, and lattice masts, lock-gates, roofs etc. of iron and steel (ii) parts of structures e.g. doors, windows and their frames, shutters, balustrades, pillars and columns etc. of iron and steel (iii) Plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel.

In *Mahindra & Mahindra Ltd. v. CCE 2005 (190) ELT 301 (CESTAT 3 member LB)*, it has been held as follows –

(i) Immovable iron and steel structures are not goods.

(ii) Structures and parts mentioned in parenthesis of 7308 like bridges, lock-gates, towers, trusses, columns frames etc., in their movable state will be subject to excise duty, even if latter they get permanently fixed in the structures.

(iii) Plates, rods, angles, sections, tubes and the like, prepared for use in the structures will also be excisable goods subject to duty in their pre-assembled or disassembled state.

Fabrication of steel structurals like columns, crane, grinders, trusses amounts to 'manufacture' - *R S Avtar Singh v. CCE (2007) 213 ELT 105 (CESTAT)*.

(e) Structure for pre-fabricated building is dutiable – Steel structure for prefabricated building is dutiable. – *Mittal Pipe Mfg. Co. v. CCE 2002(146) ELT 624 (CEGAT)*.

(f) Fabrication of steel structure at site is exempt - As per Sr. No. 64 of notification No. 3/2005-CE dated 24-2-2005, (earlier it was in tariff entry 7308.50), structures fabricated at site of work for use in construction at site are exempt from duty. In *Delhi Tourism v. CCE 1999(114) ELT 421 (CEGAT)*, it was held that the term 'site' should be given wider meaning and not narrow meaning. Even if structure is cast at different place and brought to site of construction, it will be eligible for exemption.

Q14. Discuss whether the following leads to "Manufacture".

- (a) Cutting of jumbo rolls of typewriter to make ribbon of standard length and winding on spool and blister packed**
- (b) Betel Nut to supari powder**
- (c) Upgradation of computer system**
- (d) Lifts and escalators**

Answer 14.

(a) Cutting of jumbo rolls of typewriter to make ribbon of standard length and winding on spool and blister packed — In *Kores India v. CCE (2003) 152 ELT 395 (CEGAT)*, it was held that conversion of jumbo reels of ribbons into spool form to suit particular model and make of typewriting/telex machine is 'manufacture' as new and distinct product emerges – view upheld in *Kores India v. CCE (2005) 1 SCC 385 = 174 ELT 7 (SC)* – followed in *CCE v. Sohum Industries Ltd. 2006 (203) ELT 493 (CESTAT)*.

This decision was discussed in *Anil Dang v. CCE (2007) 213 ELT 29 (CESTAT 3 member bench)*. It was held that this was no mere cutting and slitting but the roll was spooled on

metal spools, plaster packed and sealed with aluminium foils. Hence, this decision will not apply where only slitting and cutting is involved.

- (b) **Betel Nut to supari powder is not manufacture** — Crushing betel nuts into smaller pieces and sweetening them does not result in a distinct product, as 'betel nut remains a betel nut' – Crane Betel Nut Powder Works v. CCE 2007 (210) ELT 171 = 6 VST 532 (SC) – decision of Tribunal in CCE v. Crane Betel Nut Powder Works 2005 (187) ELT 106 (CESTAT) is now not valid.
- (c) **Upgradation of computer system is not manufacture** — Upgradation of computer system by increasing its storage / processing capacity by increasing hard disk capacity, RAM or changing processor chip is not manufacture as new goods with different name, character and use do not come into existence. - CBE&C circular No. 454/20/99-CX dated 12-4-1999 – view confirmed in Maxim Information Tech v. CCE 2005 (184) ELT 78 (CESTAT) * CCS Infotech v. CCE (2007) 216 ELT 107 (CESTAT).
- (d) **Lifts and escalators** — Though lifts and escalators are specifically mentioned in 8428.10, those which are installed in buildings and permanently fitted into the civil structure, cannot be considered as excisable goods. Such lifts and escalators have also been held to be non-excisable by the Government of India in the case of Otis Elevators India Co. Ltd.

There may however, be instances of fabrication of complete lifts and escalator which are movable in nature as a whole and can be temporarily installed at construction sites or exhibitions for carrying men or material. Such cases alone would be liable to duty under sub-heading 8428.10 of the Central Excise Tariff.

- Q15. (a) Is change in tariff heading/sub-heading under the Central Excise Tariff Act, 1985 required between the input material and the resultant finished product so as to render such finished products liability to duty?**
- (b) **One of the plants of the tax-payer produces ferrous sulphate, chromium sulphate and sulphur-di-oxide during the preparation of khaki dye. These are intermediate goods/semi-finished goods and are not marketable. Central excise authorities demand excise duty on the ground that the tax-payer was manufacturing these goods and clearing them for internal consumption. Your advice as a consultant is sought by the tax-payer.**
- (c) **Whether assembly amounts to manufacture?**

Answer 15.

- (a) In **CCE vs. Kapri International (P) Ltd**, the assessee contended that in order to constitute a manufacturing activity the raw material and the final product must fall within different chapters of the Central Excise Tariff Act. The assessee argued that since the raw material (cotton fabrics) and the final product (bed sheets) fall within the same chapter, there is no manufacture. The Supreme Court observed that the cutting of cotton fabrics into small pieces brought into existence new marketable commodities-bed sheets, table cloth, etc., known as such in the market and thus manufacture occurs.

Similarly, in **Laminated Packing Case**, a new product called "Laminated Craft paper" emerged when plain craft paper is laminated. Both plain and laminated craft paper fall under the same tariff heading. The Supreme Court held that the activity of lamination of duty paid craft paper amounts to manufacture. SC further observed that the fact of both items falling within the same chapter is not relevant. Once there is a transformation resulting in new commodity, duty is leviable.

Thus, if manufacture takes place, the commodity is dutiable even if the raw material and the resultant product fall under the same tariff heading.

- (b) In **CCE vs. Ambalal Sarabhai Enterprises (1989) 43 ELT 214(SC)**, the Supreme Court declared that intermediate product will not be dutiable if it cannot be marketed in that condition. On the facts of the given case, which is similar to the case cited above, the Central Excise Authorities are not correct in their view.
- (c) Where the process of assembling of parts or components results in the transformation of the into a new product which has a distinct name, character and use and which has a separate entry in the Central Excise Tariff, then such assembling activities amount to manufacture.

In **Narne Tuleman Manufacture Pvt. Ltd. vs.CCE**, the appellant had fitted a platform, load cells and indicator system, which in the assembled form became a weigh bridge. The assessee contended that such assembling activity did not amount to manufacture. The assessee also contended that since duty was paid on the items purchased, further duty cannot be demanded. Held that the weighbridge was a commercial commodity, having a distinct name, character and use and hence the activity of assembly amounts to manufacture.

Similarly, in **BPL India Ltd. Vs.CCE**, the Supreme Court held that assembly of imported kits of VTR with colour monitors imported in disassembled condition amounted to manufacture since the end product had a distinct character and use and the process of assembly was done by technical experts or skilled persons. However, if the assembly of such duty paid components does not result in the emergence of a new article having a distinct character and use, then it will not amount to manufacture.

Q16. Comment on the classification of goods on the followings:

- (a) Classification of parachute coconut oil
- (b) Plastic name plate
- (c) Meaning of 'set of articles' – distinction between laptop and desktop
- (d) Software/records/tapes supplied along with equipment

Answer 16.

- (a) **Classification of parachute coconut oil** — In **Amardeo Plastics Industries v. CCE (2007) 210 ELT 360 (CESTAT 2 v. 1 order)**, on the basis of chapter notes, it was held that parachute coconut oil is 'vegetable oil' under chapter 15 and not 'preparation for use on the hair', since the marking on package did not say that it is for 'such specialized use', though advertisements did indicate so.
- However, in **Shalimar Chemical Works v. CST (2008) 12 VST 485 (WBTT)**, it has been held that except in a few Southern States, coconut oil is not treated as edible oil for use of daily cooking. In West Bengal, considering consumption pattern, coconut oil cannot be treated as 'edible oil'. It has to be treated as 'hair oil'.
- (b) **Plastic name plate** — Plastic name plate for motor vehicle is to be classified as 'accessory of motor vehicle' in chapter 87 and not 'other articles of plastic' in chapter 39, since 'name plate' is not specified in any heading in chapter 39 – **Pragati Silicons P Ltd. v. CCE (2007) 8 VST 705 = 211 ELT 534 (SC)**.

(c) Meaning of 'set of articles' – distinction between laptop and desktop — 'Set of article' should consist of more than one item, each complementing the work of another and retaining their individual identity all the time – CC v. Acer India P Ltd. (2007) 218 ELT 17 (SC). In this case, it was held that a desktop computer is a combination of CPU with monitor, mouse and keyboard as a set. A desktop computer does not lose individual identities of CPU, monitor, mouse and keyboard. Not only they are marketable as separate items but are also used separately. On the other hand, a laptop (notebook computer) comes in an integrated and inseparable form. It is a combination of CPU, monitor, mouse and keyboard. A laptop cannot be said to be set of CPU with monitor mouse and keyboard – confirming Tribunal decision in CC v. Acer India P Ltd. (2007) 208 ELT 132 (CESTAT).

(d) Software/records/tapes supplied along with equipment – Software imports are exempt from customs duty.

Earlier, Customs and Central Excise Tariff had a note No. 6 which stated that software when presented with the apparatus for which it was intended will be classifiable as software. This note has been deleted w.e.f. 1-1-2007. Hence, software embedded or pre-loaded in machine is to be classified along with the machine. This will also be case when software is brought separately, but as a 'set'. If tangible software e.g. operating software or application software loaded on disk, floppy, CD-ROM etc. is imported, it will be classifiable as software under heading 8523 – CC (Import), Mumbai PN 39/2007 dated 3-12-2007.

In CC v. Hewlett Packard India (Sales) P Ltd. (2007) 215 ELT 484 (SC), it was held that pre-loaded software in laptop forms integral part of the laptop. Without operating system like windows, the laptop cannot work. Hence, the laptop along with software has to be classified as laptop and values as one unit. Software pre-loaded cannot be classified separately as software (In this case, the importer wanted to classify hard disk along with software as 'software' and refused to give value of software even when called upon to do so. Hence, the decision has to be seen from peculiar facts of the case).

Q17. (a) A Trader supplies raw material of Rs. 1,150 to processor. Processor processes the raw material and supplies finished product to the trader. The processor charges Rs. 450, which include Rs. 350 as processing expenses and Rs. 100 as his (processor's) profit. Transport cost for sending the raw material to the factory of processor is Rs. 50. Transport charges for returning the finished product to the trader from the premises of the processor is Rs. 60. The finished product is sold by the trader at Rs. 2,100 from his premises. He charges Vat separately in his invoice at applicable rates. The rate of duty is 16% plus education cess as applicable. What is the AV, and what is total duty payable?

Answer on and after 1-4-2007 : Assessable Value is to be calculated on basis of selling price of trader which is Rs.2,100. This price is to be treated as inclusive of excise duty. Hence, assessable value will be $(2,100 \times 100)/116.48$ i.e. Rs.1,802.89. Basic excise duty @ 16% will be 288.46. Education Cess (2%) is Rs.5.77 and Secondary and Higher Education Cess is Rs.2.88. Total duty payable will be Rs.297.11.

Answer upto 31-3-2007 - Assessable Value (AV) is Rs. 1,650 (1,150 + 350 + 100 + 50). Duty is not payable on Rs. 1,800, which includes Traders' profit. Since place of the processor is the place of removal of goods, no duty is payable on outward freight of Rs. 60.

Material cost is not required to be added if parent manufacturer had sent material under Cenvat, as per decision of Supreme Court in International Auto Ltd. v. CCE 2005 (183) ELT 239 = 68 RLT 341 (SC 3 member bench).

Q17. (b) An SSI unit (manufacturing goods eligible for benefits of SSI exemption notification) has cleared goods of the value of Rs. 60 lakhs during the financial year 2008-09. The effective rate of Central Excise Duty on the goods manufactured by it is 8% Ad valorem. Education cesses are payable at applicable rates. What is the correct amount of duty which the unit should have paid on the above clearances for 2008-09?

Answer (b)

(a) If unit intends to avail Cenvat credit on inputs, duty payable is normal duty i.e. 8% of Rs.60 lakhs, i.e. Rs. 4,80,000, plus education cess of Rs. 9,600 (2% of Rs. 4.80 lakhs), plus SAH education cess of Rs. 4,800 (1% of Rs. 4.80 lakhs). (b) If unit does not intend to avail Cenvat credit on inputs, duty payable is Nil.

Q18. A small scale manufacturer produces a product 'P'. Some of the production bears his own brand name, while some production bears brand name of his customer. The customer purchases the goods from the small scale unit and sales himself by adding 20% margin over his purchase cost. Clearances of the SSI unit in 2006-07 was Rs. 3,53,00,000. He achieved clearances of Rs. 445 lakhs in 2007-08 as per following break up. [These clearances are without considering excise duty and sales tax]

(a) Clearances with his own brand name : Rs. 80 lakhs.

(b) Clearances of product bearing his customer's brand name : Rs. 365 lakhs.

Normal excise duty of his product is 16% plus education cesses as applicable. The SSI unit intends to avail Cenvat benefit on inputs on goods supplied to the brand name owner but intends to avail SSI exemption on his own clearances.

(A) Find the total duty paid by the manufacturer in 2007-08, if (a) Inputs are common but SSI unit is able to maintain separate records of inputs in respect of final products under his brand name and those with other's brand name (b) The inputs are common and SSI unit is not able to maintain separate records on inputs used in final products manufactured under his brand name and with other's brand name.

(B) What will be the rate of excise duty payable by him in April 2008 (a) on product bearing his own brand name and (b) on product bearing his customer's brand name.

(C) Will there be any difference in duty payable in April 2008 if all his clearances of Rs. 445 lakhs in 2007-08 were of product under his own brand name ?

Answer 18.

(A) SSI unit can avail Cenvat on final products cleared under other's brand name and avail SSI exemption in respect of his own production. (a) In the first case, he has to pay duty @ 16% on Rs. 365 lakhs, i.e. Rs. 58.40 lakhs plus education cess of Rs. 1,16,800 plus SAH education cess of Rs. 58,400. He cannot avail Cenvat credit in respect of inputs used to manufacture product under his own brand name. (b) In the second case, since he is unable to maintain separate record of inputs, he will have to pay 10% 'amount' on Rs. 80 lakhs as per rule 6(3)(b) of Cenvat Credit Rules. Thus, he has to pay duty of Rs. 58.40 lakhs, plus education cess of Rs. 1,16,800 plus SAH education cess of Rs. 58,000, plus an 'amount' of Rs. 8.00 lakhs. He can avail Cenvat of all the inputs. — Note that in respect of goods bearing customer's brand name, duty is payable on his selling price to the customer even if customer sells them subsequently at higher price.

The assessee has to carefully do his costing and decide (a) whether to avail Cenvat on all inputs, pay full duty on all final products and 10% 'amount' on final products cleared under his own brand name or (b) Not avail Cenvat at all and avail exemption from duty on his own production with his brand name.

- (B) The turnover of SSI during 2007-08 was over Rs. 4 crores. However, for purposes of calculating the upper limit of Rs. 4 crores, clearances with other's brand name are not to be considered. Hence, from 1st April 2008, he can clear goods bearing his own brand name upto Rs. 150 lakhs without payment of duty, if he does not avail Cenvat credit on inputs used in such products. If he is unable to maintain separate records, he will have to pay 10% 'amount' on goods manufactured under his own brand name.
- (C) If total turnover of Rs. 4.45 crores in 2007-08 was under his own brand name, the manufacturer is not eligible for any Small industry concession in April 2006, and he will have to pay duty at normal rates on his total clearances in April 2008.

Question 19. An assessee cleared various manufactured final products during June 2007. The duty payable for June 2007 on his final products was as follows – Basic – Rs. 2,00,000 Education Cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows – Basic duty – Rs. 50,000, Education Cess – Rs. 1,000, SAH education Cess Rs. 500. Excise duty paid on capital goods received during the month was as follows – Basic duty – Rs. 12,000. Education Cess - Rs. 240. SAH education cess - Rs. 120. Service tax paid on input services was as follows – Service Tax – Rs. 10,000. Education cess – Rs. 200 SAH Education Cess - Rs. 100. How much duty the assessee will be required to pay by GAR-7 challan for the month of June 2007, if assessee had no opening balance in his PLA account? What is last date for payment?

Answer 19.

Education Cess payable on final products is Rs. 4,000 (2% of Rs. 2,00,000). SAH education cess payable is Rs. 2,000.

The Cenvat credit available for June 2007 is as follows –

Description	Basic duty	Service e tax	Education Cess	SAH Education Cess
Inputs	50,000		1,000	500
Capital Goods (50% will be eligible and balance next year)	6,000		120	60
Input Service		10,000	200	100
Total	56,000	10,000	1,320	660

Credit of Rs. 66,000 (56,000 + 10,000) can be utilised for basic duty Credit of education cess and SAH education cess can be utilised only for payment of education cess and SAH education cess on final product only.

Hence, duty payable through GAR-7 challan for June 2007 is as follows —

	Basic Duty Rs	Education Cess Rs.	SAH Education Cess Rs.
(A) Duty payable	2,00,000	4,000	2,000
(b) Cenvat Credit	66,000	1,320	660
Net amount payable (A-B)	1,34,000	2,680	1,340

Last date for payment is 5th July, 2007.

Q20. (a) Discuss Anti-dumping duty.

(b) What are the exclusions from Assessable Value?

(c) State the methods of Valuation under Customs Act.

Answer 20.

(a) Anti-Dumping Duty

- Antidumping duty is leviable u/s 9A of Customs Tariff Act when foreign exporter exports his good at low prices compared to prices normally prevalent in the exporting country.
- Dumping is unfair trade practice and the anti-dumping duty is levied to protect Indian manufacturers from unfair competition.
- Margin of dumping is the difference between normal value (i.e. his sale price in his country) and export price (price at which he is exporting the goods).
- Price of similar products in India is not relevant to determine 'margin of dumping'.
- 'Injury margin' means difference between fair selling price of domestic industry and landed cost of imported products. Dumping duty will be lower of dumping margin or injury margin.
- Benefits accruing to local industry due to availability of cheap foreign inputs is not considered. This is a drawback.
- CVD is not payable on antidumping duty. Education cess and SAH education cess is not payable on anti-dumping duty.
- In case of imports from WTO countries, antidumping duty can be imposed only if it cause material injury to domestic industry in India.
- Dumping duty is decided by Designated Authority after enquiry and imposed by Central Government by notification. Provisional antidumping duty can be imposed.
- Appeal against antidumping duty can be made to CESTAT.

(b) Exclusions from Assessable Value

Interpretative Note to rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provide that following charges shall be excluded :

- Charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation of plant, machinery or equipment
- Cost of transport after importation
- Duties and taxes in India

Other payments from buyer to seller that do not relate to imported goods are not part of the customs value.

Demurrage charges payable to port trust authorities for delay in clearing goods are not to be added . - Deepak Fertilisers v. CC 1989(41) ELT 550 (CEGAT) * Hindustan Lever v. UOI 2002(142) ELT 33 (Cal HC). [However, ship demurrage is includible w.e.f. 10-10-2007].

Ship demurrage includible w.e.f. 10-10-2007 - explanation to rule 10(2)

(c) Methods of Valuation

The methods of valuation for customs methods are as follows -

- Transaction Value of Imported goods [Section 14(1) and Rule 3(1)]
- Transaction Value of Identical Goods [Rule 4]
- Transaction Value of Similar Goods [Rule 5]
- Deductive Value which is based on identical or similar **imported** goods sold in India [Rule 7]
- Computed value which is based on cost of manufacture of goods plus profits [Rule 8]
- Residual method based on reasonable means and data available [Rule 9]

Q21. Discuss the import and export procedures under Customs Act.

Answer 21.

The procedures for import and export under Customs are :

Import Procedures:

- Goods should arrive at customs port/airport only.
- Person in charge of conveyance is required to submit Import Manifest or Export Manifest.
- Goods can be unloaded only after grant of 'Entry Inwards'.
- Importer has to submit Bill of Entry giving details of goods being imported, along with required documents. Electronic submission of documents is to be done in many ports.
- Goods are assessed to duty, examined and customs duty is paid. Bond is executed if required.
- Goods can be cleared from port after 'Out of Customs Charge' order is issued by customs officer.
- Self Assessment on basis of 'Risk Management System' (RNS) has been introduced in some ports in respect of specified goods and importers.
- Demurrage is payable if goods are not cleared within three days from port. Goods can be disposed of if not cleared within 30 days.

Export Procedures:

The broad procedures to be followed for exports are as follows —

- Submit Shipping Bill for export to customs authorities
- Submit invoice, packing lists, contracts, export license (if applicable) and other related documents
- Submit necessary declarations for export. Submit * GR/SDF/SOFTEX form as required under FEMA * Excise ARE-1 form
- Noting of Shipping Bill by customs officer

- Assessment i.e. valuation and classification of goods. Checking of Advance License, if applicable
- Custom check whether export is restricted/prohibited
- Examination of goods by customs officer
- Pay export duty, if applicable
- Stuffing of container, if not already done
- 'Let export' Order by customs officer
- Obtain ARE-1 form duly signed by customs officer. Obtain Bill of Lading from shipping company. Submit proof of export to excise authorities.
- Complete formalities relating to claim of duty drawback.

Q22. (a) State the procedure for submission of Bill of Entry under Customs.

(b) State the documents to be submitted by an Importer

Answer 22.

(a) Submission of Bill of Entry - Bill of Entry is a very vital and important document which every importer has to submit to customs officer in respect of imported goods other than goods intended for transit or transshipment. Bill of Entry should be in prescribed form. It can be either for home consumption or for warehousing [section 46(1)]. It should include all goods mentioned in Bill of Lading or other receipt given by carrier to consignor [section 46(2)]. Importer has to declare that contents of Bill of Entry are true [section 46(4)]

- White Bill of Entry is for home consumption. Imported goods are cleared on payment of customs duty.
- Yellow Bill of Entry is for warehousing. It is also termed as 'into bond Bill of Entry' as bond is executed. Duty is not paid and imported goods are transferred to warehouse where these are stored.
- Green Bill of Entry is for clearance from warehouse on payment of customs duty. It is for ex-bond clearance.

(b) Documents to be submitted by Importer - Documents required by customs authorities are required to be submitted to enable them to (a) check the goods (b) decide value and classification of goods and (c) to ensure that the import is legally permitted. The documents that are essentially required are : (i) Invoice (ii) Packing List (iii) Bill of Lading / Delivery Order (iv) GATT declaration form duly filled in (v) Importers / CHAs declaration duly signed (vi) Import License or attested photocopy when clearance is under license (vii) Letter of Credit / Bank Draft wherever necessary (vii-a) Insurance memo or insurance policy (viii) Industrial License if required (ix) Certificate of country of origin, if preferential rate is claimed. (x) Technical literature. (xi) Test report in case of chemicals (xii) Advance License / DEPB in original, where applicable (xiii) Split up of value of spares, components and machinery (xiv) No commission declaration. – A declaration in prescribed form about correctness of information should be submitted. – Chapter 3 Paras 6 and 7 of CBE&C's Customs Manual, 2001.

Electronic submission under EDI system – Customs work at many ports has been computerised. In that case, the Bill of Entry has to be filed electronically, i.e. through Customs EDI system through computerisation of work. Procedure for the same has been prescribed vide Bill of Entry (Electronic Declaration) Regulations, 1995.

Q23. Discuss the process of import of baggage and courier through post.**Answer 23.****Baggage, Courier and import through post**

- Baggage includes unaccompanied baggage but does not include motor vehicles [section 2(3)]
- Indians going out can take out any amount of foreign currency as long as it is obtained from authorised foreign exchange dealer. He can take out and bring in Indian currency only upto Rs. 1,000.
- Baggage includes all dutiable articles imported by passenger or crew but does not include motor vehicles, alcoholic drinks (beyond limits) and goods imported through courier.
- Incoming passenger with no dutiable goods can pass through green channel.
- General rate of duty on import of baggage is 36.05% (35% basic customs duty plus 2% education cess plus 1% SAH education cess). One laptop computer is exempt.
- Bona fide luggage including used personal effects are exempt from customs duty. In addition to bona fide luggage and one laptop computer, Indian resident or foreigner residing in India over 12 years of age is allowed general free allowance (GFA) of Rs. 25,000, after stay abroad for more than three days. GFA is lower when passenger comes from some countries like Nepal, Bhutan, Myanmar or China.
- Besides GFA, one laptop can be imported free of customs duty.
- GFA cannot be clubbed with other person.
- If a person comes after 6 months of stay, he can bring gold upto 10 Kg on payment of customs duty @ Rs. 250 per 10 gms (plus education cess) and silver upto 100 Kg on payment of customs duty @ Rs. 500 per Kg (plus education cess)
- Commercial samples can be brought in or taken out within prescribed limits.
- Additional concession is available if a person transfers his residence after stay abroad for two years. He is eligible for concessional rate of 15% duty (plus 2% education cess) of goods upto Rs. 5 lakhs. In case of some goods, duty is Nil. He is also entitled to GFA.
- In case of mini TR (i.e. person returning after 365 days), used personal effects and household articles upto Rs. 75,000 can be brought duty free, in addition to GFA. However, items specified in Annex I, II and III as specified in Baggage Rules are not allowed duty free.
- Foreign tourists can bring personal effects and travel souvenirs free of duty. Articles upto Rs. 8,000 can be brought as gifts duty free.
- If value of foreign currency notes exceeds US \$ 5,000 or aggregate value of foreign exchange (in the form of currency note, bank notes, traveller cheques etc.) exceeds US \$ 10,000, the passenger has to make declaration in Currency Declaration Form (CDF).
- Unaccompanied baggage can be brought. GFA is not allowed on unaccompanied baggage.

Import and export through Courier - Imports and export through couriers are treated as imports or exports as any other mode. It is not treated as 'baggage'. There is no restriction on value of goods that can be brought through courier. The duty payable is normal duty as applicable to all other goods normally imported by ship or air transport. Duty concessions, if any, are also permissible. Courier Imports and exports (Clearance) Regulations, 1998 specify the procedures, which are summarised in Chapter 17 of CBE&C's Customs Manual, 2001.

Import through post

- Label/declaration on postal article is treated as 'Entry'. Separate Bill of Entry is not required.
- Postal articles are sent to Foreign parcel Department of Post Office. The list is handed over to Principal Appraiser of Customs.
- He will inspect mail. Packets suspected of dutiable articles will be opened and examined by him. He will assess the goods and then seal the parcel.
- Goods will be handed by postmaster to addressee only on receipt of customs duty payable on the goods.
- Gifts upto Rs. 10,000 are free. Post parcel is exempt if customs duty is upto Rs. 100.

Q24. (a) Warehousing in Customs**(b) Penalties under Customs Act****(c) Margin of Dumping****(d) Rules for deciding subsidy or dumping margin****Answer 24.****(a) Warehousing in customs**

- Imported goods can be kept in customs warehouse without payment of customs duty.
- Goods can be kept in warehouse awaiting receipt of import authorisation.
- Goods can be kept in warehouse upto one year, but interest is payable beyond 90 days, @ 15%.
- Goods can be manufactured in warehouse and exported without payment of customs duty. This facility is useful to EOU.
- Warehoused goods can be (a) Cleared on payment of duty (b) Cleared for export without payment of duty or (c) transferred to another warehouse without payment of duty.

(b) Penalties under Customs Act

- Smuggling in relation to goods is an act or omission which will make the goods liable to confiscation.
- Penalty can be imposed for improper imports or improper exports.
- Monetary penalty upto value of goods or Rs. 5,000 whichever is higher can be imposed.
- Goods can be confiscated. Permission can be granted for re-export of offending goods..
- In case of goods covered under section 123 of Customs Act, burden of proof that the goods are not smuggled goods is on the accused.

(c) Margin of Dumping - 'Margin of dumping' means the difference between normal value and export price (i.e. the price at which these goods are exported). [section 9A(1)(a)].

'Normal Value' means comparable price in ordinary course in trade, for like article, when destined for consumption in the exporting country or territory. If such price is not available or not comparable (a) comparable representative price of like article exported from exporting country or territory to appropriate third country or (b) cost of production plus reasonable profit, can be considered [section 9A(1)(c) of Customs Tariff Act]. The 'normal value' is to be determined as per rules.

In *Reliance Industries Ltd. v. Designated Authority* 2006 (202) ELT 23 (SC), it was held that 'normal value' are not exporter specific but exporting country specific. Once dumping of specific goods from a country is established, dumping duty can be imposed on all exports of those goods from that country in India, irrespective of the exporter. Rate of duty may vary from exporter to exporter depending upon the export price.

'Export Price' means the price at which goods are exported. If the export price is unreliable due to association or compensatory arrangement between exporter and importer or a third party, export price can be constructed (revised) on the basis of price at which the imported articles are first sold to independent buyer or according to rules made for determining margin of dumping. [section 9A(1)(b)].

Margin of dumping is determined on basis of weighted average of 'normal value' and the 'export price' of product under consideration.

- (d) **Rules for deciding subsidy or dumping margin** - Central Government has been empowered to make rules for determining (a) subsidy or bounty in case of bounty fed goods (b) the normal value and export price to determine margin of dumping in case of dumping. Accordingly, Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for determination of Injury) Rules, 1995 [Customs Notification No. 2/95 (N.T.) dated 1-1-95] provide detailed procedure for determining the injury in case of dumped articles.

Procedure for fixing anti dumping duty - After the 'designated authority' is satisfied about prima facie case, he will give notice to Governments of exporting countries. Opportunity to inspection of documents and making representations will be given to interested parties who are likely to be affected. Designated Authority will first give preliminary finding and then final finding within one year. Provisional duty can be imposed on basis of preliminary finding which can continue upto 6 months, extendable to 9 months. Additional duty may be imposed on basis of the final finding.

As per rule 18 of Anti-Dumping Duty Rules, Central Government has to issue a notification fixing anti-dumping duty within three months from date of notification issued by designated authority.

- Q25. An importer imported Description of goods: Mulberry Raw Silk (not thrown) (HS Code 5002 00) from People's Republic of China. CIF value was US \$ 20,000 and quantity 1,000 Kgs. Exchange rate was 1 US \$ = Rs. 44 on date of presentation of Bill of Entry. Customs Duty rates are – (i) Basic Customs Duty 30% (ii) Education Cess 2% (iii) SAH Education cess-1%. There is no excise duty payable on these goods if manufactured in India. As per Notification No. 106/2003-Cus dated 10-7-2003, anti-dumping duty has been imposed on these goods imported from China, manufactured by any producer in People's Republic of China. The anti-dumping duty will be equal to difference between amount calculated @ US \$ 27.97 per Kg and 'landed value' of goods. Compute Customs Duty liability & anti-dumping liability.**

Answer 25.

(a) Computation of Customs duty:-

Total CIF Price	US \$	20,000
CIF @ Rs. 44 = 1 US \$	Rs.	8,80,000.00
Add – Landing charges @ 1%	Rs.	8,800.00

Assessable Value	Rs.	8,88,800.00
Basic duty @ 30%	Rs.	2,66,640.00
Education Cess @ 2% on 2,66,640.00	Rs	5,332.80
SAH education Cess 1%		2,666.40
Total Customs Duty payable(Basic + Education Cess)	Rs	2,74,639.20
Rounded to	Rs	2,74,639.00

(b) Computation of landed value

Assessable Value Under Customs Act,	Rs	8,88,800.00
Add: All Duties of Customs	Rs	2,74,639.00
Landed Value as per Anti-Dumping Notification	Rs	11,63,439.00

(c) Computation of anti-dumping duty

Rate of Silk Yarn as per Anti Dumping Notification.(US \$ 27.97 per Kg)	US \$	27,970
Value @ Rs. 44 = 1 US \$	Rs.	12,30,680.00

Less:

Landed Value as per Anti-Dumping Notification	Rs.	11,63,439.00
Anti Dumping Duty payable	Rs.	67,241.00

Thus, anti-dumping duty payable will be Rs. 67,241.

Q26. What are the inclusions in and exclusions from Customs Value?**Answer 26.****Customs Value – Inclusions**

Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Rule 9 upto 10-10-2007] provide that following cost and services are to be added, if these are not already included in the invoice price. –

- Commission and brokerage, except buying Commission, if not already included in the invoice price [rule 10(1)(a)(i)].
- Cost of container which are treated as being one with the goods for customs purposes, if not already included in the invoice price [rule 10(1)(a)(ii)].
- Cost of packing whether labour or materials, if not already included in the invoice price [rule 10(1)(a)(iii)].
- Materials, components, tools, dies, moulds, and consumables used in production of imported goods, supplied by buyer directly or indirectly, free of charge or at reduced cost, to the extent not already included in price [rule 10(1)(b)(i), (ii) and (iii)]
- Engineering, development, art work, design work, plans and sketches undertaken elsewhere than in India and necessary for production of imported goods, to the extent not already included in price [rule 10(1)(b)(iv)].
- Royalties and license fees relating to imported goods that buyer is required to pay, directly or indirectly, as a condition of sale of goods being valued [rule 10(1)(c)]
- Value of proceeds of subsequent resale, disposal or use of goods that accrues directly or indirectly to seller (i.e. to foreign exporter) [rule 10(1)(d)]

- All other payments made as condition of sale of goods being valued made directly or to third party to satisfy obligation of seller, to the extent not included in the price [rule 10(1)(e)]
- Cost of transport upto place of importation [rule 10(2)(a)]
- Loading, unloading and handling charges associated with delivery of imported goods at place of importation [These are termed as landing charges and are to be taken as 1%] [rule 10(2)(b)]
- Cost of insurance [rule 10(2)(c)]

The additions should be on the basis of objective and quantifiable data [rule 10(3) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9(3)).

Exclusions from Assessable Value

Interpretative Note to rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provide that following charges shall be excluded :

- Charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation of plant, machinery or equipment
- Cost of transport after importation
- Duties and taxes in India

Other payments from buyer to seller that do not relate to imported goods are not part of the customs value.

- Q27. (a) An importer imports some goods @ 10,000 US \$ on CIF basis. Following dollar rates are available on the date of presentation of bill of entry : (a) RBI Floor rate : Rs. 43.37 (b) Inter-bank closing rate : Rs. 43.38 (c) Rate notified by CBE&C under section 14 (3) (a) (i) of Customs Act : Rs. 43.55 (d) rate at which bank has realised the payment from importer : Rs. 43.58. Find the assessable value for customs purposes.**
- (b) A consignment is imported by air. CIF price is 1,000 US Dollars. Freight is 320 US \$. Insurance cost was \$ 35. Exchange rate is same as above. Find Value for customs purposes.**
- (c) FOB Cost of a consignment is 3,000 UK Pounds. Insurance and transport costs are not available. What is Customs Value? On the date of filing of bill of entry, Reserve Bank of India reference rate of US \$ was 43.37 and inter-bank closing rates were : Rs. 43.38 per US \$ and Rs. 69.38 per UK Pound. Exchange rate announced by Board (CBE&C) by customs notification was Rs. 69.78 per British Pound. T T buying rate was 69.70 and T T selling rate was Rs. 69.61 per UK pound.**

Answer 27.

- The relevant exchange rate is Rs. 43.55. Thus, CIF Value of goods is Rs. 4,35,500. Landing charges [rule 9 (2) of Customs Valuation Rules] @ 1% of CIF Value are to be added - i.e. Rs. 4,355. Thus, Customs Value or Assessable Value is Rs. 4,39,855.
- FOB Price of consignment is \$ 645 (1,000 less 320 less 35). Air freight is to be restricted to 20% of FOB Value for purpose of customs valuation. Hence, freight should be considered as 20% of 645 i.e. 129 US \$ for valuation. Thus, CIF Value for customs purposes is \$ 809 (645 + 129 + 35) i.e. Rs. 35,231.95 @ Rs. 43.55 per dollar. Add 1% of CIF i.e. Rs. 352.32 as landing charges. Thus, Value for Customs purposes will be 35,584.27.

- (c) FOB Price is 3,000 UK pounds. Add 20% as freight cost i.e. 600 as actual cost is not available. Since insurance charges are not known, insurance cost should be taken @ 1.125% of FOB price i.e. 33.75. Thus, CIF price is 3,633.75 UK pounds. Conversion rate is 69.78. Hence, CIF Value is Rs. 2,53,563.08 (3,633.75 x 69.78). Landing charges @ 1% of CIF will be Rs. 2,535.63. Thus, Customs Value is Rs. 2,56,098.71.

Q28. Customs value (Assessable Value) of imported goods is Rs. 2,00,000. Basic Customs duty payable is 10%. If the goods were produced in India, excise duty payable would have been 16%. Education cess is as applicable. Special CVD is payable at appropriate rates. Find the Customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Answer 28.

	Duty %	Amount	Total Duty
(A) Assessable Value Rs. 10,000		200,000.00	
(B) Basic Customs Duty	10	20,000.00	20,000.00
(C) Sub-Total for calculating CVD '(A + B)'		220,000.00	
(D) CVD 'C' x excise duty rate	16	35,200.00	35,200.00
(E) Education cess of excise - 2% of 'D'	2	704.00	704.00
(F) SAH Education cess of excise - 1% of 'D'	1	352.00	352.00
(G) Sub-total for edu cess on customs 'B + D + E + F'		56,256.00	
(H) Edu Cess of Customs - 2% of 'G'	2	1,125.12	1,125.12
(I) SAH Education Cess of Customs - 1% of 'G'	1	562.56	562.56
(J) Sub-total for Spl CVD 'C + D + E + F + H + I'		257,943.68	
(K) Special CVD u/s 3(5) - 4% of 'J'	4	10,317.75	10,317.75
(L) Total Duty			68,261.43
(M) Total duty rounded to			68,261

Notes : Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Q29. An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds. Other details are as follows :

- Freight from UK to Indian port was 700 pounds.
- Insurance was paid to insurer in India : Rs. 6,000
- Design and development charges of 2,000 UK pounds were paid to a consultancy firm in UK
- The importer also spent an amount of Rs. 50,000 in India for development work connected with the machinery.
- Rs. 10,000 were spent in transporting the machinery from Indian port to the factory of importer.

- (f) Rate of exchange as announced by RBI was : Rs. 68.82 = one UK Pound
 (g) Rate of exchange as announced by CBE&C (Board) by notification under section 14(3)(a)(i) : Rs. 68.70 = One UK pound
 (h) Rate at which bank recovered the amount from importer : Rs. 68.35 = One UK Pound.
 (i) Foreign exporters have an Agent in India. Commission is payable to the agent in Indian Rupees @ 5% of FOB price.

Customs duty payable was 10%. If similar goods were produced in India, excise duty payable as per tariff is 24%. There is an excise exemption notification which exempts the duty as is in excess of 16%. Education cess is as applicable Spl CVD is payable at applicable rates. Find customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Answer 29.

FOB Value	=	10,000.00	UK Pounds
Add : Design & Development Charges	=	2,000.00	UK pounds
Add : Ocean freight	=	700.00	UK Pounds
Total C & F	=	12,700.00	UK Pounds
Total in Rs. @ 68.70	=	8,72,490.00	Rs.
Add : Insurance	=	6,000.00	Rs.
Add : Local Agency commission 500 UK pounds			
@ Rs. 68.70 = 1 UK Pound	=	34,350.00	Rs.
Total CIF Price	=	9,12,840.00	Rs.
Add : Landing Charges @ 1% of CIF	=	9,128.40	Rs.
Assessable Value	=	9,21,968.40	Rs.
Assessable Value (rounded to)	=	9,21.968.00	Rs.

Calculation of duty payable is as follows —

	Duty %	Amount	Total Duty
(A) Assessable Value Rs. 10,000		921,968.00	
(B) Basic Customs Duty	10	92,196.80	92,196.80
(C) Sub-Total for calculating CVD '(A + B)'		1,014,164.80	
(D) CVD 'C' x excise duty rate	16	162,266.37	162,266.37
(E) Education cess of excise - 2% of 'D'	2	3,245.33	3,245.33
(F) SAH Education cess of excise - 1% of 'D'	1	1,622.66	1,622.66
(G) Sub-total for edu cess on customs 'B + D + E + F'		259,331.16	
(H) Edu Cess of Customs - 2% of 'G'	2	5,186.62	5,186.62
(I) SAH Education Cess of Customs - 1% of 'G'	1	2,593.31	2,593.31
(J) Sub-total for Spl CVD 'C + D + E + F + H + I'		1,189,079.09	
(K) Special CVD u/s 3(5) - 4% of 'J'	4	47,563.16	47,563.16
(L) Total Duty			314,674.25
(M) Total duty rounded to	Rs		314,674

Notes : Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Note : (1) Design and development work done in India and transport costs within India are not to be considered for purposes of 'Customs Value'.

(2) Excise duty rate has to be considered after considering excise exemption notification.

(3) Assessable Value and Final duty payable should be rounded off to nearest Rupee.

Duty payable is same whether the importer is manufacturer or a trader.

Q30. (a) State the methods of valuation of imported goods.

(b) State the conditions for accepting Transaction Value.

Answer 30.

(a) The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, based on WTO Valuation Agreement (earlier GATT Valuation Code), consist of rules providing six methods of valuation.

The methods of valuation for customs methods are as follows —

- Transaction Value of Imported goods [Section 14(1) and Rule 3(1)]
- Transaction Value of Identical Goods [Rule 4]
- Transaction Value of Similar Goods [Rule 5]
- Deductive Value which is based on identical or similar **imported** goods sold in India [Rule 7]
- Computed value which is based on cost of manufacture of goods plus profits [Rule 8]
- Residual method based on reasonable means and data available [Rule 9]

(b) In *Eicher Tractors v. CC* 2000 AIR SCW 4080 = AIR 2001 SC 196 = 2001(1) SCC 315 = 122 ELT 321 = 41 RLT 621 (SC), it has been held that actual transaction value can be rejected only for reasons specified in rule 4(2) [Now rule 3(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 w.e.f. 10-10-2007] of Valuation Rules and 'special circumstances' or 'extraordinary circumstances' as specified in section 14(1). Subject to the three conditions laid down in section 14(1) of time, place and absence of special circumstances, price of imported goods is to be determined u/s 14(1A) in accordance with Valuation Rules framed in this behalf.

Thus, transaction value can be rejected either for special circumstances as per section 14(1) or conditions as specified in rule 3(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Q31. An importer 'WR Importers Ltd.' imported 1,000 Kgs of 'X' goods from a manufacturer-exporter 'AB Inc.' in USA in April 2008 and presented Bill of Entry indicating value of US \$ 10,000 CIF. Customs Appraiser found from his records as follows :

(a) AB Inc, USA had supplied 150 Kgs of 'X' to another importer in India @ 16 \$ CIF per Kg in March 2008.

- (b) Same exporter had supplied 1,200 Kgs of X to an importer in India @ 18 US \$ in September 2007.
- (c) Price of 'AB Inc' for sale of that product in USA is 20 US \$ per Kg.
- (d) Another manufacturer-exporter from USA had supplied 800 Kgs 'X1' goods to an importer in India @ 14 US \$ per Kg in February 2008. The 'X1' are alike 'X' and can be used instead of 'X'. Both manufacturers-exporters from USA are well reputed.
- (e) Similar goods produced in India are available in India at equivalent dollar price of 12 US \$ per Kg.

Show cause notice was issued to importer. The importer replied that he has been able to negotiate the lower price as a special introductory price. He also produced a copy of invoice from manufacturer in Germany, who had supplied the 900 Kgs of 'X2' goods @ 10.50 US dollars per Kg in February, 2008. The 'X2' goods are equivalent to 'X' and can be used instead of 'X'.

Prepare an Order finalising the 'Customs Value' for purpose of assessment.

Answer 31.

Office of Assistant Commissioner of Customs, Mumbai

Order No. 34/02 dated 16th May, 2008

- Note :** (1) This copy is granted free of charge for the private use of the persons to whom it is issued.
- (2) Any person aggrieved by this order may appeal against this order to Commissioner (Appeals), Mumbai, within sixty days from date of communication of this order. Appeal should be accompanied by this copy of order or another certified copy of this order.

Order

- (1) M/s WR Importers Ltd., Mumbai filed Bill of Entry No. 2587 dated 14th April, 2008 for 1,000 Kgs of 'X' for 10,000 US \$ CIF in respect of goods imported from USA. It was observed that similar goods were imported at higher rates than the rates declared by Assessee.
- (2) A show cause notice dated 21st April, 2008 was served on the assessee. The assessee submitted their reply dated 26th April, 2008. A personal hearing was granted on 8th May, 2008. Representative of WR Importers Ltd., Mr. A M Majumdar attended the personal hearing. He reiterated the submissions made in their reply dated 26th April, 2008 and stated that the price as shown by them in Bill of Entry is the correct Customs Value for purpose of assessment.
- (3) I find that the same exporter i.e. AB Inc, USA had supplied 150 Kgs of 'X' to another importer in India @ 16 \$ CIF per Kg in March 2008. Assessee raised contention that quantity of imports in March 2008 is much less and hence the price cannot be considered, as per provisions of rule 4(1)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The assessee contended that the department has not produced any evidence regarding discount structure offered by the foreign supplier depending on the quantity purchased. Hence, this price cannot be considered for valuation. I agree with these contentions of assessee.

- (4) I find that the same exporter i.e. AB Inc, USA had supplied 1,200 Kg of X to an importer in India @ 18 US \$ in September 2007. Assessee contended that price of goods imported in September 2008 cannot be considered for valuation of goods imported in April 2008 as the import is not at or about the same time, as required in rule 4(1)(a) Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Hence, this price cannot be considered for valuation. I agree with this contention of assessee.
- (5) It was brought to notice of assessee that Price of 'AB Inc' for sale within USA is 20 US \$ per Kg. Assessee replied that only price in International Trade can be considered for valuation purposes as per section 14 of Customs Act. I agree with this contention of assessee.
- (6) Similar goods are produced in India. These are available in India at equivalent dollar price of 12 US \$ per Kg. However, I observe that such price cannot be considered for assessment in terms of rule 9(2)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (7) Assessee contended that another manufacturer in Germany, has supplied the 'X2' goods @ 10.50 US dollars per Kg at around the same time. The 'X2' goods are equivalent to 'X' and can be used instead of 'X' and that price may be considered for assessment. I find that in terms of rule 5, price of similar goods can be considered only if both are from same country. The price of goods imported from Germany could have been considered under rule 9(1) as residual method. However, this method has application only if Customs Value cannot be determined by any other method.
- (8) Another manufacturer-exporter from USA had supplied 800 Kgs 'X1' goods to an importer in India @ 14 US \$ per Kg in February 2008. The 'X1' are alike 'X' and can be used instead of 'X'. Both manufacturers-exporters from USA are well reputed. Thus, in terms of rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, these could be considered as 'similar goods' and hence that price can be adopted for valuation.
- (9) The importer in his reply stated that he has been able to negotiate the low prices of US \$ 10/- as special introductory price on special consideration of assurance of future orders. However, he stated that in terms of explanation (1)(ii) to Valuation Rules, even if discount is abnormal, the declared value is required to be accepted if it is true and accurate.
- (10) Assessee contended that even if the price is low, it is true and accurate. There is no evidence that the difference was paid through some different means to the exporter.
- (11) I agree with the contention of the assessee.

ORDER

I order that Customs Value be fixed on the basis of CIF price of 10 US dollars per Kg. The assessment be finalised accordingly.

Sd/-

Assistant Commissioner

Q32. State the highlights of the Export Promotion Schemes under Customs.**Answer 32.**

The export promotion schemes are based on the following background :

- Basic concept is that goods and services are to be exported, taxes are not to be exported.
- As per WTO stipulations, export incentives cannot be given, but exported goods can be made tax free.

- Various scheme have been devised to enable exporters to obtain inputs without payment of excise and customs duty and input services without payment of service tax. If tax paid, rebate can be obtained.
- Goods can be exported without payment of excise duty. If excise duty is paid, refund can be obtained.

Broadly, the export incentives for manufacturers are —

- (a) Indigenous inputs without payment of excise duty or rebate if duty paid
- (b) No excise charged on final product or rebate if duty paid
- (c) Imported inputs without payment of customs duty, or rebate if duty paid
- (d) No export duty on export of final product
- (e) Bank finance on priority basis and at concessional rate of interest
- (f) Import of capital goods at concessional rate (under EPCG scheme)
- (g) Exemptions/relaxations from Income tax
- (h) Exemption from sales tax on final product (refund of CST paid on inputs in case of EOU. No CST for supply to SEZ and SEZ units)
- (i) Usance bills of exchange executed by an exporter in relation to export transaction are fully exempt from stamp duty – SO 804(E) dated 8-7-2004.

Q33. Write short notes on Duty Drawback

Answer 33.

- Duty drawback is rebate of excise duty and customs duty paid on inputs used in exported final product u/s 75 of Customs Act.
- All Industry drawback rate is fixed on industry average basis for various products. Incidence of service tax is also taken into account while fixing drawback rate.
- An individual exporter can get brand rate fixed for his product.
- Drawback rate is fixed by Commissioner of Central Excise.
- Duty drawback is available on re-export u/s 74 of Customs Act.

Q34. Discuss the different types of Drawback Rates

Duty drawback rates are of following types —

- (a) All Industry Rate
- (b) Brand Rate and
- (c) Special Brand Rate.

Answer 34.

- (a) **All Industry Drawback Rates** — All Industry Drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Govt. of India, Jeevan Deep, Parliament Street, New Delhi – 110 001. The rates are periodically revised – normally on 1st June every year. Data from industry is collected for this purpose.

Whenever specific rates are provided, drawback shall be payable only if amount is more than 1% of FOB value, except when the drawback claim per shipment exceeds Rs. 500. Revised rates have been announced vide Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier Notification No. 81/2006-Cus(NT) dated 13-7-2006].

The all industry drawback rates are given in two ways – (a) when Cenvat facility has been availed and (b) when Cenvat facility not availed. The difference between the two is central excise portion of duty drawback. If rate indicated in both is same, it means that it pertains to only customs portion and is available irrespective of whether exporter has availed Cenvat or not – Condition No 5 to Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier No. 81/2006-Cus(NT) dated 13-7-2006].

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006).

In case of some cases, value cap has been fixed. In such cases, maximum drawback allowable per unit of quantity has been specified (This is to avoid misuse by over-valuation of export goods).

- (b) **Brand Rate of duty drawback** — It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, brand rate is fixed under rule 6. The manufacturer has to submit application with all details to Commissioner, Central Excise. Such application must be made within 60 days of export. This period can be extended by Central Government by further 30 days. Further extension can be granted even upto one year in if delay was due to abnormal situations as explained in MF(DR) circular No. 82/98-Cus dated 29-10-1998.

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006).

- (c) **Special Brand Rate of duty drawback** — All Industry rate is fixed on average basis. Thus, a particular manufacturer or exporter may find that the actual excise/customs duty paid on inputs or input services is higher than All Industry Rate fixed for his product. In such case, he can apply under rule 7 of Drawback Rules for fixation of Special Brand Rate, within 30 days from export. The conditions of eligibility are (a) the All Industry Rate fixed should be less than 80% of the duties paid by him (b) rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than Rs. 500 (c) export value is not less than the value of imported material used in them – i.e. there should not be 'negative value addition'.

Q35. As per Central Sales Tax Act, 1956, define:

- (a) 'Appropriate State'
- (b) 'Business'
- (c) Dealer

Answer 35.

- (a) As per **Sec 2(a) - 'Appropriate State'** means:
- (1) in relation to a dealer who has one or more places of business situated in the same state, that state.

- (2) In relation to a dealer who has places of business situated in different states, every such state with respect to the place or places of business situated within its territory.

Significance of 'Appropriate State'.

- (i) Administration, levy and collection of tax have been delegated to Appropriate State (Sec 9).
- (ii) Registration should be made with the authorities of the Appropriate State.
- (iii) Monthly returns, appeals, reviews, references, refunds and compounding of penalties are to be dealt with by the Appropriate State.
- (iv) Appropriate state is equally significant in the application of:
 - Sec 8(2) (rate of tax on sales not covered by C Form);
 - Sec 8(1) and Sec 8(2)(c) (extension of tax concessions on intra state sales to inter-state sales) and
 - Sec 9(2A) (offences under General Sales Tax Acts are offences under CST Act too in the respective states).

(b) As per Sec 2(aa) - 'Business' includes:

- (i) Any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture,
 - ... whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and
 - ... whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern;
- (ii) Any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.

(c) Sec 2(b) - 'Dealer' means any person

- ... who carries on (whether regularly or otherwise), the business of
- ... buying, selling, supplying or distributing goods, directly or indirectly,
- ... for cash or for deferred payment, or for commission, remuneration or other valuable consideration.

Dealer includes the following :

- (a) A local authority, a body corporate, a company, any co-operative society or other society, club, firm, HUF or other association of persons which carries on such business.
- (b) A factor, broker, commission agent, del credere agent, or any other mercantile agent, by whatever name called, and whether of the same description as herein before mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not, and
- (c) An auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

Q36. 'Central Government can become a dealer, but the state government cannot-is the statement correct? Give reasons.

Answer 36.

- The statement is not correct. According to Explanation 2 under Sec 2(b), "a **Government** which, whether or not the course of business buys, sells, supplies or distributes goods.....shall..... be deemed to be a dealer for the purposes of CST Act'
- The word used is 'Government' and not Central Government.
- No distinction is sought to be made between Central Government and State Government.
- Hence every government, be it central or state, buying /selling goods will be deemed to be a dealer.

Q37. (a) Arun sells his land along with the standing crops and trees for Rs.20 lakhs. Sales tax officer wants to assess for sales tax the value of standing crops and trees. Comment.

(b) Are sale of bundles of old newspapers as waste papers exempt from CST?

Answer 37. (a)

- What is sold is land along with standing crops and trees.
- The sale does not pertain to the latter alone in which case they are uprooted and removed. Consequently, they become goods.
- In the instant case, the standing crops and trees are immovable.
- They are not goods and hence do not attract sales tax.

(b) As per section 2(d), goods do not include 'news paper'.

In **Sait Rikhaji Furtarnal Vs State of AP**, the Supreme Court held that when old newspapers are sold as newspapers, they are only in the character of newspapers and they are not goods.

However, when the newspapers are sold as waste papers, they are not newspapers and hence they are goods. Therefore, sale of bundles of old newspapers as waste papers is taxable. (**The Hindu vs. State of Tamil Nadu**)

Q38. (a) What are the essential ingredients of a sale?

(b) Is transfer of property in goods without consideration chargeable to CST?

(c) Is transfer by way of mortgage chargeable to CST?

Answer 38.

(a) The essential ingredients of a sale

- (i) There must be two parties to the contract of sale (i.e.) the buyer & the seller.
- (ii) ... There must be valid consent of both the above parties.
- (iii) ... There must be an actual transfer of property in goods (i.e. agreement to sell is not a sale)
- (iv) ... There must be a consideration in cash or in deferred payment or any other valuable consideration in money or money's worth.
- (v) ... Sale includes deemed sales.
- (vi) ... Sale does not include a mortgage or hypothecation of or a charge or pledge on goods.

- (b) Sale u/s 2(g) means transfer of property for cash or deferred payment or for any other valuable consideration. Where there is transfer of property in goods without consideration, it does not amount to sale within the meaning of the definition under the act and therefore CST is not attracted.
- (c) The definition of 'sale' u/s 2(g) specifically excluded mortgage, hypothecation of goods, charge or pledge on goods. Hence, CST cannot be charged when there is transfer by way or mortgage.

Q39. What are the inclusions in and exclusions from "Sale Price" as per Central Sales Tax Act, 1956?

Answer 39.

As per Sec 2(h) - 'Sale price' means the amount payable to a dealer as consideration for the sale of any goods, less, any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof, other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

Inclusions in Sale Price :

- **Central Sales Tax**-whether or not shown separately in invoice (then back calculations are made)
- **Excise Duty**- the excise duty payable is includible in 'sale price'. *Hindustan Sugar Mills vs. State of Rajasthan(1979)*; *Ramco Cement Distribution Co. (P) Ltd. V. State of Tamilnadu* Sales tax is also payable on excise duty whether or not shown separately in invoice and even if paid directly by purchaser. However, this is so only when liability to pay duty is on seller.-*McDowell and Co.Ltd v. CTO*.

Excise duty is a part of turnover, even in that case, the duty was payable by the purchaser, as primary liability to pay duty is of the manufacturer-*Mohan Breweries & Distilleries Ltd v. CTO(1997)*, *State of Kerala V.MRF(1997)*-the judgement was in case of 'cess' payable.

- **Packing material and packing charges**-sales tax is leviable on packing material as well as packing charges (i.e. labour charges for packing goods). Sales tax is leviable on packing charges, even if shown separately-CST v. Rai Bharat Das (1988); *Ramco Cement Distribution Co. (P) Ltd. V. State of Tamilnadu*; *Dalmia Cement (Bharat)Ltd. V. State of Tamilnadu(1991)*. *Cost of packing material is includible in sale price-HPCL v .State of Kerala(1993)*
- **Bonus discount or incentive bonus**- for additional sales affected by the distributor/dealer.
- **Insurance charges**-if the goods are insured by the seller.
- **Freight and delivery charges incidental to sale only are deductible**- if the goods are sold from depot, transport charges from factory to the depot cannot be allowed as deduction-*Dyer Meakin Breweries Ltd. V. State of Kerala(1970)*
- **Design charges**- in case of goods includible if charged separately in respect of goods manufactured as per design and sold to buyer, as it is a pre-sale expense and forms part of manufacturing cost-*American Refrigerator Co.Ltd.v.State of Tamilnadu(1994)*

- **Compulsory warranty charges**-includible if a manufacturer sales goods with service warranty on which customer has no option, the charges for warranty are includible as there is no sale without it-*State of AP V. Hyderabad Allwyn Ltd(1970)*
- **Weighment charges paid for goods**-includible in the sale price.
- **Subsidy/incentive paid to supplier** – these are not post sale expense, hence includible. *EID Parry V.ACCT(1997)*
- **Tax paid by buyer when liability is of seller.** However, if the liability to pay tax/cess/duty is in the buyer, the same cannot be considered for purpose of 'sale price'-*P. V. Beedies(P)Ltd v. State of Mysore (1963); G M S Prakash Rice Mills v. State of Punjab(1993)*. Market cess collected by dealer from buyer and paid to Government is not part of consideration for sale and hence is not taxable-*State of AP v. T. Siddaiah Naidu (1997)*
- **Any sum charged for anything done by the dealer-in respect of goods at the time of or before delivery of such goods.**

Exclusions from Sale Price:

The following items shall not be a part of sale price for the calculation of sales tax liability :

- **Freight / transport charges for delivery of goods**- CST is not payable on freight and transport charges. However, CST is payable on freight charges if (a) Freight Charges are not shown separately in invoice or (b) contract is for FOR destination.

Supreme Court envisaged three situations: (1) Price at the factory gate, i.e. ex-works price. Here tax is not payable on freight (2) Contract for sale is FOR destination (3) the price is FOR destination, but contract does not have all ingredients of FOR destination railway contract. *Hindustan Sugar Mills Ltd. V. State of Rajasthan(SC); Kurkunta and Seram Stones (P)Ltd. V. State of Karnataka; Black Diamond Beverages v. CTO, Hyderabad Asbestos Cement Products Ltd v. State of AP; CST v. Ballarpur Industries Ltd(1995)*.

- **Cost of installation if charged separately**- is not to be includible.
- **Cash discount** for making timely payments- is not includible.
- **Trade discounts**-is deduction from list price to wholesalers/dealers, cannot be considered for calculation of CST. *Dy. CST v. Advani Oerlikons (P) Ltd (SC); State of Tamilnadu V. Alkali Chemical Corporation (1994); Dy. CST v. Kerala Rubber and Allied Products (1993); Dy. CST v. Motor Industries Co (SC)*.
- **Insurance on transit if incurred at the request of buyer**-are not chargeable to CST.
- **Goods returned within 6 months of the date of sale**-Sec 8A (b) provides that if goods are returned by buyer within six months, its sale price will be deducted from 'aggregate sale price', if satisfactory evidence is produced before sales tax authority in respect of the same. *Dy. CST v. Motor Industries Co (SC); State of Maharashtra v. BASF (India) Ltd (SC)*.
- **Goods rejected**-in such case, the period of six months is not applicable, as in case of rejected goods, there is no 'complete sale' at all within the meaning of CST Act or Sale of Goods Act, as the purchasing party has not accepted the goods. Return of goods is a bilateral transaction brought about by consent of seller and purchaser, while rejection of goods is a

unilateral transaction, open only to purchaser. It means that sale has not taken place to attract tax. *Metal Alloy Co. (P) Ltd. V. CTO, Bhavanipur Charge Calcutta (1977)*; *State of Tamilnadu v. General Engineering Stores (1993)*

- **Government subsidy & other subsidy**-is excludible from the sale price for CST.
- **Deposits for returnable containers**-Deposits taken for returnable bottles or tin containers are not sales. Even if the customer does not return the container for long time and security deposit is transferred to profit and loss account that will convert the deposits as part of sale proceeds. There is no intention to sale the container. If the container is not returned the deposit is retained as liquidated damages for loss of bottle. *United Breweries Ltd. V. State of AP (SC)*; *State of Tamilnadu V McDowell (SC)*; *Kalyani Breweries v. State of West Bengal*.
- **Customs duty paid by Buyer**-when sale is by transfer of documents-*Gujarat Export Corporation Ltd. V. State of Maharashtra (1990)*
- **Taxes and fees statutorily recoverable from Buyer**-*Anand Swarup Mahesh Kumar v. CST (SC)*; *State of AP v. T Siddaiah Naidu*

Q40. (a) What do you mean by sale or purchase in the course of Interstate sale?

(b) State the essential ingredients of interstate sale.

Answer 40.

- (a) According to Section 3 of the Central Sales Tax Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase:
- (i) Occasions the movement of goods from one state to another; or
 - (ii) Is effected by a transfer of documents of title to goods during their movement from one state to another.

(b) The essential ingredients of interstate sale are as follows :

1. The transaction should be a complete sale.
2. There should be movement of goods from one state to another state by virtue of agreement to sale.
3. The completed sale must take place in a state different from the state in which movement of goods commences.
4. It is not necessary that completed sale precedes the movement of goods. Sale can be either before or after the movement of goods.
5. There must be physical movement of goods from one state to another state.
6. Where the movement of goods commences and terminates in the same state, it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other state.
7. The movement of goods shall commence when the goods are delivered to the carrier or other bailee for transmission and the movement of the goods shall end when the delivery is taken from such carrier or bailee. Thus, the transfer of documents to the title of the goods (Lorry receipt/ Railway Receipt, Bill of Lading, Airway Bill) shall be made during the movement of the goods from one state to another.

Q41. (a) Is sale by VPP liable to Central Sales Tax?

(b) Discuss Penultimate sale for export of goods

Answer 41. (a)

- In order to be an interstate sale, there must be movement of goods in connection with the sale as stipulated in Section 3.
- In a sale by VPP, both the requirements of Section 3 are satisfied. In a sale by VPP, there is an order by the buyer on the seller.
- The seller dispatches the goods by post parcel and the goods are to be delivered by postal authorities to the buyer on payment of price.
- The sale takes place in the state where the parcel is received and its value is paid to the post office.

(b) Penultimate sale for export of goods refers to:

1. Penultimate sale is the last sale immediately prior to the original export.
2. According to Section 5(3) of the CST Act, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export if the following conditions are satisfied :
 - (a) There must have been pre-existing agreement or order to sell the specific goods to a foreign buyer.
 - (b) The last purchase as referred above, must have taken place after that agreement with the foreign buyer was entered into.
 - (c) The last purchase must have been made for the purpose of complying with the pre-existing agreement or order.
 - (d) The same goods, which are purchased in the penultimate sale, must be exported.
 - (e) The dealer should obtain proof of export from the original exporter.
 - (f) The original exporter should give Form H to the dealer and only on that basis the dealer can claim exemption of deemed export.

Q42. Discuss the exemption in respect of Subsequent Sale:

Answer 42.

Exemptions in respect of subsequent sales:

1. According to Section 6(2) of the Central Sales tax Act, 1956, any sale effected during the movement of goods from one state to another by transfer of document of title is known as subsequent sale.
2. Such subsequent sale shall be exempted from CST when the following conditions are fulfilled:
 - (a) The first sale should be an interstate sale.
 - (b) A sale subsequent to the sale mentioned here in above should take place.
 - (c) The subsequent sale should be during the course of movement of goods from one state to another.

- (d) Such subsequent sale shall be effected by a transfer of documents of title to such goods.
- (e) The subsequent sale shall be made to the government or a registered dealer other than the government.
- (f) Where the subsequent sale is made to a registered dealer other than the government, the goods are of the description referred to in Section 8(3).
- (g) The dealer effecting the subsequent sale furnishes the prescribed certificate or declaration to the appropriate authority.
- (h) The entire transaction of sale shall be supported by the following supporting documents:

Q43. Discuss the Registration of Dealer.

Answer 43.

(A) Compulsory Registration : [Section 7(1)]

Section 7(1) provides that every dealer liable to pay tax under the CST Act shall, within such time as may be prescribed for the purpose, make an application for registration to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

(B) Voluntary Registration: [Section 7(2)]

1. Section 7(2) provides that any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under the CST Act, apply for registration to the authority referred to in Section 7(1), and every such application shall contain such particulars as may be prescribed.
2. A dealer shall be deemed to be liable to pay tax under the sales tax law of the appropriate State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof.

(C) Issue of Certificate of Registration : [Section 7(2A) & 7(3)]

1. Section 7(2A) provides that where it appears necessary to the authority to whom an application is made for registration, he may for the proper realisation of the tax payable under the CST Act or for the proper custody and use of the forms impose as a condition for the issue of a certificate of registration, by an order in writing and for reasons to be recorded therein, a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order specified security for all or any of the aforesaid purposes.
2. Section 7(3) provides that if the authority is satisfied that the application is in conformity with the provisions of the CST Act and the rules made thereunder and the condition, if any, imposed, has been complied with, he shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of Section 8(1).

Q44. Discuss the liability of liquidator of company in liquidation as per the Central Sales Tax Act, 1956.

Answer 44.

The liability of liquidator of a company in liquidation may be discussed as follows:

1. Notice of Appointment of Liquidator/Receiver : Every person-
 - (a) Who is the liquidator of any company, which is being wound up, whether under the orders of a Court or otherwise; or
 - (b) Who has been appointed the receiver of any assets of a company, shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the appropriate authority.
2. Notification by Appropriate Authority: On receipt of notice from the Liquidator
 - (a) he appropriate authority should notify to the liquidator the amount, which in the opinion of the appropriate authority would be sufficient to provide for any tax which is then or is likely thereafter to become payable by the company.
 - (b) The above intimation should be made within 3 months of the receipt of notice of appointment.
 - (c) The appropriate authority is empowered to make such inquiry or call for such information, as it may deem fit, for arriving at the tax liability.
 - (d) The Company's liability under the CST Act, upto the date of winding up, shall be notified to the liquidator, in writing.
3. Duties of Liquidator : The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority. On being so notified, he shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands.
4. However, the Liquidator can part with such assets or properties of the Company for the following purposes :
 - (a) Compliance with any order of a Court
 - (b) Payment of the tax payable by the Company under the CST Act
 - (c) Payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation
 - (d) Meeting reasonable costs and expenses of the winding up.
5. Personal Liability of Liquidator: The liquidator shall be personally liable for the payment of the tax, which the company would be liable to pay, if he: (a) fails to give the notice, as provided or (b) fails to set aside the amount as required by, or (c) parts with any of the assets of the company or the properties in his hands in contravention of the provisions.
6. Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

7. Effect of these Provisions : The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

Q45. Discuss the Liability of Directors of Private Company in liquidation as per the Central Sales Tax Act, 1956.

Answer 45.

Directors of a private company are personally jointly & severally) liable for tax due under the CST Act if the following conditions are fulfilled :

- (a) The private company is wound up after the commencement of the CST Act.
- (b) Any tax assessed on the Company under the CST Act for any period, whether before or in the course of or after its liquidation, cannot be recovered.
- (c) The person was a director of the private company at anytime during the period for which the tax is due. 2. The Director shall not be jointly and severally liable for the payment of such tax if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Q46. (a) What is Value Added Tax?

(b) What are the methods, generally, for the levy and/or collection of VAT?

Answer 46.

- (a) VAT is an indirect tax on consumption. Generally, it is a tax on the value of every transfer (or change in hands) of goods from the original producer to the ultimate consumer. It is a tax on the value added by each transferor in the chain. The value addition is the difference (not just the profit) in the value of goods.
- (b) **There are two methods :**
 - (i) **Invoice method:** The tax is calculated and separately charged on each sale and accordingly shown in the invoices. The difference between the tax payable on sale and the tax paid on purchase (as per the invoice) is VAT.
 - (ii) **Subtraction Method:** The tax is calculated on the aggregate value of sales and purchases by applying the rate of tax as applicable to the goods. The difference of tax on sale value and purchase value is VAT.

Q47. (a) What is sales tax or output tax?

(b) What is purchase tax?

(c) What is composition of tax?

Answer 47.

- (a) Tax is payable on sale of goods:

It covers :

- Transfer of property in goods, in terms of Sale of Goods Act(normal sale)
- Works Contract

- Lease
 - Hire-purchase, instalment, etc.
- (b) Purchase tax is the tax payable by a registered dealer on certain purchases, from unregistered dealers or persons not liable to tax or in circumstances where no tax is payable.
- (c) Composition of tax implies payment of an amount in lieu of tax or a lump sum payment of tax. This is an optional scheme for certain specified dealers. The scheme would be as may be notified and would be subject to such conditions and restrictions as may be prescribed.

Q48. (a) Can a works contractor opt for composition in respect of selected works contract? Is it essential to opt for composition scheme in respect of all the works contracts?

(b) What is Works Contract Tax?

(c) What is Lease Tax?

Answer 48.

- (a) Subject to notifications and conditions, a dealer may opt to pay lump sum tax in respect of:
- The entire turnover of sales effected by way of works contract;
 - Any portion of the turnover corresponding to individual works contract
- (b) Works Contract Tax is a tax on a deemed sale, namely, transfer of property in goods involved in execution of a Works Contract. In case of works contract, the property in goods is transferred by way of accretion or accession. Accordingly, as soon as the goods are used, there is a transfer and accordingly that is the point of levy.
- (c) Lease tax is a tax on transfer of right to use goods. Under VAT laws, the transfer of right to use the goods, which is a deemed sale, may be treated at par with the sale.

Q49. (a) What is input tax credit?

(b) What is taxable turnover and how is it computed?

Answer 49.

- (a) Input tax credit or set-off is the allowance of input tax against the tax payable on sales and purchases.

The credit or set off would be subject to:

- The permissible circumstances; and
- The restrictions and conditions, as may be laid down.

- (b) The turnover liable to tax, i.e. total turnover as reduced by the following:

- Specified adjustments, like, goods returned, discounts, exempt items, inter-state sales; imports and exports, others(permissible adjustments)
- Permissible adjustments: as per generally accepted principles and as may be laid down in the rules, etc.

Q50. (a) What is Reverse Tax Credit?

(b) What is the treatment given to input tax credit in excess of output tax plus purchase tax?

(c) Would input tax credit be available on capital goods?

Answer 50.

(a) If goods purchased, intended for specified use, in respect of which is availed, are subsequently used, fully or partly, for non specified purpose, the input tax credit so availed shall be reduced from the tax credit for the period during which the said utilization has taken place.

If part of the goods purchased is utilized otherwise, the amount of reverse tax credit shall be proportionately calculated.

(b) The excess input tax credit shall be dealt with as follows:

- It may be adjusted against the tax liability, if any, under CST Act at the option of the dealer; and/or
- Any amount of credit remaining after such adjustment shall be carried forward to the next tax period; and/or
- It shall be adjusted against outstanding tax, penalty or interest, if any; and/or
- It shall be refunded, as per applicable provisions.

(c) Input tax credit on capital goods shall be allowed.

- Only on capital goods used directly in the manufacture of taxable goods for sale; or
- Capital goods (specified or otherwise) used for carrying on business.

In case of tax paid on capital goods purchased from outside the State, no input tax credit would be available.