

EXEMPTION BASED ON VALUE OF CLEARANCES (SSI)

13.1 INTRODUCTION

The Small Scale Units (SSI) are given certain relief under the Central Excise Law by passing exemption notifications. These exemption notifications are popularly called SSI exemption notification because they were originally meant to be an incentive to SSIs. But presently, it must be noted, that any unit can take the benefit of an exemption notification provided they satisfy the conditions therein.

The exemption to SSIs started with the *Notification No. 175/86* and continued with similar Notifications. Till 31.03.2005, two *Notifications 8/2003 and 9/2003 dated 1.03.2003* were relevant for the exemption for Small Scale units. However, w.e.f. 1.04.2005, *Notification No. 9/2003 dated 1.03.2003* which provided concessional rate of duty of 60% of the normal rate with Cenvat credit has been rescinded vide *Notification No. 11/2005 C.E., dated 1.03.2005*. Further, *Notification No. 8/2003* has been amended to increase the eligibility limit for general SSI exemption from Rs.300 lakh to Rs. 400 lakh.

13.2 MEANING OF SMALL SCALE UNITS

Small Scale Units are not defined in the Central Excise Act 1944 or rules made thereunder. The Small Scale Unit is defined in Industries (Development and Regulation) Act, 1951 for the purpose of exempting them from Registration under that Act. The definition basically takes the investment made on the plant and machinery by any industries as the basis for determining the small scale industries. But however it would be pertinent to note that the definition given under the said Act is not applicable for the purpose of getting the benefit of exemption under Central Excise. The basis for ascertaining the Small Scale Units as given in the notification mentioned in the earlier paragraph is the value of the clearances made by any units in the previous financial year. Therefore the definition that has to be adopted for ascertaining the Small Scale Units is not as understood generally by the industry and other sectors like banking but has to be ascertained on the basis of the value of clearances(i.e. Rs.400 lakh).

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13.3 PRODUCTS COVERED UNDER THE SSI EXEMPTION NOTIFICATION

The exemption to be given to SSIs are not applicable for all the goods. The benefit of the said notification is restricted to the products listed in the notification. The notification covers most of the products to fulfill the intention of the notification. However, tobacco products, pan masala, watches, matches and some textile products are specifically excluded from SSI exemption.

13.4 ELIGIBILITY

The units whose value of clearances computed in accordance of the notification is less than 400 lakh (4 crore) in the previous financial year are eligible for the benefit of the notification 8/2003. For example if ABC Ltd. wants to claim the benefit of the notification in the year 2009-2010, then it has to see whether the clearances of the year 2008-2009 has exceeded Rs. 4 crore. In the same example if ABC Ltd. has started up the business only in the year 2009-2010, then it is entitled for the benefit of the said notification for the year 2009-2010 as its previous year clearances is nil (even with the fact that the company has not started the operation).

The limit will be calculated by taking into account the clearances in respect of one manufacturer from one or more factories or from a factory by one or more manufacturers. There are many issues and cases on the issue which is popularly known as clubbing of clearances. The basic idea behind this is to curtail the creation of dummy units for availing the benefit of the notification for each such unit.

Exempted units whose turnover is more than prescribed limit (called specified limit) have to file a declaration in prescribed form with Assistant Commissioner of Central Excise and should obtain a dated acknowledgement. Such declaration is filed only once in the lifetime of the assessee and not every year. The 'specified limit' for this purpose is Rs.60 lakh below exemption limit. In present provisions this limit works out to be Rs.90 lakh (Rs.150 lakh – Rs.60 lakh). Therefore the declaration shall be filed by units whose turnover exceeds Rs.90 lakh. Small units whose turnover is below the specified limit (Rs.90 lakh) per annum shall not file any declaration at all.

13.5 RELAXATION IN THE DUTY

The exemption given vide notifications 8/2003 can be summarised in the following table:

Notification 8/2003

Value of clearances in Rs. lakh in a financial year	Duty Structure
0- 150 lakh	0%
>150 lakh	Normal duty

13.6 AVAILABILITY OF CENVAT CREDIT

In respect of units availing the benefits of notification 8/2003 (i.e. full exemption) no Cenvat Credit is available in respect of inputs upto clearances of Rs.150 lakh. Capital goods Cenvat can be availed but utilized only after clearances of Rs.150 lakh.

13.7 VALUE OF CLEARANCES TO BE EXCLUDED FOR THE CALCULATION OF LIMIT OF Rs.150 LAKH & Rs.400 LAKH

Value for the purpose of the SSI notification (8/2003) would mean value fixed under section 4 or 4A or tariff value fixed under section 3(2) of the Act.

For the purposes of determining the first clearances upto an aggregate value not exceeding Rs.150 lakh made on or after the 1st day of April in any financial year, the following clearances shall not be taken into account:

- (a) clearances, which are exempt from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no excise duty is payable for any other reason;
- (b) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption;
- (c) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods. Here, specified goods are those goods, which are eligible for SSI concession;
- (d) clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene;
- (e) clearances meant for exports.

For the purposes of determining the aggregate value of clearances of all excisable goods for home consumption, i.e. Rs.400 lakh, the following clearances shall not be taken into account:

- (a) clearances of excisable goods without payment of duty-
 - (i) to a unit in a free trade zone; or
 - (ii) to a unit in a special economic zone; or
 - (iii) to a hundred percent. export-oriented undertaking; or
 - (iv) to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

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- (v) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under Notification No.108/95- C.E., dated 28.08.1995.
- (b) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption;
- (c) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods. Here, specified goods are those goods, which are eligible for SSI concession;
- (d) clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene;
- (e) clearances which are exempt from the whole of the excise duty leviable thereon under specific job work notifications, viz. *Notification No. 214/86-C.E., dated 25.03.1986 or No. 83/94-C.E., dated 11.04.1994 or No. 84/94-C.E., dated 11.04.1994;*
- (f) clearances meant for exports.

It may be noted that export to Nepal and Bhutan is not considered as exports. It is taken as clearance for home consumption. Thus, export turnover of Nepal and Bhutan shall be included for determining the limit of Rs.150 lakh as well as Rs.400 lakh.

For computing the turnover of Rs.150 lakh, the clearances of goods exempted under any other notification is to be excluded. It is important to note here that while computing the limit of Rs.400 lakh, turnover of goods exempted under any other notification (except clearance to FTZ, SEZ, 100%EOU, EHTP/STP, UN etc. and specific job work Notifications) has to be included.

13.8 IMPORTANT CASE LAWS ON VALUE OF CLEARANCES

Decision	Citation
1. If manufacture of P&P medicines takes place on job work basis and not as a loan licensee, value of clearances of the two units would be clubbed	<i>Aldoc Pharmaceuticals v. CCE</i> 1994 (74) E.L.T. 94 (T-NRB)
2. Value of captive consumption not to be included even if final products are cleared.	<i>CCE v. Gadgets India Ltd.</i> 1994 (71) E.L.T. 835 (T-NRB)
3. Goods initially cleared to third party who exported them. Value of such exports was held	<i>CCE v. Nirmal Electric Industries</i> 1996 (88) E.L.T. 115 (T-WRB)

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to be includible in the value of clearances.	
Authors' Note : There is a contrary decision in <i>International Minelmech P Ltd. v. CCE</i> 1983 (14) E.L.T. 2367 which is a bench consisting of three judges. Therefore, the contrary decision should prevail. Also, CBEC Circular allow exports through Merchant exporters.	
4. Value of clearances of branded goods to be excluded from value of clearances	<i>Akhil Pharma Pvt.Ltd. v. CCE</i> 1996 (83) E.L.T. 385 (T-SRB)
5. Value of clearances of gramophone records manufactured by one unit not to be clubbed with the value of cassettes cleared by another unit.	<i>CCE v. Saraswathi Stores</i> 1995 (75) E.L.T. 538 (T-NRB)
6. Value of clearances of return of processed fabrics under bond to originating factory not to be included in value of clearances	<i>Sangita Printers & Exporters v. CCE</i> 1994 (73) E.L.T. 182 (T-NRB)
7. Value of clearances would be arrived at under section 4 of the Act after deducting excise duty from cum duty price	<i>Padma Packages Ltd. v. CCE</i> 1996 (17) RLT 883 (T-NRB)
8. Total value of excisable goods shall exclude amounts of excise duty, sales tax and other taxes	<i>Mahavir Metal Mart v. UOI</i> 1997 (90) E.L.T. 20 (SC).

13.9 BRAND NAME

The notification denies the benefit of the exemption for clearances done on products which bear a brand name of another person. This means that such clearances would attract normal rate of duty. Brand name or trade name is defined in Explanation to Notification as any mark, symbol, monogram, label, signature or inventor word or writing which may or may not be registered. This brand or trade name must indicate a connection in the trade between the goods and the person using such mark or name.

The predecessor Notification 175/86 also contained similar provisions which was challenged under Article 14 on the ground that the classification of goods into two categories (i) own branded goods and (ii) branded goods of another person was not reasonable. The Allahabad High Court in *Machine Well Engineers v. UOI* 1994 (73) E.L.T. 19 and the Calcutta High Court in *Banner & Co. v. UOI* 1994 (70) E.L.T. 181 struck down the notification while the Karnataka High Court in *Nectar Beverage Ltd. v. UOI* 1994 (70) E.L.T. 54 (DB) and Madras High Court in *Kali Aerated Water Works v. UOI* 1995 (76)

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E.L.T. 265 upheld the notification. The Supreme Court in *UOI v. Paliwal Electricals P Ltd.* 1996 (83) E.L.T. 241 upheld the validity of the notification. However, a perusal of the decision of the Supreme Courts would surprise the readers that there is no detailed discussion on most of the above judgments.

There are however the following exceptions given to the usage of brand name:

- (a) Where the manufacturer manufactures component/parts of any machinery, equipment or appliance for use as original equipment in the factory even if such components have a trade name or brand name, the exemption would be available subject to provisions of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 in respect of clearances exceeding rupees hundred lakh. This provision is there to cater to the needs of ancillary units which manufacture components for big industrial units. Such ancillary units used to mark their goods with the name of the large unit and refer to a code number or product number. They were being denied the exemption on the ground that the code number or product number is a brand name. The Madras High Court in *BHEL Ancillary Association v. CCE* 1990 (49) E.L.T. 33 had held that this code number or product number would not constitute a brand name.
- (b) When the goods bear a brand name of Khadi and Village Industries Commission or a State Khadi and Village Industry Board or National Small Industries Corporation or a State Small Industries Development Corporation or a State Small Industrial Corporation. .
- (c) The Supreme Court has held in *Astra Pharmaceuticals P Ltd. v. CCE* 1995 (75) E.L.T. 214 that in respect of medicinal preparations the mark made by the manufacturers would be called a "house mark" and would not be the brand name. Therefore, the monograph which identifies a manufacturer's name would not be a brand name.
- (d) In the case of *CCE v. ESBI Transmission Private Ltd.* 1997 (91) E.L.T. 292, the Division Bench of the Calcutta High Court held that if the brand name belonged to the foreign company but the Indian company was given the exclusive right to use the same being the owner through assignment, then the benefits of the notification cannot be denied. The Tribunal decisions have also held that assignment of brand name is valid for availing the benefit of SSI exemption in the following cases:
 - (i) *Opus India v. CCE* 1992 (62) E.L.T. 447 (T)
 - (ii) *Vikshara Trading and Investment P.Ltd. v. CCE* 1996 (87) E.L.T. 499 (T)
 - (iii) *CCE v. Bigen Industries* 1999 (107) E.L.T. 213 (T)
- (e) In *Namtech Systems Ltd. v. CCE* 2000 (115) E.L.T. 238, the Larger Bench of the Tribunal held that when the goods are affixed with the brand name or trade name of

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a foreign person whether manufacturer or trader, the benefit of the exemption notification cannot be taken. It must however be noted that this decision will not apply to cases where the brand name is assigned as the Calcutta High Court decision in (d) above holds good.

- (f) Raw materials received by manufacturers which may bear a brand name are entitled to benefit of Notification, see CBEC Circular 509/5/2000-CX., dated 18-1-2000, (115) E.L.T. T 58 extracting Supreme Court order.
- (g) When the goods bear the brand name of any person, if such goods are manufactured in a rural area. Rural area means the area comprised in a village as defined in the land revenue records, excluding –
 - (i) the area under any Municipal Committee, Municipal Corporation, Town Area Committee, Cantonment Board or Notified Area Committee
 - (ii) any area that may be notified as an urban area by the Central Government or a State Government.
- (h) The Larger Bench of the Tribunal in *Intertec v. CCE* 2001 (127) E.L.T. 609 (T-LB) has held that if the goods manufactured by the SSI unit fall outside paragraph 1 consequent to their being branded goods, payment of duty on such branded goods will not disentitle the other products from getting the benefits of the Notification.
- (i) Account books, registers, writing pads and file folders falling under heading 4820 or 4821 of the First Schedule of the Central Excise Tariff are entitled to small scale exemption even if they bear a brand name or trade name whether registered or not, of another person.
- (j) *Goods in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels, plastic bags and printed laminated rolls are entitled to small scale exemption even if they bear a brand name or trade name whether registered or not, of another person.*

13.10 CLUBBING OF CLEARANCES

As per section 2(f) of the Central Excise Act, 1944 a manufacturer means not only a person who employs hired labour but also person who engages in production or manufacture on his own account. The words “on his own account” has caused considerable litigation. The question regarding who is a manufacturer has been often invoked to deny the benefit of exemption notifications.

The Department normally denies the benefit of the exemption notification on the ground that one manufacturer wants to split up one unit into various units to take advantage of Nil duty clearances upto Rs.150 lakh in respect of each unit. It is the contention of the

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Department that there is considerable revenue loss when the manufacturer deliberately plans his affairs in this manner while continuing to exercise managerial control over all the units. Therefore, the Department denies the benefit of the exemption notification when they find common directors or common shareholders or common employees or common usage of facilities including funds.

On the other hand, judicial decisions have always stressed the point that unless there is a flow back of profits from all the other units to the parent unit in whose hands the turnover of all the units is clubbed, clubbing clearances would not be possible. Therefore, it would be imperative for the Department to prove that the other units are sham units and that there is a profit flow back to the manufacturer who has set up the various units. In fact, the Supreme Court in *Calcutta Chromotype Ltd. v. CCE* 1998 (99) E.L.T. 202 held that the principle that a company is a separate entity is not of universal application and in fit circumstances, the veil of incorporation can be lifted to see who is behind the actual operations. Though this decision pertains to who is a related person under section 4, the principles enunciated could well be applied here also.

A perusal of the case laws available on the subject clearly shows that the Tribunal has been reluctant to accept departmental view unless there is a profit flow back or common funding. However, no other generalisation can be made since each matter is to be decided based on the facts of the case.

13.11 CASE LAWS RELATING TO CLUBBING OF CLEARANCES

Particulars	Citation
1. If one person owns a factory and is a partner in another factory, the production of all factories cannot be clubbed.	<i>AC v. Jayanthilal Balubhai & Ors.</i> 1978 (2) E.L.T. J317(SC)
2. Factors such as common location of factories, common expenses, common partners, common trade mark, sharing of machinery usage, mutual financial transaction without interest not enough to club clearances.	<i>Jagjivandas & Co. v. CCE</i> 1985 (19) E.L.T. 441 (T) affirmed by Supreme Court in 1989 (44) E.L.T. A24. Authors note: This is a landmark judgment often used by assessees.
3. Turnover of limited companies being independent not clubbable in the absence of financial flowback.	<i>Spring Fresh Drinks v. CCE</i> 1991 (54) E.L.T. 333 (T)
4. Common employees, proximity of factories, closeness of relationship are not sufficient to club clearances in the absence of flow back of profits.	<i>Renu Tandon v. UOI</i> 1993 (66) E.L.T. 375 (Raj)

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5. When two units are functioning in the same Commissionerate and have been granted separate registrations and facility of job work under Rule 57F, turnover not clubbable.	<i>Nikhildeep Cables P. Ltd. v. CCE</i> 1994 (70) E.L.T. 273 (T)
6. Units separately incorporated with separate plant not clubbable because of few common directors or grant of interest free loans.	<i>Alpha Toyo Ltd. v. CCE</i> 1994 (71) E.L.T. 689 (T)
7. Manufacture of same products in factory as well as job workers factory not clubbable unless common control shown.	<i>CCE v. MM Khambatwala</i> 1996 (84) E.L.T. 161 (SC)
8. Small scale exemption – Notification No.175/86-CE dated 1-3-1986- clubbing of clearances – P&P medicines – value of medicines manufactured and cleared by job worker not to be clubbed with those manufactured and cleared by raw material supplier when transactions are on principal to principal basis.	<i>Mayo India Limited v. CCE, Aurangabad</i> 1999 (32) ELT 55 (T)
9. Assessable value – Related person – Section 4(4) (c) of CEA, 1944 – Mutuality of interest – factors namely (a) Common promoter and directors not considered sufficient by adjudicating authority for holding manufacturer and buyer as the related person – (b) giving of unsecured loans by sole buyer, promoters, their HUF and group companies, (c) sale of acid slurry by buyer to manufacturer for whom payment was adjusted against sale price of finished goods, (d) payment of buyer direct to suppliers of goods to manufacturer, (e) providing cash by buyer to manufacturer for meeting day to day requirement (f) incurring of sale promotion expenses by buyer (g) doing of research & development work by buyer, and (h) non-payment of royalty by buyer for using manufacturer's brand name – individually and jointly not sufficient to hold them related	<i>Plus Cosmetics Pvt. Ltd. v. CCE</i> 1999 (31) ELT 496 (T)

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person as there is no share holdings by the buyer and the manufacturer in each other's company and, therefore, no mutuality of interest.	
10. SSI units – Registration of SSI units/ undertakings by Director of Industries – Clubbing of units/ undertakings for computing investment in plant and machinery – A proprietor can be common if he is the same person. Similarly, a partner can be common if two firms are constituted with similar number of partners – Same is the position of a company having common director – If the number of partners / directors differs, then it cannot be said that the unit is set up with common partner or director.	<i>Kemtrode Pvt. Ltd. v. Joint Director (SSI), Govt. of Karnataka 1999 (108) E.L.T. 616 (Kar.)</i>

Self-examination questions

1. Enumerate five instances when small scale exemption will be available to the excisable goods bearing the brand name of another person.
2. Answer the following questions with reference to *Notification No. 8/2003-CE dated 01.03.2003* relating to small scale units:
 - (i) What is the eligible turnover for claiming exemption under the said notification?
 - (ii) How will the turnover be computed when the manufacturer has more than one factory?
 - (iii) What does 'value' mean for the purposes of the said notification?
 - (iv) Comment on the availability of CENVAT credit on capital goods under the said notification.
 - (v) What is the treatment in respect of 'clearances of excisable goods without payment of duty' as specified in the said notification?
3. ABC Ltd. is a manufacturing unit situated in Kanpur. In the financial year 2008-2009 the total value of clearances for the unit was Rs.550 lakh. The break-up of clearances is as under:
 - (a) Clearances worth Rs.50 lakh without payment of duty to a unit in special economic zone.

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- (b) Clearances worth Rs.50 lakh exempted under job-work *Notification No. 214/86 CE, dated 25.03.1986*.
- (c) Export clearances worth Rs.100 lakh (75 lakh to Sweden and 25 lakh to Nepal).
- (d) Clearances worth Rs.50 lakh which are used captively to manufacture finished products that are eligible for exemption under notification 8/2003. Such clearances are also eligible for exemption under notification 8/2003.
- (e) Clearances worth Rs.300 lakh of excisable goods in the normal course.

Briefly state whether the unit will be eligible to the benefits of exemption under notification 8/2003 for the year 2009-2010.

4. Tasty Biscuits Ltd. manufactures biscuits under the brand name of "Tasty" on its own account and under the brand name of "Chocopie" on job work basis, on behalf of M/s. Excellent Confectioners. Tasty Biscuits Ltd. has been availing the benefit of SSI exemption for the goods cleared under its own brand name. Tasty Biscuits Ltd. now files an application for availing the Cenvat benefit in respect of "Chocopie" brand biscuits manufactured by it on job work basis. However, the Central Excise Officer rejects the application. Is the stand taken by the Central Excise Officer correct?

Examine the case with the help of decided case laws, if any.

5. M/s. RKR manufactures footwear bearing the brand name "Lotus" which is owned by M/s. Lotus Industries Ltd. for manufacture of detergent powder. When the department disallowed the benefit of small scale exemption under *Notification No. 8/2003-C.E. dated 01.03.2003* on the ground that their goods are bearing brand name of another person, M/s. R.K.R. contended that M/s. Lotus Industries Ltd. owns brand name 'Lotus' only for detergent power and not for footwear.

Decide the case with reasons and mention case law, if any.

Answers

2. (i) The eligible turnover for claiming exemption under the said notification is Rs.400 lakh. The units whose value of clearances computed in accordance with *Notification No.8/2003* is less than or equal to 400 lakh (4 crore) in the previous financial year are eligible for the benefit of exemption in the current financial year.
- (ii) When a manufacturer clears the goods from one or more factories, the turnover of all the factories have to be aggregated for the purpose of claiming exemption under the said notification.
- (iii) The value for the purposes of the said notification would mean the value fixed under section 4 or section 4A or the tariff value fixed under section 3(2).

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- (iv) The units availing the benefit of said notification cannot avail CENVAT credit on inputs. However, they can avail CENVAT credit on capital goods but the same can be utilized for payment of duty on final products only after the turnover reaches Rs.150 lakh.
 - (v) Paragraph 3A of the said notification lays down that for computing the value of clearances of all excisable goods for home consumption (Rs.400 lakh), the following 'clearances of excisable goods without payment of duty' shall not be taken into account, namely-
 - (a) to a unit in the Free Trade Zone
 - (b) to a unit in the Special Economic Zone
 - (c) to a 100% Export Oriented Undertaking
 - (d) to a unit in the Electronic Hardware or Software Park
 - (e) supplies to United Nations or an international organization for their official use or supplied to projects funded by them on which exemption of duty is available in terms of *Notification No.108/95-CE dated August, 28, 1995*.
3. In order to claim the benefit of SSI exemption the total turnover of a unit must not exceed Rs.400 lakh. While calculating turnover of Rs.400 lakh, some of turnover of SSI is not to be considered, while some has to be considered. This has been discussed below:
- (a) Clearances of excisable goods without payment of duty to a unit in special economic zone has to be excluded. Therefore, Rs.50 lakh worth clearances to a unit in special economic zone without payment of duty is not to be considered for computing the turnover of Rs.400 lakh.
 - (b) Exempted clearance under Job work notifications are not to be considered for computing the turnover of Rs.400 lakh. Therefore, exempted clearances worth Rs.50 lakh under job work notification will not be considered.
 - (c) Export turnover has to be excluded from the turnover of Rs.400 lakh. However, export to Nepal and Bhutan cannot be excluded as it is treated as 'clearance for home consumption'. Therefore, clearances worth Rs.75 lakh exported to Sweden will not be included in computing Rs.400 lakh while clearances worth Rs.25 lakh exported to Nepal will be included in the said turnover.
 - (d) Value of intermediate products manufactured while producing final products which are eligible for exemption under *Notification No. 8/2003* will not be considered for calculating limit of Rs.400 lakh if both intermediate and final products are eligible for exemption under *Notification No. 8/2003*.

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- (e) Clearances of excisable goods worth Rs.300 lakh in the normal course will be considered for computing the limit of Rs.400 lakh. Therefore, the eligible total turnover can be calculated as:

$$\text{Rs. 550 lakh} - (50 \text{ lakh} + 50 \text{ lakh} + 75 \text{ lakh} + 50 \text{ lakh}) = \text{Rs.325 lakh.}$$

Since the eligible turnover comes out to be less than 400 lakh, ABC Ltd. will be eligible to the SSI concession.

4. The facts of the given case are similar to those of *CCEx. Ahmedabad v. Ramesh Food Products 2004 (174) ELT 310 (SC)*. In this case, the Supreme Court observed that the *Notification No.175/86-C.E.*, clearly demarcated the two categories of manufacturers. A clear-cut distinction was explicit between a manufacturer availing Modvat credit under Rule 57A (new Rule 3 of Cenvat Credit Rules, 2004) and another not opting for the Modvat scheme. Input duty relief was given under the scheme to the manufacturers who had opted to operate under the scheme by applying for it in the prescribed manner. Ultimately, the manufacturers had the choice of choosing one of the two concessions, i.e. either the Modvat scheme or *Notification 175/86-C.E.* It was held by the Apex Court that since there was no one to one correlation between the inputs and final products under Modvat Scheme, it would not be possible to allow the manufacturer to simultaneously avail Modvat for some products and avail full exemption for others under small-scale exemption scheme.

The same analogy can be applied in the present case too. *Notification No.8/2003* also differentiates between manufacturer availing Cenvat credit under Rule 3 of Cenvat Credit Rules, 2004 and the one not opting for the Cenvat scheme. Thus, here also simultaneous availment of Cenvat for some products and full exemption for others under the scheme of small-scale exemption shall not be permissible. Thus, the stand taken by the Central Excise Officer is correct.

5. *Notification No. 8/2003-CE dated 01.03.2003 inter alia* provides that the benefit of Small Scale Industry (SSI) exemption shall not apply to the goods bearing a brand name or trade name, whether registered or not, of another person. As per Explanation (A) to the notification, brand name or trade name means:
- ◆ a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing
 - ◆ which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade
 - ◆ between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

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

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

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

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

