

VALUATION OF EXCISABLE GOODS

3.1 BASIS OF COMPUTING DUTY PAYABLE

As a first step, an assessee has to establish whether the goods manufactured by him are excisable. After the excisability is decided, the goods have to be correctly classified. The next step is to value the goods so as to compute the duty payable on the excisable goods. The duty is payable on the basis of any of the following:

- (a) Specific duty
- (b) Duty based on value
 - (i) Duty based on the Tariff Value (Section 3(2) of the Central Excise Act, 1944)
 - (ii) Duty based on the value arrived at on the basis of valuation under section 4
 - (iii) Duty based on Maximum Retail Price [MRP] (Section 4A of the Central Excise Act, 1944)
- (c) Compounded Levy scheme (Rule 15 of the Central Excise Rules, 2002).
- (d) Duty based on capacity of production (Section 3A of the Central Excise Act, 1944)

3.1.1 Specific duty: In the case of some goods, duty is payable on the basis of certain unit, length, weight, volume, etc. For instance, duty payable on cigarettes is on the basis of length. However, this method of levying duty demands frequent revisions in order to increase revenue since while the prices may be increasing, the duty would remain the same quantum when based on length. Since specific duties do not keep pace with inflation, more and more tariff entries are designed based on advalorem duty structure.

Presently, specific rates have been specified for:

- (i) cigarettes -on the basis of length
- (ii) matches- per 100 boxes or packs
- (iii) sugar -on the basis of quintal
- (iv) marble slabs and tiles- on the basis of square metre
- (v) colour TV (only when MRP is not marked on the package or it is not the sale consideration) -on the basis of screen size in cm

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- (vi) cement clinkers –on the basis of per tonne
- (vii) molasses –on the basis of per ton

3.1.2 Duty based on value (Ad valorem duty): In the case of duties charged on the basis of value, such value may be charged on either of the following basis :

- (a) Duty as a percentage of Tariff value fixed by the Central Government u/s 3(2) of the Central Excise Act, 1944 -

The Central Government is empowered to notify the values of goods which will be chargeable to *ad valorem* duty as per Central Excise Tariff Act, 1975. In such a case, the task is easy since the value is already fixed. For example, Central Government has fixed tariff value for pan masala and readymade garments. The Central Government has also got the power to alter the tariff value once fixed.

The Central Government may fix different tariff values for different classes or descriptions of the same excisable goods. The Central Government can also fix different tariff values for same class or description of the goods but produced or manufactured by different classes of producers or manufacturers or sold to different classes of buyers. Such tariff values may be fixed on the basis of wholesale price or average price of various manufacturers as the Government may consider appropriate.

- (b) Duty as percentage of Assessable Value determined in accordance with section 4 of the Central Excise Act, 1944 (Ad valorem duty).

Section 4 deals with the valuation of goods which are chargeable to duty on the basis of *ad valorem*. Prior to 1st July 2000 the valuation under this section was based on the principle of 'normal price' which was based on the prices at which manufacturer sold the goods. Since 1st July 2000, the new concept of transaction value has been brought in to the central excise law as a precursor to introduction of full fledged VAT in the country.

- (c) Duty may also be fixed on the basis of maximum retail price after giving permissible deductions. This has been done under section 4A on many mass consumption products where the retail price and wholesale price of goods are at wide variance and the Government wants to raise revenues knowing that the manufacturer has shifted much of the overheads away from the manufacturing location.

The valuation under section 4 and also section 4A (MRP valuation) are discussed in detail in the coming paragraphs.

3.1.3 Compounded levy scheme [Rule 15 of the Central Excise Rules, 2002]: Rule 15(1) empowers the Central Government to specify, by notification, the goods in respect of which an assessee shall have the option to pay the duty of excise on the basis of specified factors relevant to production of such goods (size of equipment employed, number and the types of machines used for manufacture etc.) at the specified rates. The

prescribed duty has to be paid by the manufacturer for the specified period. The advantage of this scheme is that it frees the manufacturer from observing day to day central excise formalities and maintenance of detailed accounts after making the lump sum periodic payment. Thus, small manufacturers generally benefit from this scheme.

The Central Government has been empowered vide sub-rule (2) of rule 15 to specify the procedure for making an application for availing of the special procedure for payment of duty, the abatement, if any, that may be allowed on account of closure of a factory during any period, and any other matter incidental thereto.

The Central Government has notified stainless steel pattas/patties and aluminium circles for the purpose of compounded levy scheme. These articles are not eligible for SSI exemption.

3.1.4 Duty based on capacity of production in respect of notified goods [Section 3A]

- (1) The Central Government in order to safeguard the interest of the revenue may notify goods on which excise duty shall be levied and collected in accordance with the provisions of this section. The Government may notify the goods having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant. Presently, the *Central Government has notified pan masala [falling under tariff item 2106 90 20 of the First Schedule to the Central Excise Tariff Act, 1985 (except the pan masala containing not more than 15% betel nut)] and pan masala containing tobacco, commonly known as gutkha (falling under tariff item 2403 99 90 of the said Tariff Act) manufactured with the aid of packing machine and packed in pouches, for the purpose of section 3A.*
- (2) Where the goods are so notified, the Central Government may, by rules,—
 - (a) provide the manner for determination of the annual capacity of production of the factory by an officer not below the rank of Assistant Commissioner of Central Excise. Such annual capacity shall be deemed to be the annual production of such goods by such factory; or
 - (b) (i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by the use of a unit of such factor; and
 - (ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:

However, where a factory producing notified goods is in operation during a part

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of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Further, in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re-determined on a proportionate basis having regard to such alteration or modification.

- (3) The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed:

However, where a factory producing notified goods did not produce the notified goods during any continuous period of 15 days or more, the duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

- (4) The provisions of this section shall not apply to goods produced or manufactured, by a 100% export oriented undertaking and brought to any other place in India.

It has been clarified that for the purposes of section 3 of the Customs Tariff Act, 1975, the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985, read with any notification for the time being in force.

Also, the expression, 'hundred percent export-oriented undertaking' shall have the meaning assigned to it in section 3.

3.1.5 The scheme of *ad valorem* valuation in general can be summarised in the form of the chart given on page 3.5.

3.2 VALUATION UNDER SECTION 4 (AD VALOREM)

With the intention of making the valuation mechanism simple, from 1st July 2000 valuation mechanism based on "normal price" was replaced by a user friendly and commercially acceptable new mechanism based on "transaction value". Valuation provisions are contained in section 4.

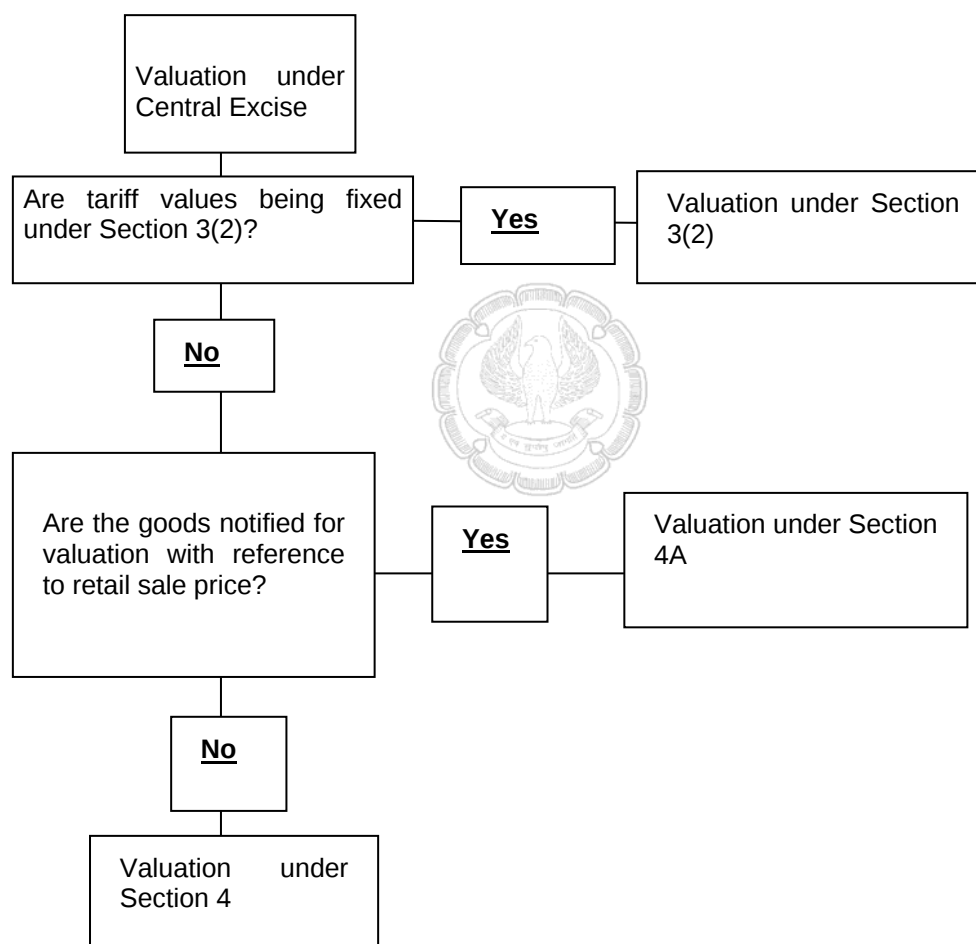
Section 4 reads as under:

- (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall –
- (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation – For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

Chart showing the scheme of *ad valorem* valuation under Central Excise



[Refer to page 3.4 (para 3.1.5)]

- (2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

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- (3) For the purpose of this section
- (a) “assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;
- (b) persons shall be deemed to be “related” if
- (i) they are inter-connected undertakings
 - (ii) they are relatives
 - (iii) amongst them the buyer is a relative and a distributor of the assessee or a sub distributor of such distributor
 - (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

Explanation : In this clause –

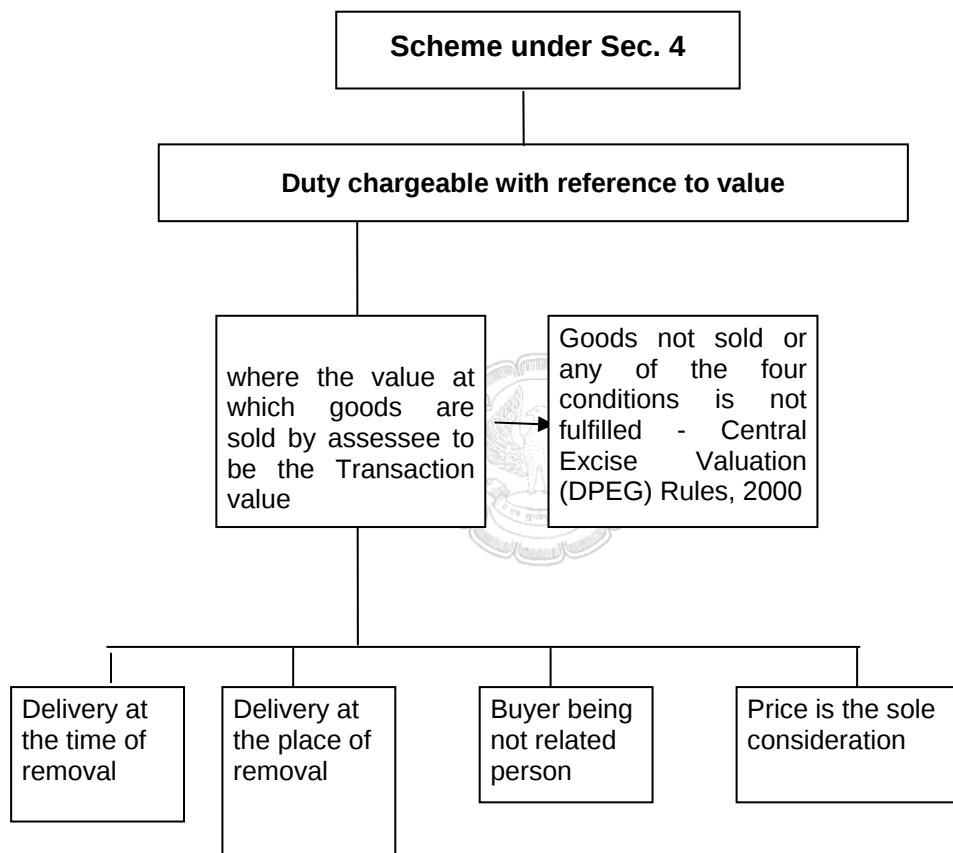
- (i) “inter-connected undertakings” shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969; and
 - (ii) “relative” shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956;
- (c) “place of removal” means –
- (i) a factory or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty.
 - (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 the excisable goods are to be sold after their clearance from the factory.
- (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) “transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

Section 3(1) of the Act is the charging section, and the goods are chargeable with rate of

duty as specified in the Central Excise Tariff Act, 1975. The rates specified in this Tariff for most of the goods are *ad valorem* and hence the valuation of the goods becomes most important.

The scheme of valuation under section 4 can be put in the form of chart provided below.

Scheme of Valuation under section 4



3.3 RELATED PERSONS

Section 4(3) (b) states that persons shall be deemed to be related if :

- (a) they are inter-connected undertakings;
- (b) they are relatives;
- (c) amongst them the buyer is a relative and distributor of the assessee or a sub-distributor of such distributor; or

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- (d) they are so associated that they have interest directly or indirectly in the business of each other.

Inter-connected undertakings are defined to have the same meaning as in the MRTP Act and relative to have the same meaning as the Companies Act, 1956.

3.3.1 "Inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manners, namely:-

- (i) if one owns or controls the other,
- (ii) where the undertakings are owned by firm, if such firms have one or more common partners,
- (iii) where the undertakings are owned by bodies corporate,-
 - (a) if one body corporate manages the other body corporate, or
 - (b) if one body corporate is a subsidiary of the other body corporate, or
 - (c) if the bodies corporate are under the same management, or
 - (d) if one body corporate exercises control over the other body corporate in any other manner;
- (iv) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm,-
 - (a) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate, or
 - (b) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate.
- (v) if one is owned by a body corporate and the other is owned by firm having bodies corporate as its partners, if such bodies corporate are under the same management,
- (vi) if the undertakings are owned or controlled by the same person or (by the same group),
- (vii) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more foregoing sub-clauses.

Explanation I - For the purpose of this Act, two bodies corporate shall be deemed to be under the same management,-

- (i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(iii) if one such body corporate holds not less than one fourth of the equity shares in the other or controls the composition of not less than one fourth of the total membership of the Board of Directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives of such directors or the employees of the first mentioned body corporate) one-fourth of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or

(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II - If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of or controlled by, the group shall be deemed to be under the same management.

Explanation III - If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth of equity share in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV - In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

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Illustration

Undertaking N is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

Therefore we can understand that interconnected undertakings under MRTP Act is very wide enough to cover many types of connections including the holding and subsidiary company. Under Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the applicability of the definition of inter-connected undertakings has been considerably restricted to cover the cases listed in (b), (c) and (d) of the above paragraph or where the companies are holding and subsidiary companies.

3.3.2 Relative : Coming now to the definition of “relative”, one has to read sections 2(41), 6 and schedule I-A of the Companies Act, 1956 together. Section 2(41) of Companies Act, 1956 defines “relative” to mean persons related as per section 6 and no other. Section 6 of the said Act, states that the following are relatives :-

- (a) members of a HUF;
- (b) husband and wife;
- (c) persons related to one another in the manner indicated in Schedule I-A. The Schedule is a detailed one and enumerates 22 different relationships. Thus, all of the above categories will be covered within the definition of relatives and transactions between an assessee and such relatives will be covered within the ambit of section 4(4) (c) of the Act.

3.3.3 Distributor : Section 4(4)(c) governing related person incorporates the word ‘distributor’. The phrase ‘relative and a distributor of the assessee’ as occurring in the section apparently implies that even a distributor should be a related person. In its landmark decision in the *Bombay Tyres International’s* case, the Supreme Court has given a narrow and interesting interpretation of this expression. The Court held that the words “a relative and distributor of an assessee”, do not refer to any distributor but they are limited only to a distributor who is also a relative of the assessee, within the meaning of the Companies Act, 1956.

So analyzing the definition of relative read with the decision given by Supreme Court in Bombay Tyres case, if a company or a firm is appointed as a distributor, it can never be related person since an impersonal body cannot be treated as a relative under section 4(4)(c).

The words “relative & a distributor of the assessee” do not refer to any distributor but the distributor who is relative of the assessee within the meaning of the Companies Act, 1956 - *UOI v. Bombay Tyre International Ltd.* 1983 (14) E.L.T. 1986 (S.C.)

Price charged by the manufacturer to the distributor is to be assessable value, when the dealings are on principal to principal basis - *UOI v. Mahindra & Mahindra Ltd.* 1989 (43) E.L.T. 611 (Bom.)

3.3.4 Mutuality of business interest : In *U.O.I Vs. Atic Industries Ltd.* 1984 (17) E.L.T. 323, The Supreme Court has held that in order to attract the first part of the definition, the assessee and the person alleged to be a related person must have interest, direct or indirect, in the business of each other. Each of them must have direct or indirect interest in the business of the other. The quality and degree of interest which each has in the business of the other may be different, the interest of the one in the business of the other may be direct, while interest of the latter in the business of the former may be indirect. That would not make any difference so long as each has got some interest, direct or indirect, in the business of the other .

In *U.O.I Vs. Hind Lamp* 1989 (43)ELT 161, the Supreme Court reiterated the principle that it is not enough that the assessee has an interest, direct or indirect, in the business of the assessee. Both must have an interest in the business of each other. The degree and quality of their respective interests in each other may be different. In *CCE Vs. Vikram Engineering Co.* 1989 (39) ELT 143, the Tribunal followed the decision in Atic's case by holding that the degree of mutual interest was not material in order to attract the definition but the existence of some interest was all that was required.

Corporate concern and a partnership concern were not related persons, and where the price charged from a person was the same as charged from others, then such a person could not be construed as a favored buyer. – *Weikfield Products Co. Pvt. Ltd. Vs. CCE* 1990 (29) ECR 321

Sales of the entire quantity of excisable products through a single agency, which also undertook advertising of such products would not, per se make the manufacturer and the agency as related persons since the mutuality of business interest was not proved – *Pepsi Foods (P) Ltd. Vs. CCE* 1993(44) ECR 599.

The mere fact of there being a common registered office and common usage of telephone and godown was not sufficient to prove common ownership between two units so as to make them related persons. See *Cheryl Laboratories Vs. CCE* 1994 (50) ECR 194.

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3.3.5 Summary of various decisions on this issue is given in the following table:

Decision	Citation
The definition of 'related person' requires mutuality of interest in the business to be proved.	<i>UOI v. Atic Industries Ltd.</i> 1984 (17) E.L.T. 323(S.C.)
The mutuality of business interest between the manufacturer and his buyer can be shown only if one has special interest in the promotion or development of the business of another.	<i>Cibatul Ltd. v. UOI</i> 1979 (4) E.L.T. (J407) (Guj.)
If one of the directors of the buyer company is also chairman of the manufacturing company, it can not be said that they have mutual interest in the business.	<i>Jay Engg. Works Ltd. v. UOI</i> 1981 (8) E.L.T. 284 (Del.)
A limited company can not have indirect interests in the business carried by one of its shareholders.	<i>Collector v. T.I. Miller Ltd.</i> 1988 (35) E.L.T. 8 (S.C.)
The words "relative & a distributor of the assessee" do not refer to any distributor but the distributor who is relative of the assessee within the meaning of the Companies Act, 1956.	<i>UOI v. Bombay Tyre International Ltd.</i> 1983 (14) E.L.T. 1986 (S.C.)
Goods sold to dealers under agreement. Dealers to have own show room, repair shop etc. Dealer not a related person.	<i>Moped India Ltd v. AC</i> 1986 (23) E.L.T. 8 (S.C.)
Goods sold to dealers having no funds of their own or business premises. Dealers merely a sham and to be ignored.	<i>JK Cotton Spg. & Weaving Mills Co. Ltd v. CCE</i> 1997 (91) E.L.T. 534 (SC).
Once existence of mutual interest is established, the extent of such interest is not material.	<i>UOI v. Atic Inds. Ltd.</i> 1984 (17) E.L.T. 323 (S.C.)

Merely because, goods are manufactured with customer's brand name and entire production sold to customer, does not mean that sales are to related person.	<i>Ceam Electronics P. Ltd. v. UOI</i> 1991 (51) E.L.T. 309 (Bom.)
Regional sale offices/godowns are not related persons.	<i>Indo-National Ltd. v. UOI</i> 1979 (4) E.L.T. (J334) (A. P.)
After sales service by dealers during warranty period do not make such dealers related persons.	<i>S.M. Chemicals & Electronics v. R. Parthasarathi</i> 1980 (6) E.L.T. 197 (Bom.)
Price charged by the manufacturer to the distributor, to be assessable value, when the dealings are on principal to principal basis.	<i>UOI v. Mahindra & Mahindra Ltd.</i> 1989 (43) E.L.T. 611 (Bom.)
"Main dealer" can not be treated as distributor or related person, when goods are sold through main dealer as well as independent purchasers.	<i>GOI v. Ashok Leyland Ltd.</i> 1983 (14) E.L.T. 2168 (Mad.)
Sale of entire production to one buyer does not make Buyer & Seller related persons.	<i>Ceam Electronics P. Ltd. v. UOI</i> 1991 (51) E.L.T. 309 (Bom.)
Customers can not be treated as related, if the sales are on principal to principal basis to a shareholding company and associate companies of foreign shareholding companies.	<i>UOI v. Hind Lamps Ltd.</i> 1989 (43) E.L.T. 161 (S.C.)
Merely because goods are manufactured with customer's brand name and entire production sold to him, it can not be treated as a sale to a related person.	<i>UOI v. Play World Electronics P. Ltd.</i> 1989 (41) E.L.T. 368 (S.C.)
Brand name value can not be added to the value of goods manufactured by manufacturer for brand name owner unless it is proved that they are related persons.	<i>UOI v. Purolator India Ltd.</i> 1989 (24) ECR 216 (S.C.)

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Whole sale price at which goods are sold to the buyer to be the assessable value, when goods are manufactured under agreement with buyer's trade mark.	<i>UOI v. Cibatul Ltd.</i> 1985 (22) E.L.T. 302 (S.C.)
Buyer to be held as related person when manufacturer was to accept back unsold stock etc. and the buyer's price held to be assessable value.	<i>Snow White Indl. Corpn. v. Collector</i> 1990 (46) E.L.T. 3 (S.C.)
Partner of one of the dealers related to director of the manufacturing company to whom only 34% - 40% of production is sold, can not be treated as related person and the price at which goods are sold to him is assessable value.	<i>UOI v. Kantilal Chunilal</i> 1986 (26) E.L.T. 289 (S.C.)
Dealers can not be treated as relative of the manufacturer or even otherwise, when the dealer is required to deposit specific sum for each moped, getting fixed commission and all payments are through bank.	<i>Mopeds India Ltd. v. Asst. Collector</i> 1986 (23) E.L.T. 8 (S.C.)
When 90% of the goods are sold to the wholesaler, and only 10% to the related person, the assessable value will be price charged to wholesale dealers.	<i>Kirloskar Cummins Ltd. v. UOI</i> 1991(51) E.L.T. 325(Bom.)
Department can lift the corporate veil even if the assessee concerned are limited companies.	<i>Calcutta Chromotype Ltd v. CCE</i> 1998 (99) E.L.T. 202 (SC)
Holding and subsidiary companies not related persons unless tests of mutuality and extra-commercial consideration shown. Note : Not applicable after 1-7-2000.	<i>Dawn Apparels v. UOI</i> 1989 (43) E.L.T. 401 (Bom) and <i>Ralliwolf Ltd v. UOI</i> 1992 (59) E.L.T. 220 (Bom.)

3.4 PLACE OF REMOVAL

Section 4(3)(c) defines 'the place of removal' to mean

- (a) a factory or any other place or premises of production or manufacture of the excisable goods;

- (b) 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.
- (c) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory.

3.5 PRICE IS THE SOLE CONSIDERATION

The price should be the '**sole consideration for sale**'. Any other consideration in cash or in kind which forms part of the transaction has to be converted in monetary terms and added back to the price. Each such transaction has to be at arm's length and on principal to principal basis. If the transaction is not on principal to principal basis, the charges paid are to be added to the transaction value of the goods.

When the sale is at arm's length, sale price of subsequent seller is not relevant and does not matter that dealings were confined only to two buyers - *Atic Inds. Ltd. v. H.H. Dave, Asst. Collector* 1978 (2) E.L.T. (J444) (S.C)

Relationship between manufacturer & sole distributor though a special one is not a proof by itself to show that price is favourable price - *UOI v. Hind Lamps Ltd.* 1981 (8) E.L.T. 11 (Del.)

Price declared by the assessee to be acceptable even though it is less than cost of raw material, manufacturing cost & manufacturing profit; when the transactions are at arm's length - *Guru Nanak Refrigeration Corpn v. CCE* 1996 (81) E.L.T. 290 (T)

3.6 INGREDIENTS OF TRANSACTION VALUE

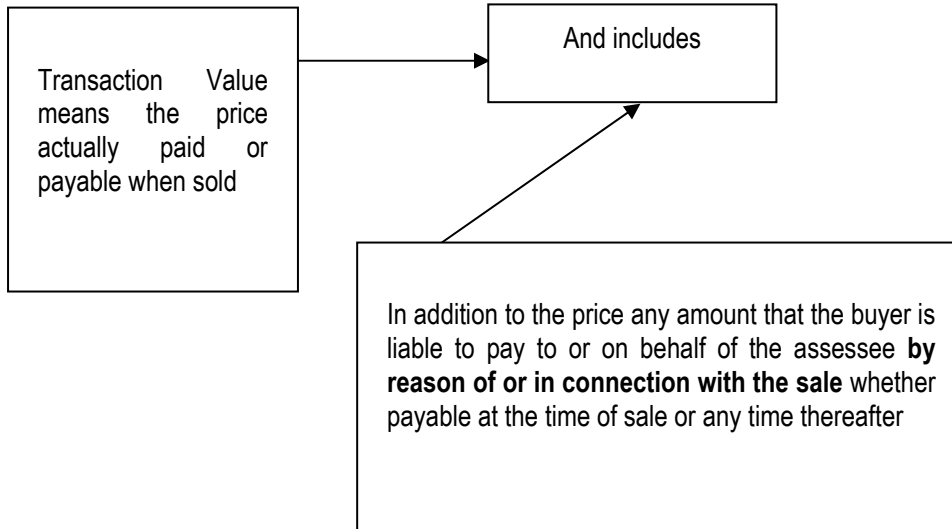
It would be important to see that the definition of transaction value is an all inclusive definition which seems to extend its scope beyond the normal boundaries of central excise levy.

While it is true that such a definition is necessary when we have a full fledged VAT system, it is rather premature to include so many items within the parameters of excise, more so when the assesses are paying sales tax and service tax.

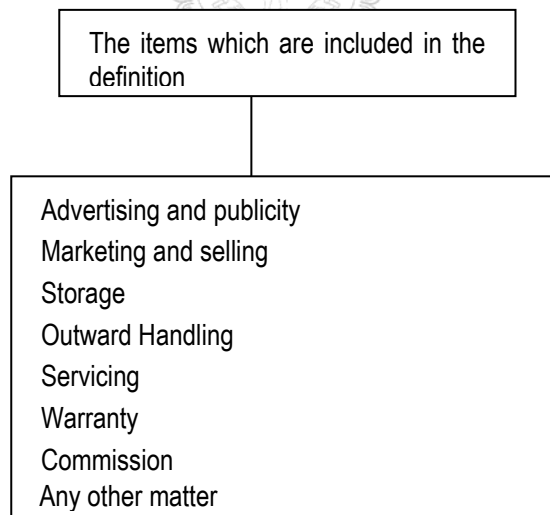
It is important to note that the Supreme Court has held in the context of customs law in *Associated Cement Companies Ltd. v. CC* 2000 (121) ELT 21 that the concept of transaction value is quite different from the concept of price and such value can include many items which may classically have been understood to be part of the sale price.

Let us analyse the definition of transaction value through the use of flow charts.

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The definition also gives an illustration of what amounts are included as additions to price which the buyer may be liable to pay to or on behalf of the assessee. However, the definition specifically states as “including but not limited to” which clearly means that the items included in the definition are only illustrative and more may be includible.



It is clear that the above are includible only if the buyer is liable to pay for or on behalf of the assessee.

However, the amounts like excise duty, sales tax and other taxes are not includible if actually paid or payable.

It would be worthwhile to examine the issue of includibility or otherwise of certain items.

Items of Cost	Includibility or otherwise
1. Advertising and publicity	Yes
2. Warranty	Yes
3. Marketing and selling	Yes
4. Storage and outward handling	Yes
5. Servicing	Yes
6. Commission	Yes
7. Discounts (Trade and Cash)	No. Since the same is already factored into the definition of transaction value. See also <i>CBE Circular No. 354/81/2000-TRU, dated 30-6-2000</i> itself clarifies that reference to discounts in the definition of transaction value is not relevant since duty is to be charged on net price after allowing discounts. However, the Circular states that the discount should be actually passed on to the buyers.
8. Installation and Commissioning	No. Since the activity would not be related to sale of goods and can be done independently. Ratio of decision in <i>Thermax Ltd v. CCE</i> 1998 (99) E.L.T. 481 would apply.
9. Packing	Yes. However, in our opinion, certain packing like tankers sent to deliver goods may not be includible. The distinction between primary/secondary packing and safe packing will no more be relevant.
10. Taxes and duties	No. Specifically excluded by section.
11. Interest on deposits, advances.	No.
12. Accessories	No. See decision of Supreme Court in <i>Shriram Bearing Ltd v. CCE</i> - 1997 (91) E.L.T. 255.
13. Dharmada	Yes. [CBE&C Circular No. 763/79/2003 C.X. dated 21.11.2003]

However, the above is not conclusive in all cases and would be subject to interpretation of the Courts in future time to come.

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3.7 SITUATIONS WHERE TRANSACTION VALUE DOES NOT APPLY

As given in the chart for the valuation scheme under section 4 there are four conditions which have to be fulfilled.

- (a) There should be sale of goods
- (b) The goods sold should be for delivery at the time and place of removal
- (c) The assessee and the buyer of the goods are not to be related persons
- (d) The price should be the sole consideration for the sale.

In those cases where any of the above said requirements are missing, the assessable value shall be determined on the basis of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 notified under section 4(1)(b) by *Notification No. 45/2000-CE (NT), dated 30.6.2000.*

3.8 CENTRAL EXCISE VALUATION (DETERMINATION OF PRICE OF EXCISABLE GOODS) RULES, 2000

These rules were notified vide *Notification No. 45/2000-C.E. (N.T.) dated 30-6-2000.* They came into effect from 01.07.2000. The text of the rules is given for the reference.

RULE - 1. (1) These rules may be called the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

(2) They shall come into force on and from the 1st day of July, 2000.

CHAPTER I

PRELIMINARY

RULE - 2. In these rules, unless the context otherwise requires,-

- (a) "Act" means the Central Excise Act, 1944;
- (b) "normal transaction" means the transaction value at which the greatest aggregate quantity of goods are sold;
- (c) "value" means the value referred to in Section 4 of the Act;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

CHAPTER II

DETERMINATION OF VALUE

RULE - 3. The value of any excisable goods shall, for the purposes of clause (b) of sub-section (1) of section 4 of the Act, be determined in accordance with these rules.

RULE - 4. The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable to the proper officer.

RULE - 5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstance in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods.

Explanation 1 –“cost of transportation” includes-

- (i) the actual cost of transportation; and
- (ii) in case where freight is averaged the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2- For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of excisable goods.

RULE - 6. Where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

Explanation1 - For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly, namely:-

- (i) value of materials, components, parts and similar items relatable to such goods;
- (ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;
- (iii) value of material consumed, including packaging materials, in the production of such goods;

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- (iv) value or engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.

Explanation 2- 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 by way of charging a lesser price from or by offering a special discount to the buyer who has made the advance deposit.

Illustration 1: X, an assessee, sells his goods to Y against full advance payment at Rs.100/- per piece. However, X also sells such goods to Z without any advance payment at the same price of Rs.100/- per piece. No notional interest on the advance received by X is includible in the transaction value.

Illustration 2: A, an assessee, manufactures and supplies certain goods as design and specification furnished by B at a price of Rs.10 lakhs. A takes 50% of the price as advance against these goods and there is no sale of such goods to any other buyer. There is no evidence available with the Central Excise Officer that the notional interest on the advance has resulted in lowering of the prices. Thus, no notional interest on the advance received shall be added to the transaction value.

RULE - 7. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

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

RULE - 9. When the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail;

Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.

RULE - 10. When the assessee so arranges that the excisable goods are not sold by him except to or through an inter-connected undertaking, the value of goods shall be determined in the following manner, namely:-

- (a) If the undertakings are so connected that they are also related in terms of sub-clause (ii) or (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act or the buyer is a holding company or subsidiary company of the assessee, then the value shall be determined in the manner prescribed in rule 9.

Explanation- In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies act, 1956 (1 of 1956);

- (b) in any other case, the value shall be determined as if they are not related persons for the purpose of sub-section (1) of section 4.

Rule - 10A. Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then,-

- (i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;
- (ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker;
- (iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods:

Provided that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation. - For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs

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or goods supplied by the said principal manufacturer or by any other person authorised by him.

RULE - 11. If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act.

3.9 ANALYSIS OF THE VALUATION RULES

The salient features of the Valuation Rules are as under:-

According to **rule 3** the valuation rules is invocable only when the condition in section 4(1)(b) is satisfied that is to say when the valuation is not possible as per section 4(1)(a). When the goods are clearly valued according to section 4(1)(a) itself then there is no question of applying the valuation rules.

Rule 4 requires adjustment for the differences in the time of removal and the time of delivery when the delivery time is different from the time of removal.

Rule 5 speaks of the conditions that all the condition as per section 4(1)(a) which are mentioned earlier are fulfilled except for the condition that the place of delivery is different from the place of removal. In such circumstances the rule allows the adjustment for the transportation from the place of removal to the place of delivery. Old rule permitted exclusion of only the actual cost of transportation from the place of removal upto the place of the delivery. However, this exclusion was allowed only if the cost of transportation was charged separately and such cost was shown separately in the invoice. The rule has been amended to omit the specific requirement for showing the transportation cost separately in the invoice. Moreover, the actual transportation cost may also now be excluded on an averaged or equalized basis. For this purpose, the average transportation cost shall be computed in accordance with the generally accepted principles of costing. Where necessary, the assessee may be asked to furnish certification from a Cost Accountant, inter alia, showing the computations separately in respect of the exempted, non-excisable and specific rated products and the basis for apportionment for arriving at the average cost of transportation.

However, no deduction shall be allowable whether on actual or equalized freight basis, for the cost of transportation from the factory to the point of removal (if other than the factory gate). Since as per the amended section 4, "place of removal" shall include a depot, the premises of the consignment agent as well as any other place or premises from which the goods are to be sold after their clearance from the factory, it may be noted that deduction in respect of the transportation cost from the factory premises to the depot or to any other place of removal shall not be allowed.

Rule 6 takes up another condition and continues to say that other conditions as said above are being fulfilled except for the condition of consideration to be received for such goods. If the price received is not the sole consideration, then the rule requires to add the value of the additional consideration whether directly or indirectly received (not necessarily from the buyer, it may be received even from the third party but which should have relation with the goods being transferred) to the transaction value.

In Explanation 1 to **Rule 6** it is said that when any goods or services are given by the buyer free of cost or at concessional price, the value of such goods or service or the concession so received may be added or apportioned (in case such goods or service is used for the manufacture of more than one product) and should be included in the value of the finished goods. The examples given in the said explanation as to the goods and services are :

- (a) value of materials, components, parts and similar items relatable to such goods;
- (b) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;
- (c) value of material consumed, including packaging materials, in the production of such goods;
- (e) value or engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods

Rule 7 says that in cases where the goods are not sold at the factory gate or at the warehouse but they are transferred by the assessee to his depots or consignment agents or any other place for sale, the assessable value in such case for the goods cleared from factory/warehouse shall be the normal transaction value of such goods at the depot, etc. at or about the same time on which the goods as being valued are removed from the factory or warehouse.

It may be pertinent to take note of the definition of "normal transaction value" as given in the valuation rules. What it basically means is the transaction value at which the greatest aggregate quantity of goods from the depots etc. are sold at or about the time of removal of the goods being from the factory/warehouse. If, however, the identical goods are not sold by the assessee from depot/consignment agent's place on the date of removal from the factory/warehouse, the nearest date on which such goods were sold or would be sold shall be taken into account.

In either case if there are series of sales at or about the same time, the normal transaction value for sale to independent buyers will have to be determined and taken as basis for valuation of goods at the time of removal from factory/warehouse. It follows from

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the Valuation Rules that in such categories of cases also if the price charged is with reference to delivery at a place other than the depot, etc. then the actual cost of transportation will not be taken to be a part of the transaction value and exclusion of such cost allowed on similar lines as discussed earlier, when sales are effected from factory gate/warehouse.

In **Rule 8** as a measure of simplification, it has been decided to value goods which are captively consumed on cost construction method only as there have been disputes in adopting values of comparable goods. The assessable value of captively consumed goods will be taken at 110% of the cost of manufacture of goods even if identical or comparable goods are manufactured and sold by the same assessee. The concept of deemed profit for notional purposes has thus been done away with and a margin of 10% by way of profit etc. is prescribed in the rule itself for ease of assessment of goods used for captive consumption.

CBE&C, vide *Circular No. 692/8/2003 dated 13-2-2003*, has clarified that for the purpose of valuation of excisable goods in case of captive consumption as per Rule 8 of Central Excise Valuation Rules, 2000, calculation of cost of production should be as per CAS-4 issued by Institute of Cost and Works Accountants of India. Cost Accounting Standard – 4 is given below in a summarized form.

Cost of production will include various cost components as defined in Cost Accounting Standard-1 ('Classification of Cost' – CAS-1). The various cost components are:

Direct Material Cost	Prime Cost	Cost of Production	Cost of Sales
+	+	+	+
Direct Labour Cost	Production Overheads	Selling Cost	Profit
+	+	+	=
Direct Expenses	Administration Overheads	Distribution Cost	Selling Price
=	+	=	
PRIME COST	Research & Development Expenses (Apportioned)	COST OF SALES	
	=		
	Cost of Production		

Cost of Production: Cost of production shall consist of Material Consumed, Direct Wages and Salaries, Direct Expenses, Works Overheads, Quality Control cost, Research and Development Cost, Packing cost, and Administrative Overheads relating to production.

To arrive at cost of production of goods dispatched for captive consumption, adjustment for Stock of work-in-Process, finished goods, recoveries for sales of scrap, wastage etc shall be made.

Material Consumed shall include materials directly identified for production of goods such as indigenous materials, imported materials, bought out items, self manufactured items, process materials and other items

Cost of material consumed shall consist of cost of material, duties and taxes, freight inwards, insurance, and other expenditure directly attributable to procurement. Trade discount, rebates and other similar items will be deducted for determining the cost of materials. Cenvat credit, credit for countervailing customs duty, Sales Tax set off, VAT, duty draw back and other similar duties subsequently recovered/ recoverable by the enterprise shall also be deducted.

Direct wages and salaries shall include house rent allowance, overtime and incentive payments made to employees directly engaged in the manufacturing activities.

Direct wages and salaries include fringe benefits such as contribution to provident fund and ESIS, bonus/*ex-gratia* payment to employees, provision for retirement benefits such as gratuity and superannuation, medical benefits, subsidised food, leave with pay and holiday payment, leave encashment and other allowances such as children's education allowance, conveyance allowance which are payable to employees in the normal course of business etc.

Direct expenses are the expenses other than direct material cost and direct employees costs which can be identified with the product.

Direct expenses include cost of utilities such as fuel, power, water, steam etc, royalty based on production, technical assistance/know –how fees, amortized cost of moulds, patterns, patents etc, job charges, hire charges for tools and equipment, and charges for a particular product designing etc.

Works overheads are the indirect costs incurred in the production process. Works overheads include consumable stores and spares, depreciation of and machinery, factory building etc, lease rent of production assets, repair and maintenance of plant and machinery, factory building etc, indirect employees cost connected with production activities, drawing and designing department cost., insurance of plant and machinery, factory building, stock of raw material & WIP etc., amortized cost of jigs, fixtures, tooling etc and service department cost such as tool room, engineering & maintenance, pollution control etc.

Quality control cost is the expenses incurred relating to quality control activities for adhering to quality standard. These expenses shall include salaries & wages relating to employees engaged in quality control activity and other related expenses.

Research and development cost incurred for development and improvement of the process or the existing product shall be included in the cost of production.

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Administrative overheads in relation to production activities shall be included in the cost of production. Administrative overheads in relation to activities other than manufacturing activities e.g. marketing, projects management, corporate office expenses etc. shall be excluded from the cost of production.

Packing cost includes both cost of primary and secondary packing required for transfer/dispatch of the goods used for captive consumption. If product is transferred/dispached duly packed for captive consumption, cost of such packing shall be included.

Overheads shall be analysed into variable overheads and fixed overheads. The variable production overheads shall be absorbed in production cost based on actual capacity utilisation. The fixed production overheads and other similar item of fixed costs such as quality control cost, research and development costs, administrative overheads relating to manufacturing shall be absorbed in the production cost on the basis of the normal capacity or actual capacity utilization of the plant, whichever is higher. **Normal Capacity** is the production achieved or achievable on an average over a period or season under normal circumstances taking into account the loss of capacity resulting from planned maintenance (CAS-2).

Stock of work-in-progress shall be valued at cost on the basis of stages of completion as per the cost accounting principles. Similarly, stock of finished goods shall be valued at cost. Opening and closing stock of work-in-progress shall be adjusted for calculation of cost of goods produced and similarly opening and closing stock of finished goods shall be adjusted for calculation of goods despatched. In case the cost of a shorter period is to be determined, where the figures of opening and closing stock are not readily available, the adjustment of figures of opening and closing stock may be ignored.

In case **joint products** are produced, joint costs are allocated between the products on a rational and consistent basis. In case **by-products** are produced, the net realisable value of by-products is credited to the cost of production of the main product.

For allocation of joint cost to joint products, the sales values of products at the split off point i.e. when the products become separately identifiable may become the basis. Some other basis may also be adopted. For example, in case of petroleum products, each product is assigned certain value based on its certain properties, may be calorific value and these values become the basis of apportionment of joint cost among petroleum products.

The production process may generate **scrap or waste**. Realized or realizable value of scrap or waste shall be credited to the cost of production. In case, scrap or waste does not have ready market and it is used for reprocessing, the scrap or waste value is taken at a rate of input cost depending upon the stage at which such scrap or waste is recycled. The expenses incurred for making the scrap suitable for reprocessing shall be deducted from value of scrap or waste.

Miscellaneous income relating to production shall be adjusted in the calculation of cost of production, for example, income from sale of empty containers used for despatch of the captively consumed goods produced under reference.

Inputs received free of cost

In case any input material, whether of direct or indirect nature, including packing material is supplied free of cost by the user of the captive product, the landed cost of such material shall be included in the cost of production.

The amortization cost of **moulds, tools, dies & patterns etc** received free of cost shall be included in the cost of production.

Interest and financial charges being a financial charge shall not be considered to be a part of cost of production.

Abnormal and non-recurring cost arising due to unusual or unexpected occurrence of events, such as heavy break down of plants, accident, market condition restricting sales below normal level, abnormal idle capacity, abnormal process loss, abnormal scrap and wastage, payments like VRS, retrenchment compensation, lay-off wages etc. The abnormal cost shall not form the part of cost of production.

		Qty	
Q1	Quantity Produced (Unit of Measure)		
Q2	Quantity Despatched (Unit of Measure)		
	Particulars	Total Cost (Rs)	Cost/ unit (Rs)
1.	Material Consumed		
2.	Direct Wages and Salaries		
3.	Direct Expenses		
4.	Works Overheads		
5.	Quality Control Cost		
6.	Research & Development Cost		
7.	Administrative Overheads (relating to production activity)		
8.	Total (1 to 7)		
9.	Add : Opening stock of Work - in -Progress		
10.	Less : Closing stock of Work -in- Progress		
11.	Total (8+9-10)		

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12.	Less : Credit for Recoveries/Scrap/By-Products / misc income		
13.	Packing cost		
14.	Cost of production (11 - 12 + 13)		
15.	Add: Inputs received free of cost		
16.	Add: Amortised cost of Moulds, Tools, Dies & Patterns etc received free of cost		
17.	Cost of Production for goods produced for captive consumption (14 + 15 + 16)		
18.	Add : Opening stock of finished goods		
19.	Less : Closing stock of finished goods		
20.	Cost of production for goods despatched (17 + 18 - 19)		

The cost sheet should be prepared in the format as per Appendix – 1 or as near thereto as possible.

Statement of Cost of Production of _____ manufactured / to be manufactured during the period _____

Rule 9 speaks of the situation where goods are sold only through related person (except inter-connected undertakings which is dealt in Rule 10). In such cases the transaction value is not applicable. Here, the value to be adopted will be the price at which such related person sells to unrelated person. If such related person sells it to another related person, then the price at which the second related person sells to unrelated person. Further, it is said when such related person uses such goods in the manufacture of other goods (captive consumed) then the valuation will be based on the principle of cost plus 10% as per Rule 8.

It is important to note that the definition of related persons includes "inter-connected undertakings" as defined in the Monopolies and Restrictive Trade Practices Act, 1969. The definition of inter-connected undertaking in the said Act is comprehensive and includes two or more undertakings which are inter-connected with each other in any of the ways such as if one owns or controls the other, or where the undertakings are owned by firm, if such firms have one or more common partners, etc.

Rule 10 provides that even if the assessee and the buyer are 'inter-connected undertakings', the transaction value will be "rejected" only when they are "related" in the following manner:

- (a) They are relatives.

- (b) The buyer is a relative and a distributor of the assessee, or sub-distributor of such distributor.
- (c) They have a direct or indirect interest in the business of each other.

In other cases, they will not be considered related. In other words the definition of the inter-connected undertaking as per MRTP Act, 1969 is restricted only to Holding and Subsidiary company and the other types of relationship mentioned in (a), (b) and c above. "Transaction value" could then form the basis of valuation provided other two conditions, namely, price is for delivery at the time and place of removal and the price is the sole consideration for sale are satisfied. If any of the two aforesaid conditions are not satisfied then, quite obviously, value in such cases will be determined under the relevant rule.

Rule 10A inserted, with effect from 01.04.2007, in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 vide Notification No. 9/2007 CE (NT) dated 01.03.2007 provides for valuation in case of job-work. The rule provides that where goods are manufactured by a job-worker on behalf of a person (commonly known as principal manufacturer), the value for payment of excise duty would be based on the sale value at which the principal manufacturer sells the goods, as against the past practice where the value was taken as cost of raw material plus the job charges.

Rule 11 is a residuary rule, which says when the value of any excisable goods cannot be determined under any of the aforesaid rules, the value shall be determined using reasonable means which are consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act.

3.9.1 The rules can be summarized through the chart on page 3.32.

3.9.2 Clarifications: With reference to the Valuation Rules, the Central Board of Excise and Customs has issued a *Circular No.643/34/2002 Cx dated 1st July 2002* wherein the following clarifications are issued:

a. With reference to the term "greatest aggregate quantity" used to define the term "normal transaction value" used in Rules 7 and 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the Board clarifies that the time period should be taken as the whole day and the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day, irrespective of the number of buyers. In case the "normal transaction value" from the depot or other place is not ascertainable on the day identical goods are being removed from the factory/warehouse, the nearest day when clearances of the goods were affected from the depot or other place should be taken into consideration

b. In cases where the vehicle is owned by the manufacturer, the cost of transportation can be calculated through costing method following the accepted principles of costing. A

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cost certificate from a certified Cost Accountant/Chartered Accountant/Company Secretary, may be accepted. The cost of transportation should, however, be separately shown in the invoice.

c. As per Rule 5 of the Valuation Rules the actual cost of transportation from the place of removal up to the place of delivery is only to be excluded. If the assessee is recovering an amount from the buyer towards the cost of return fare of the empty vehicle from the place of delivery, this amount will not be available as a deduction. Therefore, unless it is specifically mentioned in the invoice that the transportation charges indicated therein do not include cost of transportation for the return journey of the empty truck/vehicle, the deduction of the said transportation charges will not be admissible.

d. The transit insurance shall be allowed as deduction as being part of transportation cost as held by the Apex Court in the case of Bombay Tyres International that the cost of transportation will include the cost of insurance also during the transportation of the goods. But the transit insurance should either be shown separately in the invoice or can be included in the transportation cost shown separately.

e. Normally the cost of reusable containers (glass bottles, crates etc.) is amortized and included in the cost of the product itself. Therefore the question of adding any further amount towards this account does not arise, except where Audit of accounts reveals that the cost of the reusable container has not been amortised and included in the value of the product

f. Delayed payment charges are excludible since " transaction value" relates to the price paid or payable for the goods. In this case the delayed payment charge is nothing but the interest on the price of the goods which is not paid during the normal credit period. However, to be admissible as deduction it should be separately shown or indicated in the invoice and should be charged over and above the sale price of the goods

g. The erection, installation and commissioning charges should not be included in the assessable value, if the final product is not excisable.

h. Where the assessee does not sell the inputs/capital goods to any independent buyer and the only removal of such input/capital goods, outside the factory, is in the nature of transfer to a sister unit. In such a case proviso to rule 9 will apply and provisions of rule 8 of the valuation rules would have to be invoked. However, this would require determination of the 'cost of production or manufacture', which would not be possible since the said inputs/capital goods have been received by the assessee from outside and have not been produced or manufactured in his factory. Recourse will, therefore, have to be taken to the residuary rule 11 of the valuation rules and the value determined using reasonable means consistent with the principles and general provisions of the valuation rules and sub-section (1) of sec.4 of the Act. In that case it would be reasonable to adopt the value shown in the invoice on the basis of which CENVAT credit was taken by the

assessee in the first place. In respect of capital goods adequate depreciation may be given as per the rates fixed in letter *F.No.495/16/93 –Cus VI dated 26.5.93*, issued on the Customs side.

Valuation of samples: *Circular No. 813/10/2005-CX dated 25.04.2005* has laid down that value of samples distributed free as part of marketing strategy or as gifts or donations shall be determined under Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

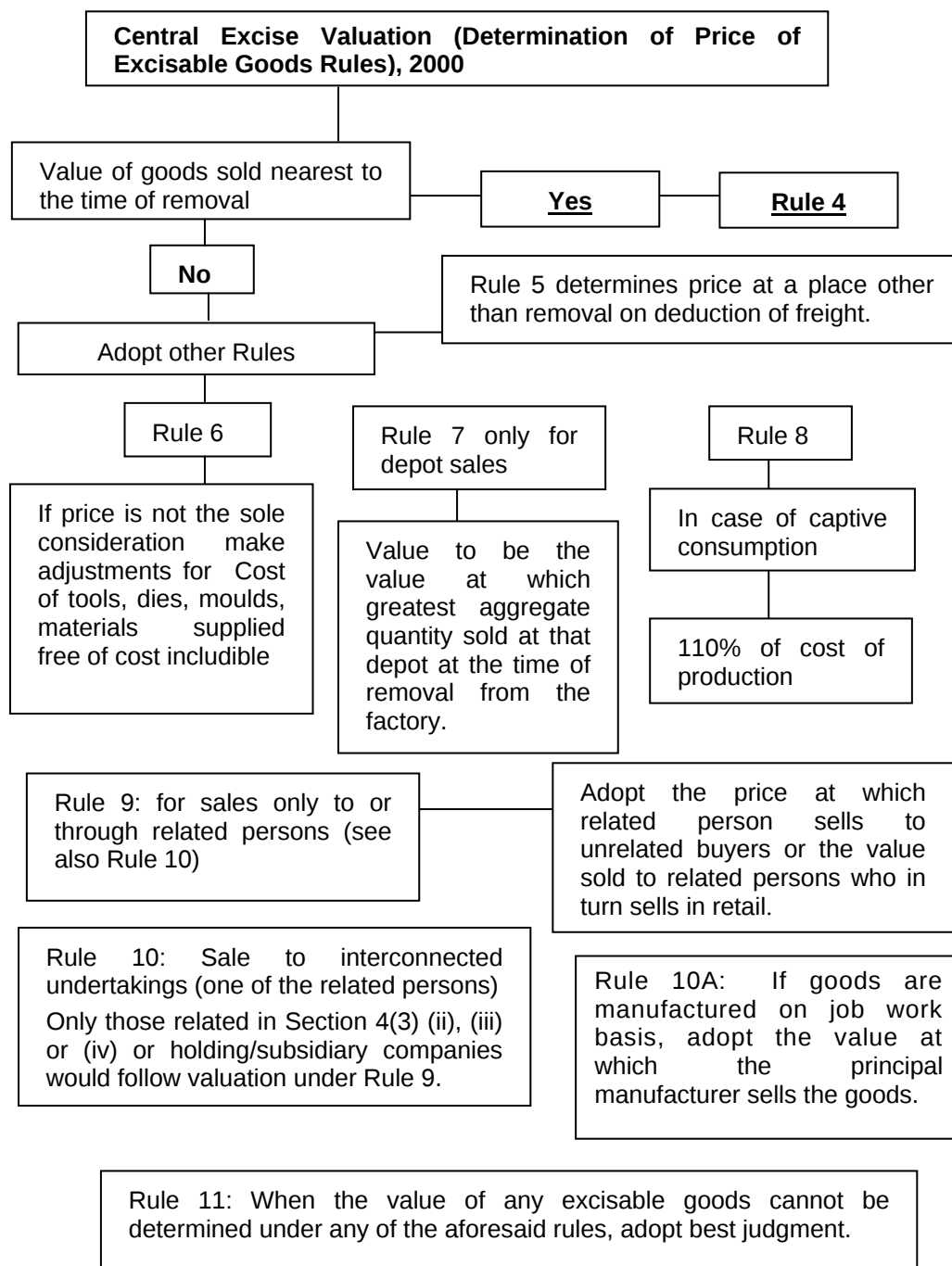
3.10 VALUATION UNDER DIFFERENT CIRCUMSTANCES

3.10.1 Assessable value where the raw material is provided by the customer: The value of the raw material supplied by the customer would form a part of the assessable value. The fact that the manufacturer does not pay for the raw material is immaterial. The matter stands concluded by the judgement of the Supreme Court in the case of *Burn Standard Co. Ltd. Vs. UOI – (1991) 36 ECC-1(SC)*. In this case the assessee manufactured wagons for Railways. The latter supplied wheel sets and certain other items free of cost. The price charged for the vehicle did not include the value of the items supplied free of cost. The Supreme Court held that free supply items like wheel sets etc. form part of the complete wagon and would lose their identity. It hardly matters as to how and in what manner the components of wagons were procured by the manufacturer. The assessee would be liable to pay duty on the normal price of the wagon. The present Valuation Rules follow this.

3.10.2 Effect of price escalation subsequent to the removal of goods, on the assessable value: The excess amount realised under an escalation clause would form part of the assessable value and thus attract central excise duty.

If the goods are removed on payment of duty, based on declared price, subsequent reduction of price for whatever reason, including Government interference, would not create a claim for refund of central excise duty paid on the quantum of price reduced.

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[Refer to page 3.29 (para 3.9.1)]

3.10.3 In cases where interest is made payable after the general credit period is over, such interest will not form part of the assessable value:

Illustration: Assessee charges Rs.100/- per unit for his goods, if the payment is made within 45 days. Rs.100/- per unit will of course include the interest component pertaining to the general credit period of 45 days. Even if the payment is made at the time of delivery Rs.100/- would be the assessable value, irrespective of the possible inclusion of interest element in the price. If the assessee charges Rs.102/- per unit after 45 days and Rs.2/- per unit is identifiable as being relatable to time lag in payment, this amount of Rs.2/- per unit will not form a part of the value. This is based on the decision of the Supreme Court in *GOI vs MRF Ltd. 1995 (77) ELT 449*.

3.10.4 Role of notional interest on the advances/deposits taken by the manufacturer from the buyer in influencing the assessable value: Interest on advance deposits is includible in the assessable value only if there is a nexus between the advance deposit and the sale price. The ratio decided in the *Metal Box case – 1995 (75) ELT 449(SC)* requires, before adding notional interest, establishment of the facts that the interest free advance reflected favoured or special treatment and that advances had the effect of pegging down the wholesale price. If the assessee charges the same price from those who give advances and those who do not, the question of including notional interest on advances does not arise – *VST Industries Ltd vs CCE 1998 (97) ELT 395 (SC)*.

3.10.5 Value of trade mark and assessable value: Where a manufacturer is the owner of the brand name, the price including the value of the brand name, at which he sells the goods in the course of wholesale trade, would constitute the normal price. But where the goods are manufactured by somebody else and then sold to a dealer who owns the brand name, the value of the brand name cannot be added for computing the assessable value for the brand name owner cannot be treated as manufacturer and the price at which the brand name owner sells the goods cannot be taken as assessable value.

3.10.6 Consultancy /technical services and assessable value: The costs towards drawing, designing and technical specifications are clearly elements of machinery costs and are to be included in the assessable value. However, the cost towards project report, plant layout, civil works and training are in the nature of services and are not includible in the assessable value.

3.10.7 Inspection charges and testing charges, whether includible in the assessable value: Where the manufacturer bears the cost towards inspection and testing of goods prior to their removal, such costs are included in the assessable value. The inspection and testing charges incurred subsequent to the clearance of the goods are also to be included in the assessable value if they form part of agreement for sale of goods. The new definition of transaction value would rope in such amounts also.

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3.10.8 Excess amounts charged to customer whether dutiable: If the amounts recovered from the customers is in excess of expenditure actually incurred on permissible deductions, the excess amount will form part of the assessable value.

Amount charged and recovered from customers by separate bills will be considered as gross receipts or cum duty price and duty payable is to be calculated after working out the assessable value from the gross receipts.

3.10.9 Handling cost and assessable value: Handling cost incurred before the clearance of the goods from the place of removal is includible in the assessable value.

3.10.10 Assessable value in case of repair activities: If the assessee replaces certain parts while repairing a manufactured product, he is liable to pay duty only on value of spare parts manufactured and used in the said manufactured product.

3.10.11 Maintenance charges, whether part of assessable value: Maintenance charges (being optional and distinct from warranty obligations), and sight service charges recovered for rendering special services are not includible in the assessable value. But if the price is marked up to cover servicing costs, *prima facie* such amount would form a part of the assessable value.

3.10.12 Warranty expenses and the assessable value: After sales service expenses for warranty are a part of the value.

3.11 MAXIMUM RETAIL PRICE (MRP) BASED VALUATION [SECTION 4A]

The provision relating to duty based on MRP is dealt in section 4A. Section 4A was introduced with effect from 14.5.97 and today covers more than 83 Tariff headings. The Government thought it fit to introduce the said section to fight the evil of manufacturers transferring cost to trading companies and reducing the excise duty payable by them. The provisions of section 4A are discussed below:

- (a) The goods are required under Standard Weights and Measures Act, 1976 or rules made there under or under any other law to declare on the package the retail sale price thereof [sub-section (1)].
- (b) The Government may notify such products for the purpose of this Section. However, it must be noted that if products are to be so notified, law must require such products to declare the retail sale price on the package [sub-section (1)].
- (c) The valuation has to be done on the basis of retail sale price declared on the package less abatement [sub-section (2)]. Abatements can be given by the Central Government after taking into account the amount of duties and taxes. Abatements are also given in the notification as explained above. The basis of such abatements have not been made public [sub-section (3)].
- (d) The 'retail sale price' has been defined to mean the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and

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

However, if the provisions of the Act, rules or other law referred to in (a) above requires the retail sale price to exclude any taxes, local or otherwise, the retail sale price shall be construed accordingly [explanation 1].

- (e) It is also stated that where there is more than one retail sale price the maximum of such retail sale price will be deemed to be the retail sale price for the purpose of this section [explanation 2(a)].
- (f) The excisable goods shall be confiscated and the retail sale price will be ascertained in the manner prescribed by the Central Government if the manufacturer does any of the following acts:
 - (i) removes excisable goods from the place of manufacture, without declaring the retail sale price of such goods on the packages, or
 - (ii) declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law referred to in (a) above or
 - (iii) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture [sub-section 4].
- (g) Where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates [explanation 2(c)].
- (h) If the retail sale price declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price [explanation 2(b)].

3.11.1 Duty based on MRP not a sales tax: The basis of this type of valuation is based on the decision of the Supreme Court in the case of *UOI Vs. Bombay Tyres International 1986 (14) ELT 1896*, which lays down the principle that although the taxable event for the charge of the duty of excise is manufacture of goods, nevertheless the basis for the levy need not necessarily be restricted to the so called manufacturing costs/profits. In other words, the excise duty on goods would not be transformed into a sales tax merely because the value for the purpose of the levy would be based on the MRP.

3.11.2 Statutory requirement of declaring retail sale price on the package of notified excisable goods is a pre-requisite for applying section 4A: For the purpose of valuation under section 4A, care should be taken to see that unless the products are

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required under the Standards of Weights and Measures Act 1976 or the rules made thereunder to declare on the package the retail sale price of such goods, the question of applying section 4A does not arise.

In other words, if there is no statutory requirement under the provisions of Weights and Measures Act, 1976, or the rules made there under or any other law for the time being in force to declare the retail sale price on the packages, section 4A will not apply. Such goods will be valued as per section 4 of the Central Excise Act, 1944 or as per section 3(2) of the Central Excise Act, 1944, if tariff values have been fixed for the commodity.

3.11.3 Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008

Notification No. 13/2008 CE (NT) dated 01.03.2008 has introduced “Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008” to determine the retail sale price of any excisable goods under sub-section (4) of section 4A of the Act.

Rule 4 provides that where a manufacturer removes the excisable goods:

- (a) without declaring the retail sale price on the package or
- (b) by declaring the retail sale price, which is not the retail sale price as per law or
- (c) by declaring the retail sale price but obliterates the same after their removal ,

then, the retail sale price of such goods shall be

retail sale price of identical goods manufactured by the manufacturer and removed within a period of one month, before or after removal of such goods,

otherwise, it shall be ascertained by conducting the enquiries in the retail market at or about the same time of the removal of such goods.

However, if more than one retail sale price is ascertained, then the highest of the retail sale price, so ascertained, shall be taken as the retail sale price of all such goods.

It has been clarified that where the retail sale price is required to be ascertained based on market inquiries, the said inquiries shall be carried out on sample basis.

Rule 5 provides that where a manufacturer alters or tampers the retail sale price declared on the package of goods after their removal from the place of manufacture, resulting into increase in the retail sale price, then such increased retail sale price shall be taken as the retail sale price of all goods removed during a period of one month before and after the date of removal of such goods. However, where the manufacturer alters or tampers the declared retail sale price resulting into more than one retail sale price available on such goods, then, the highest of such retail sale price shall be taken as the retail sale price of all such goods.

Rule 6 further provides that if the retail sale price of any excisable goods cannot be ascertained under these rules, the retail sale price shall be ascertained in accordance with the principles and the provisions of section 4A of the Act and the rules aforesaid.

Self-examination questions

1. Differentiate between "Tariff value", "Transaction value" and "Normal value".
2. How are goods valued when they are sold partly to a related person and partly to an unrelated person?
3. On 25.02.2009 goods were removed from the factory at Chandigarh for sale from the depot at Mumbai. On that date the normal transaction value of the goods at Chandigarh factory was Rs.10,000 and tariff rate was 8%. These goods were sold ex Mumbai depot on 3.3.2009. On that date the normal transaction value at Mumbai depot was 11,000 and tariff rate was 14%. The normal transaction value at Mumbai depot on 25.02.2009 was Rs.9,000 and tariff rate was 8%. The manufacturer has paid duty @ 8% on Rs.10,000, but the department claims duty @ 14% on Rs.11,000. Discuss the correct approach to be adopted in the case.
4. ABC Ltd. of Kanpur agreed to sell an electric motor to DEF Ltd. of New Delhi for Rs.15000.00 on ex-factory basis. Other particulars are:
 - (i) Transportation and transit insurance were arranged by ABC Ltd. at the request of DEF Ltd. for Rs.1250.00 and Rs.1500.00 respectively which were charged separately. Actual transportation charges amounted to Rs.1000.00 only.
 - (ii) A discount of Rs.1000 was given to DEF Ltd. on the agreed price on payment of an advance of Rs.3500.00 with the order. (Ignore notional interest on advance)
 - (iii) Interest of Rs.800.00 was charged from DEF Ltd. as it failed to make the payment within 30 days.
 - (iv) Packing charges of the motor amounted to Rs.1300.00.
 - (v) The expenditure incurred by ABC Ltd. towards 'free after sale service' during warranty period comes out to be Rs.500 per motor.
 - (vi) Dharmada charges of Rs.200 were recovered from DEF Ltd.
 - (vii) ABC Ltd. sold a lubricant worth Rs.250.00 along with the motor to the interested customers. Lubricant which was purchased from the market by ABC Ltd. at Rs.200 ensured durability and high efficiency of the motor. DEF Ltd. opted for the said lubricant.

Compute the assessable value.

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5. Pristine Industries has got a contract from Cantburry Automobiles for supply of a machine used for welding the steel sheets. The various details are:

Particulars	Rs.
Price of machine (net of taxes and duties)	5,45,000.00
Machinery erection expenses	35,000.00
Packing (normally done by him for all machines)	20,000.00
Design and drawing charges relating to manufacture of machinery (Net of taxes and duties)	60,000.00
Central Sales Tax	2%
Central Excise Duty	14%
Cash discount (offered if full payment is received before dispatch of goods)	15,000
Bought out accessories supplied along with the machine (accessories were optional)	10,000
Cost of loading the machinery in the truck in the factory (not charged separately to Cantburry Automobiles)	3,500.00

Cantburry Automobiles made all the payment before delivery. You are required to compute the assessable value and the duty payable on the machine for Pristine Industries.

6. M/s. Well Welders manufactures welding electrodes that are put first in polythene bags and then packed together in cardboard cartons. They sell electrodes at the factory gate packed in cardboard cartons where such electrodes are also packed in wooden boxes when sold to outstation customers. Is the Department justified to include the cost of wooden boxes in the assessable value of the welding electrodes? Discuss with the help of case laws, if any.
7. M/s. Cool Air manufactures complete ceiling fans excluding regulators that are purchased from other manufacturers. The contention of M/s. Cool Air is that since the regulators are not manufactured by them but, instead are purchased from outside, the value of the same should not form part of the assessable value of fans. Do you agree to the stand taken by M/s. Cool Air? Give reasons in support of your answer.
8. Alpha Industries Ltd. manufactures shoes on the basis of bulk orders received from various Government Departments. Footwear is covered under the Third Schedule to the Central Excise Act, 1944. Alpha Industries Ltd. does not make any retail sale to individual buyers, nor does it affix any MRP on shoe packages sold by it. Even the

necessary declarations required under statutes are not filed by it. How should the goods be valued?

9. The value of the operational software should not be included in the value of the computer. Discuss the correctness of the statement with reference to the provisions of the Central Excise Act, 1944.
10. M/s. Della Traders is in the practice of charging each of its customers compulsorily, a certain amount as labour charges for repair of the finished products during warranty period. This repair is done by the dealers. The Central Excise Officer added the value of such charges in the assessable value of the finished products for the purpose of computation of duty, on the ground that such repair charges are in the nature of 'after sale service' done by M/s. Della Traders to promote marketability. However, the contention of M/s. Della Traders is that such charges are recovered as service charges for repairs, a service being provided by the dealers. Do you agree to the stand taken by the Central Excise Officer? Give reasons.
11. Infotech systems manufactured mini computer processing systems with floppy drive, keyboard, and CPU. In around 30% of cases, Infotech Systems bought duty paid monitors and printers from the market and supplied to customers on their request. A classification list which did not include monitors and printers was filed by Infotech systems and was approved.

Chapter Note 5 to Chapter 84 specifies that a monitor or printer has to be classified along with the computer. Therefore, by virtue of this Chapter Note the Central Excise Officer took a view that the value of monitors and printers should be included in the value of the computers.

Give your opinion on the issue with the help of decided case laws, if any.

12. Beta Ltd. has sold refractories to Omega Steel Plant under a contract at a particular price. For the supply of refractories, Beta Ltd. has availed the duty exemption scheme contained in the Export and Import Policy. In order to enable Beta Ltd. to avail the duty exemption scheme, Omega Steel Plant has surrendered the advance licences held by them for import of refractories.

Against such surrender, advance intermediate licences for import of inputs have been issued to Beta Ltd. Consequently, Beta Ltd. has imported the inputs without payment of customs duty as well as got them at a lower price than what they would have paid had they purchased the same in India. The excise department has claimed that the benefit derived by Beta Ltd. under the advance intermediate licence, issued to them as a result of surrender of licence by Omega Steel Plant, is additional consideration towards the value of the refractories and that this additional consideration forms part of the price of the refractories for purposes of excise duty.

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Do you think that the stand taken by the excise department is correct in law? Discuss.

Answers

2. There is no specific rule covering such a contingency. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per section 4(1) transaction value is to be determined for each removal. For sales to unrelated buyers valuation will be done as per section 4(1)(a) and for sale of the same goods to related buyers recourse will have to be taken to the residuary rule 11 read with rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are made to related buyers only.

3. According to Rule 7 of the Central Excise Valuation Rules, 2000, in cases where the goods are not sold at the factory gate or at the warehouse but they are transferred by the assessee to his depots or consignment agents or any other place for sale, the assessable value for the goods cleared from factory/warehouse shall be the normal transaction value of such goods at the depot, etc. at or about the same time on which the goods as being valued are removed from the factory or warehouse.

In the given case, Rs.10,000 represents value on 25.02.2009 (time of removal) but it is not the value prevalent on the depot. Similarly, Rs.11,000 represents depot price, but then it is not the price prevalent on 25.02.2009 (time of removal).

The correct value to be adopted in this case is the depot price of such goods (normal transaction value) on 25.02.2009 i.e., Rs.9,000 and the correct rate will be 8%.

4. (i) Transportation charges will not be included in the assessable value as the sale is at the factory gate and the seller has merely arranged for the delivery. The payment made by the buyer in this case is not in connection with the sale but in connection with the transportation as the sale is over at the factory gate itself. Transit insurance will also not be included in the assessable value as delivery of goods to transporter is prima facie delivery of goods to buyer hence sale gets over at the factory gate itself. [*Escorts JCB Ltd. v. CCE 2002 146 ELT 31 (SC)*]. Profit of Rs.250 earned on transportation charges will not be included in the assessable value [*Baroda Electric Meters Ltd. v. CCE 1997 (94) ELT 13 (SC)*].
- (ii) Discount of Rs.1000 is given on Rs.15000 (agreed price) i.e., the discounted price is Rs.14000 however, as in this case price is not the sole consideration, the extra discount of Rs.1000.00 will be included in the assessable value.
- (iii) Interest of Rs.800 will not be included in the assessable value as the payment of such interest is not in connection with the sale but in connection with the payment of the consideration for sale. *CBEC Circular No. 643/34/2002-CX dated 1.7.2002* has confirmed that delayed payment charges will not be includible in

the assessable value, if shown or indicated separately in invoice and charged over and above the sale price.

- (iv) Packing charges will form part of the assessable value.
- (v) Charges for 'free after sale service' during warranty period are includible in the assessable value.
- (vi) Dharmada charges are includible in the assessable value [CBEC Circular No. 763/79/2003 C.X. dated 21.11.2003].
- (vii) Value of such lubricant will not be included in the assessable value as it is a purely trading activity and the sale of main article (motor) is independent of sale of optional bought out item (lubricant). Even the profit earned on such bought out item is not included in the assessable value of manufactured product [Triveni Engineering v. CCE 2000 (122) ELT 386 CEGAT].

Therefore, the assessable value will be:

$$\text{Rs.14000} + \text{Rs.1000} + \text{Rs.1300} + \text{Rs.500} + \text{Rs.200} = \text{Rs.17000.00.}$$

5. Computation of assessable value and duty payable

Particulars	Rs.
Price of machine (net of taxes and duties)	5,45,000.00
Machine installation expenses (See Note 1)	-
Packing	20,000.00
Design and drawing charges relating to manufacture of machinery (Net of taxes and duties)	60,000.00
Bought out accessories supplied along with the machine (See Note 2)	-
Cost of loading the machine in truck in the factory (See Note 3)	-
Total	6,25,000.00
Less : Cash discount (See Note 4)	15,000.00
Assessable Value	6,10,000.00
Excise duty @ 14%	85,400.00
Education cess @ 2%	1,708.00
Secondary and higher education cess @ 1%	854.00
Total duty payable	87,962.00

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Note 1: Installation expenses are not includible in assessable value [*Thermax Ltd. v. CCE 1998 (99) E.L.T. 481*].

Note 2: Duty is not payable on optional bought out accessories supplied along with the machinery as it is a purely trading activity.

Note 3: The cost of Rs.3500.00 is already included in the selling price of machine (as it is not charged separately) and hence is not to be added again.

Note 4: Cash discount is allowable as deduction if actually passed on to buyer [*CBEC Circular No. 643/34/2002 – CX dated 01.07.2002*].

6. Yes, department is justified to include the cost of wooden boxes in assessable value of welding electrodes because from the given facts it is clear that the cost of wooden boxes has been incurred by the reason of or in connection with the sale made to outstation customers.

As per Section 4(3)(d) of Central Excise Act, transaction value is the price actually paid, or payable, for the goods when sold and includes 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.

Further, Board has clarified by its *Circular No.354/81/2000 CE dated 30.06.2000* any charges recovered for packing are charges recovered in relation to the sale of the goods under assessment and will form part of transaction value of the goods.

Hence, charges for the wooden packing that are being recovered by M/s. Well Welders are the charges in relation to sale and will form part of assessable value irrespective of the fact whether packing is special or secondary.

7. Value of essential bought out items, supplied with the main article at the time of removal should be included in the assessable value as goods should be assessed in the stage in which they are removed. Further, the payment for such items is in 'connection with the sale' and the main article cannot work without the bought out part.

This view was followed by the Supreme Court in the case of *Khaitan Electricals Ltd. vs. CCE, New Delhi 2004 (92) ECC 633 (SC)*. The Court held that value of regulators of fans is includible in the assessable value of fans because these are parts of fans.

8. A similar issue came up for consideration before the Tribunal in the case of *Commissioner of C. EX. & Cus., BBSR –II v. Mehar Shoes Industries 2004 (172) E.L.T. 409 (Tri. – Kolkata)*. The question, which arose before the Tribunal, was that whether the goods had to be valued as per the provisions of section 4 or as per the provisions of section 4A. The Tribunal followed the *Circular No. 625/16/2002 – C.X., dated 28.02.2002* that read:

“Section 4A of the Central Excise Act, 1944 is applicable in respect of those cases only where the manufacturer is legally obliged to print the MRP on the packages of the goods, under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law for the time being in force.

The basic issue, therefore, is to determine the circumstances in which section 4A of the Central Excise Act can be applied. The wording of section 4A (1) makes it very clear that it will apply only to such goods “..... in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976, or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods....”. In other words, if there is no statutory requirement under the provisions of Weights and Measures Act to declare the retail sale price on the packages, section 4A will not apply. Chapter V of the Weights & Measures (Packaged Commodity) Rules, 1977 mentions the instances where MRP is not required to be printed on the packages. Thus, in these cases valuation will have to be done under section 4 of the Central Excise Act, 1944.

It is, therefore, clarified that, in respect of all goods (whether notified u/s.4A or not) in which there is no statutory requirement to print/declare the retail sale price on the packages under the provisions of the Standards of Weight & Measures Act, 1976, or the rules made there under or any other law for the time being in force, valuation will be done u/s.4 of the Central Excise Act, 1944 (or under section 3(2) of the Central Excise Act, 1944, if tariff values have been fixed for the commodity). Thus, there could be instances where the same notified commodity would be partly assessed on the basis of MRP u/s.4A and partly on the basis of normal price (prior to 1.7.2000) or transaction value (from 1.7.2000), u/s.4 of the C.E. Act, 1944.

It may be kept in mind that if an assessee does not declare or print the retail sale price in respect of a notified commodity, which it is statutorily required to do under the provisions of the Weights & Measures Act, or any other law for the time being in force, the goods, on removal, will be liable to confiscation u/s. 4A(4) of the Central Excise Act, 1944.”

In the situation referred to in the question there is no legal obligation on the manufacturer to print the MRP on the shoe packages as the shoes are not sold in retail. Therefore, the basic condition for the shoes to be valued as per provisions of section 4A is absent i.e, the MRP is not affixed on the goods. Thus, abovementioned Circular should be followed in this case also and the valuation of the goods sold in bulk should be done as per section 4 and not as per section 4A.

9. The issue was discussed in detail by the Supreme Court in the case of *CCE, Pondicherry v. Acer India Ltd. 2004 (172) E.L.T. 289 (S.C.)* wherein it was held by the Apex Court that the value of the operational software loaded on the computer is not includible in the assessable value of the computers.

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Computer and operative softwares are different marketable commodities. They are available in the market separately and are classified differently. The rate of excise duty for computer is 16% whereas that of software is *nil*.

The computer and software are distinct and separate, both as a matter of commercial parlance and also under the statute. A computer may not be capable of functioning effectively without being loaded with software. However, it will not tantamount to bringing them within the purview of the part of the computer so as to include their value in the assessable value of the computers. Both computer and software must be classified under their respective headings viz., 84.71 and 85.24 and must be subjected to corresponding rates of duties separately.

Although the information contained in software is loaded in the hard disc, but the operational software does not lose its value and is still marketable as a separate commodity. It does not lose its character as a tangible goods being of the nature of CD-ROM. The fact that the manufacturers put different prices for the computers loaded with different types of operational software does not make any difference as regards nature and character of the 'computer'. Even if the manufacturers in terms of the provisions of a licence are obliged to preload software on the computer before clearing the same from the factory, the characteristic of the software cannot be said to have transformed into hardware so that it can be charged to excise duty along with the computer.

As regards valuation it was pointed out by the Apex court that the valuation of goods would be subjected to the charging provisions contained in section 3 of the Act and also subsection (1) of section 4. The definition of 'transaction value' must be read in the text and context of section 3, the charging section i.e., the expressions 'by reason of sale' or 'in connection with the sale' contained in the definition of 'transaction value' cannot be used to justify the chargeability of software to excise duty. These expressions refer to such goods, which are excisable to excise duty and not the one, which are not excisable. The legal text contained in Chapter 84, as explained in Chapter Note 6, clearly states that software, even if contained in hardware, does not lose its character as such. When an exemption has been granted from levy of any excise duty on software whether it is operating software or application software in terms of heading 85.24, no excise duty can be levied thereupon indirectly as it is impermissible to levy a tax indirectly.

The excise duty is chargeable on the excisable goods and not on the goods, which are not excisable. Thus, if non-excisable goods are transplanted into excisable goods, the assessee is not liable to pay excise duty on the combined value of both. Excise duty, in other words, is leviable only on the goods, which answer the definition of 'excisable goods' and satisfy the requirement of section 3. A machinery provision contained in section 4 and that too the explanation contained therein by way of

definition of 'transaction value' can neither override the charging provision nor by reason thereof 'goods' which is not excisable will become excisable only because one is fitted into the other. While computing costs of manufacturing, expenses that add to the value of the excisable goods are to be considered and not the value of non-excisable goods.

10. The facts of the case are similar to the case of *Collector of Central Excise, Chandigarh v. Eicher Tractors Ltd.* 2004 (164) E.L.T. 129 (S.C.). On this issue, the Supreme Court observed that service is distinct and separate from repairs. Dealers providing 'service' have nothing to do with 'repairs' during warranty period. If there is a provision for free repair during warranty period then that is something which is being provided by manufacturers. Such service may be provided through dealers for benefit of the customer to whom an additional value is provided. Hence, it was held by the Apex Court that cost of labour charges recovered from the buyers for free repair provided by dealers during warranty period should be included in the assessable value.

Applying the ratio of the abovementioned decision in the given case, it can be said that the contention of M/s. Della Traders of service being provided by dealer is erroneous. Therefore, the stand taken by the Central Excise Officer is correct in law.

11. This issue was taken up by the Supreme Court in the case of *CCEx., Mumbai v. C.M.S. Computers P. Ltd.* 2005 (182) E.L.T. 20 (S.C). The facts of the given situation are similar to that of the above-mentioned case.

In this case, the Apex Court opined that a monitor or a printer is not an essential part of the computer. It is a peripheral item which may be required along with a computer. Merely because a Tariff Entry may also include a monitor or printer, it would not lead to the conclusion that a monitor or printer is an essential part of a computer. All that the Chapter Note indicates is that not only the computer but a monitor and a printer are also excisable products. However, the monitor and/or printer would be excisable only in the hands of their manufacturer. The assessee did not manufacture the monitor or the printer. The Supreme Court observed that in approximately 70% of the cases monitors and printers were not supplied along with the computer sold by the assessee. Thus, it could be concluded that the assessee did not sell their computer as a unit including a monitor and a printer. Therefore, Apex Court held that as monitor and printer were not essential parts of the computer their value could not be included in the value of computer. However, it was clarified by the Supreme Court that the situation may be different where a manufacturer sells a computer with a monitor and a printer as a unit.

Therefore, in view of the above-mentioned case law the stand taken by the Central Excise Officer is not correct.

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12. The facts of the problem are similar to that of the case of *CCEx. Bhubaneswar-II v IFGL Refractories Ltd.* 2005 (186) ELT 529 (SC). In this case, the Supreme Court has held that surrendering of licences by buyer and as a result thereof, assessee getting licences has nothing to do with any Import and Export policy. This is directly a matter of contract between two parties which has resulted in additional consideration by way of "advance intermediate licence" flowing from buyer to the assessee. The Apex Court stated that had the seller procured the advance intermediate licence on its own i.e. without buyer having to surrender its licence for the purposes of the contract, then there would have been no additional consideration. However, since the licence is obtained in pursuance of the contract of sale, there is directly a flow of additional consideration from the buyer to seller. Thus, the Supreme Court held that the value thereof has to be added to the price of the refractories.

The Apex Court further clarified that where parties take advantage of policies of Government and benefits flow therefrom, then such benefit can be said to be an additional consideration.

In view of the abovementioned decision, the stand taken by the excise department holds good.

