

Excise Case laws Circulars Trade notices on Valuation

II-Case laws on Valuation

1-Case Studies on MRP Valuation:

Some of the situations where MRP cannot be printed are

Bulk supplies for personal as well as industrial use, Bulk supplies against contract,

Supplies to canteen store depots of defence,

Item supplied free with another consumer item,

Items supplied free as marketing strategy or market response, Items meant for export.

CBE&C circular No. 625/16/2002-CX dated 28-2-2002. – followed in *Bharti Systel v. CCE* 2002(145) ELT 626 (CEGAT).

Price Printed on the package is relevant and not price shown in Advertisement –Kripal Drinks VS CCE (2004) 167ELT545(CESTAT)

If the goods are give on free- MRP will not applicable when goods are given free along with other product. The assessee is manufacturing razors for a buyer who is distributing it free with his own product. Assessee was not printed MRP on the razor, It was held valuation was to be done on the basis of 4 and not 4A- **GSE Enterprises VS CCE (2004) 172ELT31 (CESTAT).**

When the goods falling under sec 4A are supplied free of cost with other products and the packet of such goods doesn't bear any MRP, then such goods will be assessed under sec 4 and not under sec 4A. **Pepsi foods Ltd. (CESTAT).**

Valuation on MRP even Product not really intends for resale: Telephone instruments were packed MRP Printed and supplied to DOT/MTNL. DOT/MTNL lent these phones to subscribers and retain the ownership. It was held that valuation is to be done on the basis of MRP since the goods were in packed condition. It was also observed that there is no condition under package commodity rules, the goods should be actually sold in retail. **ITEL Industries VS CCE (2004) 163ELT219(CESTAT) & BPL Telecom Vs CCE (2004) 168ELT251(CESTAT)**

Different MRP will be considered only in case of different packets. Not in case of same packets. **Mount Everest Mineral Water Vs CCE (2004) 166ELT 52 (CESTAT)**

Excise department cannot question, Challenge or investigate on the genuineness of MRP printed on the product, they can only ensure, that MRP is printed- **ITC LTD Vs CCE (2004) 171ELT433**

Goods packed in bulk – If goods are packed in bulk, MRP provisions do not apply – *Titan Industries v. CC* (2007) 216 ELT 327 (CESTAT).

Same product partly sold in retail and partly in wholesale - CBE&C has further clarified in circular No. 737/53/2003-CX dated 19-8-2003 that when goods covered u/s 4A are supplied in bulk to large buyer (and not in retail), valuation is required to be done u/s 4.

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Provisions of Section 4A apply only where manufacturer is legally obliged to print MRP on the packages of goods. Thus, there can be instances where the same commodity would be partly assessed on basis of Section 4A and partly on basis of transaction value u/s 4 – view noted and approved in Jayanti Food Processing v. CCE (2007) 10 STT 375 = 215 ELT 327 (SC).

Some of the situations where MRP cannot be printed are – (1) bulk supplies for personal as well as industrial use, (2) Bulk supplies against contract, (3) Supplies to canteen store depots of defence, (4) Item supplied free with another consumer item, (5) Items supplied free as marketing strategy or market response, (6) Items meant for export. In case of doubt, a clarification may be obtained from Meteorology Department of State Government. – CBE&C circular No. 625/16/2002-CX dated 28-2-2002. – followed in Bharti Systel v. CCE 2002(145) ELT 626 (CEGAT).

Provision of MRP based valuation are applicable only when product is statutorily covered both under Weights and Measures Act and notification issued under CEA

Provision does not apply to ice cream sold in bulk - In Monsanto Manufacturers v. CCE 2006 (193) ELT 495 (CESTAT), it was held that if ice cream is sold in bulk to hotels and not intended for retail sale, valuation will be as per Section 4 and not on MRP basis – view confirmed in Jayanti Food Processing v. CCE (2007) 10 STT 375 = 215 ELT 327 (SC).

No MRP on free gifts/samples, hence valuation as per Section 4 – In Jayanti Food Processing v. CCE (2007)10 STT 375 = 215 ELT 327 (SC), assessee as selling Kitkat chocolates to Pepsi. These were distributed as free gift along with Pepsi bottle as a marketing strategy. It was held that even if product (chocolate) is covered under MRP provisions, since the product was not to be sold in retail, MRP is not required. Hence, valuation should be on basis of Section 4.

2. Case studies on Transaction Value

Cost of production not relevant

Central Excise Valuation can be below manufacturing Cost. If there is no allegation of flow-back of money from buyer to assessee, if price is the sole consideration and if dealings between assessee and buyer are at arm's length, Assessable Value will be decided on basis of selling price, even if it is below manufacturing cost. - Guru Nanak Refrigeration Corpn. v. CCE - (1996) 81ELT 290 (CEGAT 3 member bench).

Duty is chargeable at the rate and on the price prevailing on the date of actual removal of goods from the factory gate and subsequent reduction in the price even at the behest of the Govt. does not create a right in favor of the assessee for refund of duty on the reduction in the price.- **MRF Ltd. (SC)**

Where cum duty price is charged, then in arriving at the assessable value of the goods, the element of duty, which is payable, has to be excluded. Sale price realized by the assessee is to be regarded as the entire price inclusive of excise duty. **Maruti Udyog Ltd.**

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On inclusions

Discounts in the form of damage in transit/damages are not allowed as deduction. Discount in respect of defective tyres sold earlier is in the nature of benefit given to Consumer as a compensation for loss suffered and hence not allowed in deduction. **GOI Vs MRF Ltd (SC)**

77ELT433./Hindustan Lever Ltd (2001)130

Loading and handling charges within the factory

These are in by reason of sale and are includable – Punjab Alkalies v. CCE 2005 (179) ELT 341 (CESTAT). Shree Rajasthan Syntex v. CCE 2005 (186) ELT 239 (CESTAT)

Dharmada (Charity) includible

Sometimes, some amount is collected by seller in the invoice as 'Dharmada' (charity) and spent for charitable purposes such Dharmada (Charity) includible in assessable Value in central Excise **TISCO Ltd (2002) (SC) 146ELT3.CBE&C, vide circular No. 763/79/2003- CXdated 21-11-2003**

Joint Plan Committee Cess compulsorily payable by all assessee in case of modernization and development of steel plant. Held it is includible –**Panchamukhi Engineering works (2003)(SC)**

154ELT 10

The cost of bought out items viz. sockets, which are fitted to M S G I. pipes before their removal from the factory gate, is includible in the assessable value of the pipes **Siddhartha Tubes Ltd. v. CCEx., Indore (M.P.) 2006 (193) ELT 3 (SC)**

Regulators are parts of fans and held includible in valuation- **Khaitan Electrical (2004)SC165ELT134**
Fan regulators which are not cleared with electric fan but are cleared as such would be classifiable as parts/accessories of fan under sub-heading 8414.99 of the Central Excise Tariff and not under sub-heading 8414.20 ibid covering fans **North West Switchgear Ltd. v CCEx., New Delhi 2006 (195) ELT 134 (SC)**

Advance license surrendered in favour of seller is additional consideration and includible The seller had Advance License. It was surrendered to enable the supplier-manufacturer to get Advance Intermediate License, due to which, the seller agreed to sale the goods at prices much lower than the prices quoted earlier. In **CCE v. IFGL Refractories Ltd. 2005(186) ELT 529 (SC)**

Wooden crates used for packing of glass sheets is in the nature of durable and returnable packing hence not includible in valuation

The glass sheets are packed in the wooden crates and sold. The invoices/bills raised upon the customers/consumers contain a Clause which reads as follows:

"Packing charges recovered in respect of packing of durable and returnable nature subsequent to initial packing for facilitating safe transport will be refunded (@ Rs.140/- per crate) if the same are returned intact."

Held Wooden crates are durable and returnable packing; cost/value thereof is not to be includible in the value of glass sheets. **TRIVENI GLASS LTD. – 2005 - SC**

Royalty for Franchise Agreement is includible in the Valuation: Pepsi and cola Supplies concentrate to bottlers and bottler's manufactures the cool drinks. Bottlers pay royalty for

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using the brand name Pepsi and cola and for using the concentrate, Held Royalty for franchise agreement is includible in valuation as it is in connection with sale- **Pepsi Foods VS CCE (2003) (SC) 158ELT552**

Price increase after removal is not includible in valuation, since the price is relevant at the time and place of removal. However **if there is escalation clause** in the sale agreement and if any additional price is realized, such additional price is includible in valuation and excise duty is payable. **Hindustan Ship Yard Vs CCE (1997) 92ELT189(CEGAT)/India Tin Industries**

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

Wooden crates which are not returnable as per agreement is includible in valuation Since glass sheets were delicate/fragile in nature and could not be moved in wholesale trade without being packed in wooden crates, therefore the wooden were meant to make the glass sheets marketable and thus, the cost thereof was includible in the A.V. of glass sheets. **Hindustan Safety glass works Ltd.(CESTAT)**

Compensation paid for losses in transit: The amount paid as compensation to customers for breakages or losses sustained during transit is not deductible as cost of transportation. **Surya Roshni Ltd.**

The cost of material should be net of ex duty if CENVAT credit is availed in respect of such inputs. Duty paid on raw material which is allowed as CENVAT or to be utilized towards payment of duty of excise **Dai itci Karkaria Ltd.**

Subsidy received from Buyer is includible in valuation and from Govt. Not includible

The assessee received 20% subsidy from the government and 10% subsidy from the buyer of its products as per the policy of the government. It was contended by the department that the value of these subsidies should be included in the assessable value of the final product

In the given case the subsidy of 20% from the government could not be said to be additional consideration as it was not received from the buyer either directly or indirectly. Therefore, that would not be includible in the price of the goods for the purposes of excise. However, the 10% subsidy received by the assessee from the buyer was additional consideration. The fact that it was received under a policy of the government did not detract from the above position **Mazagaon Dock Ltd SC**

On Exclusions

If any excise duty or other tax is paid or payable at concessional rate for a particular transaction, the amount of excise duty or tax actually paid at concessional rate shall only be allowed to be deducted from price. - **Chapter 3 Part III Para 2.5(v) of CBE&C's CE Manual, 2001.**

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Equalized deduction of taxes not permissible – Since each clearance is a separate transaction for assessment, that taxes are deductible only on actual basis and not on average basis. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002,**

Trade Discounts: Trade discount means discount usually expressed as a percentage deduction given to wholesale buyers. The valuation based on the 'transaction value', The transaction value' means price actually paid or payable for goods. Normally the transaction value arrived only after deducting the trade discount. 'Thus, 'trade discount' is allowable as deduction. The trade discount need not be uniform. Trade discount may be called by different names like cash discount, quality discount, turnover discount, etc. Such discount will be allowed on actual basis. There is no condition or provision that such discount should be known at the time of removal of goods from factory. Differential discount is also permissible. **Circular No. 354/81/2000-TRU dated 30-6-2000**

Cash discount - Department has confirmed that cash discount is allowable as deduction, if actually passed on to buyer, if transaction is on principal-to-principal basis. **CBE&C circular No. 643/34/2002-CX dated 1-7-2002**

Different discounts should be given to different buyers, discount given is deductible.

The assessee has four factories located at four different places. They have a practice of giving 20% discount to bulk buyers. However some of the bulk buyers i.e. 10% have been given a discount of only 8%. The assessee contends that it shall be allowed a deduction of discount @ 20%. Whereas the department is of the opinion that they should be given a deduction of 8% as the additional 12% is given to those bulk buyers who are related with the assessee.

Held that Discount of any description actually given to buyer shall be allowed as deduction. However it should be known at time of removal & if it is not known then intention of allowing such discount should be disclosed with department at time of removal of goods and make a request for provisional assessment.

Therefore, **the discount given to majority of buyers shall be allowed as deduction**

Discount can be given at any time - There is no provision that discount should be known or given at the time of removal of goods. For example year-end discount or turnover discount given on basis of turnover achieved during a prescribed period should be allowable as deduction. Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently e.g. year-end discount, the assessment for such transactions may be made on a provisional basis. However, the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment. Same view is reiterated in Chapter 3 Part III Para 2.5(iv) of CBE&C's CE Manual, 2001.

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Installation and Erection Expenses - Installation and erection expenses are incurred after the goods are removed from the factory. There may be an independent contract for erection or even a composite contract. The erection and commissioning charges should not be includible.

CLARIFICATION BY CBE&C – The Board has clarified with regard to erection and commissioning charges as follows

- (a) If final product is not excisable, question of including erection and commissioning charges does not arise.
- (b) If a machine is cleared from a factory on payment of appropriate duty and later taken to premises of the buyer for installation/erection and commissioning into an immovable property, no further duty will be payable
- (c) If parts/components are brought to site and the machine is erected/installed and commissioned, if the product (generator as per Board circular) is excisable commodity, cost of erection, installation and commissioning would be included in assessable value. In other words, if the expenditure on erection, installation and commissioning has been incurred to bring into existence any excisable goods, these charges would be included. If these costs are incurred to bring into existence some immovable property, they will not be included in the assessable value of such resultant property. -**CBE&C circular No. 643/34/2002-CX dated 1-7-2002.**

Interest on Receivables and on Delayed payment - The manufacturer may recover interest from buyer, if he does not make payment as per agreed terms and delay in payment of bill. Such interest should not be includible. Department has confirmed that delayed payment charges will not be includible, if shown or indicated separately in invoice and charged over and above the sale price. – **CBE&C circular No. 643/34/2002-CX dated 1-7-2002. Departmental circular No. 354/81/2000-TRU dated 30-6-2000 has clarified that interest on delayed payment shall not be regarded as part of the assessable value provided that:**

- (a) The interest charges are clearly distinguished from the price actually paid or payable for the goods;
 - (b) The financing arrangement is made in writing; and
 - (c) Where required, assessee demonstrates that such goods are actually sold at the price declared as the price actually paid or payable.
- Chapter 3 Part III Para 2.5(iii) of CBE&C's CE Manual, 2001.**

Inspection charges / addition testing charges paid by buyer - Assessee carries out his own inspection and its cost is obviously included in his selling price. However, sometimes, customer carries out additional inspection either himself or through another inspection agency. Some times, expenses of such additional inspection / testing are borne by assessee while, in other case, the expenses may be borne by the buyer himself. This inspection is in addition to normal inspection and quality checks of the manufacturer himself. Considering the judgment given in **Emerson Net power Vs CCE (2004) 176ELT168(CESTAT)**, following points need considered for inclusion or exclusion as per CBEC Clarification.

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- 1 If the inspection charges are to be borne by assessee and goods can be sold only if approved by the inspection agency, the payment is in connection with sale and by reason of sale. It should be includible.
- 2 If such testing is a mandatory requirement, it should be includible whether borne by assessee or buyer. This is because there is no sale without such testing.
- 3 If assessee has agreed that buyer can reject the goods if not approved by the testing agency, the payment will be 'by reason of sale' and should be includible, whether paid by assessee or buyer.
- 4 If the inspection is done by buyer on his own only to satisfy himself about quality of the product, the cost should not be includible, as in such case, the payment made by buyer or expenditure incurred by buyer is not 'on behalf of assessee' but on his own.

Deduction of Local Taxes: In case of deduction of local taxes, effective taxes only deductible, taxes which are refundable/incentives are not allowed, In case of refundable taxes/ incentives collected by seller from buyer, which are not refunded to him is includible in valuation. Taxes paid on final products are only allowed as deduction. Taxes paid on inputs always includible in valuation **CBEC Circular-378/11/98**

Optional Extended warranty not included valuation- The assessee discharged duty liability by including cost of normal 2 years warranty in the value of manufactured goods. By way of separate agreement, the assessee offered extended warranty charges for 3rd and 4th Year which was optional in nature. Held **There is no direct or proximate connection between sale of car to the dealer and the purchase of extended warranty; hence extended warranty charges were not includible** **MARUTI UDYOG LTD(2007) SC 212 ELT73**

Payment is in nature of a penalty for breach of contract is not includible in valuation: **J.J. Confectionery (P) Ltd.** entered into a contract with **M/s Parry Confectionery Ltd** for manufacture of confectionery. For not producing contract quantity, the assessee has been paid compensation. Held that, compensation has nothing to do with goods manufactured and cleared and can not be said to be by reason of, or in connection with, sale" and not includible in valuation **J J CONFECTIONERY (P) LTD. 2007 TRI210 ELT196**

Additional Quantity free supplied is nature of trade discount deductible: The assessee is giving one case free for every twelve cases and each case contains ten packets of coils. Held one case given free is a trade discount **VINAYAKA MOSQUITO COIL MFG CO.2005 - SC 181 ELT 183**

Area wise discount given by way of credit notes in addition to basic discount is deductible: Assessee was giving area-wise discount to its buyer apart from certain basic discount. The availability of discount is made known to the buyer at the time of receipt of sales order itself. However, the additional area-wise discount is given not at the invoice itself but by way of issuing credit notes. Assessee is clearing goods availing provisional assessment. Held area wise discount is deductible. **MAHAVIR SPINNING MILLS LTD – 2007 - SC 212 ELT 152**

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Freight and insurance from depot onwards –it was held that freight and insurance from depot to the customer is not includible. **Prabhat Zardav. CCE 2002(146) ELT 497 (SC),**

Rental charges of a Cylinder from buyer is not includible in valuation- **Grasim Industries Vs CCE (2004) 164ELT257 (CESTAT) / CCE v. Bisleri International P Ltd. 2005 (186) ELT 257 (SC),**

Any Subsidy received from Government will not includible in valuation- **Nyveli lignite corporation.(2001)(SC)**

Discounts in the form of supplying additional quantity is similar to that of trade discount and allowed as deduction. CCE Vs Hindustan Lever Ltd (2002) (SC) 142ELT513

If any process is done by assessee after removal of goods, Process charges and value addition will not includible in valuation if such process does not amounting to manufacture- **CBEC Circular No 138/08/2000 dated 03.01.2001**

Bank charges incurred for collection of sale bill do not represent sale price of goods and hence not includible - **Hindustan Lever Ltd 2002(142) ELT513 (SC)**

Loading and unloading charges incurred by a distributor of the assessee are not includible in the A.V. of goods. Only those charges incurred for loading the finished goods within the factory of the assessee are includible. **Poona Bottling Co.Ltd.**

Commission paid to Selling Agent/Sales personnel is paid out of profit, where as discount is a deduction from sale bill. Where discount is deductible and Commission is not deductible

Value of Preloaded Operational software is not includible in the valuation of Computer, though computer cannot perform without operational software- **Acer India Ltd (2004) 172ELT289 (SC)**

Instrustuction manuals, leather cases supplied along with cameras charged separately is not a parts or components but they are only accessories and not includible in valuation. **Phil Corporation Ltd (2005) (SC) 180ELT311**

Monitors and Printers are not essential parts or components of a computer, which are bought out and supplied along with computer not includible in valuation- **CMS Computers (2005)(SC) 182ELT20**

Assessee was manufacturing soap for Hindustan Lever. He packed 'bindis' with soap for free supply to buyers of soap, as per instructions of Hindustan Lever. It was held that supply of bindis has no connection with price of soap and price of bindis is not includible to arrive at assessable value. **Oswal Fats & Oils v. CCE 2003 (156) ELT 112 (Sc)**

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Advertisement expenses (that are born by the buyers) not to be included in the assessable value .Factual position showed that the transaction was on principal to principal basis. Expenditure was incurred by buyer on his own. Hence, the Supreme Court held that there was no scope for making any addition in the assessable value. There is no evidence the gradual transfer of expenditure of seller to buyer. **Alembic Glass Industries Ltd. v. CCEx.**

2006 (201) ELT 161 (SC)

Value of price support incentives received from the raw material supplier should be included in the assessable value of the final products

The assessee manufactured aerated waters and sold the same to the wholesale dealers. Further, it received price support incentive in the form of credit notes from the raw material supplier. The department contended that the assessee had undervalued the assessable value of the aerated water by excluding the rent on containers (ROC) and the value of price support incentive and thus, they should be included in the assessable value of the aerated water.

There was no evidence of any concession to any of the buyers or existence of any favored buyers. Thus, the Supreme Court held that the value of the price support incentives would not be includible in the assessable value of the aerated water. **CCEx., Meerut-I Bisleri International Pvt. Ltd. 2005 (186) ELT 257 (SC)**

Subsidy received from the buyer/Government as per the policy of the Government The assessee received 20% subsidy from the Government and 10% subsidy from the buyer of its products as per the policy of the Government. The Apex Court stated that the subsidy of 20% from the Government could not be said to be additional consideration as it was not received from the buyer either directly or indirectly. Therefore, that would not be includible in the price of the goods for the purposes of excise. However, the 10% subsidy received by the assessee from the buyer was additional consideration. **CCEx., Bangalore v. Mazagaon Dock Ltd. 2005 (187) ELT 3 (SC)**

Administrative charges collected from the buyer and paid to the Government are not to be included in the assessable value The assessee collected administrative charges from the buyer for selling the molasses as per the State Government Act. The amount collected was paid over to the Government. The Supreme Court held that such charges were in the nature of a tax and hence, would not be includible in the assessable value. **CCEx. Lucknow v. Chhata Sugar Co. Ltd. 2004 (165) ELT 369 (SC)**

Advertising expenses incurred by an agency of the bottlers (Third party) not includible in valuation.

The assessee manufactured concentrates of non-alcoholic beverages and sold it to various bottlers. The bottlers after processing the concentrate bottled the outcome and sold the same. Bottlers formed a company and advertising about the product. The Apex court held that Advertisement expenses not includible in valuation

2006 (198) ELT 486 (SC)

CCEx., Mumbai-I v. Parle International Ltd.

cost of bought out items viz. sockets, which are fitted to m.s./g.i. pipes before their removal from the factory gate, is includible in the assessable value of the pipes The reason

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for the inclusion being the essentiality of the sockets for the functioning of the pipes as these sockets join the pipes to each other. **Siddhartha Tubes Ltd. v. CCE., Indore (M.P.) 2006 (193) ELT 3 (SC)**

When the significant sales to unrelated persons and some sales to related person, the price to related and unrelated persons is same, there is no special consideration to related persons. Hence the price is the value **CCE., Mumbai v. Universal Luggage Mfg. Co. Ltd. 2005 (190) ELT 3 (SC)**

Supplying 13 units of ex goods to a wholesaler at a price of only 12 units, is in the nature of trade discount by way of quantity discount. Further, in case of free supply there is no sale and thus, its value is not includible in the A.V. under sec 4A. **Vinayak Mosquito Coil Mfg. Co. (CESTAT)**

Pre-delivery inspection charges paid to dealers by customers and not to manufacturer will not be includible in valuation. **Maruthi Udyog Ltd (2004) 170ELT245(CEGAT)**

Engineering Charges/Design supplied by customer, since the design not made by manufacturer- **Bharat Forge Ltd (2000) 122ELT 169**

Excess collection of insurance charges on account of collection on average basis would not be taxable as value of goods. **[Rama Vision Ltd. v. CCE., Meerut 2005 (185) ELT 296 (Tri.- Del.)]**

In cases where price is reduced due to non-completion of contract within contracted time, the assessable value would be computed according to the reduced rates as delivery is made in terms subsequently agreed upon. **[Jaiswal Equipments and Holdings Pvt. Ltd. v CCE., Raipur 2005 (185) E.L.T. 306 (Tri.-Del.)]**

Subsidy / Rebate obtained by assessee - A general subsidy / rebate is obviously not be includible as it has no connection with individual clearances of goods.

Profit earned on post removal activity - Profit earned on post removal activity is not to be added unless there is any deliberate attempt to divert a part of the genuine price and show it as other charges - **Empire Industries Ltd. v. CCE 1997 (CEGAT)**. In **Baroda Electric Meters Ltd. v. CCE 1997 (SC)**, it was held that profit earned by manufacturer on transportation/insurance couldn't be included in Assessable Value. - **S R Jhunjunwala v. CCE 1999 (114) ELT 890 (CEGAT)** - **Sri Kaliswari Fireworks v. CCE 1998 (98) ELT 93 (CEGAT)**

3. Case Laws on Valuation rules

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

Valuation in case of part of goods sold and part is captive consumption

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CBEC has clarified that if same goods are partly sold by assessee and partly consumed captively, goods sold have to be assessed on basis of transaction value and goods captively consumed should be assessed on basis of rule 8. **CBE&C, vide its circular No.**

643/34/2002-CX dated 1-7-2002, the reason is, as per new section 4, transaction value has to be determined separately for each removal. In case of captive consumption, cost calculation should be as per CAS-4 issued by ICWAI

Free Samples along with main product: When free samples given as a addition to the product, no duty is payable on samples (In this it is biscuits), trade discount can be given in any form – **Surya Foods and Agro ltd Vs CCE (2003)**. Same view was held in **Vinayaka Mosquito coil Vs CCE (2004)174ELT107(CESTAT)** (Here the assessee supplying one case of mosquito coil free for every 12 coils.

Full intrinsic value should be considered, ownership is irrelevant it was held that cost of material supplied free by buyer has to be added to arrive at full intrinsic value of goods. It was observed, 'The fact that the petitioners are not the owners of the end-product are irrelevant. Taxable event is manufacture - not ownership'. - **Burn Standard Co. Ltd. v. UOI - SC,**

When free gifts are given in case of products covered under MRP, the free gift is only incidental benefit, the price will be sole consideration.- **Sony India Ltd Vs CCE 2004 (SC)**

Where there is a free supply of components to the assessee by the buyer whose brand name goods are to be manufactured then the A.V. shall be determined in accordance with rule 6 as price is not the sole consideration for sale. **Dugar Electronics**

Where the sale is made from the depot the freight and insurance charges up to the depot will be includible while the freight & Insurance. For delivery to the customer from the depot is not includible in A.V. **Prabhat Zarda Factory Ltd.**

Even if free gifts are offered by the manufacturer to the buyer on the sale of ex goods, the retail sale price charges from the buyer will be the sole consideration for sale. **Sony India Ltd.** Transportation charges collected in excess of that agreed upon would not be additional consideration if the contract for the same is separate. **[PSL Ltd.v. CCEx., Daman 2005 (185) ELT59 (Tri.– Mumbai)]**

HPCL at bottling plant, gas is put into cylinders which are then delivered at dealers at a Company Billing Rate (CBR). The CBR price includes among other things, delivery charges from the Bottling Plants to the dealers' premises. CG had fixed the delivery charges at Rs. 10 per cylinder which is inbuilt in CBR. Held that CBR price which includes among other things such as delivery charges from the Bottling Plants to the dealers' premises not includible in valuation **HINDUSTAN PETROLEUM 2007 SC [213 ELT 116]**

Tribunal decision needs reconsideration. ISPAT INDUSTRIES LTD. – 2007 – TRIBUNAL,Mumbai LARGER BENCH 209ELT185

Assessee was selling goods manufactured by him to unrelated buyers. Part of production was also consumed by him in the other unit . Assessee valued the captively consumed goods at 110% of cost of production by applying Rule 8 of Central Excise Valuation Rules, 2000.

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Department has insisted that shall Rule 8 be applicable for valuation of captively consumed goods only when entire production is captively consumed. Where part only of goods is captively consumed, then valuation shall be done in terms of Rule 11

Held that departments contention was right. This is evident on a plain reading of Rule 8 of the valuation rules, which reads as under “**Where the excisable goods are not sold by the assessee but are used for consumption by him** or on his behalf in the production or manufacture of other articles, the value shall be 110% of cost of production or manufacture of such goods”

Notes: It is very clear to note that no where it is mentioned in the rule 8 the word “exclusively” to apply in a cases where entire production was captively consumed. And it is no where mentioned in goods should be consumed in the same factory of assessee and not in any other unit of assessee

It is very sad to note that the CBEC Circular. CBEC has clarified that if same goods are partly sold by assessee and partly consumed captively, goods sold have to be assessed on basis of transaction value and goods captively consumed should be assessed on basis of rule

8. CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002

The above circular was not given weightage and decision was given considering some other tribunal decisions

Related person

Relation as per interconnected undertaking is not relevant at all as the rule 10 of valuation rules discarded it. **Asia Tyres Vs CCE (2003) 152ELT454 (CEGAT)**. Hence other three concepts such as the relative as a relative, relative cum distributor and persons having mutual interest in each other is only relevant

Sale to related person at a same price to unrelated person - If there were significant sales to unrelated buyers at same price at which goods were sold to related persons, that price could form basis of valuation – **CCE v. Universal Luggage 2005 (190) ELT 3 (SC)**

Mutual interest is relevant: Persons will be treated as relative only when interest of business of each other. If one person has interest with other and other does not interest, they are treated as unrelated persons only. **UOI Vs kaira district Co-operative milk producers associations (sc) 146ELT502/CCE Vs Kersons Manufacturing Ltd 100ELT194 (CEGAT)/UOI Vs Atic Industries Ltd (SC)**

Mutual interest is relevant: Mere rental payments and discounts does not make them relatives

Assessee was selling goods to a buyer who was reselling goods. Department contended that assessee and buyer are related person and value should be done on the basis of price of buyer to unrelated person be taken as AV. Department contend that

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Registered office of buyer and assessee-company was located in the same premises. Assessee Company pays factory rent to buyer. And 40% discount was offered by assessee to buyer.

Held: relative value will not applicable because buyer does not hold any shares in assessee- company nor the assessee-company owns any shares in buyer. Rent paid is also at market rate. The 40% discount was a normal trade practice. There is no evidence to suggest that the profit made by the buyer had flown into the assessee company **DAMNET CHEMICALS PVT LTD.2007 SC216 ELT3**

Companies with Common directors are not relatives: The fact that two public companies have common directors does not render both the companies as related person. **Alembic Glass Industries Ltd (SC)**

Mere holding shares in public Ltd company do not mean shareholder has interest in the public Company. No mutual interest even mutual share holding and common Directors/Common partners - **Alembic Glass Industries Vs CCE (2002) SC 143ELT244/Narendra Industries Vs CCE (2001) 132ELT141(CEGAT)/Besta Chemicals (SC) 2005**

Merely because the buyer is the holding co. and a person related to manufacturer does not by it show that the invoice price was influenced by such relationship, more so when the manufacturer is selling goods at same prices to other prices. **Acorn Engg. Ltd(CEGAT)**

A is a holding company B and C is a Subsidiary Companies. B is a manufacturer. B Sells 60% products A and 40% products to C. B Sales promotion expenses are met by A. Held AB and C are treated as related persons - **Flash Laboratories Ltd (2002) (SC)151ELT241**

Interconnected undertaking cannot be treated as relatives and valuation under rule 9 will not apply. Interconnected undertaking will be treated as relatives only when they are holding and subsidiary. Here the Cost Accountant also certified the value that there is no decrease in the price to relative. Held demand by way of SCN to be withdrawn. **Kirloskar Ferrous Industries Ltd. vs. CC&CE, Belgaum 2007(78) RLT 402 (CESTAT-Bang.)**

An Assessee, who is distributor but not a relative, cannot be treated as related person. Both the distributor and relative should be satisfied to treat them as related persons- **Bombay Tyre International tyres Vs UOI (SC)**

Federation and Member of federation are not relatives

Assessee was member of Federation known as 'Gujarat Cooperative Milk Marketing Federation Ltd'. Assessee was selling products to Federation. The Federation was charging commission for marketing the product. It was held that the commission charged by Federation is deductible, as even if assessee may have interest in the Federation, the Federation has no interest in the business of assessee. Hence, they cannot be treated as

'related person' **UOI v. Kaira Dist Coop Milk ProduceRs. Union 2002(146) ELT 502 (SC),**

Brand name owner is not related person—

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Often, some companies get the goods manufactured under their brand name from some other Companies. However, such brand name owner cannot be termed as relative of the actual manufacturer, only for this reason. In such cases, duty payable will be on the basis of price charged by the actual manufacturer to the brand name owner – **Voltas Ltd. v. CCE 2005 (188) ELT 421 (CESTAT).**

97% of sales were through marketing subsidiary and only 3% sales were to independent buyers. It was held that valuation is required to be done on basis of price at which the related person (subsidiary in this case) makes further sale. Net price charged by related person to its buyers (exclusive of discount) should be assessable value. **In Pepsico India Holding v. CCE 2004 (163) ELT 478 (CESTAT),**

.4. Cum Duty Price

When Cum Duty price is to be considered

- When the price is not sole consideration and if any Additional Consideration is added to arrive Assessable Value it should be treated, as cum duty price - CBEC D O Letter 334/1/2003 dated 28.02.2003
- If Assessee removes goods without payment of duty by mistake (treating dutiable goods as exempted goods), the price should be treated as cum duty price CCE Vs Maruthi Udyog Ltd (2002) (SC). If the goods are covered under MRP, abatement deduction will not be available
- If the information is specific (in exam question) it should be cum duty price
- And calculation should be made backwards-

$A V = (\text{Cum duty price minus permissible deduction} \times 100 / 100 + \text{rate of duty including EC})$

If Additional Consideration is added, it should be treated, as cum duty price and calculation should be made backwards- **CBEC D O Letter 334/1/2003 dated 28.02.2003** (Cum duty price minus-permissible deduction/1+rate of duty)_

If Assessee removes goods without payment of duty by mistake (treating dutiable goods as exempted goods), the price should be treated as cum duty price and calculation should be made backwards- **CCE Vs Maruthi Udyog Ltd (2002) (SC). If the goods are covered under MRP, abatement deduction will not be available**

5. Job work

As the new rule for valuation Rule 10 A of Job work is effective from 01.04.2007, the old case laws regarding valuation of job work are not relevant.

6. Bought out accessories

Cost of Bought out Parts, Components, which are fitted and supplied along with the main product, will be includible in the valuation. **CCE Vs Multiplex Packaging (1999) 105ELT374 (CEGAT)/Diamond Manufacturing Co. Vs CCE (SC) 44 ELT 24.** Profit earned on Bought out Parts, Components and Consumable is not includible in the valuation -**Triveni Engineering Vs CCE (2002) 122ELT386 (CEGAT)**

