CHAPTER 1

Basic Concepts

Question 1

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

(a) Excisable goods

(b) Assessee

(c) Taxable Event

Answer

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

The Explanation to Section 2(d) states that "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. Thus, the concept of deemed marketability is introduced by this explanation.

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

(c) 'Taxable Event' is that event which on its occurrence creates or attracts the liability to tax. In the context of Central Excise 'Taxable Event' is the "manufacture" of goods as per section 3 of Central Excise Act. However, the collection of duty is postponed to the stage of removal of goods as per Rule 4 of the Central Excise Rules, 2002. In *Wallace Flour Mills Vs C.C. EX. (1989) 44 ELT 598* the apex court held that the taxable event for the liability to duty was manufacture of goods but the duty could be levied and collected at any later stage for administrative convenience. Merely because the payment of duty under Rules is postponed to the stage of removal it could not be contended that the removal of goods has become the taxable event for the levy of duty. Besides, it is also worth mentioning that the excisable goods which were chargeable to duty under the Tariff at the time of manufacture but were exempted under an exemption notification will be liable to payment of duty if, post manufacture and prior to removal, such exemption is withdrawn. On the other hand, in cases where the goods were outside the purview of the Tariff at the time of manufacture such goods would not be chargeable to duty even though subsequent to manufacture but prior to removal, such goods were brought

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within the purview of the Tariff or were charged to a duty of excise by means of an amendment to the Tariff.

✓ Question 2

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

Answer

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

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, or

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in production or manufacture on his own account.

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

Thus, if any process which is specified in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture is carried out, goods will be deemed as manufactured, even if as per Court decisions, the process may not amount to manufacture. For instance, if any of specified processes (like re-packing, re-labelling, alteration of retail sale price etc.) is being carried out on goods covered in Third Schedule to the Central Excise Act, 1944, the process will be deemed to be as that of manufacture.

✓ Question 3

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

(i) Wholesale dealer

(ii) Factory

(iii) Dutiability of waste and scrap

Answer

(i) As per section 2(k) of the Central Excise Act, 1944, wholesale dealer means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

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(ii) As per section 2(e) of the Central Excise Act, 1944, factory means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.

(iii) The issue relating to dutiability of waste and scrap was settled by the Supreme Court by its decision in *Khandelwal Metal & Engineering Works Vs Union of India 1985 20 ELT 222* by holding that notwithstanding that process waste and scrap arose as intermediate products or by-products out of final products, such process waste and scrap, if marketable, would be chargeable to duty in view of the incorporation of the specific sub-headings in various chapters of the tariff. The Apex court has held that process waste and scrap is a commercially distinct and identifiable product and has commercial value. Hence, such waste and scrap is chargeable to duty if covered in the Tariff.

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

Question 4

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

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

Answer

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

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

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

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Question 5

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

(i) Adjudicating authority

(ii) "Assembly" would tantamount to "Manufacture"

(iii) Processing and Manufacture

Answer

(i) Adjudicating Authority: Section 2(a) of the Central Excise Act, 1944 defines adjudicating authority to mean any authority competent to pass any order or decision under this Act. However, it does not include the following:

(a) CBEC constituted under the provisions of Central Board of Revenue Act, 1963;

(b) Commissioner of Central Excise (Appeals);

(c) Appellate Tribunal.

(ii) "Assembly" would tantamount to "Manufacture": Assembly is a process of putting together a number of items or parts of an item to make a product or item. Assembly of various parts and components may tantamount to manufacture if new product emerges, which is movable and marketable. In *Narne Tulaman Manufacturers Pvt. Ltd. V CCE 1988 (38) E.L.T. 566 (S.C)* it was inferred that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture. Similarly, in *BPL India Ltd. Vs CCE 2002 (143) ELT 3,* the Supreme Court held that assembly of imported kits of VTR with colour monitors imported in disassembled condition amounted to manufacture since the end product had a distinct character and use and the process of assembly was done by technical experts or skilled persons. On the other hand, assembly of plant at site will not be liable to duty, if "immovable property" emerges after such assembly because excise duty can be levied only on 'goods'.

(iii) Processing and Manufacture: A process is series of things which are carried out in order to achieve a particular result. 'Processing' is distinct from 'manufacturing' and mere processing does not mean 'manufacture'. In *Empire Industries V Union of India 1985 20 ELT 179 (SC)* it was held that any process creating something else having distinctive name, character and use would be 'manufacture'. Thus, processing gray fabrics by bleaching, dyeing, printing of fabric will amount to 'manufacture'.

Question 6

Briefly describe whether a Raw Material Supplier can be treated as manufacturer? Are there any exceptions to aforestated preposition?

Answer

A Raw Material Supplier can not be treated as manufacturer even if he possesses the right of rejection of goods manufactured by the concerned job worker or processor. It has been held in

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*Multi Trade Overseas Corporation V CCE 1987 (30) ELT 980 (CEGAT)** that raw material supplier can not be held as manufacturer unless the processor was a mere dummy for the raw material supplier. Likewise in Mayo India Ltd. V CCE 1999(113) ELT 1036 (CEGAT) it has been held that job worker is the manufacturer and raw material supplier is not manufacturer if relationship is principal to principal basis. Thus, it can be safely inferred that generally a Raw Material Supplier is not treated as manufacturer. However, in the following exceptional situations a Raw Material Supplier can be treated as manufacturer:

(i) There is no principal to principal relationship and job worker functions like a hired labour.

(ii) Job Worker functions as an agent of raw material supplier.

(iii) Job worker functions as labourer under the supervision and control of raw material supplier.

(iv) Job workers are not manufacturing on their own account and they are dummy or bogus concerns and the arrangement is made to evade duty.

*Note-This case was maintained in *Collector vs. Multi Trade Overseas Corporation 1997(96)ELT A233(SC).*

Question 7

Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases:

(i) in the State of Jammu and Kashmir;

(ii) by or on behalf of the Government.

Answer

(i) Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.

(ii) Section 3(1A) of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, excise duty is payable on goods manufactured by, or on behalf of, the Government (both Central & State) also.

Question 8

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

Answer

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

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Excise Act, 1944 states that the expression "goods", for purpose of the said clause, includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

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

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

(i) Nil duty goods-Tariff rate for such goods is nil, and

(ii) Exempted goods-100% exemption is available under section 5A. for such goods.

Question 9

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

(i) Both inputs and the final product fall under the same tariff heading under the first schedule to the Central Excise Tariff Act, 1985 (Tariff Act.)

(ii) Inputs and final product fall under different tariff headings of the Tariff Act.

Answer

(i) 'Manufacture' is bringing into goods known in the market having distinctive name, character or use and separate and identifiable function. Once a new commodity having a definite and distinct commercial identity in market is produced and the same has been specified in the tariff, it is exigible to duty. It is irrelevant whether the new article falls into the same tariff heading as the duty paid raw material from which it is manufactured or belongs to a separate tariff heading.

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

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

Therefore, manufacturing is not only about a process and a product but it is about a new identity that must emerge out of the given process. Mere mention of process in tariff

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entry is not sufficient, it must be specifically stated that a particular process amounts to 'manufacture'. – *Shyam Oil Cake Ltd. v. CCEx. (2005) 174 ELT 145 (SC – 3 members bench).*

Question 10

A Port Trust used cement concrete armour units in the harbour for keeping water calm. Each unit weighed about 50 tons and is like a tripod and keeps water calm and tranquil. These units are essentially in prismoid form and were made to order. They are harbour or location specific. The Central Excise Department contended that the armour units are excisable goods and chargeable to duty. Examine the validity of the Department's contention in the light of decided case law.

Answer

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

In this case, armour blocks, in prisomoid form, were made to order and were of certain specifications. They were harbour or location specific. It would depend on the water level required to be maintained in the harbour. There was no evidence to show that these blocks could be used in any other harbour. Moreover, the Department failed to prove marketability of the impugned goods. Therefore, assessee's contention, that goods were not capable for being bought and sold in the market was accepted. Therefore, in the given case, Department's stand is not correct and no duty is payable on the goods.

Question 11

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

Answer

As per section 3 of the Central Excise Act, 1944 a duty of excise is levied on goods produced or manufactured in India. The paragraph *inter alia* provides that as a result of manufacture, a new and different article must emerge having a distinctive name and character or use.

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

(i) no new and distinct product comes into existence, and

(ii) the product which is a film at the onset remains a film, even after lamination or metallisation.

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

Question 12

ABC Company imported medicines in pallets with one big box containing assorted medicines in smaller units which were, then, repacked in thermocole boxes of different sizes which again were put into cardboard boxes. The cardboard boxes were in turn labelled containing, interalia, the name of the medicine, the name of the manufacturer, the quantity, batch no., manufacturing date, expiry date and name of the marketing agency. The department relying upon note 5 to chapter 30, claimed that the activities as aforesaid amount to manufacture i.e., bulk pack to retail pack. Decide whether the above activities tantamount to manufacture.

Answer

The facts of the case are similar to the case of *CCEx., Mumbai v. Johnson & Johnson Ltd., 2005 (188) ELT 467 (SC)*. While dismissing the case, the Supreme Court observed that merely packing for being marketed does not amount to manufacture for the purpose of Note 5 to Chapter 30 of Central Excise Tariff. The products have to be repacked from *bulk packs to retail packs* so as to make them marketable to the consumer for the activity to be termed as 'manufacture' In this case there was no evidence relied upon by the department to the effect that the cardboard boxes or the thermocole containers in which the units were placed were 'retail packs'

In view of the abovementioned decision, the activity of repacking described in the question would not amount to manufacture.

Question 13

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

Answer

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

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

This view has been reiterated by the Supreme Court in *CCEx v. Tata Iron and Steel Co. Ltd. 2004 (165) E.L.T. 386 (S.C.)* wherein the Apex Court has held that the dross and skimming are merely the refuse, scum or rubbish produced during the process of manufacture. The

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

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

Question 14

TCL purchases duty paid metal rods and draws them into wire of a thinner gauge. Both the items fall under different tariff headings. The assessee claims that the process undertaken by it does not amount to manufacture. You are required to advise with reference to the present position of law in this regard.

Answer

The taxable event for levying excise duty is production or manufacture of the excisable goods. Section 2(f) of the Central Excise Act, 1944 *inter alia* provides that manufacture includes any process, incidental and ancillary to the completion of a manufactured product, and which is specified in relation to any goods in the Section or Chapter Notes of the Schedules of the Central Excise Tariff Act, 1985 as amounting to manufacture.

The definition stipulates that manufacture will include any process which is specified in the Section or Chapter Notes of the Central Excise Tariff as amounting to manufacture.

However, Note No. 10 in Section XV of the First Schedule to the Central Excise Tariff Act provides that the process of drawing or redrawing a rod, wire or any other similar article, into wire shall amount to manufacture.

Therefore, in view of the above Section Note, the claim of TCL is not correct in law.

Note: *This issue had come up before the Supreme Court in the case of CCE v. Technowled Industries (2003). The Apex Court held that there was no manufacture of a new product when the gauge of the rod was made thinner and the product was finished a little better. Merely because there were two separate entries, it did not mean that the product became excisable.*

However, in view of the above-mentioned Section Note this judgment does not hold good anymore.

Question 15

Gaseous Ltd., purchased helium gas in bulk from the open market and its quality control officer had conducted various tests and issued test reports stating the results of the tests. The bulk purchase was packed and filled in cylinders of various sizes and certificates were issued along with quantities. The purchases from the open market were of generic description and

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after test and analysis were sold to different customers based on their specific requirements with a profit margin of 40 to 60%. The Central Excise Department claimed that duty had to be paid on the sale price as there was "deemed manufacture" in terms of Note 9 to Chapter 28 of the Central Excise Tariff, 1985 which reads as follows:

"In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture." Briefly explain with a note based on case law, if any, whether:

(i) the process of filling the bulk gas into cylinders of smaller quantities after tests and quality processes with distinct grades would amount to 'treatment' as per the said chapter note.

(ii) Whether it could be said that the helium gas purchased in bulk is already marketable and hence the chapter note will not be attracted in this case.

Answer

The facts of the given case are similar to the case of *Air Liquide North India Pvt. Ltd. v. CCE 2011 (271) E.L.T. 321 (S.C.)*. Hence, answers to part (i) and (ii) are based on the observations and the decision in the said case.

(i) Yes, the process of filing the bulk gas into cylinders of smaller quantities after the tests and quality processes with distinct grades would amount to 'treatment' as per the said chapter note.

In the aforesaid judgment, the Apex Court observed that if the gas purchased by the assessee had not undergone any treatment and was being sold as such, customers of the assessee could have purchased the same from the assessee's suppliers. Further, the customers would not have paid a price 40% to 60% higher than the purchase price of assessee.

(ii) No, the helium gas purchased in bulk was not already marketable and hence, chapter note will be attracted in this case.

The Supreme Court observed that the marketability of the product to "the purchaser trading in it" is distinguishable from the marketability of the product to "the purchaser purchasing the same for final consumption". The phrase "marketable to the consumer" in the Chapter note refers to the latter case.

The helium gas purchased in bulk by the assessee was marketable to the "purchaser trading in it" and the helium sold by the assessee is marketable to "the person who purchases the product for his own consumption". Hence, the product became marketable only after undergoing the said treatment. Thus, the chapter note is attracted thereby making the assessee liable to pay excise duty.

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Question 16

Explain briefly whether "assembly" would tantamount to 'manufacture' under the Central Excise Act, 1944.

Answer

Assembly is a process of putting together a number of items or their parts to make a product. All cases of assembly may not amount to manufacture as an already manufactured item may also be assembled to put it in a readily usable form.

However, assembly of various parts and components may tantamount to manufacture if a new product which is movable and marketable emerges out of such assembly. Therefore, if an "immovable property" emerges after such assembly, it will not be considered as manufacture.

The Apex Court in the case of *Narne Tulaman Manufacturers Pvt. Ltd. V CCE 1988 (38) E.L.T. 566 (S.C)* held that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture.

Question 17

The assessee M/s T& Co. Ltd. were engaged in the manufacture of 'tarpaulin made ups'. This was nothing but tarpaulin cloth prepared by making a solution of wax, aluminum stearate and pigments that were mixed. The solution was heated in a vessel and was transferred to a tank. Grey cotton canvas fabric was then dipped into the solution and passed through two rollers, whereafter the canvas was dried by exposure to sun. The tarpaulin made ups were prepared by cutting the cloth into various sizes and stitched and eyelets were fitted. The central excise department has issued a show cause notice to M/s T & Co. Ltd. that the tarpaulin made ups prepared by means of cutting, stitching and fixing eyelets amounts to manufacture under the Central Excise Act, 1944. Write a brief note with reference to decided case law if any whether the department's view in the matter is legally sustainable.

Answer

The facts of the given case are similar to the one decided by the Apex Court in the case of CCE v. *Tarpaulin International. 2010 (256) E.L.T. 481 (S.C.)* In this case, the Apex Court has observed that stitching of tarpaulin sheets and making eyelets does not change the basic characteristic of the raw material as the process does not bring into existence a new and distinct product different from the original commodity. The original material used i.e., the tarpaulin, is still called tarpaulin made-ups even after undergoing the said process. Hence, the Supreme Court has held that process of making tarpaulin made ups by cutting, stitching the tarpaulin fabric and fixing eyelets therein cannot be said to be a manufacturing process liable to excise duty.

Therefore, in view of the above-mentioned judgement, the Department's view in the matter is not legally sustainable.

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Question 18

PQR & Co. is engaged in the business of fabrication and erection of structures of various types on contract basis. They entered into a contract with M/s. XYZ Co. for fabrication, assembly and erection on turn key basis of a waste water treatment plant. This activity involved procurement, supply, fabrication, transportation of various duty paid components and finally putting up a civil construction and erection of the waste water treatment plant and commissioning the same. The entire fabrication is done at site. The pressure testing was carried out as such until it was wholly built. The excise department has issued a show cause notice that the fabrication at site amounted to manufacture of excisable goods since the plant came into existence in an unassembled form, as per drawings and designs approved by the client, M/s. XYZ Co. before the fabrication activity was undertaken. Therefore, according to the department, excise duty was payable on the value of the plant excluding the value of the civil work. Briefly discus with reference to case law whether the show cause notice is sustainable in law.

Answer

No, the show cause notice is not sustainable in law. The facts of the case are similar to the case of *Larsen & Toubro Ltd. v. UOI 2009 (243) E.L.T. 662 (Bom.)*. The High Court opined that mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site, does not amount to manufacture of a plant. Simply collecting together at site the various parts would not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts.

In the present case, as the petitioner had stated that the waste water treatment plant did not come into existence unless all the parts were put together and embedded in the civil work. Waste water treatment plant did not become a plant until the process which included the civil work, was completed. Thus, the Court held that no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. Accordingly, since waste water treatment plant was not a separate movable marketable good and came into existence only on assembly of parts in the civil work, there was no question of levying excise duty on it.

Question 19

Write a short note with reference to the Central Excise Act, 1944 on "goods" .

Answer

Section 2(d) of the Central Excise Act, 1944 carries an explanation which states that the expression "goods", for purpose of the said clause, includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

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Question 20

Write a brief note on taxable event for levy of excise duty. Quote the relevant Supreme Court decision.

Answer

As per section 3 of the Central Excise Act, 1944, the taxable event for charge of central excise duty is manufacture of the goods. However, collection of duty is postponed to the stage of removal of goods as per rule 4 of the Central Excise Rules, 2002.

According to the decision of the Apex Court in the case of *Vazir Sultan Tobacco Co. Ltd. v. CCE (1996) 83 ELT 3,* exempted goods will be chargeable to duty if, subsequent to manufacture but before removal exemption is withdrawn. However, goods which are not listed in the Schedules to Central Excise Tariff Act, 1985 will not be liable to excise duty if they are subjected to levy after they are manufactured. The test for determining the liability is whether goods were covered in the tariff when they were manufactured. Therefore, date of removal is relevant only if levy was there at the time of manufacture.

Question 21

M/s. Cool and Kool Ltd. has two units, one in Jaipur and another in Delhi. Jaipur unit manufactures condensing units which are cleared to Delhi unit on payment of appropriate excise duty. Delhi unit procures cooling units manufactured locally and combines the same with such condensing units. After conducting quality control test and affixing the brand name, the Delhi unit clears the complete units along with pipe kits, electrical cord, remote control, etc. The Department contends that the process being carried out by Delhi unit amounts to manufacture as it is not a mere process of assembly whereas, the assessee argues that putting together various duty paid articles in a carton with a brand name to be marketed as 'air conditioner' is not manufacture. No process is involved except that all the items are put together in one box.

Explain, with the help of decided case law, whether the contention of the Department is correct in law?

Answer

Yes, the contention of the Department is correct in law. The facts of the given case are similar to the case of *Fedders Lloyd Corporation Ltd. v. CCEx. (2008) 221 ELT 3 (SC)* wherein it was held that neither the condensing unit nor the cooling unit by itself, was a complete air conditioner. It was only when these two were put together that the complete unit of air conditioner fit for use came into existence. The air conditioner, so cleared by Delhi branch was a commercially new article. Hence, the process amounted to manufacture.

Processing and assembly of various parts and components may amount to manufacture if a new and identifiable product known in the market emerges, which is movable and marketable.

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Question 22

Kaavya was the manufacturer of the white cement. He repaired his worn out machineries/parts of the cement manufacturing plant at its workshop such as damaged roller, shafts and coupling with the help of welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc. In this process of repair, M.S. scrap and Iron scrap were generated. Kaavya cleared this metal scrap and waste without paying any excise duty. The Department issued a show cause notice demanding duty on the said waste contending that the process of generation of scrap and waste amounted to the manufacture in terms of section 2(f) of the Central Excise Act.

Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

Answer

No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of *Grasim Industries Ltd. v. UOI 2011 (273) E.L.T. 10 (S.C.).* The Apex Court observed that manufacture in terms of section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to the raw material at various stages by different operations. The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient.

However, in the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, (the end product). The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process.

Hence, it held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant does not amount to manufacture.

Question 23

Prakhat Manufacturers was a manufacturer of cigarettes. It used duty paid paperback aluminum foil in the roll form for the purpose of packing cigarettes. In the process, the roll of aluminum foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it. Thereafter, fixed number cigarettes were wrapped in it. An aluminium foil being resistant to moisture was used as a protector for the cigarettes and to keep them dry.

Revenue issued a show cause notice to Prakhat Manufacturers alleging that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was

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used as a shell for cigarettes to protect from them moisture; the nature, form and purpose of foil were changed.

Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

Answer

No, the show cause notice is not sustainable in law The facts of the given case are similar to case of *CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)*. The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture as per section 2(f) of the Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity and renders marketable value can be called manufacture.

Exercise

1. *What are the basic conditions for levy of duty under section 3 of the Central Excise Act, 1944?*
2. *Describe the constitutional provisions under which Central Excise Duty is imposed.*
3. *Explain whether a person who is neither a producer nor a curer not a manufacturer of excisable goods but only stores such goods in a warehouse, can be called upon to pay the duties of excise on such goods?*

   Answer/Hint : Yes, if stores in warehouse under Rule 20.
4. *Outline any six processes which have been deemed to be a process of "manufacture" under the Central Excise Tariff Act, 1985, by way of Section Notes/Chapter Notes. Also examine the relevance thereof to the provisions of Section 2(f) of the Central Excise Act, 1944.*

   Answer/Hint: (i) In case of dairy products like milk, cream, butter etc., the labelling or re-labelling of containers or re-packing from bulk packs to retail packs

   (ii) In relation to product of tariff item 2106 90 30, adding or mixing cardamom, copra, menthol, spices, sweetening agents or such ingredients, other than lime, katha (catechu) or tobacco to betel nut in any form

   (iii) In case of preparations of meat, fish etc. labelling or re-labelling of containers or re-packing from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer

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(iv) Labelling or re-labelling of containers or re-packing from baulk packs to retail packs of organic chemicals.

(v) Recording of sound or other phenomena on audio or video tapes.

(vi) Building a body or fabrication of structure on chassis shall amount to manufacture of a motor vehicle.

5. *Define the nature of excise duty and enumerate the duties leviable under the various excise laws and rules made thereunder.*

6. *Discuss briefly whether excise duty is attracted on the excisable goods manufactured in:*

   (a) Jammu & Kashmir;

   (b) Special Economic Zone;

   (c) 100% EOU;

   (d) Indian Territorial Waters;

   (e) Beyond Indian Territorial Waters.

7. *Examine whether the following amount to 'manufacture':*

   (i) Labeling or re-labeling of unit containers of chocolate

   (ii) Dyeing and colouring of yarn

   (iii) Pulverising of chilly

8. *With reference to the Central Excise Act, 1944, define the following:*

   (i) Factory

   (ii) Appellate Tribunal

   (iii) Excisable Goods

   (iv) Wholesale Dealer

   (v) Sale and purchase

   (vi) Broker or commission agent

9. *Discuss whether the following can be considered as excisable goods for the purpose of levying excise duty:*

   (a) Turn key projects

   (b) Lifts and escalators

   (c) Refrigeration or Air conditioning plants

10. *Explain briefly whether "assembly" would tantamount to "manufacture" under the Central Excise Act, 1944.*

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11. *M/s. Onkar Steel Works processes cold rolled strips from duty paid hot rolled strips. Duty is being paid by M/s. Onkar Steel Works on removing cold rolled strips. M/s. Onkar Steel Works contends that cold rolled strips are only those strips, which emerge after the hot rolled strips have been processed and the edges sheared and slit according to the specification of the customer. However, Department has claimed that cold rolled strips meant and included unsheared and unslit strips also. The basis of the Department's claim is Indian Standard Specification Nos. 1956 to 1962, which specifiy that a strip "is supplied in straight length or in coil with mill, trimmed or sheared edges." On this basis duty is demanded on the unsheared and unslit strips also. Discuss whether the demand put forth by the Department is tenable in law. You may refer to any decided case laws on this issue.*

    Answer/Hint: Similar issue came up for consideration before Supreme Court in the case of *Tata Iron & Steel Co. Ltd. v. Union of India 2004 (164) E.L.T. 372 (S.C).* Here, the Apex Court pointed out that there was no separate heading in respect of cold rolled strips and hot rolled strips.

    Another reasoning put forward by the Supreme Court was that there was no proof of the marketability of the cold rolled strips, which is an essential item of manufacture. The Court held that Marketability is a question of fact and does not follow from the mere mention of item in the ISI. Therefore, it was held by the Court that the processing of cold rolled strips from duty paid hot rolled strips does not amount to manufacture.

    Therefore, the Department's claim in the instant case is not tenable as the very process of manufacturing cold rolled strips from hot rolled strips does not amount to manufacture, thereby, making the demand on unsheared and unslit strips void.

12. *Pravaal purchases duty paid wire rods and draws them into a thinner gauge. The two items fall under different tariff headings. Pravaal claims that the process undertaken by him does not amount to manufacture. His claim is based on a decision given by the Apex Court in the case of Collector of Central Excise v Technowled Industries 2003 (155) E.L.T. 209 (S.C.). Is the claim of the assessee correct in the present position of law?*

    Answer/Hint: The Apex Court had held in the case of *Collector of Central Excise v Technowled Industries 2003 (155) E.L.T. 209 (S.C.)* that there is no manufacture of a new product when the guage of the rod is made thinner and the product is finished a little better.

    However, Finance (No. 2) Act, 2004 has inserted a section note in section XV of the First Schedule to the Central Excise Tariff Act so as to provide that 'the process of drawing or redrawing a rod, wire or any other similar article, into wire' shall amount to 'manufacture'. Therefore, this chapter note overrules the judgment of the Supreme Court.

    Hence, the contention of the assessee is not correct in law.

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13. *MTZ Ltd. purchases edible vegetable oil from the open market and refines it. Refined edible vegetable oil falls in Chapter 15 of the First Schedule to the Central Excise Tariff. MTZ Ltd. claims that the process undertaken by it does not amount to manufacture as there is no Chapter Note or Section Note which specifies that refining of edible vegetable oil amounts to manufacture.*

You are required to advise with reference to the present position of law in this regard.

Answer/Hint: The definition of manufacture inter alia provides that "manufacture includes any process, which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture."

Finance Act, 2005 has inserted a Note in Chapter 15 of Central Excise Tariff to provide that in relation to refined edible vegetable oils falling under Headings 1507 to 1515, the process of refining shall amount to manufacture. In this context, the process of refining shall include treatment of crude oil with alkali, bleaching and deodorisation. This Chapter note has been given retrospective effect from 1.03.1986.

Therefore, in the current position of law the process of refining of edible vegetable oil undertaken by MTZ Ltd. shall amount to manufacture.

Note: This matter had come up before the Supreme Court in the case of *Shyam Oil Cake Ltd. v. CCEx., Jaipur, 2004 (174) E.L.T. 145 (SC)*. The Apex Court stated that merely setting out a process in tariff entry would not be sufficient to hold that the particular process resulted in manufacture. If the process was indicated in the Tariff Entry, without specifying that the same would amount to manufacture, then the indication of the process was merely for the purpose of identifying the product and the rate which was applicable to that product. The Apex Court emphasised that for a deeming provision to come in to play it must be specifically stated that a particular process would amount to manufacture. In the absence of it being so specified, the commodity would not become excisable merely because a separate Tariff Item existed in respect of that commodity.

It was observed by the Supreme Court that neither the Section Note nor the Chapter Note nor the Tariff Item gave any indication that the process indicated would amount to manufacture. The product remained edible vegetable oil even after the processing/refining. It was held by the Apex Court that as actual manufacture had not taken place, deeming provision could not be invoked in the absence of a specific statement that the process would amount to manufacture.

However, in view of the above-mentioned amendment made by Finance Act, 2005 this judgment does not hold good anymore.

14. *Alpha Ltd. is engaged in the activity of cutting/slitting of jumbo rolls of toilet paper of a width exceeding 36 cms. The jumbo rolls are purchased on payment of excise duty from various suppliers. The process undertaken by Alpha Ltd. reduces the width of the jumbo rolls to less than 36 cms. The rolls with width exceeding 36 cms and with width less than*

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36 cms fall under different tariff headings. The excise department contends that such reduction of width amounts to manufacture. The excise department has assessed and demanded duty from Alpha Ltd. on the basis of the heading covering jumbo rolls of width less than 36 cms.

Answer/Hint: The facts of the problem are similar to that of the case of *CCEx. New Delhi – I v. S.R. Tissues Pvt. Ltd. 2005 (186) ELT 385 (SC)*. In this case, the Supreme Court has held that slitting/cutting of jumbo rolls of plain tissue paper into smaller size does not amount to manufacture as its character and end-use viz., household purposes, do not undergo any change on account of winding, cutting/slitting and packing. Further, slitting and cutting of toilet paper cannot be termed as deemed manufacture as the said process is not treated as manufacture by legislature under any of the Section/Chapter Notes of the Central Excise Tariff.

The Apex Court has elaborated that mere mention of a product in a tariff heading does not necessarily imply that said product is obtained by process of manufacture. Just because raw material and finished product come under two different headings, it cannot be presumed that process of obtaining finished product from such raw material automatically constitute manufacture. Therefore, slitting/cutting of jumbo rolls of toilet tissue paper into various shapes and sizes shall not amount to manufacture merely because tissue paper in jumbo roll of size exceeding 36 cms. fall in one entry and toilet roll of a width not exceeding 36 cms. fall in a different entry. The Supreme Court further explained that value addition on account of transport charges, sales tax, distribution and selling expenses and trading margin without any change in name, character or end-use by mere cutting/slitting of jumbo rolls cannot constitute the criteria to decide what is "manufacture".

In view of the abovementioned decision, the contention of the excise department does not hold good.

15. *Whether production of mustard oil and oil cake from mustard seeds amounts to manufacture?*

You are required to examine the situation with the help of a decided case law.

Answer/Hint: The activity of producing mustard oil and oil cake from mustard seeds amounts to manufacture. This particular issue has been decided by the Supreme Court in the case of *Jai Bhagwan Oil and Floor Mills v. UOI 2009 (239) E.L.T. 401 (SC)*. In the instant case, the Apex Court held that the true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture.

When mustard seeds were subjected to the process of extraction whereby mustard oil and oil cake were produced, the process involved manufacture of mustard oil as also the manufacture of oil cake. It was certainly not a mere process of cleaning, repairing,

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reconditioning, recycling or assembling. Oil cake had a distinct and different identity from mustard seeds and it had a separate name, character and use different from mustard seed. Oil cake was not a waste to be thrown away, but was a valuable product with a distinct name, character, use and marketability. Resultantly, it can be concluded that the said process amounts to manufacture.

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CHAPTER 2

Classification of Excisable Goods

Question 1

Write a short note on Harmonised System of Nomenclature.

Answer

Central Excise Tariff Act, 1985 is based on the Harmonised System of Nomenclature (popularly known as HSN). It is worth specifying that Central Excise Tariff Act, 1985 generally follows HSN pattern but it is not a copy of HSN. HSN is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs and Trade (GATT). Excise Tariff Act is modeled along with international practices. The international practice of adopting a uniform classification has been adopted to facilitate a common understanding of products across countries. In different words, the classification under HSN would be the same across the countries.

Question 2

Discuss the powers of Central Government to amend first and second schedules to Central Excise Tariff Act, 1985.

Answer

The Central Government has the power to amend the Schedules by Notification under Section 5 of the Central Excise Tariff Act, 1985 subject to the condition that such amendment shall not alter or affect in any manner the rates of duty. The relevant provisions of aforementioned section 5 are as under:

(1) Where the Central Government is satisfied that it is necessary so do in the public interest it may, by notification in the Official Gazette, amend the First Schedule and the Second Schedule. However, such amendment shall not alter or affect in any manner the rates specified in the First Schedule and the Second Schedule in respect of goods at which duties of excise shall be leviable on the goods under the Central Excise Act, 1944.

(2) Such notifications shall be laid before each House of Parliament, while it is in session, for a total period of thirty days as soon as it is issued. These thirty days may be comprised in one session or in two or more successive session. If before the expiry of the session, immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Notification or both Houses agree that the Notification should not be issued, the Notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that Notification.

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Question 3

How are the 'incomplete or unfinished goods having the essential characteristics of finished goods' classified under the Central Excise Tariff Act, 1985?

Answer

According to Rule 2(a) of Central Excise Tariff Act, 1985 if any particular heading refers to a finished or complete articled, the incomplete or unfinished form of that article shall also be classified under the same heading provided the incomplete or unfinished goods have the essential characteristics of the finished goods. For example, railway coaches removed without seats would still be railway coaches. Likewise a car without seat would still be classified as car.

It will not be out of place to cite the case of *Sony India Ltd. V CCE 2002 (143) ELT 411* wherein it was held that Rule 2(a) applies only when components are not subject to further working operation for completion into the finished state.

Question 4

The assessee manufactured compressors and filters and removed them as "stand alone" items. He also manufactured and removed safety valves and filters on payment of duty. The assessee also supplied bought out items like V belts, motor, pulley etc. to their buyers. The Excise Department relying on rule 2(a) of the General Interpretative Rules for classification has decided to include the value of safety valves and filters together with value of bought out items in the value of compressors for purposes of duty under section 4 of the Central Excise Act, 1944. Write a brief note, with any decided case law, whether the stand taken by the Department is correct.

Answer

A similar question had come up for consideration before the Supreme Court in the case of CCEx., *Delhi v. M/s Frick India Ltd. 2007 (216) ELT 497 (S.C).* In the instant case, the Supreme Court observed that rule 2(a) of the General Interpretative Rules for classification could not be applied in this case as:

(i) The compressors manufactured by assessee were removed as 'stand alone' item and not in an unassembled or disassembled condition; and

(ii) Section and Chapter notes in Tariff and the Interpretative Rules do not provide guidelines for valuation of excisable goods because they decide the classification, and valuation is different from classification.

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

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Question 5

M/s. Khan Ltd. is a small scale unit manufacturing plastic name plates for motor vehicles as per specifications provided to them by their customers, who are vehicle manufacturers. For purposes of classification under the first schedule to the Central Excise Tariff Act, 1985 the assessee has claimed that the plastic name plates are "parts and accessories of motor vehicles". The Central Excise Department has proposed classification as "other plastic products" in respect of these plastic name plates. The department's view is that the motor vehicle is complete without the affixation of name plates and cannot be treated as a part of the motor vehicle. Write a brief note on whether the stand taken by the department is correct in law.

Answer

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

(i) name plates are solely and exclusively used for motor vehicles.

(ii) classification as parts and accessories of motor vehicles is more specific while the classification as other plastic products is residuary and more general in nature.

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

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

Question 6

An assessee classified his product as per Central Excise Tariff subject to nil rate of duty. The Department classified it under another heading attracting 8% duty, relying upon the HSN for the purpose of classification of the impugned product. However entries in the HSN and Central Excise Tariff are not aligned. Do you think that Department's plea is valid in law? Discuss briefly, with reference to a decided case law, if any.

Answer

No, the Department's plea is not valid in law. Central Excise Tariff is based upon HSN, but it is not a copy of HSN. In case of *Camlin Ltd. v. CCEx. Mumbai (2008) 230 ELT 193 (SC),* the Supreme Court ruled that when the entries in HSN and the Excise Tariff are not aligned,

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reliance cannot be placed upon HSN for the purposes of classification of goods. Central Excise Tariff of India should be followed in such cases. It should be appreciated that since the entries under the HSN and the entries under the said Tariff were completely different, the Department could not base its decision on the entries in the HSN.

Question 7

Explain briefly the significance of "trade parlance test" with respect to classification of excisable goods under the Central Excise Act, 1944.

Answer

According to the trade parlance test, if a product is not defined in the Schedule and Section Notes and Chapter Notes of the Central Excise Tariff Act, 1985, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it, i.e., in commercial sense. However, where the tariff heading itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense.

Question 8

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

Answer

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

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

Question 9

Write a brief note on the classification of incomplete/unfinished articles with reference to Rule 2(a) of the Interpretative Rules to the First Schedule of the Central Excise Tariff.

Answer

As per rule 2(a)(i) of the Interpretative Rules to First Schedule of the Central Excise Tariff, if any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article would also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.

Question 10

"Pure & Lovely" are manufacturers of 'hair oil' falling under Chapter 33 of the Central Excise Tariff (CET). Disputes arose in respect of two other categories 'edible oil' or 'coconut oil'. The Department contends that the coconut oil falling under these two categories are meant for sale as hair oil and should be classified under Chapter 33 of the CET. The manufacturers contend that they are not printing the specific use of such oil as 'hair oil' and this should be classified

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as vegetable oil under Chapter 15 of the CET irrespective of its use by the consumer. Chapter Note 2 of Chapter 33 prescribes a condition that Heading No. 3305 (which covers hair oil) applies to products put up in packing of a kind sold by retail for such use. Section Note 2 to Section VI provides that goods falling in Heading 3305 by reason of being put up for retail sales are to be classified in the said Heading. Briefly discuss whether coconut oil packed in larger packs generally used by consumers for edible purposes would merit classification under Chapter 15.

Answer

Yes, the coconut oil packed in larger packs generally used by consumers for edible purposes would merit classification under Chapter 15. The dispute in this case with the Department is restricted to 'edible oil' or 'coconut oil'. The assessee 'Pure & Lovely' pays excise duty under Chapter 33 in respect of all packages that are marked for use as 'hair oil'.

The Section Note 2 to Section VI supports the interpretation that although a product is capable of being classified under more than one heading, owing to the nature of its retail packing which is indicative of its use as hair oil, the classification under heading 3305 would get priority.

What follows is that if the same coconut oil is packed in larger packs of say 1 litre or 2 litre generally used by consumers for edible purposes (even though some customers may use it as hair oil), it would be classified under Chapter 15. Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the product. Equally, if the oil is put in packages generally meant for sale as 'hair oil', then it would be classified under Chapter 3305 even though some consumers may use it as edible oil.

Question 11

BCD Auto parts Ltd. is manufacturing rail assembly front seat, adjuster assembly slider seat, rear lock assembly used in motor vehicles for fitment along with seats. Assessee classified the items under Chapter Heading No. 8708 – parts and accessories of motor vehicles of the First Schedule to Central Excise Tariff Act, 1985. Department's contention is that goods manufactured are integral parts of seats and hence have to be classified under Chapter Heading No. 9401.00 – seats.

Examine whether contention of the department is correct by referring to case law, if any, and principles for classification of goods.

Answer

The facts of the given case are similar to the case of *CCEx. Delhi v. Insulation Electrical (P) Ltd. 2008 (224) ELT 512 SC* wherein the Apex Court held that the products manufactured by the assessee cannot be considered as parts of a seat. The rail assembly front seat, adjuster assembly slider seat etc. manufactured by the assessee were used to facilitate fitment of seat, in the motor vehicle and helped the driver and passenger of vehicle in adjusting the seat. The seat was complete and fully functional without rail assembly or adjuster assembly. None of the items manufactured could be considered as part of the seat.

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Thus, in view of the above-mentioned decision of the Supreme Court, Department's contention is not correct.

Question 12

Examine whether the rules for interpretation of tariff schedules applicable to classification of goods are also applicable to interpretation of exemption notification or to determination of the eligibility of goods for exemption under an exemption notification.

Answer

This issue has been dealt by the Supreme Court in the case of *CCEx. Jaipur v. Mewar Bartan Nirman Udyog 2008 (231) ELT 27 (SC*). In the instant case, the Apex Court clarified that it is a well settled position in law that exemption notification has to be read strictly and interpreted in terms of its language. Where the language is plain and clear, effect must be given to it. The rules of interpretation applicable in the cases of classification under the Tariff cannot be applied to interpretation of exemption notification.

Exercise

1. *Describe the Rules for Interpretation of the Schedules to the Central Excise Tariff Act, 1985.*
2. *How are the following goods classified under the Central Excise Tariff Act, 1985?*
   - *(i) Incomplete or unfinished goods having the essential characteristics of finished goods*
   - *(ii) Finished goods that are removed in an unassembled condition or in a disassembled condition such as semi-knocked down or completely knocked down condition.*
   - *(iii) Waste generated from the raw material before the starting the process of conversion.*
3. *Vertex Ltd. manufactures a product known as "MICEL" which is used for killing lice in human hair. Vertex Ltd classifies their product under Tariff sub-heading 3808.10 as an insecticide. However, the Central Excise Officer is of the view that the product is classifiable under Tariff subheading 3003.10 as a medicament as it has therapeutic and prophylactic properties. Vertex Ltd.'s claim is supported by the reports of chemical examiners and the Department of Dermatology & Venereology, which confirm that "MICEL" is an insecticide. Further, various statements of dealers also state that in the market the product is considered to be an insecticide. The claim of the central excise officer is substantiated by the fact that Chapter Note 1(c) of Chapter 38 indicates that Chapter 38 would not cover "Medicaments under Heading No. 3003 or 3004". Chapter Heading 2(i) of Chapter 30 defines "Medicament", inter alia, as a product comprising of*

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two or more constituents which have been mixed or compounded together for therapeutic or prophylactic use.

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

Answer/Hint: The facts of the given problem are similar to the case of *Sujanil Chemo Industries v CC.Ex., & Cus., Pune 2005 (181) E.L.T. 206 (S.C.)* wherein the Supreme Court observed that even though, in normal parlance, a product might be considered to be an insecticide if that product had any therapeutic and prophylactic use, but for the purposes of classification, that product could not fall under Chapter 38. The Apex Court clarified that any medicine or substance which treats disease or is a palliative or curative is therapeutic. Therefore, since Licel cured the infection or infestation of lice in human hair, it was therapeutic. Further, it was also prophylactic in as much as it prevented disease which would follow from infestation of lice. Thus, the Apex Court held that 'Licel' was a product which was used for therapeutic and prophylactic purposes. It would thus be a Medicament within the meaning of the term "Medicament" in Note 2 of Chapter 30 and would be excluded from Chapter 38.

Applying the ratio of the above decision, "MICEL" will be classified as a medicament under Tariff subheading 3003.10 and not as an insecticide under Tariff sub-heading 3808.10.

Note: This case was maintained in 2008(227) ELT A166 (Supreme Court).

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CHAPTER 3

Valuation of Excisable Goods

Question 1

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

Answer

The provisions of section 4A are as follows:

(a) Excisable goods are valued on the basis of retail sale price when they are packaged and it is required under Legal Metrology Act, 2009 or Rules or under any other law to declare on such packages the retail sale price thereof. The Government may notify the products for the purpose of this section.

(b) The assessable value shall be deemed to be the retail sale price declared on the package less amount of abatement. Abatements can be given by the Central Government through notifications after taking into account the amount of duties and taxes payable on such goods.

(c) The retail sale price has been defined to mean the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer inclusive of all taxes and expenses and price is the sole consideration for such sale.

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

(d) Where there is more than one retail sale price, the maximum of such retail sale price will be deemed to be the retail sale price for the purpose of this section.

(e) Where different retail sale prices are declared on different packages for different areas, each such retail price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.

(f) The excisable goods shall be confiscated and the retail sale price will be ascertained in the manner prescribed by the Central Government if the manufacturer:

- tampers, alters or obliterates the retail sale price declared on the package of goods after their removal, or
- removes such goods without declaring the retail sale price on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in (a) above.

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

Question 2

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

Answer

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

Question 3

Write short note on "Place of Removal''.

Answer

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

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

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from the factory; from where such goods are removed.

Question 4

Briefly explain the following in the context of valuation of excisable goods:

(i) Specific Duty

(ii) Compounded levy scheme

(iii) Tariff Value

(iv) Duty based on production in respect of notified goods

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Answer

(i) Specific Duty: It is the duty which is payable on the basis of certain unit like weight, length, volume, thickness etc. For instance specific duty is payable in respect of following goods:

(A) Cigarettes (length basis)

(B) Matches (per 100 boxes/packs)

(C) Sugar(per quintal basis)

(D) Marble slabs and tiles (square meter basis)

(E) Colour TV when MRP is not marked on the package or when MRP is not the sole consideration(screen size basis)

(F) Cement clinkers(per tonne basis)

The greatest advantage of this method of valuation of excisable goods is its simplicity. However, this method requires frequent changes for the purpose of increasing revenue because duty under method would remain constant even if the prices of relevant goods increase. Hence this method is used only in case of certain selected goods.

(ii) Compounded levy scheme: Rule 15 of Central Excise Rules, 2002 empowers Central Government to specify [by notification in the Official Gazette] the goods in respect of which an assessee shall have the option to pay duty of excise on the basis of specified factors [such as size of equipment employed, number and types of machines used for manufacture etc] relevant to production of such goods at specified rates. The prescribed is required to be paid by the concerned manufacturers 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. Hence, this scheme is quite useful for small manufacturers. The scheme is presently notified in respect of stainless steel patta/patties and aluminium circles. It is worth mentioning here that aforestated goods are eligible for SSI Exemption. In addition, from the government's perspective also it is a simplified scheme.

(iii) Tariff Value: It is Notional Value for the purpose of calculating the duty payable. In pursuance of provisions of Section 3(2) of Central Excise Act, 1944 Central Government can fix different tariff values for different classes of goods or goods manufacturered by different classes or sold to different classes of buyers. The consequence of fixing Tariff Value in respect of concerned goods is that the duty is to be paid as a percentage of 'Tariff Value' and not on the basis of Assessable Value fixed under section 4 of Central Excise Act, 1944.

(iv) Duty based on production in respect of notified goods: According to Section 3A of Central Excise Act, 1944 in order to safeguard the revenue the Central Government may notify goods on which excise duty shall be levied and collected on the basis of production capacity of the factory. The annual capacity fixed will be deemed to be annual production

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of such goods from the factory. If the factory does not operate for a part of the year, annual production will be calculated on proportionate basis. Further, if factor on the basis on which annual capacity is determined undergo change during the year, the annual capacity will be re-determined. This scheme has so far been notified in respect of Pan Masala containing tobacco [popularly known as Gukta] unmanufactured tobacco bearing a brand name, chewing tobacco and Jarda scented tobacco. In addition, this scheme does not apply to EOU.

Question 5

Briefly explain the situations where transaction value does not apply ?

Answer

According to Section 4 of Central Excise Act, 1944 following four conditions are required to be satisfied individually and cumulatively for valuing excisable goods on the basis of transaction value:

(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 should not be related persons.

(d) The price should be sole consideration for the sale.

In those cases where any of the above requirements are not fulfilled, the assessable value should not be Transaction Value. In such cases the assessable value is required to be determined on the basis of Central Excise (Determination of Price of Excisable Goods) Rules, 2000.

Question 6

The assessee was a manufacturer of I.C. engine parts like piston and gudgeon pins. He used to procure from the market piston rings and circlips and supply them along with the items that he had manufactured, to the buyers. He was also selling these procured items separately. The department contended that those bought-out items, supplied along with the manufactured items, were part of piston assembly and therefore, their value should be included in the value of the piston assemblies cleared by the manufacturer. But the assessee contended that the piston rings and circlips were all different parts of I.C. engine and therefore they were not to be considered as parts of another item.Decide whether the contention of the department is correct or not.

Answer

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

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that each part had an integral function in an assembly was not sufficient to hold that one item formed part of another item.

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

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

Question 7

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

Answer

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

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

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

"Relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956.

Question 8

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

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

Other information:

(a) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.

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(b) Bought out accessories supplied along with machinery valued at ₹6,000.

(c) Central excise duty rate 12% and educational cess as applicable @ 3%.

Make suitable assumptions as are required and provide brief reasons.

Answer

Determination of excise duty payable:

Particulars	₹
Price of machinery	5,50,000
Add:Packing charges (Note 6)	11,500
Design and engineering charges (Note 7)	2,000
Cost of material supplied by buyer (Note-3)	8,500
Pre-delivery inspection charges (Note-4)	500
Total	5,72,500
Less : 2% cash discount on price of machinery=550,000 x 2 % (Note-5)	11,000
Assessable value	5,61,500
Excise duty @ 12.36%	69,401.40
Excise duty [rounded off] payable	69,401

Notes :-

While computing the assessable value:-

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

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Question 9

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

		₹
(i)	*Sale price of the machine excluding taxes and duties*	*2,00,000*
(ii)	*Sales tax*	*20,000*
(iii)	*Cost of durable and returnable packing included in the sale price given at (i) above*	*5,000*
(iv)	*Design and development charges paid by buyer on behalf of seller to a third party*	*20,000*
(v)	*Warranty charges charged separately by the seller*	*5,000*
	Rate of excise duty 12%	
	Education cess 3%	

Calculations should be supported by notes, wherever required

Answer

Computation of total amount of excise duty payable:-

Particulars	₹
Sale price of the machine excluding taxes and duties	2,00,000
Add : Design and development charges (Note-3)	20,000
Add: Warranty charges (Note-4)	5,000
Less : Cost of durable and returnable packing (Note-2)	5,000
Assessable value	2,20,000
Excise duty @ 12%	26,400
Education cess @ 3% on Excise Duty	792
Total excise duty payable on the machine	27,192

Notes:

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

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Question 10

Explain briefly, how the value of goods will be ascertained for purpose of excise duty where the assessee sells the goods partly to a related person and the balance to unrelated third parties.

Answer

There is no specific rule covering such a situation. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per section 4(1), transaction value is to be determined for each removal. For sales to unrelated buyers, valuation will be done as per section 4(1)(a) and for sales of the same goods to related buyers, recourse will have to be taken to the residuary rule 11 read with rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are made to related buyers only *[Circular No. 643/34/2002 dated 01.07.2002].*

Question 11:

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

	Particulars	*No. of units*	*Price at factory per unit*	*Price at depot per unit*	*Rate of duty ad valorem*
(i)	*Goods transferred from factory to depot on 8th February*	*1,000*	*₹ 200*	*₹ 220*	*12%*
(ii)	*Goods actually sold at depot on 18th February*	*750*	*₹ 225*	*₹ 250*	*10%*

Answer

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

Assessable Value = 1,000 units x ₹ 220 = ₹ 2,20,000

Calculation of central excise duty:-

Basic excise duty @ 12% (₹ 2,20,000 × 12%)	26,400
Education cess @ 2%	528
Secondary and higher education cess @ 1%	264
Total duty payable	27,192

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

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Question 12

How will the assessable value under the subject transaction be determined under section 4 of the Central Excise Act, 1944? Give reasons with suitable assumptions where necessary.

Contracted sale price for delivery at buyer's premises ₹ 9,00,000

The contracted sale price includes the following elements of cost:

(i)	*Cost of drawings and designs*	*₹ 4,000*
(ii)	*Cost of primary packing*	*₹ 3,000*
(iii)	*Cost of packing at buyer's request for safety during transport*	*₹ 7,000*
(iv)	*Excise duty*	*₹ 1,11,200*
(v)	*VAT (Sales tax)*	*₹ 37,000*
(vi)	*Octroi*	*₹ 9,500*
(vii)	*Freight and insurance charges paid from factory to 'place of removal'*	*₹ 20,000*
(viii)	*Actual freight and insurance from 'place of removal' to buyer's premises*	*₹ 42,300*

Answer

Computation of assessable value of the excisable goods:-

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

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

1. the duty of excise, sales tax and other taxes, if any, actually paid or payable on the excisable goods has to be excluded [Section 4(3)(d) of the Central Excise Act, 1944].
2. the cost of transportation from the place of removal up to the place of delivery of the excisable goods has to be deducted [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
3. the cost of transportation, worth ₹ 20,000, from the factory to the place of removal would not be excluded [Explanation 2 to rule 5 of Central Excise Valuation (Determination of Price of Excisable Rules, 2000].

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4. cost of packing, ₹ 3,000 and ₹ 7,000 would not be deducted. In this regard, it has been clarified that as per section 4 of the Central Excise Act, 1944, packing charges would form part of the assessable value whether packing is ordinary or special, or primary or secondary. Any charges recovered for packing are the charges recovered in relation to the sale of the goods under assessment and, hence, will form part of the transaction value of the goods *[Circular no. 354/81/2000 dated 30/6/2000].*

5. The cost of drawings and designs, worth ₹ 4,000 would not be deducted.[Rule 6 of Central Excise Valuation (Determination of Price of Excisable Rules, 2000].

Question 13

Comment on the following

(i) Excise department cannot challenge the reasonability of MRP printed on the package.

(ii) If any excisable goods are exempted from duty of excise absolutely, the manufacturer of such goods will be bound to avail of the exemption.

Answer

(i) True. The central excise department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form *[ITC Ltd. v. CCEx., New Delhi 2004 (171) ELT 433 (SC)].* This case was maintained in Commissioner v. ITC Ltd. 2005 (186) E.L.T. A118(SC)

(ii) True. As per section 5A(1A) of the Central Excise Act, 1944, if any excisable goods is exempt from duty of excise absolutely, the manufacturer of such goods will be bound to avail the exemption.

Question 14

An assessee sold certain goods to PQR Company Limited for ₹ 20,000 on 09.09.2012. The buyer is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. The buyer did not sell the goods but used it as intermediary product. The cost of production of the goods was ₹ 16,000. What should be the assessable value? What should be the assessable value, if the goods were sold to unrelated person for ₹ 20,000, who also used it as intermediary product? *You may assume that the price charged from the buyer is excluding excise duty and other taxes.*

Answer

The proviso to Rule 9 of the Central Excise Valuation (Determination of Excisable Goods) Rules, 2000 lays down that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value thereof shall be determined in the manner specified in Rule 8.

Rule 8 provides that where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the

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value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

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

Question 15

I Scream Ltd. is engaged in manufacture of ice-cream falling under sub-heading 2105 of the Central Excise Tariff Act, 1985. The company supplied the ice cream in four litres pack to catering industry or hotels, who sell the same in scoops. The pack contained a declaration that the pack was not meant for retail sale. The Department contended that packs have to be assessed on the basis of value arrived at as per the provision of section 4A of Central Excise Act, 1944, which provides for assessment based on M.R.P and not under section 4 of the Central Excise Act, 1944. Assessee contended that the ice-cream pack sold was a bulk pack of 4 litres which was not meant to be sold in retail and they were not required to print the Maximum Retail Price and hence the transaction was a wholesale transaction and assessment under section 4 of the Central Excise Act, 1944 was correct.

Further contention of the assessee was that they are entitled to exemption under rule 3(b) of Legal Metrology (Packed Commodities) Rules, which exempts packs meant for industrial use. Examine whether the stand taken by the Department is correct in the light of decided case law.

Answer

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

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

Secondly, four litre pack of ice-cream could have been covered under the definition of "retail package" only if such package had been intended for retail sale for consumption by an individual or a group of individuals. However, the package specifically displayed that "the pack was not meant for retail sale". Moreover, hotel could not be covered in term of 'individual or a group of individuals'. Hence, the ice-cream package could not be termed as "retail package". Therefore, the assessee was not required under the erstwhile Standards of Weight and Measures Act (now Legal Metrology Act, 2009) and the rules there under to print the MRP on the package

Lastly, the Apex Court agreed with the contention of the asseesee that they were entitled to exemption under rule 34 which exempts the product from requirement of affixing maximum retail price on the pack. Rule 34 of the erstwhile Standard of Weights and Measures (Packaging Commodity) Rules, 1977 [now Rule 3(b) of Legal Metrology (Packaged

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Commodity) Rules, 2011] exempts the package specially packed for the purpose of servicing any industry. Supreme Court concluded that the sale of pack of ice-cream to the retail industry was squarely covered in the term "servicing any industry".

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

Note: The above case would hold good in the Legal Metrology Act, 2009. Standards of Weights and Measures Act, 1976 has been substituted with Legal Metrology Act, 2009 in section 4A with effect from August1,2011. Further as per Rule 3(b) of Legal Metrology (Packed Commodities) Rules, 2011, provisions of MRP do not apply to packaged commodities meant for industrial or institutional consumers.

Question 16

M/s Ganga Marketing supplies 12 bottles of mineral water in a single package to Speed Airways (airline company).

Maximum retail price was printed on the package. However, individual bottle of 200 ml. each did not carry such maximum retail price (M.R.P) as these were to be distributed to the passengers by the airline company and not intended for resale. M/s Ganga Marketing pays duty of excise assessing the goods under section 4 of the Central Excise Act, 1944.

The Department has taken a view that the package of 12 bottles is not a wholesale package. The airline company itself is the ultimate consumer. Hence, the package of 12 bottles is a 'retail package' and duty is payable on the basis of MRP under section 4A of the Central Excise Act, 1944.

Examine briefly, whether the stand taken by the Department is correct in law.

Answer

No, the stand taken by the Department is not valid in law. Section 4A(2) of the Central Excise Act, 1944 stipulates that value of the goods notified by the Central Government under section 4A(1) of the Act , would be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow. For the purpose of valuation under section 4A of the Central Excise Act, 1944, there should be requirement under the provisions of Standards of Weights and Measures Act (now Legal Metrology Act,2009) or the rules made there under or any other law to declare the retail price of such goods on the package.

As per Rule 3(b) of Legal Metrology (Packed Commodities) Rules, provisions of MRP do not apply to packaged commodities meant for industrial or institutional consumers. Thus, package of mineral water bottles meant for Speed Airways, being an institutional consumer does not require to bear any MRP. Hence, in the present case, the goods are to be valued under section 4 and not under section 4A of the Central Excise Act, 1944.

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Question 17

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

Answer

Retail Sale Price:-Explanation 1 to section 4A of the Central Excise Act, 1944 defines the retail sale price as the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

However, in case the provisions of the Central Excise Act, rules or Legal Metrology Act 2009 or the Rules made thereunder or under any other law for the time being in force require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Question 18

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

Answer

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

(a) the excisable goods to be valued are covered under Legal Metrology Act 2009 or related rules or under any other law and such law requires to declare on the package the retail sale price thereof; and

(b) the Central Government has notified the said goods as goods in relation to which the payment of excise duty shall be on the basis of the MRP less such deductions/abatements as it may allow in the notification. However, it must be noted that if the goods have been so notified, Legal Metrology Act 2009 or the rules made thereunder must require a declaration of the retail sale price on the package of such goods.

Question 19

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

Answer

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

(i) such goods shall be liable to confiscation and

(ii) the retail sale price of such goods shall be ascertained in the manner prescribed by the

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Central Government and such price shall be deemed to be the retail sale price.

Question 20

Asha Ltd. supplies raw material to a job worker Kareena Ltd. After completing the job-work, the finished product of 5,000 packets are returned to Asha Ltd. putting the retail sale price as ₹ 20 on each packet. The product in the packet is covered under MRP provisions and 40% abatement is available on it. Determine the assessable value under Central Excise law from the following details:

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

Answer

As the product is under MRP scheme, the duty shall be payable only as per the provisions of section 4A of the Central Excise Act i.e. on the basis of MRP less abatement and not on the basis of material cost plus job charges etc. Section 4A overrides section 4 of the Central Excise Act.

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

	₹
Retail sale price of 5000 packets = 5000 x 20 =	1,00,000
Less: Abatement @ 40%	40,000
Assessable Value	60,000

Question 21

Dharma Manufacturers, engaged in the manufacture of machines (and not availing small-scale concession) sold a machine to Asha Ltd. The cum-duty sale price of the machine excluding VAT is ₹ 5,80,000. Rate of excise duty is 12%, education cess is 2% and secondary and higher education cess is 1 %.

Sale price includes the following charges:

		₹
(i)	*Warranty charges*	*28,000*
(ii)	*Secondary packing*	*6,000*
(iii)	*Trade discount actually allowed*	*24,000*
(iv)	*Design and development charges of machine*	*20,000*
(v)	*Primary packing*	*10,000*
(vi)	*Cost of return fare of vehicles*	*4,500*

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(vii)	*Advertisement and publicity charges borne by Asha Ltd.*	*16,000*
(viii)	*Pre-delivery inspection charges*	*22,000*
(ix)	*After sales service charges*	*18,000*

Determine the assessable value of the machine for purpose of Central Excise duty.

Provide notes in respect of the treatment for each of the items listed at (i) to (ix) above.

Answer

Computation of assessable value of the machine

Particulars	₹	₹
Cum-duty sales price of the machine excluding VAT		5,80,000
Less: Trade discount [Note 3]	24,000	
Cost of return fare of vehicles [Note 5]	4,500	28,500
Cum-duty price for excise duty purposes		5,51,500
Assessable value= $\left(\frac{5,51,500}{112.36}\times 100\right)$		4,90,833

Notes:

1. As per the definition of the transaction value under section 4(3)(d) of the Central Excise Act, 1944, warranty charges are includible in the assessable value.
2. Amount charged from the buyer in relation to packing, irrespective of it being primary or secondary, is included in the assessable value. *[Circular No. 643/34/2002 CX dated 01.07.2002]*
3. As the transaction value is the price actually paid or payable, trade discount is allowable as deduction. The discount amount is reduced from the sale price on the presumption that such discount is included (added back) in the sale price of ₹ 5,80,000.
4. Design and development charges of machine are included in the assessable value as such charges are 'in connection with sale'.
5. Cost of return fare of vehicles is not included in the assessable value *[Circular No. 923/13/2010 CX dated 19.05.2010].*
6. Advertisement and publicity expenses borne by the buyer are included in the assessable value. *[Circular No. 643/34/2002 CX dated 01.07.2002]*
7. Pre-delivery inspection charges and after sales service charges are included in the assessable value. *[Circular No. 936/26/2010 CX. dated 27-10-2010]*

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Question 22

The following information is provided in respect of manufacture of a product "X" for the purpose of captive consumption in the same factory. You are required to determine the value for purpose of duty of excise in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000:

	₹
Cost of direct materials (includes central excise duty ₹ 1,545)	16,545
Cost of direct employees	12,300
Works overheads	8,400
Quality control cost	4,300
Research & development cost	2,700
Administrative cost:	
Production related	3,000
Others	1,500
Selling and distribution cost	3,600
Scrap value realized	1,500

Make assumptions if required and provide suitable explanations.

Answer

As per rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the value of the excisable goods used for captive consumption is 110% of the cost of production of such goods. The cost of production has to be computed as per the Cost Accounting Standard (CAS)-4.

Computation of cost of production as per CAS-4 and value of the excisable goods:-

Particulars		₹
Cost of direct materials	₹ 16,545	
Less: Central excise duty	₹ 1,545	15,000
Cost of direct employees		12,300
Work overheads		8,400
Quality control cost		4,300
Research and development cost		2,700
Administrative cost (production related)		3,000
Total		45,700
Less: Scrap value realized		1,500
Cost of production as per CAS-4		44,200
Value of excisable goods [₹ 44,200× 110%]		48,620

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Notes:

1. It has been assumed that CENVAT credit is available on central excise duty paid on direct materials and hence, it has been deducted from the cost of direct materials in accordance with Cost Accounting Standard-4.
2. Administrative overheads in relation to activities other than manufacturing activities have not been included in cost of production [CAS-4].
3. Selling and distribution cost have been excluded from the cost of production as they are not in relation to production activity [CAS-4].

Question 23

Explain briefly the significance of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 relating to goods produced or manufactured by a job worker.

Answer

Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 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.

Where the goods are sold by the principal manufacturer from the factory of the job worker's factory, the price charged by the principal to his customer would have to be taken as the value on which duty would have to be paid at the applicable rate. If the buyer is related to the principal manufacturer, the valuation would have to be done as in case of clearances to related parties. Where the goods are not removed for sale from the job worker's factory but cleared to some other premises of the principal from where the goods are sold, the valuation at the time of removal from the job worker's premises would be similar to what is followed under rule 7.

Question 24

Determine the assessable value for purpose of excise duty under the Central Excise Act, 1944 in the following cases:

(i) An assessee sells his excisable goods for ₹120 per piece and does not charge any duty of excise in his invoice. Subsequently, it was found that the goods were not exempted from excise duty, but were liable at 20% advalorem.

(ii) Certain excisable goods were sold for ₹120 per piece and 20% advalorem is the rate of excise duty. Subsequently, it was found that the price cum duty was in fact ₹140 per piece as the assessee had collected ₹20 per piece separately.

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(iii) The cum duty price per piece was ₹ 120 and the assessee had paid duty at 20% advalorem. Subsequently, it was found that the rate of duty was 30% advalorem and the assessee had not collected anything over and above ₹ 120 per piece.

Answer

(i) $$\frac{\text{Price cum duty}}{\frac{\text{1+ Rate of Excise duty}}{100}} = \text{Assessable Value} = \frac{120}{1.2} = ₹\ 100$$

(ii) $$\frac{\text{Price cum duty}}{\frac{\text{1+ Rate of Excise duty}}{100}} = \text{Assessable Value} = \frac{120+20}{1.2} = ₹116.67$$

(Note: Additional consideration has to be added to price)

(iii) $$\frac{\text{Price cum duty}}{\frac{\text{1+ Rate of Excise duty}}{100}} = \text{Assessable Value} = \frac{120}{1.3} = ₹\ 92.30$$

Question 25

Y Ltd. (raw material supplier) supplies raw material to a job worker (manufacturer) Z Ltd. The job worker after completion of the job delivers 5000 packets of finished goods to Y Ltd. In all these packets retail sale price (maximum) of ₹ 30 per packet is marked. The product in packaged form is subject to excise duty on the basis of MRP under section 4A of the Central Excise Act, 1944 and in respect of the same, 30% abatement has been prescribed. Determine the assessable value for purpose of excise duty after considering the following particulars:

Cost of raw material supplied ₹ 45,000

Job charges including profit ₹ 15,000

Transport charges for dispatch to job worker ₹ 4,000

Transport charges for return of finished product ₹ 4,000

(Provide brief explanation and make assumptions where required.)

Answer

Section 4A of the Central Excise Act, 1944 provides for valuation of excisable goods with reference to retail sale price.

Sub section (2) of this section provides that where the goods specified under sub-section (1) are excisable goods and are chargeable to duty with reference to value, then, notwithstanding

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anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

Thus, the provisions of section 4A of the Central Excise Act, 1944 are overriding provisions, i.e., if a product is covered under provisions of section 4A, valuation will be done on the basis of section 4A and not on the basis of material cost plus job charges.

Hence, in this case, the assessable value of the product will be computed as follows:-

Particulars	₹
Retails sale price per packet	30
Less: Abatement of 30% = ₹ $\left[30 \times \frac{30}{100}\right]$	9
Assessable value of each packet	21
Assessable value for the purpose of excise duty	
= ₹ 21 × 5,000 packets	1,05,000

The information pertaining to raw material cost, job charges, profit, transport charges etc. need not to be considered.

Question 26

Hand blender manufactured by the assessee was cleared as gift along with each unit of juicer, mixer and grinder (JMG). The MRP of ₹ 750 though printed on the 'hand blender box' contains clear indication that it is supplied free of cost. The package of JMG also shows this. The hand blender is not sold separately. The Department has issued a show cause notice that duty should be paid on the hand blender. Write a brief note with reference to section 4A of the Central Excise Act, 1944 whether the notice is sustainable in law.

Answer

No, the notice issued by the Department is not sustainable in law. In this case, though the MRP of ₹750 is printed on the 'hand blender box', there is a clear indication that it is supplied free of cost. This is merely a sale promotion measure in order to augment the demand.

In *Sony India Ltd. v. CCE 2004 (167) ELT 385 (SC)*, Supreme Court held that the offer of gifts was only incidental benefit and not the part of the consideration to be paid in regard to television sets (main product) as such. Similar view has been expressed by Tribunal in case of *Gujtron Electronics Pvt. Ltd. v. CCEx. & Cus. 2009 (241) E.L.T. 371 (Tri. - Ahmd.)*.

It is also clear that hand blender would be given free with every purchase of JMG and there is no sale of the same.

Hence, it can be concluded that the duty under section 4A will have to be paid on the JMG and the 'hand blender' provided as a gift will not be again subject to duty on the MRP because there is no sale of the hand blender.

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Question 27

What is the meaning of "normal transaction value" according to Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000?

Answer

As per rule 2(b) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, 'normal transaction value' means the transaction value at which the greatest aggregate quantity of goods are sold.

Question 28

How should value of samples, which are distributed free as part of marketing strategy, or as gifts or donations, or distributed as physicians' samples be determined according to the latest circular issued by Central Board of Excise & Customs? Indicate whether the procedure requires a change when products are notified for MRP based assessment.

Answer

Circular No. 813/10/2005 CX dated 25.04.2005 clarifies that value of samples which are distributed free as part of marketing strategy, or as gifts or donations, or distributed as physicians' samples should be determined under Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Circular No. 915/05/2010 CX dated 19.02.2010 has clarified that even when the products are notified for MRP based assessment under section 4A of the Central Excise Act, 1944, samples thereof would be assessed under Rule 4 of the valuation rules by taking into consideration the deemed value under section 4A(1). Accordingly, the value for payment of excise duty for samples notified for MRP based assessment would be the value determined under section 4A for the similar goods (subject to adjustment for size and pack etc.).

Question 29

For the purposes of valuation of taxable service, what is the meaning of a 'pure agent'?

Answer

'Pure agent' is a person, who

- incurs expenditure or costs on behalf of service recipient in terms of a contract
- does not hold any title to goods or services procured or provided as pure agent of the recipient of services
- does not use such goods or services
- receives only actual amount incurred to procure such goods or services.

Question 30

Vibhuti Motors Ltd. was manufacturer of various types of motor vehicles chargeable to duty on ad valorem basis. Department observed that while selling the vehicles to the customers, the dealers added their own margin known as the dealer's margin to the price at which the

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vehicles were made available to them by Vibhuti Motors Ltd. This dealer's margin contained provision for rendering pre-delivery inspection and three after sale services.

Hence, the Department contended that the cost of pre-delivery inspection and after sale services would form part of the assessable value of the automobile while discharging the duty liability.

You are required to examine the veracity of the Department's contention, with the help of a decided case law.

Answer

Yes, the Department's contention is valid in law. The facts of the given case are similar to the case of *Maruti Suzuki India Ltd. v. CCE 2010 (257) E.L.T. 226 (Tri. – LB).* The Larger Bench of the Tribunal drew the following propositions:-

(i) Transaction value includes the amount paid by reason of/in connection with sales of goods

The transaction value is not confined to the amount actually paid and is not restricted to flow back of consideration or part thereof to the assessee directly but even for discharge of sales obligations both in present and future. Thus, all deferred and future considerations are added to assessable value.

(ii) Definition of transaction value is extensive, at the same time restrictive and exhaustive in relation to the items excluded there from

Extensive

The use of expressions like "includes in addition to" and "including but not limited to" in the definition clause establishes that it is of very wide and extensive in nature.

Restrictive and exhaustive

At the same time, it precisely pinpoints the items which are excluded there from, with the prefix as "but does not include". Since, exclusions are defined, no presumption for further exclusions is permissible. Hence, the definition is restrictive and exhaustive in relation to the items excluded there from.

(iii) PDI and after sales service charges is a payment on behalf of the assessee to the dealer by the buyer

Any amount collected by the dealer towards pre-delivery inspection or after sale services from the buyer of the goods under the understanding between the manufacturer and the dealer or forming part of the activity of sales promotion of the goods would be a payment on behalf of the assessee to the dealer by the buyer, and hence, it would form part of the assessable value of such goods.

Hence, it was held that the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars.

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Note: In view of the aforesaid judgment, CBEC vide Circular No. 936/26/2010-CX. dated 27-10-2010 has also clarified that Pre-delivery Inspection charges and after-sale service charges collected by the dealers are to be included in the assessable value under section 4 of the Central Excise Act, 1944.

Question 31

Compute the assessable value of the goods manufactured by Bharat Enterprises, under section 4 of the Central Excise Act, 1944, with the help of the following particulars:-

Particulars	*Amount (₹)*
Contracted sale price for delivery at buyer's premises	*2,42,000*
The contracted sale price includes the following elements of cost:-	
(i) Cost of containers supplied by the buyer	*15,200*
(ii) Design and engineering charges	*22,400*
(iii) Loading and handling charges incurred after removal from the factory	*6,000*
(iv) Cost of after sale service	*10,000*
(v) Dharmada charges	*2,100*

Give reasons with suitable assumptions wherever necessary.

Answer

Computation of the assessable value of goods manufactured by Bharat Enterprises:-

Particulars	Amount (₹)
Contracted sale price for delivery at buyer's premises	2,42,000
Less: Loading and handling charges incurred after removal from the factory	6,000
Assessable value of the goods	2,36,000

Notes:-

While computing the assessable value,

1. cost of containers supplied by the buyer is includible *[Circular No. 643/34/2002-CX. dated 1-7-2002].*
2. design and engineering charges are essential for the purpose of manufacture and hence, are includible since such payment is in connection with sale.
3. loading and handling charges incurred after removal from the factory are not includible.
4. cost of after sale service is includible *[Circular No. 936/26/2010-CX. dated 27-10-2010].*
5. dharmada charges are includible *[Circular No. 763/79/2003-CX. dated 21-11-2003].*

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Question 32

ABC Limited is engaged in the manufacture of Product 'X' for the purpose of captive consumption. Determine the assessable value of Product 'X:-.

Direct Wages & Salaries	*19,500*
Consumbale stores and repairs	*5,700*
Research and Development Costs	*3,800*
Direct Material (including excise duty of ₹1800)	*35,000*
Administrative overheads (relating to production activities)	*5,300*
Selling and Distribution Costs	*1,500*
Realisable Value of Scrap	*1,300*
Amortised cost of fixtures	*2,500*

Answer

Cost of Production for purposes of Captive Consumption is determined as per 'Cost Accounting Standard (CAS)-4: Cost of Production for Captive Consumption' issued by ICWAI [*CBEC Circular No. 692/8/2003 dated 13-2-2003]*. Different elements of cost have been treated as per CAS-4.

Particulars		Amount (₹)
Direct Material Consumed		
Purchase Price		35,000
Less: Excise duty available as credit (Note-1)	1,800	33,200
Direct Wages & Salaries		19,500
Consumbale stores and repairs		5,700
Research and Development Costs		3,800
Administrative overheads		5,300
Amortised cost of fixtures		2,500
Total		70,000
Less: Realised value of Scrap		(1,300)
Cost of production		68,700
Assessable Value (₹ 68,700 x 110%) (Note - 3)		75,570

Notes:

1. As per CAS-4, excise duty of which credit is available, shall be deducted from the cost of material consumed.

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2. Selling and distribution Overheads doesn't form part of Cost of Production and hence ignored.
3. As per Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, 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.

Question 33

Mahavir Manufacturers, engaged in the manufacture of machines, sold a machine to Highland Enterprises. Cum-duty sales price of the machine excluding sales tax is ₹ 3,50,000. Rate of excise duty is 12%, education cess is 2% and secondary and higher education cess is 1%. Sales price includes the following charges:-

S.No.	*Particulars*	*Amount (₹)*
(i)	*Secondary packing*	*5,500*
(ii)	*Design and development charges of machine*	*20,000*
(iii)	*Warranty charges*	*35,000*
(iv)	*Cost of return fare of vehicles*	*2,000*
(v)	*Trade discount*	*3,000*
(vi)	*Advertisement and publicity expenses borne by Highland Enterprises*	*15,000*
(vii)	*Pre-delivery inspection charges*	*20,000*

Determine the amount of assessable value of the machine for the purposes of the levy of the excise duty.

Answer

Computation of assessable value of the machine:-

Particulars	Amount (₹)
Cum-duty sales price of the machine excluding sales tax	3,50,000
Less: Cost of return fare of vehicles	2,000
Less: Trade discount	3,000
Cum-duty price for excise duty purposes	3,45,000
Assessable value= $\left(\frac{3,45,000}{112.36}\times 100\right)$	3,07,048.77

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Notes:

While computing the assessable value:-

1. amount charged from the buyer in relation to packing, whether primary or secondary, will be included *[Circular No. 643/34/2002 dated 01.07.2002].*
2. design and engineering charges will be included as such payment is 'in connection with sale'.
3. advertisement and publicity expenses borne by the buyer shall not be excluded *[Circular No. 643/34/2002 dated 01.07.2002]*
4. As per the definition of the transaction value under section 4(3)(d) of the Central Excise Act, 1944, warranty charges are includible.
5. cost of return fare of vehicles is not includible *[Circular No. 923/13/2010 – CX dated 19.05.2010].*
6. Trade discount is allowable as deduction.
7. pre-delivery inspection charges are includible *[Circular No. 936/26/2010-CX. dated 27-10-2010].*

Exercise

1. *How are the goods valued when they are sold partly to a related person and partly to an unrelated person?*
2. *What are the conditions under which MRP based valuation shall apply under Central Excise Act, 1944?*
3. *State and briefly discuss the important deductions that are statutorily available under section 4 of Central Excise Act, 1944?*
4. *How would you deal with 'Protective packing for safe transportation of goods' in the course of arriving at the assessable value of excisable goods?*
5. *Differentiate between "Tariff value", "Transaction value" and "Normal value".*
6. *On 25.02.2012 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 ₹ 10,000 and tariff rate was 8%. These goods were sold ex Mumbai depot on 3.3.2012. On that date the normal transaction value at Mumbai depot was 11,000 and tariff rate was 10%. The normal transaction value at Mumbai depot on 25.02.2012 was ₹ 9,000 and tariff rate was 8%. The manufacturer has paid duty @ 8% on ₹ 10,000, but the department claims duty @ 10% on ₹ 11,000. Discuss the correct approach to be adopted in the case.*

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Answer/Hint: 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, ₹ 10,000 represents value on 25.02.2012 (time of removal) but it is not the value prevalent on the depot. Similarly, ₹ 11,000 represents depot price, but then it is not the price prevalent on 25.02.2012 (time of removal).

The correct value to be adopted in this case is the depot price of such goods (normal transaction value) on 25.02.2012 i.e., ₹ 9,000 and the correct rate will be 8%.

7. *ABC Ltd. of Kanpur agreed to sell an electric motor to DEF Ltd. of New Delhi for ₹ 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 ₹ 1250.00 and ₹ 1500.00 respectively which were charged separately. Actual transportation charges amounted to ₹ 1000.00 only.

   (ii) A discount of ₹ 1000 was given to DEF Ltd. on the agreed price on payment of an advance of ₹ 3500.00 with the order. (Ignore notional interest on advance)

   (iii) Interest of ₹ 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 ₹ 1300.00.

   (v) The expenditure incurred by ABC Ltd. towards 'free after sale service' during warranty period comes out to be ₹ 500 per motor.

   (vi) Dharmada charges of ₹ 200 were recovered from DEF Ltd.

   (vii) ABC Ltd. sold a lubricant worth ₹ 250.00 along with the motor to the interested customers. Lubricant which was purchased from the market by ABC Ltd. at ₹ 200 ensured durability and high efficiency of the motor. DEF Ltd. opted for the said lubricant.

   Compute the assessable value.

   Answer/Hint

   (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 ₹

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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 ₹ 1000 is given on ₹ 15000 (agreed price) i.e., the discounted price is ₹ 14000 however, as in this case price is not the sole consideration, the extra discount of ₹ 1000.00 will be included in the assessable value.

(iii) Interest of ₹ 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:

₹ 14000 + ₹ 1000 + ₹ 1300 + ₹ 500 + ₹ 200 = ₹ 17000.00.

8. *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	*₹*
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	*12%*
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*

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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.

Answer/Hint

Computation of assessable value and duty payable

Particulars	₹
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 @ 12%	73,200.00
Education cess @ 2%	1,464.00
Secondary and higher education cess @ 1%	732.00
Total duty payable	75,396.00

Note:

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

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

3: The cost of ₹ 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.

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

9. *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*

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wooden boxes in the assessable value of the welding electrodes? Discuss with the help of case laws, if any.

Answer/Hint: 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.

10. *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.

    Answer/Hint: 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.

11. *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 statues are not filed by it. How should the goods be valued?*

    Answer/Hint: 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

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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 Excsie 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.

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12. *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.*

Answer/Hint: 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.

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.

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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.

13. *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.*

Answer/Hint: 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.

14. *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

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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.

Answer/Hint: 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.

15. *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.

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

Answer/Hint: The facts of the problem are similar to that of the case of CCEx. Bhubaneshwar-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,

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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.

16. *Hema Exports gets its product manufactured on job work basis from Meltex Ltd., an independent processor. The details of the transaction are as follows:*

Particulars	*Amount (₹)*
Cost of material sent to job worker for processing	*5,000*
Processing charges (₹ 1000 processing charges & ₹ 500 profit)	*1,500*
Transportation charges for receiving the goods at the premises of the processor	*200*

After processing, goods are sold by Hema Exports at ₹ 8,000 from the premises of Meltex Ltd. Ascertain the assessable value of the goods as per section 4 of the Central Excise Act, 1944.

Answer/Hint: The assessable value of goods would be ₹ 8000 in terms of Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 as the goods are cleared by Hema Exports directly from the premises of Meltex Ltd.

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CHAPTER 4

CENVAT Credit

Question 1

Briefly explain the following with reference to the provisions of CENVAT Credit Rules, 2004 :

(i) Exempted Goods

(ii) Exempted Services

(iii) Final products

(iv) First stage dealer.

Answer

(i) Exempted Goods: As per Rule 2(d) of the CENVAT Credit Rules, 2004, "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under *Notification No. 1/2011-C.E., dated 1st March, 2011* or under entries at serial numbers 67 and 128 of *Notification No. 12/2012-C.E., dated the 17th March, 2012* is availed.

(ii) Exempted Services: Rule 2(e) of CCR, 2004 provides that "exempted services" means a -

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or

(2) service, on which no service tax is leviable under section 66B of the Finance Act; or

(3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

(ii) Final Products: As per Rule 2(h) of the Cenvat Credit Rules, 2004, "final products" means excisable goods manufactured or produced from input or using input service.

(iv) First Stage Dealer: As per Rule 2(ij) of the Cenvat Credit Rules, 2004 "first stage dealer" means a dealer who purchases the goods directly from, -

(a) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(b) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice

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Question 2

Elucidate the meaning of term "input" as given in Rule 2(k) of CENVAT Credit Rules, 2004.

Answer

Statutory Definition of term "input" as given in Rule 2(k) of CENVAT Credit Rules, 2004 : "input" means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service;

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;

Question 3

Elucidate the meaning of term "input service" as given in Rule 2(l) of CENVAT Credit Rules, 2004.

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Answer

According to Rule 2(l) Of Cenvat credit Rules, 2004 "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes, -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

Question 4

XYZ Co. is engaged in the manufacture of water pipes. From the following details for the month of May, 2012, compute the available CENVAT credit under the CENVAT Credit Rules, 2004:

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Duty (including the education cesses) paid on purchases as detailed below:

Particulars	₹
Raw steel	*22,000*
Water pipe making machine	*18,000*
Spare parts for the above machine	*7,500*
Grease and oil	*2,800*
Office equipment	*20,000*
Light Diesel Oil	*12,000*

XYZ Co. is not eligible for SSI exemption

Provide explanation for treatment of various items.

Answer

CENVAT credit admissible to XYZ Co. for the month of May, 2012

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

Notes :

In respect of:-

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

Question 5

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

(i) Credit of duties of excise on inputs can be availed irrespective of whether payment is made or not against the invoice, whereas credit of service tax on input services can be availed only after making payment of the invoice.

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(ii) An input service distributor is comparable to a dealer under the CENVAT scheme of inputs and capital goods.

(iii) The manufacturer shall not be allowed to transfer unutilized input credit in case of transfer of ownership of the factory by way of sale along with the inputs and capital goods.

(iv) A manufacturer availing CENVAT credit on input, capital goods or input services wrongly is liable to a penalty.

Answer

(i) *False.* W.E.F. 01.04.2011 the CENVAT Credit of "input service" is allowed, on or after the day on which invoice, bill or challan is received as per provisions of Rule 4(7) of CENVAT Credit Rules, 2004. In simple words, w.e.f. 01.04.2011 the CENVAT Credit is allowed on accrual basis. Similarly, CENVAT credit in respect of excise duty paid in respect of inputs can be availed on accrual basis i.e. as soon as the goods are received in the factory as per provisions of Rule 4(1) of CENVAT Credit Rules, 2004.

*Thus, w.*e.f. 01.04.2011 the CENVAT Credit both in r/o "input" and "input service" can be availed on accrual basis.

(ii) *True.* The invoice issued by a dealer is acceptable under the CENVAT Credit Rules, 2004 as an eligible document for availing credit. In order to pass on the credit, the dealer has to obtain registration and file quarterly returns with the Superintendent of Central Excise. Likewise, the document/invoice issued by an input service distributor is also acceptable under the CENVAT Credit Rules, 2004 as an eligible document for availing credit. Similarly, in order to pass on the credit, the input service distributor too has to obtain service tax registration, comply with rule 4A of Service Tax Rules, 1994 and file half yearly statement giving details of credit received and distributed, with the Superintendent of Central Excise.

(iii) *False.* The manufacturer shall be allowed to transfer the credit lying unutilized in his accounts provided the transfer takes place with specific provision for transfer of liabilities of such factory [Rule 10(1) of CCR, 2004] and the said inputs and capital goods are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise. [Rule 10(3) of CCR, 2004]

Note: It is also possible to answer as True. if it is assumed that there is no specific provision of transfer of the liabilities of such factory or the inputs and the capital goods have not been accounted for to the satisfaction of the Deputy/Assistant Commissioner of Central Excise.

(iv) *True*. The quantum of penalty imposed due to different reasons in r/o inputs, input services and capital goods has been exhibited in the following table in order to facilitate greater clarity and convenient learning by students

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<table>
<tr><th>Nature of items in r/o which CENVAT Credit is taken wrongly or in contravention of the provisions of CCR, 2004</th><th>Broad Reason for taking CENVAT Credit wrongly or contravention of the provisions of CCR, 2004</th><th>Quantum of Penalty</th><th>Relevant Rule of CCR, 2004</th></tr>
<tr><td rowspan="2">Inputs</td><td>Any reason other than fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Excise Act or the Rules made thereunder with intent to evade payment of duty</td><td>(A)Such goods shall be liable to confiscation; and
(B) Penalty not exceeding greater of the following two amounts:
(i) Excise duty payable on such goods or
(ii) ₹ 2,000/-</td><td>Rule 15(1)</td></tr>
<tr><td>Fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Excise Act or the Rules made thereunder with intent to evade payment of duty</td><td>In additional to above penalty given under Rule 15(1), following Penalty shall also be imposed:<table><tr><td>In case of a manufacturer</td><td>In terms of Section 11AC of Central Excise Act, 1944 i.e Penalty for non-levy or short levy or non-payment or short payment or erroneous refund</td></tr></table></td><td>Rule 15(2)</td></tr>
</table>

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<table>
<tr><td></td><td></td><td><table><tr><td>In case of a service provider</td><td>In terms of Section 78 of Finance Act, 1994</td></tr></table></td><td></td></tr>
<tr><td rowspan="2">Capital Goods</td><td>Any reason other than fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Excise Act or the Rules made thereunder with intent to evade payment of duty</td><td>(A)Such goods shall be liable to confiscation; and
(B) Penalty not exceeding greater of the following two amounts:
(i) Excise duty payable on such goods or
(ii) ₹ 2,000/-</td><td>Rule 15(1)</td></tr>
<tr><td>Fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Excise Act or the Rules made thereunder with intent to evade payment of duty.</td><td>In additional to above penalty given under Rule 15(1), following Penalty shall also be imposed:<table><tr><td>In case of a manufacturer</td><td>In terms of Section 11AC of Central Excise Act, 1944 i.e Penalty for non-levy or short levy or non-payment or short payment or erroneous refund</td></tr><tr><td>In case of a service provider</td><td>In terms of Section 78 of Finance Act, 1994</td></tr></table></td><td>Rule 15(2)</td></tr>
</table>

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<table>
<tr><td rowspan="2">Input Services</td><td>Any reason other than fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Finance Act, 1994 or the Rules made thereunder with intent to evade payment of Service Tax.</td><td>(A) Penalty not exceeding greater of the following two amounts:
(i) Service Tax payable on such services or
(ii) ₹ 2,000/-</td><td>Rule 15(1)</td></tr>
<tr><td>Fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Finance Act, 1994 or the Rules made thereunder with intent to evade payment of Service Tax</td><td>In additional to above penalty given under Rule 15(1) following , Penalty shall also be imposed:<table><tr><td>In case of a manufacturer</td><td>In terms of Section 11AC of Central Excise Act, 1944 i.e Penalty for non-levy or short levy or non-payment or short payment or erroneous refund</td></tr><tr><td>In case of a service provider</td><td>In terms of Section 78 of Finance Act, 1994</td></tr></table></td><td>Rule 15(3)</td></tr>
</table>

Question 6

I Ltd. was a manufacturer of excisable goods such as polyester yarn. A ground plan of the factory was provided by the assessee to the jurisdictional Central Excise Officer and the same was approved. The ground plan showed the area in which the manufacturing is carried out as also the areas occupied for purpose of storage godowns, cycle sheds, canteen as well as the housing complex for staff and workers. The assessee had a captive power plant in the

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approved area. The electricity generated was supplied to the housing complex as well as for use in the manufacturing activity.

I Ltd. claimed CENVAT credit on the duty paid on furnace oil used for generation of electricity as it was used within the factory and was covered by the expression "for any other purpose" in rule 2(k) of the CENVAT Credit Rules, 2004. The Central Excise Department wanted to deny the CENVAT credit on the duty paid on furnace oil for generation of electricity which in turn is supplied to the housing complex on the ground that it was not used in relation to manufacture of the final product. Examine whether the stand of the Department is correct in law.]

Answer

The definition of term "input" given under Rule 2(k) of CCR, 2004 provides that the term "input" specifically excludes any goods such as food items, goods used in a guest house, residential colony, club or a recreation facility when such goods are used primarily for personal use or consumption of any employee. In the given case excise duty has been paid on furnace oil for generation of electricity which is supplied to the housing complex of employees of the factory. Thus, furnace oil would not fall within the purview of term "input". and hence, the stand taken by the Department is correct in law.

Furthermore, the definition of "input" also specifically excludes any goods which have no relationship whatsoever with the manufacture of a final product. In the given case, furnace oil used for generation of electricity which is supplied to the housing complex of employees of the factory has no relationship whatsoever with the manufacture of a final product. Thus, due to this specific exclusion also, furnace oil would not fall within the scope of term "input".

Question 7

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

(i) Credit of duties of excise on inputs will not be available if inputs are used in intermediate product, which is exempt from duty, even though the final product is dutiable.

(ii) A manufacturer can sell the inputs on which CENVAT credit has already been availed of, as they are, provided he pays the amount equal to the credit availed.

(iii) A manufacturer is eligible for CENVAT credit in the cases stated below:

(1) Inputs used in trial runs;

(2) Materials used for maintaining factory building.

Answer

(i) False. It was held in CCEx. v. Hindustan Sanitaryware 2002 (145) ELT 3 (SC) that CENVAT credit would be available in respect of duty paid on inputs even if intermediate product is exempt from duty but the final product is dutiable. Further, the Central Board of Excise and Customs has clarified vide Clarification No. B-4/7/2000-TRU, dated 03.04.2000 that the CENVAT credit shall not be denied if the inputs are used in any intermediate product of the final product even if such intermediate product is exempt from

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payment of duty so long as the final product is dutiable. The basic idea is that CENVAT credit should be admissible so long as the inputs are used in or in relation to the manufacture of dutiable final products, whether directly or indirectly.

(ii) True. Rule 3(5) of CENVAT Credit Rules, 2004 *inter alia* provides that a manufacturer of the final products can remove inputs on which CENVAT credit has been taken, as such, from the factory if he pays an amount equal to the credit availed in respect of such inputs and such removal is made under the cover of an invoice referred to in rule 9 of CENVAT Credit Rules, 2004. However, in the following case, no payment equivalent to CENVAT availed is required to made:

Purpose of removal of inputs outside the factory	Relevant statutory provision and its effective date
Providing free warranty for final products	Second proviso to Rule 3(5) of CCR, 2004 inserted w.e.f. 01.04.2011

(iii) (1) True. Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are considered to have been used in the factory by the manufacturer of final product *[Definition of Input, Rule 2(k)]*

(2) False. According to Rule 2(k) of CCR, 2004 the term "input", amongst other things, means all goods used in the factory by the manufacturer of the final product. Materials used for maintaining factory building only facilitate manufacture and are not integrally used in the manufacture of final products. Hence, such materials are not eligible for CENVAT Credit.

Question 8

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

(i) Basic excise duty credit can be utilized for payment of basic excise duty and education cess and secondary and higher education cess.

(ii) CENVAT Credit can be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated 01.03.2011 is availed.

(iii) CENVAT Credit can be utilised for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.

(iv) Credit of duty paid @ 1% on inputs and input services in pursuance of Notification No. 1/2011-C.E. dated 01.03.2011 is available both to the manufacturer of these goods as well as manufacturer or service provider who buys them.

(v) CENVAT credit on inputs lying in stock or in process or contained in the final product shall be reversed when the final product is subsequently exempted unconditionally in terms of an exemption notification issued under section 5A of the Central Excise Act, 1944.

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Answer

(i) Correct. There is no restriction in the said rules on utilization of CENVAT credit of basic excise duty (BED) for payment of education cess (EC) and secondary and higher education cess (SHEC). Rule 3(4) of the said rules provides that credit of BED can be utilized for payment of any duty of excise on any final product. Since EC and SHEC are duties of excise,. as per statutory provisions. Hence, credit of BED can be utilized for payment of cesses.

(ii) Incorrect. According to second proviso [inserted w.e.f. 01.03.2011] to Rule 3(4) of CENVAT Credit Rules, 2004 CENVAT Credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated 01.03.2011.is availed. In simple words, excise duty liability on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated 01.03.2011 is availed has to be discharged in cash/ by cheque/ e payment only.

(iii) Incorrect. According to sixth proviso [inserted vide Notification No. 26/2010-C.E.(N.T.) dated 29.06.2010]to Rule 3(4) of CENVAT Credit Rules, 2004 the CENVAT Credit of any duty specified under Rule 3(1) of CCR, 2004 shall not be utilised for *payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.*

(iv) Incorrect. Credit of duty paid on input or input services is not available to the manufacturer of these goods. In addition, credit of the duty paid on these goods is also not available to the manufacturer or service provider who buys them

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

Question 9

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

Answer

The case is similar to *CCEx. v. Bombay Dyeing & Mfg. Co. Ltd. (2007) 215 ELT 3 (SC),* wherein it was held by the Apex Court that since the entry for credit was reversed before utilizing the same, it would amount to not taking of credit. Hence, in view of this decision, M/s Smart Ltd. is entitled to claim the benefit of exemption notification. Consequently, the Department's action is not correct.

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Question 10

Discuss in detail whether interest can be recovered from an assessee who firstly wrongly takes and subsequently reverse CENVAT Credit before its utilisation.

Answer

According to Rule 14 of CCR, 2004 where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries.

Hence, interest cannot be recovered from an assessee who firstly wrongly takes and subsequently reverse CENVAT Credit before its utilisation.

Question 11

Based on the following particulars, arrive at the CENVAT credit available on clearance of goods to Domestic Tariff Area (DTA) from an Export Oriented Unit (EOU):

Assessable value	*₹ 20 lakhs*
Basic customs duty	*10%*
Excise duty	*12%*
Education cess	*2%*
Secondary and Higher Education cess	*1%*
VAT payable under State VAT law	*4%*

Answer

As per *Notification No. 23/2003 CE dated 31.3.2003*, 50% of basic customs duty is exempt in case of clearance of goods by an EOU to DTA. The amount of excise duty payable by EOU is calculated as under:

Calculation of duty payable by EOU/EHTP/STP is as follows, w.e.f. 17-3-2012 -

		Duty %	Amount	Total Duty
(A)	Assessable Value Rs		20,00,000.00	
(B)	Basic Customs Duty	5	1,00,000.00	1,00,000.00
(C)	Sub-Total for calculating CVD '(A+B)'		21,00,000.00	
(D)	CVD 'C' x excise duty rate	12	2,52,000.00	2,52,000.00
(E)	Sub-total for edu cess on customs 'B+D'		3,52,000.00	
(F)	Edu Cess of Customs - 2% of 'E'	2	7,040.00	7,040.00
(G)	SAH Education Cess of Customs - 1% of 'E'	1	3,520.00	3,520.00
(H)	Sub-total for Spl CVD 'A+B+D+F+G		23,62,560.00	
(I)	Special CVD u/s 3(5) - 4% of 'H' (Nil if State Vat paid)	4	94,502.40	94,502.40
(J)	Total Excise duty payable			4,57,062.40
Notes – Buyer who is manufacturer in DTA, is eligible to avail Cenvat Credit of D and I above.				

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As per second proviso to rule 3(7)(a) of CENVAT Credit Rules, 2004, the amount of CENVAT credit will be as under:

	₹
Additional duty of customs (CVD)	2,52,000.00
Special CVD u/s 3(5)	94,502.40
Total amount of credit	3,46,502.40

Question 12

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

Answer

As per Rule 10 of the CENVAT Credit Rules, 2004, if a manufacturer of the final product shifts his factory to another site with the specific provision for transfer of liabilities of such factory, he shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to the new site if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of Central Excise.

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

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

Note: This case was maintained in Commissioner v. CESTAT – 2009(237) E.L.T. A48(S.C.).

Question 13

What are the provisions relating to the payment of excise duty on used capital goods cleared by an assessee on which CENVAT credit has been availed?

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Answer

As per Rule 3(5A) of the CENVAT Credit Rules, 2004 if the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely : -

S .No.	Type of Capital Goods	Percentage points calculated by straight line method	
1.	Computers and computer peripherals	For each quarter in	Percentage
		Year 1	10%
		Year 2	08%
		Year 3	05%
		Year 4 & 5	01%
2.	Other capital goods	2.5% quarter for each year	

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

Question 14

Following transactions took place in the factory of JKA Ltd:

(i) An imported consignment of raw materials was received vide bill of entry dated 2.09.12 showing the following customs duty payments:

Basic customs duty ₹ 25,000; Additional duty (CVD) ₹ 20,000; Special additional duty ₹ 5,800.

(ii) A consignment of 1,000 kg of inputs was received. The excise duty paid as per the invoice was ₹ 10,000. While the input was being unloaded, 50 kg were damaged and were found to be not usable.

(iii) A vehicle containing machinery was received. The machinery was purchased through a dealer and not from the manufacturer. The dealer's invoice no. 925 dated 3.9.12 marked "original for buyer" certified that the excise duty paid by the manufacturer of machinery was ₹ 24,000. The dealer is registered with the Central Excise Authorities.

(iv) Some inputs for final product were received. These were accompanied by a certified Xerox copy (photo copy) of invoice no. 286 dated 15.11.12 indicating that excise duty of ₹ 6,400 had been paid on inputs. The original or duplicate copy of invoice was not traceable.

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(v) *A supplementary invoice for ₹ 1,00,000 together with Service Tax of ₹ 10,300/-was received on 15.09.2011.The aforementioned supplementary invoice was in respect of Business Support Services received during the month of May 2011 and whose original invoice of ₹ 3,00,000 together with Service Tax of ₹ 30,900/- was received in the month of May 2011 itself.*

Would your answer in above case be different if the above supplementary invoice was issued consequent upon additional amount of tax became recoverable from the concerned provider of Business Support Services on account of short-payment by reason of fraud with intent to evade payment of service tax.

Indicate the eligibility of CENVAT credit, in each case, under the CENVAT Credit Rules, 2004 with explanations where necessary.

Answer

(i) As per rule 3(1)(vii) of the CENVAT Credit Rules, 2004, CENVAT credit of the additional duty leviable under section 3 of the Customs Tariff Act, 1975 viz., Countervailing Duty (CVD) shall be allowed to a manufacturer or producer of the final products. Thus, credit can be availed in respect of ₹20,000 paid as additional duty (CVD). In different words, no CENVAT Credit can be availed in relation of Basic customs duty and Special Additional Duty.

(ii) Rule 2(k) of CENVAT Credit Rules, 2004 *inter alia* provides that input means all goods used in the factory by the manufacturer of the final product. Thus, the inputs lost before being issued for production cannot be termed as "used in the factory by the manufacturer of final product". Hence, CENVAT credit in respect of 50 kg of inputs will not be available but CENVAT credit of ₹9,500 on balance 950 kg of inputs can be availed.

(iii) Sub-Clause (iv) of rule 9(1)(a) of CENVAT Credit Rules, 2004 provides that CENVAT credit shall be taken by manufacturer on the basis of an invoice issued by a first/second stage dealer. Further, as per rule 9 of Central Excise Rules, 2002, a first/second stage dealer requires registration. Thus, in the given case, CENVAT credit can be claimed against dealer's invoice since the dealer is registered with Central Excise Authorities.

However, CENVAT credit in respect of capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [Rule 4(2) of CENVAT Credit Rules, 2004]. Hence, CENVAT credit of ₹12,000 will be available in the current financial year. Balance credit of ₹12,000 can be availed in any subsequent year.

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

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(v) Clause (bb) has been inserted in sub-rule (1) of Rule 9 of CENVAT Credit Rules, 2004 w.e.f. 01.04.2011. The aforementioned clause (bb) provides that CENVAT Credit can be availed on the basis of a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994. Thus, in the given case CENVAT Credit can be availed on the basis of supplementary invoice received on 15.09.2011 *in respect of Business Support Services received during the month of May 2011.*

However, Rule 9(1)(bb) also specifies that CENVAT Credit in relation of supplementary invoice, bill or challan shall not be available in a case where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud, collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of Finance Act or the rules made there under with the intent to evade payment of service tax. Since in the given case supplementary invoice has been issued consequent upon additional amount of tax became recoverable from the concerned provider of Business Support Services on account of short-payment by reason of fraud with intent to evade payment of service tax CENVAT Credit in relation of supplementary invoice in this case can not be availed.

Question 15

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

Answer

ER-6 is a monthly return of receipt and consumption of each of principal inputs with reference to the quantity of final products manufactured by a manufacturer of final products. It is to be submitted to the Superintendent of Central Excise by the assessee within ten days from the close of each month. Further, assesses will now have to file the monthly return of information relating to Principal Inputs(ER-6) electronically irrespective of the duty paid in the preceding year.

It is also worth specifying that according to Explanation to Rule 9A, "principal inputs" means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final product.

Question 16

X, a manufacturer purchased 500 kgs of inputs on 1.10.2010. Total assessable value of inputs was ₹10,000 and excise duty of 10% and 3% as education cess was paid on the input. On the day of receipt itself, inputs were sent to the job worker. Job worker sent back 50% of the inputs on 1.4.2011 and balance 50% on 31.5.2011. X received back the processed inputs on the same day. Calculate the CENVAT credit required to be reversed or that can be availed on relevant dates and net availment and reversal in the financial years 2010-11 and 2011-12.

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Answer

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

In the light of above provisions, present problem will be solved as under:

	₹
CENVAT credit that can be taken on 1.10.2011 (₹ 10,000×10.30%)	1,030
Therefore,Goods should have been returned within 180 days i.e., by 30.03.2011.	
CENVAT credit that should be reversed on 31.3.2011 i.e., immediately after the expiry of 180 days from the date of sending goods to job worker	1,030
CENVAT credit availed and reversed in financial year 2010-11	1,030
CENVAT credit that can be taken on 1.4.2011 (50% of ₹ 1,030)	515
CENVAT credit that can be taken on 31.5.2011 (50% of ₹ 1,030)	515
CENVAT credit availed in financial year 2011-12	1,030

Question 17

Ashish and Sons, a sole proprietorship firm is engaged in the manufacture of final products. It purchased following items during the financial year 2011-12:

Jigs	*₹1,00,000*
Fixtures	*₹1,50,000*
Moulds and dies	*₹2,00,000*
Excise Duty paid on above items@ 10.30%	*₹ 46,350*

It sent above-mentioned Jigs, Fixtures, Moulds and dies to another manufacturer for the production of goods according to his specification. Will Ashish and Sons get CENVAT Credit in respect of aforementioned Jigs, Fixtures, Moulds and dies?

Answer

According to Rule 4(5)(b) of CENVAT Credit Rules, 2004 the CENVAT Credit shall be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to :-

(i) Another manufacturer for the production of goods ; or

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(ii) A job worker for the production of goods on his behalf

according to his specification.

Since in the given case Ashish & Sons has sent Jigs, Fixtures, Moulds and dies to another manufacturer for the production of goods according to its specification, it is entitled to get CENVAT Credit in respect of excise duty of ₹ 46,350/- in accordance with provisions of Rule 4(5)(b)(i) of CENVAT Credit Rules, 2004.

Question 18

M/s ABC Ltd. was a cement manufacturer. The company used ropeway system for bringing crushed limestone from the mines located 4 - 5 kms away from the factory. A part of ropeway system was installed in the factory and the system was controlled from the factory. M/s ABC Ltd. availed CENVAT credit on parts / spares for ropeway system treating the same as capital goods. The Central Excise Department denied CENVAT credit on the ground that ropeway is used for transporting raw materials from the mines to the factory and cannot be considered as material handling system within the factory premises. Examine, with the help of a decided case law, whether the stand taken by the Department is correct in law.

Answer

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

The facts of the given case are similar to the case of M/s. Birla Corporation Ltd. v. CCE 2005 (186) ELT 266 (SC). In the instant case, the Apex Court followed the principle laid down in case of J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II 2001 (130) E.L.T. 996 wherein the same question arose for consideration and the facts were almost identical. It was held in aforementioned case that the assessee was entitled to the CENVAT credit of the spares of the ropeway system because the ropeway system, used to bring the crushed lime stone from the mines to the factory, could be covered under the expression "precincts of the premises" in the definition of the term "factory" under section 2(e) of the Central Excise Act, 1944. The same ruling has also been given in the following case:-

(i) Ultratech Cement V CCE(2009) 243 ELT 575 (CESTAT)

Applying the ratio of the abovementioned judgement, the ropeway system used by ABC Ltd. would be taken to be within the factory and therefore, parts/spares thereof would be covered under the definition of capital goods.

Hence, the stand of the Department is not correct.

Question 19

M/s. AJ imported some inputs and paid basic customs duty ₹5 lakh, surcharge on customs duty ₹ 50,000 and CVD ₹1 lakh. Calculate the amount that he can claim as CENVAT credit. Would it make any difference, if the assessee is not a manufacturer but a service provider?

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Answer

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

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

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

Question 20

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

Answer

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

(i) Pay an amount equal to 6% of the value of exempted services;

OR

(ii) Pay an amount as determined under Rule 6(3A) of CCR, 2004 i.e. Reverse the CENVAT Credit attributable to the inputs and input services used for providing exempted services

(iii) Maintain separate accounts for inputs as provided for in Rule 6(2)(a) of CCR, 2004 and take credit of only those inputs which are used for provision of output services excluding exempted services. In addition, a service provider has to pay an amount determined in accordance with Rule 6(3A) in respect of input services.

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

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

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(ii) TCCL has to reverse CENVAT Credit attributable to inputs and input services used for providing exempted services which are given as ₹ 40,000/- .

(iii) In the absence of complete information for maintaining separate accounts for inputs, this option cannot be worked out in this case. Consequently, proportionate reversal option only in relation of input services cannot be worked out.

Question 21

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

Answer

The following actions can be taken by the Department in case of misuse of service tax credit:

(i) Penalty not exceeding Service Tax on such services OR ₹2,000, whichever is greater can be levied if a person has taken CENVAT credit in respect of input service wrongly [Rule 15(1) of the CENVAT Credit Rules, 2004];

(ii) Penalty prescribed under section 78 of the Finance Act, 1994 shall also be levied on the output service provider if the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of these Rules or Finance Act or the rules made thereunder with an intent to evade payment of service tax [Rule 15(3) of the CENVAT Credit Rules, 2004];

(iii) The special audit, in cases where credit of duty availed or utilized is not within the normal limits etc., prescribed under section 14AA of the Central Excise Act, 1944 can be ordered in case of misuse of service tax credit.

Question 22

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

Answer

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

Question 23

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

Answer

As per Rule 3(5C) of the CENVAT Credit Rules, 2004, where on any goods manufactured by an assessee, the payment of duty is ordered to be remitted under Rule 21 of Central Excise

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Rules 2002, the credit taken on inputs used in the manufacture or production of said goods shall be reversed. Thus, there is no requirement for the reversal of CENVAT credit taken on input services used in the manufacture of such goods.

Question 24

Mr. Happy, a service provider, has provided services of ₹ 1,00,00,000. Out of this, ₹ 70,00,000 are taxable output services and ₹ 30,00,000 are exempt output services. Mr. Happy has opted not to maintain separate inventory and accounts and pay prescribed amount on value of exempt output services.

Service tax paid on his input services, excluding education cess and secondary and higher education cess (EC & SHEC) is ₹ 6,00,000.Rate of service tax, excluding EC and SHEC, is 12%. Calculate the total amount payable including service tax, EC and SHEC by Mr. Happy through GAR-7 challan.

Answer

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

Particulars	₹
Service tax payable on taxable services (₹ 70,00,000 × 12%)	8,40,000
Education cess @ 2% (₹ 8,40,000 × 2%)	16,800
Secondary and higher education cess @ 1% (₹ 8,40,000× 1%)	8,400
Amount payable on exempt services under rule 6(3)(i) (₹ 30,00,000 × 6%) [Note (1)]	1,80,000
Total	10,45,200

Particulars	Service tax and amount payable under rule 6(3)(i)	Education cess	Secondary and higher education cess
Amount payable (A)	₹ 8,40,000+₹ 1,80,000 = ₹ 10,20,000	₹ 16,800	₹ 8,400
Less: CENVAT credit (B)	₹ 6,00,000	₹ 6,00,000 × 2% = ₹ 12,000	₹ 6,00,000 × 1% = ₹ 6,000
Net amount payable = (A) - (B)	₹ 4,20,000	₹ 4,800	₹ 2,400

Amount payable by GAR-7 challan=₹ 4,20,000 + ₹ 4,800 + ₹ 2,400=₹ 4,27,200

Notes :

(1) Education cess and secondary and higher education cess are not payable on 'amount' payable @ 6% of the value of exempt services under rule 6(3)(i) of the CENVAT Credit Rules, 2004.

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(2) Credit of education cess and secondary and higher education cess paid on input services can be utilized only for the payment of education cess and secondary and higher education cess payable on output services (or on excisable goods) respectively [First and second proviso to rule 3(7)(b) of the CENVAT Credit Rules, 2004].

Question 25

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

Total credit of service tax on input services	*₹ 6,000*
Total turnover of output service exported	*₹ 30,000*

Answer

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

In the present case there is no service tax liability because the entire turnover of output services has been exported. Thus, refund can be claimed in respect of entire service tax of ₹ 6,000/- paid on input services.

Question 26

If a manufacturer manufactures various products, can he avail CENVAT credit on some products and exemption under Notification No. 8/2003-CE dated 1.3.03 on some other products?

Answer

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

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

Question 27

Whether CENVAT Credit can be availed in respect of service paid under section 66A of Finance Act, 1994?

Answer

As per Rule 3(1)(ixa), a manufacturer or producer of final products or a provider of output service can take cenvat credit of the service tax leviable under section 66A of the Finance Act.

Question 28

Punjab National Bank provides the following information for the month of June 2011:

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CENVAT Credit available on Inputs	*₹2,00,000*
CENVAT Credit available on Input Services	*₹4,00,000*
Service Tax liability before availing eligible CENVAT	*₹10,00,000*

Determine the amount of CENVAT Credit available to Punjab National Bank for the month of June, 2011 in view of Rule 6(3B) of CENVAT Credit Rules, 2004. Also determine the net service tax liability of the Bank after availing the eligible CENVAT Credit.

Answer

According to Rule 6(3B) of *CENVAT Credit Rules, 2004,* notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances shall pay for every month an amount equal to fifty per cent of the CENVAT credit availed on inputs and input services in that month.Looking from another perspective, a banking company is entitled to avail only 50% of CENVAT Credit in relation of inputs and input services.

In view of above statutory provisions, CENVAT Credit available to bank for the month of June 2011 and its net service tax liability will be computed as under:

CENVAT Credit available on Inputs	₹ 2,00,000
Less: Payment of 50% of CENVAT Credit available on Input by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed	₹ 1,00,000
Net CENVAT Credit available on Inputs	₹ 1,00,000
CENVAT Credit available on Input Services	₹ 4,00,000
Less: Payment of 50% of CENVAT Credit available on Input Services by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed.	₹ 2,00,000
Net CENVAT Credit available on Input Services	₹ 2,,00,000

Determination of Net Service Tax liability of Bank for the month of June, 2011

Service Tax liability of bank before availing eligible CENVAT Credit	₹ 10,00,000
Less: Net/Eligible CENVAT Credit available on Inputs	₹ 1,00,000
Less: Net/Eligible CENVAT Credit available on Input Services	₹ 2,00,000
Net Service Tax liability of bank after availing eligible CENVAT Credit	₹ 7,00,000

Question 29

PQR Ltd, a manufacturer of excisable goods purchased in the month of September, 2011 inputs of ₹1,00,000/- on which it pays excise duty of ₹,10,300/- . The company availed the aforementioned CENVAT of ₹10,300/- while discharging its excise duty liability for the month of September, 2011. In Dec. 2011 before the said inputs are put into use, the company has

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written off ₹ 20,000 against the said inputs. What economic consequences the company has to face for foregoing writing off of ₹ 20,000/- However, subsequently, in the month of March, 2012 the company put to use the entire inputs of ₹ 1,00,000/-. Can the company get some economic benefit now?

Answer

Finance Act, 2011 has amended Rule 3(5B) of CENVAT Credit Rules, 2004 w.e.f. 08.04.2011 to require a manufacturer or service provider to pay an amount equivalent to the CENVAT Credit taken in respect of inputs or capital goods even where the value of such inputs or capital goods is written off partially before being put to use. Until 07.04.2011 this provision used to apply only when the value was written off fully.

In view of the above-mentioned amendment in CCR, 2004 PQR Ltd. will have to pay an amount equivalent to the CENVAT Credit taken in respect of inputs [which are ₹ 10,300 in the present case] consequent upon partial writing off to the extent of ₹ 20,000/- in respect of said inputs.

However, proviso to Rule 3(5B) provides that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of output service, the manufacturer or output service provider, shall be entitled to take credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of CCR, 2004. Thus, in the present case, by virtue of proviso to Rule 3(5B) when in March 2012, the company puts to use entire inputs of ₹ 1,00,000 to use; the company will be entitled to take credit of the amount equivalent to the CENVAT Credit paid earlier i.e. ₹ 10,300/-.

Question 30

Briefly explain the condition when accessories and goods used for providing free warranty are eligible as 'input' under rule 2 (k) of the Cenvat Credit Rules, 2004.

Answer

As per rule 2(k) of the CENVAT Credit Rules, 2004,

(i) accessories would be eligible as input, if they are cleared along with the final product and their value is included in the value of the final product.

(ii) goods used for providing free warranty for final products would be eligible as input if warranty is provided by the manufacturer and its value is included in the price of the final product and is not charged separately from the customer.

Question 31

Discuss with a brief note the validity of the following statements with reference to the Cenvat Credit rules, 2004.

(i) Credit of input services used in the repairs or renovation of factory or office is not available.

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(ii) Credit of capital goods can be availed where such capital goods are exclusively used in the manufacture of dutiable goods with respect to which benefit under Notification No. 1/2011-CE dated 1-3-2011 is availed.

(iii) Cenvat Credit of duty paid on capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory is allowed.

Answer

(a) (i) The given statement is not valid as the definition of input service under rule 2(l) of the CENVAT Credit Rules, 2004 specifically includes services used in relation to renovation or repairs of a factory or an office relating to such factory. Thus, credit on such services is available.

(ii) The said statement is not valid. No credit can be availed on capital goods which are used exclusively in manufacture of exempted goods or in providing exempted service. Since, goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE dated the 01.03.2011* is availed are exempted goods, credit of capital goods used exclusively in manufacture of such goods is not allowed [*Circular No. 943/04/2011-CX dated 29.04.2011]*.

(iii) The said statement is valid. Capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory are capital goods eligible for CENVAT credit. Such capital goods have been specifically included in the definition of capital goods as provided under rule 2(a) of the CENVAT Credit Rules, 2004.

Question 32

ABC Co. Ltd. procured the following inputs during the month of Jan 2012. Determine the amount of CENVAT credit available with necessary explanations for treatment of various items.

Items	*Excise duty paid (₹)*
Raw materials	*52,000*
Manufacturing machine	*1,00,000*
Light diesel oil	*40,000*
Greases	*10,000*
Office equipment	*20,000*
Paints	*5,000*

(Note: M/s. ABC Co. Ltd. is not eligible to avail exemption under a notification based on value of clearances in a financial year)

Answer

Computation of CENVAT credit available to ABC Co. Ltd. for purchases made during the month of January, 2012:

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Particulars	CENVAT credit available (₹)
Raw materials	52,000
Manufacturing machine (1,00,000 × 50%) *(Note – 1)*	50,000
Greases	10,000
Paint	5,000
CENVAT credit available	1,17,000

Notes:

1. As per third proviso to rule 4(2)(a) of the CENVAT Credit Rules, 2004, assessee eligible for SSI exemption can avail CENVAT credit of the whole amount of the duty paid on the capital goods in the same financial year in which such goods are received. However, since ABC Co. Ltd. is not eligible for SSI exemption, CENVAT credit of only 50% is available in respect of the manufacturing machine in the year of purchase.
2. Light Diesel Oil is not an input as per the definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004. Hence, it is not eligible for the CENVAT credit.
3. Office equipment is not a capital good as per the definition of capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.
4. It is assumed that the excise duty paid on various items includes education cess and secondary and higher education cess.

Question 33

C & C Co. Ltd. manufactured non-alcoholic beverage bases known as concentrates. These were sold to bottling companies who in turn sold the aerated beverages manufactured from the concentrates to distributors. These were then sold to retailers and thereafter to the ultimate consumers. The advertisement and market research activities were undertaken by M/s. C & C Co. Ltd. Input credit of service tax paid on the advertising service used for marketing of soft drinks removed by bottlers was claimed by M/s. C & C Co. Ltd. This credit was denied on the ground that advertisements did not relate to the concentrates manufactured by M/s. C & C Co Ltd. Discuss briefly with reference to decided case law whether M/s. C & C Co. Ltd. is eligible to avail CENVAT credit paid on advertising services which was utilised towards payment of excise duty on concentrates.

Answer

The fact of the case are similar to the case of *Coca Cola India Pvt. Ltd. v. CCE (2009) 15 STR 657 (Bom)*. The Bombay High Court held that though the contents of advertisements made by the appellants (the manufacturer of 'concentrates') essentially featured the 'bottle of aerated waters' (the bottles being the final products manufactured by bottlers and not by the appellants), the credit on advertising services received by the appellant could not be denied on the ground that the advertisement was not of the final product of the appellants (viz.

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'concentrates'), but of the final product of the bottlers (viz. 'aerated waters') (Rule 2(l) of CENVAT Credit Rules, 2004).

The High Court observed that any input service that forms a part of value of final product should be eligible for the benefit of CENVAT credit. In the said case, since the advertising cost formed part of the assessable value, the assessee was eligible to take credit of tax paid on advertising services. So long as the manufacturer can demonstrate that the advertisement services availed have an effect or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of final product, credit must be allowed. In the present case, the Court held that the advertisement of soft-drink enhanced the marketability of the concentrate.

In view of the above-mentioned judgment, C & C Co Ltd. is eligible to avail CENVAT credit paid on advertising services.

Question 34

Sona Ltd., purchased a lathe machine at a cum-duty price of ₹ 18,63,680. The excise duty rate charged on the said machine was 12% plus education cess 2% plus secondary and higher education cess 1%. The machine was purchased on 1-7-2010 and was disposed of on 30-09-2012 for a price of ₹ 10,00,000(in this case, the transaction value) in working condition as second hand machine. Calculate the amount of CENVAT credit allowable for the financial years 2010-11 and 2011-12 and also specify the amount payable towards CENVAT credit already taken at the time of disposal of the machinery in the year 2012-13.

Answer

Amount of CENVAT credit allowable for financial years 2010-11 and 2011-12:-

Cum duty price of the machinery	₹18,63,680
Rate of duty including education cess and secondary and higher education cess	12.36%

Duty paid on machinery = ₹ 18,63,680 $\times \frac{12.36}{112.36}$ =₹ 2,05,011.43

CENVAT credit allowable during the

Financial Year	2010-11 @ 50%	₹1,02,505.72
Financial Year	2011-12 @ 50%	₹1,02,505.72

(i) Amount payable towards CENVAT credit on disposal of machinery during the year 2012-13

Total CENVAT credit availed on the machinery	₹ 2,05,011.43
Less: Amount of reduction from the said credit on	
(i) First 50% = [1,02,505.72 × 2.5%] × 9 quarters	₹ 23,063.79

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(ii) Next 50% = [1,02,505.72 × 2.5%] × 6 quarters ₹ 15,375.86

Amount payable on disposal of machinery ₹ 1,66,571.78

(ii) Duty leviable on transaction value= ₹10,00,000 x12.36%=₹ 1,23,600

Hence, amount payable towards CENVAT Credit=₹1,66,571.58 (₹1,66,571.58 or ₹ 1,23,600, whichever is higher)

Notes:

1. In respect of capital goods, CENVAT credit shall be taken only for an amount not exceeding 50% of duty in the same financial year and balance may be taken in any subsequent year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].
2. If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by 2.5% of each quarter of a year or part thereof from the date of taking the CENVAT credit

   Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

   [Rule 3(5A) of the CENVAT Credit Rules, 2004]
3. It is assumed that first 50% of the CENVAT credit has been taken on 01.07.2010 and the balance 50% of the credit has been taken on 01.04.2011.

Question 35

M/s R & Co. Ltd. have cleared their manufactured final products during April, 2012 and the duty payable is ₹ 2,40,000 plus education cesses as applicable. Given below are the details of excise duty/service tax paid by them during the month at the time of purchase of goods/procurement of input services:

		₹	
(i)	*On inputs (RM)*	*1,00,000*	*(Invoice for excise duty of ₹20,000 paid was received by the assessee on 04.05.2012)*
(ii)	*On input service*	*20,000*	
(iii)	*On welding electrodes for repairs and maintenance of capital goods*	*5,000*	
(iv)	*Fuel (excluding HSD/Petrol)*	*6,000*	

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(v)	*Storage Tank*	*8,000*	
(vi)	*Tubes and Pipes (used in the factory)*	*14,000*	
(vii)	*Air-conditioner for the office of the Factory Manager*	*12,000*	

Note: all the above payments are exclusive of education cesses as applicable.

Find the total duty payable by the assessee for the month of April, 2012 after taking into account the CENVAT credit available.

Answer

CENVAT credit available for the month of April, 2012

S. No.	Particulars	Excise Duty/service tax	Education Cess	Secondary and Higher Education Cess
		₹	₹	₹
1.	Inputs *[Refer Note 1]*	80,000	1600	800
2.	Input service	20,000	400	200
3.	Welding Electrodes *[Refer Note 2]*	5,000	100	50
4.	Fuel *[Refer Note 3]*	6,000	120	60
5.	Storage Tank *[Refer Note 4]*	4,000	80	40
6.	Tubes and Pipes *[Refer Note 4]*	7,000	140	70
7.	Air-conditioner *[Refer Note 5]*	-	-	-
	Total credit available	1,22,000	2,440	1220
	Excise duty payable for the month April, 2012	2,40,000	4,800	2,400
	Payable in cash after set off of the credit	1,18,000	2,360	1,180

Notes:

(1) Since invoice for ₹ 20,000 was not received as on 30.04.2012, credit thereon has not been considered [First proviso to rule 3(4) read with rule 9(1) of the CENVAT Credit Rules, 2004].

(2) CENVAT credit is available on welding electrodes as per Rajasthan High Court's decision in the case of *Hindustan Zinc Ltd. 2008 (228) ELT 517.*

(3) It has been assumed that fuel excludes light diesel oil also.

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(4) Storage tank and tubes and pipes are capital goods [Rule 2(a)(A)(vii) and Rule 2(a)(A)(vi) of the CENVAT Credit Rules, 2004 respectively]. Hence, only 50% credit is allowed [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].

(5) Air conditioner is not an eligible capital goods as it is used in the office of the factory manger [Rule 2(a)(A)(1) of the CENVAT Credit Rules, 2004].

Question 36

Determine the amount of CENVAT credit available to Gangotri Manufacturing Ltd. in respect of the following items procured by them in the month of October, 2012:-

Items	*Excise duty paid (including EC and SHEC) (₹)*
Raw materials	*52,000*
Capital goods used for generation of electricity for captive use within the factory	*1,00,000*
Motor spirit	*40,000*
Inputs used for construction of a building	*1,00,000*
Dairy and bakery products consumed by the employees	*5,000*

(Note: The aggregate value of clearances of Gangotri Manufacturing Ltd. for the financial year 2011-12 is ₹ 450 lakh)

Answer

Computation of the amount of CENVAT credit available to Gangotri Manufacturing Ltd.:-

Items	Excise duty paid (including EC and SHEC) (₹)
Raw materials	52,000
Capital goods used for generation of electricity for captive use (50% of ₹ 1,00,000) (Note-1 & 2)	50,000
Motor spirit (Note-3)	Nil
Inputs used for construction of a building (Note-3)	Nil
Dairy and bakery products consumed by the employees (Note-3)	Nil
Total CENVAT credit available	1,02,000

Notes:-

1. Capital goods used for generation of electricity for captive use within the factory are eligible capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.

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2. Since, aggregate value of clearances of Gangotri Manufacturing Ltd. for the financial year 2011-12 is ₹ 450 lakh i.e. more than ₹ 400 lakh, it is not eligible for SSI exemption. Therefore, CENVAT credit of only 50% of the duty paid is available in respect of the eligible capital goods in the year of purchase [Third proviso to rule 4(2)(a)].

3. As per the definition of inputs under rule 2(k), there is specific exclusion with regard to the following:-

   (i) motor spirit

   (ii) goods used for construction of a building or a civil structure or a part thereof

   (iii) any goods, such as food items used primarily for personal use or consumption of any employee

Question 37

Examine the validity of the following statements, with reference to the CENVAT Credit Rules, 2004:-

(a) If the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to the duty leviable on transaction value.

(b) Rule 4 of CENVAT Credit Rules, 2004 allows credit of inputs without bringing them into the premises of output service provider subject to due documentation regarding their delivery and location.

Answer

(a) The said statement is not valid. Rule 3(5A) of the CENVAT Credit Rules, 2004 has been amended vide *Notification No. 18/2012-CE (NT) dated 17.03.2012* which provides that if the capital goods are cleared as waste and scrap, the manufacturer/provider of output services shall pay an amount equal to:-

   (i) CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified for each quarter of a year or part thereof from the date of taking the CENVAT Credit.

   or

   (ii) Duty leviable on transaction value.

   whichever is higher.

(b) The said statement is absolutely valid. Rule 4 of the CENVAT Credit Rules, 2004 has been amended vide *Notification No. 18/2012-CE (NT) dated 17.03.2012* to provide *that* CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.

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Question 38

Parsvnath Financials Ltd., a Non-Banking Financial Company, is engaged in providing the 'banking and other financial services'. It furnishes the following information for the month of August, 2011:

Particulars	*Amount*
CENVAT credit availed on inputs	*₹2,00,000*
CENVAT credit availed on input services	*₹5,00,000*
Service tax liability	*₹10,20,000*

Determine the amount of CENVAT credit available to Parsvnath Financials Ltd. for the month of August, 2011. Also determine the net service tax payable by Parsvnath Financials Ltd. for the said month.

Note: Parsvnath Financials Ltd. is not eligible for small service providers' exemption under Notification No. 6/2005 dated 01.03.2005 for the financial year 2011-12.

Answer

According to rule 6(3B) of the CENVAT Credit Rules, 2004, notwithstanding anything contained in sub-rules (1), (2) and (3) of rule 6, a banking company and a financial institution including a non-banking financial company (NBFC), engaged in providing services by way of extending deposits, loans or advances, shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month. In other words, a banking company is entitled to utilise only 50% of the CENVAT credit in respect of the inputs and input services.

Computation of CENVAT credit available to Parsvnath Financials Ltd. for the month of August, 2011:-

Particulars	Amount (₹)
CENVAT credit availed on inputs	2,00,000
CENVAT credit availed on input services	5,00,000
Total amount of credit availed	7,00,000
Less: Payment of 50% of CENVAT credit availed on inputs and input services by virtue of rule 6(3B)	3,50,000
Net CENVAT credit available for August, 2011	3,50,000

Computation of net service tax payable by Parsvnath Financials Ltd. for the month of August, 2011:-

Particulars	Amount (₹)
Service tax liability for August	10,20,000
Less: Eligible CENVAT credit available on inputs and input services	3,50,000
Net service tax payable by Parsvnath Financials Ltd.	6,70,000

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Exercise

1. *With reference to CENVAT Credit Rules, 2004, discuss whether a manufacturer is eligible for CENVAT Credit on inputs used in trial runs.*
2. *State briefly the provisions relating to CENVAT Credit on capital goods.*
3. *Determine the CENVAT Credit available for use in the current year under the CENVAT Credit Rules on equipments used in office-Duty paid ₹12,000.*
4. *Discuss in relation to Rule 3(4) of CENVAT Credit Rules, the manner of utilisation of CENVAT Credit allowed on inputs received in a factory.*
5. *What are the duties in respect of which CENVAT credit can be availed under the CENVAT Credit Rules, 2004?*
6. *Discuss the provisions prescribed in CENVAT Credit Rules, 2004 for a situation where an output service provider renders both taxable as well as exempted output services by using common inputs/input services and maintains only one set of books of accounts for taxable and exempted services.*
7. *Discuss the provisions relating to information on principal inputs in context of CENVAT Credit Rules, 2004.*
8. *Can credit be taken only after making payment against the bill/invoice/challan? Discuss.*
9. *Who is an "input service distributor"?*
10. *Credit for inputs is not available if the final products are exempted goods. What are the exceptions to this rule?*
11. *A machine was received in a factory at 5 p.m. on 31.03.2010. It was not erected at that time. The machine was meant for the manufacture of dutiable as well as zero duty goods. The assessee decided to claim depreciation under section 32 of the Income-tax Act on the sans duty price of machinery. Can the manufacturer take CENVAT Credit? If yes, what is the amount of credit that he can avail?*

    Answer/Hint: As per Rule 4 of the CENVAT Credit Rules, 2004, CENVAT credit on capital goods can be availed on the following propositions--:

    (1) The capital goods should have been actually received in the factory (Physical receipt is a must, as in the case of inputs. Erection of the machinery is not compulsory for the first year).

    (2) The capital goods might have been received at any point of time in a financial year.

    (3) Not more than 50% of the duty paid on the capital goods in the same financial year can be taken as CENVAT credit. Credit for the balance can be taken in any subsequent year, provided the goods are in the possession and use of manufacturer.

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(4) Capital goods must not be used exclusively in the manufacture of exempted goods.

(5) Depreciation under section 32 of the Income tax Act on the part of the value of the capital goods that represents excise duty cannot be claimed, if the manufacturer avails CENVAT credit.

As all the conditions specified above are fulfilled in the given case, 50% of the duty paid by the manufacturer can be availed as CENVAT credit in the first year and the balance in any subsequent year, if the machine remains to be in his possession and use.

12. *India Cements Ltd. is engaged in the business of manufacturing cement. For this purpose, limestone is excavated from a mine, which is situated at a distance of few kilometres from the plant where the cement is manufactured. The mine is connected to the main plant through a ropeway. Explosives are used for blasting the mine to excavate limestone. Can CENVAT credit be taken on such explosives? Discuss.*

Answer/Hint: The Supreme Court in the case of *Vikram Cement v. CCEx. (2006) 194 ELT 3 (SC)* has held that CENVAT credit on inputs being explosives used for blasting mines to produce limestone for use in manufacture of cement/clinkers in factory situated at some distance away from mines could not be denied on the ground that they were not used as inputs within the factory.

Note: The above-mentioned decision overrules the contrary opinion of the Supreme Court in the case of *J.K. Udaipur Udyog Ltd. 2004 (171) E.L.T. 289 (SC)*. In this case, the credit on explosives used for blasting mines was disallowed on the ground that the same were not used within the factory but in a mine which could not qualify to be a factory.

Further, it may be noted that in *Vikram Cement v. CCE 2006 (197) ELT 145 (SC)*, it has been held that CENVAT credit is available only when mines are captive mines i.e. they constitute one integrated unit with the main cement factory. Credit would not be available if the supplies from the mine are made to various cement factories of different assessees.

13. *Answer the following with reference to CENVAT Credit Rules, 2004:*

(a) 'A' manufactures a certain final product in which petrol is used among other inputs. Can he avail CENVAT credit on petrol?

(b) 'B' is an outdoor caterer. He has purchased a lorry for carrying utensils, tables, groceries, vegetables etc. to the place of service. Can 'B' avail credit of the excise duty paid by him on the purchase of the lorry?

(c) Can a manufacturer located in Jammu utilize the credit of service tax availed on input services received in New Delhi for payment of excise duty on his final products cleared in Jammu?

(d) Inputs are received in the factory of the manufacturer on 10.11.2012 but are issued for the production process on 10.12.2012. When should the manufacturer avail credit?

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Answer/Hint

(a) No. Petrol (motor spirit) is specifically excluded from the list of eligible inputs under Rule 2(k).

(b) Yes. As per Rule 2(a)(B)(ii), motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for transportation of inputs and capital goods used for providing an output service are treated as capital goods.

(c) No. CENVAT Credit Rules, 2004 in relation to availment and utilization of service tax credit are not applicable in the State of Jammu and Kashmir, as service tax law does not apply in Jammu and Kashmir.

(d) Credit can be availed on 10.11.2012 immediately on receipt of the inputs in the factory of the manufacturer [Rule 4(1)].

14. *With reference to CENVAT Credit Rules, 2004, discuss giving reasons whether the following statements are true or false:*

(a) An input service distributor has to furnish a half yearly statement in the form specified by the Board to the jurisdictional Superintendent of Central Excise.

(b) Cenvat credit shall be allowed on inputs which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products, if they are received back in the factory within 180 days of their being sent to the job worker.

(c) Where the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to the duty leviable on transaction value. Such amount paid can be availed as CENVAT credit.

(d) Credit of basic excise duty can be utilized for payment of education cess whereas the vice versa is not possible.

Answer/Hint

(a) False. The sub-rule 10 of rule 9 provides that the input service distributor shall furnish a half yearly return in the form specified by the Board to the jurisdictional Superintendent of Central Excise.

(b) True. Rule 4(5) lays down that CENVAT credit shall be allowed on goods (being inputs or capital goods) sent to the job worker for further processing, testing, repair, reconditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, if they are received back in the factory within 180 days of their being sent to the job worker. In case they are not returned within 180 days the credit on such goods has to be reversed. However, credit can be retaken once the goods come back.

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(c) True. Sub-rule (5A) of rule 3 provides that if the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely: -

(a) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

Rule 3(6) provides that the amount paid under sub-rule (5A) shall also be eligible as CENVAT credit as if it was duty paid by the person who removed such goods under sub-rule (5A).

(d) True. As per rule 3(4) read with rule 3(1) and rule 3(7)(b), the Cenvat credit of basic excise duty, special excise duty, service tax and AED(GSI) can be utilised for payment of any duty or service tax as credit of all duties together is known as 'Cenvat credit'. Hence, credit of basic excise duty can be utilised for payment of education cess on excisable goods. However, as per rule 3(7)(b), credit of education cess paid on excisable goods can be utilised only for payment of education cess on excisable goods or taxable services.

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CHAPTER 6

Export Procedures

Question 1

What is CT-1 certificate?

Answer

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

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

Question 2

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

Answer

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

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

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

(ii) Such re-import and re-export shall be governed by the provisions of the Customs Act, 1962.

(iii) Any waste or refuse arising as a result of the said processes shall be removed from the factory after the payment of appropriate duty or destroyed after informing the proper officer in writing at least 7 days in advance and after observing such conditions and procedure as may be specified by the Commissioner of Central Excise.

(iv) Thereafter, the duty payable on such waste or refuse may be remitted by the said Commissioner of Central Excise.

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Question 3

Under what circumstances it may be beneficial to pay duty and claim rebate under Rule 18 of Central Excise Rules, 2002.

Answer

It is usually preferable not to pay duty rather than to pay it and wait for refund from the government. However, in the following situations, it is beneficial to pay duty and claim rebate under Rule 18 of Central Excise Rules, 2002:

(A) If assessee has balance of duty in Capital Goods CENVAT Credit Account, it is advisable to pay duty and claim refund, as balance in Capital Goods CENVAT Credit Account is never refundable. The said situation may take place if duty paid on capital goods is heavy and assessee may not be able to utilize the credit.

(B) An SSI Unit may pay excise duty and claim rebate, as getting refund of CENVAT Credit of inputs is not an easy preposition. Further, he is not entitled to get refund of duty paid on capital goods.

(C) When duty paid goods are proposed to be exported.

(D) Claiming rebate is comparatively easy procedure than claiming refund of duty paid on inputs under CENVAT Credit Rules, 2004.

Question 4

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

(i) What is the type of bond to be executed? Who is exempted from furnishing such bond?

(ii) What is the export document for export clearance? How many copies are required to be prepared for it?

(iii) Is it necessary to prepare an invoice also? If yes, how should it be prepared?

(iv) What will be the duty payable, if goods are not exported within six months after clearance?

Answer

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

(i) A bond in Form B-1 is required to be executed by a merchant exporter in case of export without payment of duty. The bond should be at least equal to the duty chargeable on the goods, with such surety or security as the excise officer may approve. Manufacturer-exporter is exempted from furnishing such bond. He can furnish an annual Letter of Undertaking (LUT) in Form UT-1.

(ii) ARE-1 is the export document for export clearance which shall be prepared in five

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copies (quintuplicate). The fifth copy is the optional copy which the assessee can use for claiming other export incentives.

(iii) Yes, the goods have to be cleared from the factory under an invoice which shall be prepared in terms of rule 11 of the Central Excise Rules, 2002. The invoice should be prominently marked as "FOR EXPORT WITHOUT PAYMENT OF DUTY".

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

Question 5

Write a brief note on "Cancellation of Export Documents" with reference to Central Excise Act, 1944 and the Rules made thereunder.

Answer

If the excisable goods cleared under A.R.E. 1 are not exported for any reason and the exporter intends to divert the goods for home consumption, he may request in writing the authority which accepted the Bond or Letter of Undertaking [LUT] to allow cancellation of application, and diversion of goods for consumption in India. He will be permitted to do so if he pays the duty as specified in the application along with interest on such duty from the date of removal for export from the factory or warehouse till the date of payment of duty. The permission shall be granted within three working days. Since duty assessment on A.R.E. 1 has to be done in normal course, there will not be any need for re-assessment by the Department or the assessee unless there are reasons to believe that the assessment was not correct. After discharge of duty, the exporter may take credit in his running bond (where bond is furnished) on the basis of letter of permission, invoice and GAR-7 Challans on which duty is paid. He shall also record these facts in the Daily Stock Account.

If the exporter, after clearing the goods for export without payment of duty, intends to change the destination or buyer or port or place of export, he may do so provided he informs the Bond/LUT accepting Authority in writing about the changes and makes necessary changes in all the copies of A.R.E. 1 and the invoices. If he intends to cancel the original export documents and issue fresh ones, the same may be done under permission and authentication by bond/LUT accepting authority which will ensure that the serial no. and date of the initial documents are endorsed on the fresh documents. In such cases, if bond was furnished for single consignment, fresh bond may not be asked.

Question 6

Happy Ltd., cleared certain goods to P. Ltd., paying higher rate of excise duty in the month of March, although the rate of duty on the said goods had been reduced in the Budget of the same financial year. However, P Ltd., refused to pay the higher duty which Happy Ltd., had

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paid by mistake. P Ltd., raised a debit note in the month of June of the same year. Happy Ltd., applied for refund of the excess excise duty paid in August. The Department rejected the claim on the ground that the incidence of duty has been passed by Happy Ltd. to P. Ltd.

While claiming refund Happy Ltd., relied on the debit note raised by P Ltd., in the month of June to demonstrate that its customer P Ltd, had not paid the excess duty to Happy Ltd. The Department contended that since the debit note was issued in the month of June and not March it could not be the basis for refund.

With a brief note:

(i) Examine, with the help of decided case law, whether the contention of the Department is correct in law.

(ii) State whether in the above case, assuming that the issue is decided in favour of Happy Ltd. by the Commissioner of Central Excise (Appeals) and the duty involved is ₹ 4,80,000, the Revenue could file an appeal before the CESTAT against such an order.

Answer

(i) The facts of the given case are similar to the case of *CCE v. Techno Rubber Industries Pvt Ltd. 2011 (272) E.L.T. 191 (Kar.)* wherein the High Court has held that the Department is bound to refund the excess amount of duty received by it to the person who has paid this excess duty. In this case, the buyer had refused to pay excess duty claimed and had raised a debit note. The High Court observed that in such a situation, the only inference which could be drawn was that the assessee had not received the excess duty paid by him to the Department.

In the given case also, P Ltd. (buyer) has refused to pay the higher duty and has raised a debit note on Happy Ltd. (assessee). Thus, it can be inferred that Happy Ltd. has paid higher duty to the Department and has not received it from P Ltd. Thus, Happy Ltd. is entitled to the refund of such excess duty paid by him and the contention of the Department is not valid in law.

(ii) No, Revenue could not have filed an appeal to CESTAT against the order passed by the Commissioner of Central Excise (Appeals) as the duty involved for refund is ₹4,80,000.

CBEC has issued the instructions vide *F.No.390/Misc./163/2010-JC dated 17.08.2011* fixing the monetary limits of duty below which an appeal cannot be filed in CESTAT, High Court and Supreme Court by the Department and these monetary limits apply to cases of refund as well. As per the said instructions, an appeal cannot be filed before the Tribunal if the duty involved in a case is ₹ 5,00,000 or below.

Question 7

Briefly explain the documents required for filing claim of rebate of duty on export of goods under rule 18 of the Central Excise Rules, 2002.

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Answer

The following documents are required for filing claim of rebate:-

(i) A request on the letterhead of the exporter containing claim of rebate, A.R.E.1 numbers and dates, corresponding invoice numbers and dates on each A.R.E.1 and its calculations.

(ii) Invoice issued under rule 11.

(iii) Self attested copy of shipping bill

(iv) Self attested copy of Bill of Lading

(v) Disclaimer Certificate (in case where the claimant is not the exporter).

(vi) Original copy of the A.R.E.1

After satisfying himself that goods were actually exported based on original and duplicate copies of A.R.E.1 duly certified by Customs and that goods are of duty paid character as certified in the triplicate copy of A.R.E.1 received from the jurisdictional Superintendent of Central Excise, rebate sanctioning authority would sanction the rebate in part or full.

Question 8

Indicate the central excise authorities who can accept bonds executed for various purposes and obligations of exporter in respect of bond acceptance while filling in ARE-1 form.

Answer

Bonds may be accepted by any of the following officers:

(i) Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory or warehouse or any other premises approved by the Commissioner for storing non-duty paid goods

(ii) Jurisdictional Maritime Commissioner in case of exports or

(iii) Deputy/Assistant Commissioner of Central Excise (Export) as officers authorized by the Board for this purpose.

Exporters are required to indicate on the ARE-1 the complete address of the authority before whom the bond is executed and to whom the documents are to be submitted for admission of proof of export.

Exercise

1. *What are the conditions to be followed while exporting to Bhutan under bond, where payment is in freely convertible currency?*

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2. *Discuss the provisions in respect of re-entry of the goods cleared for export under bond but not actually exported in the factory of manufacture.*

3. *Answer the following questions relating to export of excisable goods under Rule 18 of the Central Excise Rules, 2002 to countries other than Bhutan?*

   (i) Should a bond be executed in such export? Support your answer with proper reason.

   (ii) What is the form for clearance of excisable goods in such export?

   (iii) How can the rebate of duty on the exports be claimed? Is there any time limit for the same?

   (iv) Is there any duty limit below which the rebate of duty cannot be granted? If yes, then, what is the limit? Is there any other restriction on the grant of rebate?

   (v) Which duties of excise are eligible for rebate under Rule 18?

   (vi) Is it necessary that in order to claim rebate, excise duty should be paid in cash?

   Answer/Hint: Under Rule 18 of Central Excise Rules, 2002, the rebate of excise duty paid on exported goods is granted. Procedures and conditions for export of excisable goods under claim of rebate to countries other than Bhutan are specified in Notification No.19/2004 C.E. (N.T.) dated 06.09.2004. Answers to each part of the question are as follows:

   (i) There is no need to execute a bond in such a case as the goods are exported under claim of rebate after full payment of duty under an invoice.

   (ii) Export under claim for rebate should be made under ARE-1 form.

   (iii) A claim of rebate of duty paid, along with the original copy of the ARE-1, shall be lodged with the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case maybe, the Maritime Commissioner. As per section 11B of the Central Excise Act, 1944, the claim must be filed within one year from the date of export.

   (iv) The rebate will not be granted if amount of rebate of duty is less than ₹500. Further, the rebate will also not be granted if the market price of the excisable goods at the time of exportation is less than the amount of rebate.

   (v) Following duties are eligible for rebate:

      (a) duties of excise collected under the Central Excise Act, 1944;

      (b) duties of excise collected under the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

      (c) duties of excise collected under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;

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(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001, as amended from time to time;

(e) special excise duty collected under a Finance Act;

(f) additional duty of excise as levied under section 157 of the Finance Act, 2003;

(g) education cess on excisable goods levied under Finance (No.2) Act, 2004;

(h) additional duty of excise leviable on pan masala and specified tobacco products under Finance Act, 2005.

(vi) No. It is not necessary that rebate can be obtained only if duty is paid in cash. Duty on final products can be paid either through cash or PLA or Cenvat credit *[CBE&C Circular No. 262/96/96-CX 6 dated 06.11.96].*

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CHAPTER 7

Bonds

Question 1

Briefly discuss the provisions in respect of bonds for provisional assessment.

Answer

For the purpose of provisional assessment B-2 Bond Surety/Security(General Bond) has been prescribed .Further, the amount of the bond in Form B-2 should be fixed on the following basis:-

(i) If provisional assessment is likely to be completed within 3 months: The amount of the specific bond in Form B-2 should be sufficient to cover the difference between the duty payable on provisional assessment and the probable duty payable if the highest rate/value applicable on such goods is applied for a period of 3 months.

(ii) If provisional assessment is not likely to be completed within 3 months: However, if the provisional assessment is not likely to be completed within 3 months and longer time is required [for instance one year] the differential duty likely to arise during such period should be basis for determination of bond amount.

(iii) Determination of amount of security: When the security bond is executed, the amount of security is generally fixed at 25% of the bond amount. However, in appropriate cases, for special reasons to be recorded, the proper officer may order for a higher security amount.

(iv) Consequences of death/insolvency or insufficiency of the surety/security: The proper officer may demand fresh bond. In case of inadequacy of surety, additional security may be demanded by the proper officer.

Enforcement of the bond: If the assessee fails to make due adjustment within the period of 15 days of the final assessment, the proper officer may proceed to enforce the bond or encash the bank guarantee after due notice to the assessee.

Question 2

What are the various methods of making verification of sureties?

Answer

In respect of surety bonds, periodical verification [preferably on annual basis] is required to be made by the jurisdictional Central Excise Officer with a view to ensure that the relevant sureties are financially sound, solvent and alive. The enquiry to verify the financial stability of the sureties will be made by any of the following methods:

(i) By reference to the surety's bankers.

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(ii) By making personal enquiries and ascertaining whether the surety possesses a house or other immovable property, industrial equipment, shop etc. which would cover the bond amount. Alternatively, the sureties may themselves be asked to furnish a list of their property, which may be objectively verified.

(iii) By reference to Revenue Officer not below the rank of Tahsildar or a Mamalakdar.

Question 3

List the various authorities which can accept Bond under Central Excise Act, 1944.

Answer

The bond may be accepted by any of the following officers:

(i) The Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory or warehouse or any other premises approved by the Commissioner for storing non-duty paid goods;

(ii) Maritime Commissioner under whose jurisdiction one or more of the port, airport, land customs stations or post office of exportation is located.

(iii) The Deputy/Assistant Commissioner of Central Excise(Export) as officers authorised by the Board for this purpose.

Exercise

1. *What are the provisions of preservation of bond and retention of securities?*
2. *Briefly describe the provisions governing the execution of bonds by banks?*
3. *What is a bond?*
4. *What are the various types of bonds?*
5. *Who can accept a bond?*

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CHAPTER 8

Demand, Adjudication and Offences

Question 1

What is the difference between short levy and short payment?

Answer

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

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

Question 2

What are the provisions for recovery of duties not levied or not paid or short-levied or short paid or erroneously refunded?

Answer

Section 11A of Central Excise Act, 1944 deals with the provisions for recovery of duties not levied or not paid or short-levied or short paid or erroneously refunded. The aforesaid Section has been substituted with effect from 08.04.2011. The provisions of substituted section are given in the following table for the purpose of ease of understanding and better retention:

Relevant Heading	Description	Relevant Section of Central Excise Act
Issue of Show Cause Notice within one year from the Relevant Date	Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:	11A(1)(a)

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Payment of duty with interest before the issue of Show Cause Notice	The person chargeable with duty may, before service of above-mentioned Show Cause Notice pay either on the basis of- (i) his own ascertainment of such duty; or (ii) the duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA.	11A(1)(b)
Submission of information regarding payment of duty & consequent no issue of SCN	The person who has paid the duty under clause (b) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.	11A(2)
Issue of Show Cause Notice for recovery of short-payment of duty	Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that subsection and the period of one year shall be computed from the date of receipt of information under sub-section (2).	11A(3)
Issue of Show Cause Notice within five years from the Relevant Date	Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of- (a) fraud; or (b) collusion; or (c) any wilful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.	11A(4)

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When reduced penalty equivalent of 50% of duty is payable	Where, during the course of any audit, investigation or verification, it is found that any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded due to fraud, collusion, any willful mis-statement or suppression of facts etc. but the details relating to the transactions are available in the specified records, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11 AA and penalty equivalent to fifty per cent, of such duty.	11A(5)
Facility of Compounding of Penalty	Any person chargeable with duty (for an extended period) may, before service of show cause notice on him, pay the duty in full or in part, as may be accepted by him along with the interest payable thereon under section 11 AA and penalty equal to one per cent, of such duty per month to be calculated from the month following the month in which such duty was payable, but not exceeding a maximum of twenty-five per cent, of the duty, and inform the Central Excise Officer of such payment in writing.	11A(6)
No issue of Show Cause Notice where duty, interest and penalty are fully paid	The Central Excise Officer, on receipt of information under sub-section (6), shall not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the Central Excise Officer that the amount of duty, interest and reduced penalty as provided under sub-section (6) has been fully paid;	11A(7)
Issue of Show Cause Notice in case of short-payment of duty or interest or penalty	The Central Excise Officer, on receipt of information under sub-section (6), shall proceed for recovery of such amount, if found to be short-paid, in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of such information.	11A(7)

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Exclusion of Stay Period	Where the service of notice is stayed by an order of a court or tribunal, the period of such stay shall be excluded in computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4) or sub-section (5), as the case may be.	11A(8)
Determination of duty payable for one year if charges of fraud etc. are not established	Where any appellate authority or tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty has not been established against the person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year, deeming as if the notice were issued under clause (a) of sub-section (1).	11A(9)
Determination of excise duty due after opportunity of being heard	The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice.	11A(10)
Time-limit for determining amount of excise duty due	The Central Excise Officer shall determine the amount of duty of excise under subsection (10)- (a) within six months from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (1); (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4) or sub-section (5).	11A(11)
Effect of modification of amount of excise duty	Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10), then the amount of penalties and interest under this section shall stand modified accordingly, taking into account the amount of duty of excise so modified.	11A(12)

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Time-limit for depositing modified (increased) excise duty	Where the amount as modified by the appellate authority or tribunal or court is more than the amount determined under sub-section (10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority or tribunal or court in respect of such increased amount.	11A(13)
Compulsory payment of interest	Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.	11A(14)
Application of provisions for recovery of interest	The provisions of sub-sections (1) to (14) shall apply, mutatis mutandis, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.	11A(15)
Meaning of term Refund	"refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;	Explanation 1(a) to Section 11A
Meaning of term "Relevant Date"	(b) "relevant date" means,- (i) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, and no periodical return as required by the provisions of this Act has been filed, the last date on which such return is required to be filed under this Act and the rules made thereunder; (ii) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid and the return has been filed on due date, the date on which such return has been filed; (iii) in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder; (iv) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;	Explanation 1(b) to Section 11A

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	(v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;	
Meaning of term "specified records"	"specified records" means records including computerised records maintained by the person chargeable with the duty in accordance with any law for the time being in force.	Explanation 1(c) to Section 11A

Question 3

M/s Om Processors, a job worker, was engaged in the processing of manmade fabrics received from the principal supplier. The job worker (assessee) had undertaken to discharge all the duty liabilities under the Central Excise Act, 1944. The assessee received manmade fabrics on declaration from the principal supplier that the said fabrics had polyester content below 70%. It processed the same and cleared the processed fabrics claiming the benefit of concessional rate of duty available to manmade fabrics containing polyester below 70%. On the basis of chemical examination by the Department, it was found that the fabrics contained polyester in excess of 70% and thus would attract higher rate of duty. A show cause notice was issued invoking the extended period of limitation under section 11A of the Central Excise Act, 1944 demanding differential duty and penalties on the ground of mis-declaration on the part of the assessee. Briefly discuss, with reference to decided case law, whether the stand taken by the Department is correct in law.

Answer

According to Section 11A (4) of Central Excise Act, 1944 extended period of limitation can be invoked only where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-

(a) fraud; or

(b) collusion; or

(c) any wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder

with intent to evade payment of duty.

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

In the given case, there was no requirement for the assessee (processor) to verify the

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

Question 4

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

Answer

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

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence:

(iv) the age of the accused (too young or too old)

Question 5

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

Answer

As per rule 26(1) any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reasons to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or ₹2,000 whichever is greater. Section 9(1)(bbb) of the Central Excise Act also contemplates punishment for such dealings by any person. Thus a director, partner, employee or transporter or trader will be personally liable to penalty if he is personally involved in clandestine removal etc.

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

Penalty is also imposable on such persons if they issue any other document or abet in making

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such document on the basis of which, user of such document takes any ineligible benefit such as CENVAT credit or refund [Rule 26(2)(ii)].

Question 6

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

Answer

Omission on the part of the assessee to provide correct information does not constitute suppression of facts as the expression "suppression of facts" used in the proviso to section 11A of Central Excise Act is accompanied by very strong words as "fraud" and "collusion" and, therefore, has to be construed strictly. Suppression means failure to disclose full information with intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression.

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

Question 7

What is the period of provisional attachment of property during the pendency of any proceeding under section 11A or section 11D of the Central Excise Act, 1944?

Answer

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

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

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

Question 8

Write a note on "interest under section 11AA of Central Excise Act, 1944.

Answer

Section 11AA deals with interest on delayed payment of duty. With effect from 08.04.2011 provisions of erstwhile Section 11AA and Section 11AB have been merged into a revised section 11AA. The provisions of substituted/revised section 11AA have been given in the following table under suitable headings:

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Relevant Heading	Description	Relevant Section
When interest is payable	Notwithstanding anything contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified in sub-section (2), whether such payment is made voluntarily or after determination of the amount of duty under section 11A. As far as **period of interest** is concerned, it is worth mentioning that interest is to be paid for the period **beginning with the first date** of the month succeeding the month in which the duty ought to have been paid or from the date of erroneous refund and **ending with actual date of payment.**	11AA(1)
Rate of Interest	The rate of interest shall vary between 10% p.a. and 36% p.a.as may be fixed by Central Government from time to time. The Central Government has fixed interest @ 18% p.a. for the financial year 2011-12.	11AA(2)
When no interest is required to be paid	No interest shall be payable where- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 37B; and (b) such amount of duty is voluntarily paid in full, within **forty-five days** from the date of issue of such order, instruction or direction, **without reserving any right to appeal** against the said payment at any subsequent stage of such payment.	11AA(3)

Question 9

Naman Ltd. is registered under Central Excise Act, 944. It has paid the following amounts under Central Excise Act, 1944:

Central Excise Duty	*₹16,00,000*
Amount of Interest	*₹ 1,00,000*

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In addition, it is liable under the following Acts for the amounts indicated against each Act:

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993	*₹ 3,00,000*
The Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002	*₹ 2,00,000*
Factories Act, 1948	*₹3,00,000*
Customs Act, 1962	*₹6,00,000*

The company has a property worth ₹ 20 lakhs. What legal remedy is available to Central Excise Department for recovery of its above-mentioned dues of ₹17 lakhs.

Answer

According to provisions of Section 11E of Central Excise Act, 1944 Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall be the first charge on the property of the assessee or the concerned. However, aforementioned first charge shall be subject to the amounts payable under the following Acts:

1. Companies Act, 1956 [Section 529A].
2. The Recovery of Debts Due to Banks and the Financial Institutions Act, 1993.
3. The Securitisation Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002.

In view of above-mentioned provisions of Section 11E of Central Excise Act, 1944, the Department can create first charge on the property of defaulting assessee Naman Ltd. However, aforementioned first charge shall be subject to amounts payable under the following Acts:

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993	₹ 3,00,000
The Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002	₹ 2,00,000

Thus, the Department will be able to create first charge of ₹ 15 lakh [₹ 20 lakh less ₹ 5 lakh payable under above Acts] only by virtue of Section 11E of Central Excise Act, 1944.

Question 10

Write a detailed note on cases in which appeal, application, revision or reference is not to be filed by Central Excise Officer

Answer

Section 35 R [deemed to have been inserted with effect from 20.10.2010] deals with the cases in which appeal etc. is to be filed by Central Excise Officer. The aforementioned section has been discussed under following broad headings:

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Fixation of monetary limits for regulating the filing of appeal etc.: According to provisions of Section 35R(1) of Central Excise Act, 1944 Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.

Central Excise Officer may file appeal etc. in any other case: Section 35R (2) provides that where, in pursuance of the orders or instructions or directions, issue under sub-section (1) the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filling appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

No contention of consent by Central Excise Officer:-According to Section 35R(3) notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued by CBEC under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesce in the decision on the disputed issue by not filing appeal, application, revision or reference.

Regard to the circumstances in which appeal etc. is not filed: Section 35R (4) provides that the Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued by CBEC under section 35R (1).

Question 11

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

Answer

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

As per section 19 of the Act, every person arrested under the Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or if there is no such Central Excise Officer within a reasonable distance, to the officer-in-charge of the nearest police station. The arrest should be made as per the provisions of the Code of Criminal Procedure [Section 18 of the Central Excise Act].

Question 12

M/s Evasions Unlimited, manufacturing excisable goods, paid the differential duty, suo motu, to the Department as the prices of the said goods were revised with retrospective effect. The Revenue took the view that the assessee was liable to pay interest on differential duty under

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section 11AA of the Central Excise Act, 1944 and penalty thereof. The assessee replied that there was no question of charging interest and penalty as the payment of differential duty was made by it at the time of issuing supplementary invoices to the customers.

Discuss, whether the view taken by the Revenue is justifiable.

Answer

As per section 11AC of Central Excise Act 1944, where the non-payment or short payment etc. of duty is by the reason of fraud, collusion, any wilful mis-statement, suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty would also be liable to pay a penalty. However as per the facts of the given case, the short payment is not intentional and hence, penalty cannot be levied in above case.

Further as per section 11AA, interest on delayed payment of duty is compulsorily levied whether such payment is made voluntarily or after determination by Central Excise Officer.

Hence M/S Evasion Unlimited is liable to pay interest, but not the penalty.

Question 13

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

Records seized by Department during investigation but not relied upon in the show cause notice should be returned within 30 days of issue of show cause notice.

Answer

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

Question 14

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

Answer

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

Question 15

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

Answer

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

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dealer -

(i) removes any excisable goods in contravention of Central Excise Rules/Notifications; or

(ii) does not account for any excisable goods produced or manufactured or stored by him; or

(iii) contravenes any of the provisions of Rules/Notification with an intent to evade payment of duty; or

(iv) engages in the manufacture or production or storage of any excisable goods without registration of the factory.

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

Question 16

State the three conditions upon fulfilment of which penalty under Section 11A of the Central Excise Act, 1944 may be halved and the extended period of limitation of five years may be invoked.

Answer

Under section 11A of the Central Excise Act, 1944, extended period of limitation can be invoked and penalty be reduced to 50% on fulfillment of the following conditions:

- duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded by the reason of fraud, collusion, any wilful mis-statement, suppression of facts, contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.
- the said default has been found during the course of any audit, investigation or verification.
- details relating to the transactions are available in the specified records.

Question 17

State the three conditions upon fulfilment of which no interest would become payable under Section 11AA of the Central Excise Act, 1944.

Answer

Interest under section 11AA of the Central Excise Act, 1944 would not be payable on fulfillment of the following conditions:

(a) Duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B;

(b) Full duty is paid voluntarily within 45 days from the date of issue of such order,

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instruction or direction; and

(c) Right to appeal against such payment at any subsequent stage is not reserved.

Question 18

An assessee had cleared goods without payment of excise duty. However, on coming to know from his sources that a show cause notice demanding duty on such clearances is likely to be issued but before actual issue of such notice the assessee made full payment of excise duty with interest. A show cause notice was issued subsequently as to why the assessee should not be subject to mandatory penalty equal to the excise duty sought to be evaded under section 11 AC of the Central Excise Act, 1944. Briefly examine, with a note, the conditions for levy of penalty under section 11AC and state whether there is any discretion to reduce such penalty.

Answer

The conditions and the circumstances that would attract the imposition of penalty under section 11AC of the Central Excise Act, 1944 have been laid down by the Apex Court in case of *UOI v. Rajasthan Spinning and Weaving Mills 2009 (238) ELT 3 (SC).*

In the instant case, the Apex Court, overruling the decision of the Tribunal, held that mandatory penalty under section 11AC of the Central Excise Act, 1944 is not applicable to every case of non-payment or short-payment of duty.

In order to levy the penalty under section 11AC, conditions mentioned in the said section should exist. Supreme Court ruled that the Tribunal was not justified in striking down the levy of penalty against the assessee on the ground that the assessee had deposited the balance amount of excise duty (that was short paid at the first instance) before the show cause notice was issued.

The Apex Court elaborated that the payment of the differential duty, whether before/ after the show cause notice is issued, cannot alter the liability for penalty. The conditions for penalty to be imposed are clearly spelt out in section 11AC of the Act.

Supreme Court clarified that both section 11AC as well as proviso to sub-section (1) of section 11A use the same expressions : ".....by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.....". Hence, it drew the inference that the penalty provision of section 11AC would come into play only if the notice under section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under section 11A(2), there is a legally tenable finding to that effect.

Further, Central Board of Excise and Customs vide *Circular No. 889/09/2009 CX dated 21.05.2009* has clarified that when the conditions spelled out under section 11AC are fulfilled, there is no discretion to reduce the mandatory penalty which is equal to duty even though the duty is paid before the issuance of show cause notice.

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Question 19

XS Ltd. was engaged in manufacture of various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc. XS Ltd. procured Extra Natural Alcohol (ENA) from the local market on payment of duty, to which Di-ethyl Phthalate (DEP) was added so as to denature it and render the same unfit for human consumption. As a result, an intermediate product i.e. Di-ethyl Alcohol was produced. The Department alleged that Di-ethyl Alcohol manufactured as a result of addition of DEP to ENA, was liable to central excise duty and issued a show cause notice under section 11A.

However, XS Ltd. alleged that the notice issued is time-barred as per section 11A. In reply, Department pleaded that non-disclosure as regards manufacture of Di-ethyl Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A.

You are required to examine, with the help of a decided case law, whether the Department's plea is valid in law.

Answer

No, the Department's plea is not justified in law. The issue, as to whether non-disclosure as regards manufacture of Di-ethyl Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A, was decided by the Gujarat High Court in case of the *CC Ex. & C v. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.).* In the instant case, The Tribunal noted that denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act. Thus, addition of DEP to ENA to make the same unfit for human consumption was a statutory requirement. Hence, failure on the part of the respondent to declare the same could not be held to be suppression as Department, knowing the fact that the respondent was manufacturing cosmetics, must have the knowledge of the said requirement. Further, as similarly situated assesses were not paying duty on denatured ethyl alcohol, the respondent entertained a reasonable belief that it was not liable to pay excise duty on such product.

The High Court upheld the Tribunal's judgment and pronounced that non-disclosure of the said fact on part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation.

Exercise

1. *What are the methods of recovery of sums due to Government from assessee?*
2. *Briefly describe the provisions relating to search and seizure?*
3. *What are the circumstances in which compounding authority may grant immunity from prosecution?*

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4. *Can a manufacturer make suo moto payment of duty short paid? Discuss.*
5. *Explain briefly whether the penalty can be attracted on short levy of duty. When can the penalty be reduced?*
6. *Discuss the provisions regarding issue of duty demand notice under section 11A.*
7. *A sum of ₹ 50,00,000.00 is due from 'A' towards his excise duty liability. How does the Central Excise Act, 1944 provide for recovery of such money? Will it make any difference if 'A' transfers his whole business to 'B'? Discuss.*
8. *ABC Ltd. has removed the goods manufactured by it by paying excise duty @ 20% ad valorem. However, in the invoice for sale of goods, ABC Ltd. shows an amount, which is 25% of the value of the goods as excise duty and collects it from the buyer as part of the total sale price. Can the Department ask ABC Ltd. to pay the amount so collected by him to the credit of the Central Government? Discuss the related legal provisions in detail.*
9. *Who will be held liable in case of offences committed by Company under section 9?*
10. *What is culpable mental state?*
11. *Write a short note on penalty under section 11AC?*

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CHAPTER 9

Refund

Question 1

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

Answer

The term “unjust enrichment” is used to describe a situation when a person undeservedly gets enriched .In the context of refund in Central Excise, the principle of unjust enrichment is the first and foremost principle which is kept in mind by the sanctioning authorities. If the manufacturer has charged excise duty to his buyer, it is clear that he has passed on the burden to the buyer and has already recovered duty from his customer. In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him. It will not be equitable to refund the duty to him as he will get double benefit-first from the customer and again from the Government. This is called “unjust enrichment”. Refund of duty should, therefore, be paid to the customer who has borne the burden of duty. Since it is practically not feasible to identify such customers on individual basis, the amount of refund is credited to Consumer Welfare Fund in accordance with Section 12C of the Central Excise Act 1944.

The principle of unjust enrichment has been held as valid and constitutional by the Apex Court in the famous case of *Mafatlal Industries Ltd. V U.O.I. 1997 (89) E.L.T. 247..* In addition, it has also been held in the case of **CCE V Allied Photgraphics 2004(166)ELT 3* that doctrine of unjust enrichment applies even when duty is paid under protest.

*This case was affirmed in Allied Photographics India (P) Ltd. v. Commissioner – 2004(173) E.L.T. A191(S.C.)

Question 2

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

Answer

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

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

(i) The assessee shall inform the Superintendent or Inspector of Central Excise in writing giving reasons for paying duty under protest and a dated acknowledgement shall be given to him.

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(ii) The assessee shall mark invoices or monthly/quarterly returns indicating the goods on which duty is paid "under protest" If it is a lump-sum duty payment in respect of past demand, he may record the fact of duty payment under protest in the Personal Ledger Account, CENVAT Account and the Daily Stock Account.

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

Question 3

M/s MM & Co., a machinery manufacturer, effected clearances from its factory with effect from 1.4.2011 by payment of duty under protest and had also filed an appeal against the order for payment of duty. On 15.5.2011, one of its customers M/s BB & Co. purchased the machines from M/s MM & Co. On 23.5.2012, the appeal filed by M/s MM & Co. was decided in favour of M/s MM & Co. Pursuant to the said order in the appeal filed by M/s MM & Co., its customer M/s BB & Co. filed a refund claim on 1.6.2012 claiming refund of duty suffered by M/s BB & Co. This claim for refund of duty was rejected by the department on the ground of 'unjust enrichment' as well as on the ground of 'limitation'. Explain briefly with reference to section 11B of the Central Excise Act, 1944 whether the action of the department is correct in law.

Answer

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

Thus, in the given question, since the refund claim filed by M/s. BB & Co., the purchaser, was not within a period of one year from the date of purchase, being 15.05.2011, the same is barred by period of limitation. Thus, the Department's action is correct in law.

*This case was affirmed in Allied Photographics India (P) Ltd. v. Commissioner – 2004(173) E.L.T. A191(S.C.)

Question 4

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

Answer

Section 11D of the Central Excise Act governs the provisions relating to collection of amount

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by a person from a buyer in excess of the duty assessed or determined and paid on any excisable goods in the following manner:

(1) Every person who is liable to pay duty and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government. This provision is notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the regulations made there under.

(2) The Central Excise officer may serve on the person who is liable to pay the amount under sub-section (1) a notice if such amount has not been paid to the credit of the Central Government. The notice requires such person to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.

(3) The Central Excise officer shall, after considering the representation, if any, made by the person on whom the notice is served, determine the amount due from such person (not being in excess of the amount specified in the notice). Thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (3) shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in sub-section (1).

(5) Where any surplus is left after the adjustment made under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B. Such person may make an application under section 11B in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.

Question 5

Deputy Commissioner of Central Excise passes an adjudication order classifying the goods manufactured by MTZ under heading 85.42 and charges duty @ 10% ad valorem. MTZ pays the duty without challenging the adjudication order. After 4 months they realise that partial exemption under a notification was available to goods manufactured by them. They file a claim for refund of duty paid in excess on the ground that benefit of exemption can be claimed at any time Are MTZ entitled to the refund of duty claimed in time?(Note : Presume that principle of unjust enrichment does not apply).

Answer

It has been held by the Supreme Court in the case of *CCE v. Flock India Ltd. 2000 (120) E.L.T. 285 (S.C)* that where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing

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an appeal it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund. If this position is accepted then the provisions for adjudication and appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant.

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

Question 6

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

Answer

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

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

Question 7

What is Consumer Welfare Fund?

Answer

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

(i) the refund of duty of excise/customs, which is not to be granted to the applicant.

(ii) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

Question 8

Briefly state the powers of the Central Government under section 35EE of Central Excise Act, 1944 relating to Revision of orders passed.

Answer

Against the order passed by Commissioner (Appeals) relating to loss of goods in transit, processing loss, rebate on exports/exports in bond without payment of duty (Other than Nepal and Bhutan) and CENVAT Credit, revision application can be filed in prescribed form EA-8 in duplicate to the Central Government[An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of the Central Government].According to provisions of Section 35EE(2) the revision application should be filed within 3 months from the date of the communication of the order. This period can be further extended by three months on sufficient

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cause being shown. The Central Government has the powers to annul or modify the order against which revision application has been filed.

In addition, it is also worth highlighting that in accordance with provisions of Section 35EE(4) & (5) Central Government can, on its own motion, annual or modify the order of the Commissioner (Appeals)

Question 9

Describe whether assessee is entitled to get interest in respect of delayed refund?

Answer

Yes, assessee is entitled to get interest in respect of delayed refund in accordance with provisions of Section 11BB Central Excise Act, 1944. In order to enable the students to appreciate the finer points of this topic, following table has been constructed:

Sl. No.	Sub-Heading	Statutory Provision with practical example, if any
1.	When interest becomes due to any applicant(assessee)	According to provisions of section 11BB of Central Excise Act 1944 if any duty ordered to be refunded under section 11B (2) to any applicant is not refunded within three months from the date of receipt of application under section 11B (1) of Central Excise Act 1944, then applicant shall be paid interest in r/o of such amount for the delayed period. For example the refund application of Mr. Ram is received on 1st April and refund is given to him on 12th July. In this case interest for a period of 12 days (i.e. from 1st July to 12th July) becomes due to Mr. Ram.
2.	Rate of Interest	It shall not be below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government (by Notification in the Official Gazette) on such amount of duty. The Central Government has fixed rate of interest @ 6% p.a. w.e.f. 12-09-2003 by virtue of *Notification No. 67/2003-CE (NT).*
3.	Period of Interest	Beginning from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty. For instance if the refund application of Mr. Mohan is received by the Department on 4th August and the duty is actually refunded to the applicant on 21st December. In this situation Interest @ 6% p.a.

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		will be given to Mr. Mohan for 48 days (i.e. from 4th November to 21st December).
4.	Deeming Effect of any Refund Order made by Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court.	As per Explanation to section 11BB where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Central Excise under section 11B (2), then such order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court shall be deemed to be an order passed u/s 11B (2).In simple words, this explanation applies in case the refund application is rejected by Assistant/Deputy Commissioner., but later on at the appellate stage, the application is decided in favour of the assessee, and consequently he becomes entitled to refund of duty. According to this explanation if there is a gap of more than three months between the date of receipt of refund application and concerned Appellate Order, then interest has to be paid to the assessee in respect of delayed period. For instance if refund application of Mr. Deepak is received by the Department on 1st January 2010 and Court passes a refund order in favour of Mr. Deepak on 30th September 2011, then interest for a period of 18 months (i.e. from 1st April 2010(three months after the date of receipt of application) to 30th September 2011) will be given to Mr. Deepak in accordance with this explanation.

Question 10

State briefly the circumstances under which a refund claim could be admitted under the proviso to section 11B(2) of the Central Excise Act, 1944.

Answer

Under proviso to section 11B(2), a refund claim of excise duty made by a buyer/assessee can be admitted only in the following cases:

(i) Rebate of excise duty on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(ii) Unspent advance deposits lying in applicant's account current;

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(iii) Refund of credit of duty paid on inputs, provided it is payable according to any rule or notification;

(iv) Refund of duty to manufacturer, if he has not passed on the incidence of duty to another person;

(v) Refund of duty to buyers, provided he has borne the duty and if he has not passed on the incidence of the duty to any other person;

(vi) To any other class of applicant, if borne by any such class of applicants, as may be specified by the Government of India, if the incidence of duty has not been passed on to any other person.

Question 11

Duty demand of ₹ 10 lakh was made in terms of an order in original dated 25.02.2012 against XYZ Ltd. with interest as applicable on the ground of clandestine removal of the products manufactured by the assessee in the month of June, 2011. Penalty equal to duty demanded was also imposed. On an appeal filed by XYZ Ltd., the Commissioner (Appeals) required it to deposit an amount of ₹ 5 lakh as pre-deposit which was duly deposited on 03.06.2012. The case against XYZ Ltd. was finally decided and duty demand of ₹ 3,20,000 was confirmed and penalty was set aside on 30.06.2012. XYZ Ltd. filed a refund claim on 15.09.2012. Refund was sanctioned on 10.12.2012. Calculate the amount of refund admissible.

Answer

As the Commissioner (Appeals) has confirmed the duty demand of ₹3,20,000 and set aside the penalty, only ₹1,80,000 will be payable as refund to XYZ Ltd. Interest would also be payable as per the provisions of section 35FF as the pre-deposit is not refunded within three months from the date of communication of such order to the adjudicating authority. Interest would be payable @ 6% on such refund after the expiry of three months from the date of the communication of the order of the appellate authority (01.10.2012) to the adjudicating authority till the date of refund of such amount (10.12.2012) i.e., for 71 days in total. It has been assumed that the order was communicated to the adjudicating authority on the same day (30.06.2012).

Interest payable = $\frac{6}{100} \times \frac{71}{366} \times 1,80,000$

= ₹2,095

Total refund admissible = ₹1,80,000 + ₹2,095

= ₹1,82,095

Question 12

Examine, with the help of a decided case law, whether for the purpose of computing interest on delayed refunds under section 11BB of the Central Excise Act, 1944, the period

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commences with the date of receipt of application for refund or date on which the order of refund is made?

Answer

The question whether for the purpose of computing interest on delayed refunds under section 11BB, the period commences with the date of receipt of application for refund or date on which the order of refund is made was examined by the Apex Court in the case of ***Ranbaxy Laboratories Ltd. v. UOI 2011 (273) E.L.T. 3 (SC).***The Apex Court observed that interest under section 11BB becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded.

The Apex Court further noted that Explanation appearing below the proviso to section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner/Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under section 11B(2). It is apparent that the explanation does not have any bearing or connection with the date from which interest under section 11BB becomes payable and does not postpone the said date.

In the light of the aforesaid discussion, the Supreme Court elucidated that section 11BB of the Central Excise Act, 1944 comes into play only after an order for refund has been made under section 11B. However, the liability of the revenue to pay interest under section 11BB commences from the date of expiry of three months from the date of receipt of application for refund under section 11B(1) and not on the expiry of the said period from the date on which order of refund is made.

Exercise

1. *What are the relevant dates as set out in explanation (B) to Section 11B of Central Excise Act, 1994?*
2. *What is the time limit for making the application for refund of duty?*
3. *Enumerate the circumstances under which refund of duty would be granted to the assessee instead of being credited to the Consumer Welfare Fund.*
4. *The refund of an encashed bank guarantee for all or part of the disputed excise duty, pursuant to an order of the Court, is governed by the provisions of section 11B. Discuss the correctness or otherwise of the statement with the help of decided case law, if any.*

   Answer/Hints: Supreme Court in the case of Oswal Agro Mills Ltd. v. Assistant Collector of C. Ex., Ludhiana 1994 (70) ELT 48 (SC) has held that refund of an encashed bank guarantee for all or part of the disputed excise duty pursuant to an order of the Court is not governed by the provisions of section 11B, since furnishing of a bank guarantee is not equivalent to payment of excise duty.

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The Supreme Court stated that section 11B applies when an assessee claims refund of excise duty. A claim for refund is a claim for repayment. It presupposes that the amount of the excise duty has been paid over to the excise authorities. It is then that the excise authorities would be required to repay or refund the excise duty.

The Apex Court explained that a bank guarantee is a security for the Revenue for recovering the dues in the event the Revenue succeeds in the dispute concerning the duty. However, if the bank refuses to honour its guarantee, the revenue or the principal administrative officer of the Court (where the bank guarantee is in his favour) has to file a suit against the bank for the amount due upon the bank guarantee. Therefore, the amount of the disputed tax or duty that is secured by a bank guarantee cannot be considered as having been paid to the Revenue. Thus, there arises no question of its refund and hence provisions of section 11B would not be attracted.

The applicant filed the rebate claim beyond the time limit of one year on the ground that the export promotion copy shipping of shipping bill was provided by the Customs Authorities belatedly. The Department rejected the claim as time barred under Section 11B of the Central Excise Act, 1944. Discuss whether the contention of the Department is valid.

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CHAPTER 10

Appeals

Question 1

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

Answer

The Finance Act, 2008 has added a proviso to section 35E(1) of Central Excise Act 1944 to cover a case where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise. In such a case the Committee shall state the point or points on which it differs and make a reference to the Board which after considering the facts of the order, if is of the opinion that the decision or order passed by the Commissioner of Central Excise is not legal or proper may direct such Commissioner or any other Commissioner to apply to Appellate Tribunal for determination of such points arising out of decision or order

Question 2

M/s Raj Fibres had filed an appeal to the High Court on Aug. 11, 2011 under section 35G of the Central Excise Act, 1944 aggrieved by an order passed by the Appellate Tribunal. The order appealed against was received by the assessee on Jan. 1, 2011. The High Court dismissed the appeal petition on the ground that the same had been filed beyond the period provided for filing an appeal under section 35G of the Act and the Court had no power to condone the delay. M/s Raj Fibres urged before the High Court that the provisions of the Limitation Act, 1963 should be made available and the delay in presenting the appeal ought to be condoned. State briefly whether the High Court could condone the delay in presenting the appeal pursuant to the provisions of the Limitation Act, 1963 as urged by M/s Raj Fibres.

Answer

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

Question 3

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

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Answer

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

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

Question 4

What are the grounds for obtaining a stay of demand of duty ?

Answer

According to first proviso to Section 35F of Central Excise Act, 1944 pre-deposit of duty and penalty for hearing appeal may be dispensed or waived or stayed by appellate authority if in the opinion of the Appellate Authority the deposit or duty demanded or penalty levied would cause 'undue hardship' to the concerned person. The hardship can be any hardship and not only financial hardship. Wide discretion is available to the appellate authority in granting stay/dispensing pre-deposit of duty.

Question 5

State in relation to appeals to Commissioner (Appeals) under Central Excise Act, 1944 and Central Excise (Appeals) Rules, 2001 regarding order that can be passed.

Answer

According to provisions of section 35A(3) of Central Excise Act, 1944 the Commissioner (Appeals) shall, after making necessary enquiry, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. Further, section 35A(4) provides that order of Commissioner(Appeals) shall be in writing and shall state all points for determination, give decision and reasons for the same. Copy of the order should be communicated to the following:

(i) Appellant

(ii) The adjudicating authority against whose order the appeal was filed and

(iii) Commissioner

(iv) Chief Commissioner of Central Excise.

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Question 6

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

High Court is empowered to condone delay in filing appeal and cross objection filed under sections 35G and 35H of the Central Excise Act, 1944, beyond the prescribed period.

Answer

Yes, the statement is valid. Sub-section (2A) of section 35G and sub-section (3A) of section 35H, empowers the High Court to condone the delay in filling appeal and cross objections filed under sections 35G and 35H of the Central Excise Act, 1944 after the expiry of the prescribed period.

Question 7

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

Answer

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

(1) where the adjudicating authority has refused to admit evidence which ought to have been admitted, or

(2) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by adjudicating authority, or

(3) where the appellant was prevented by sufficient cause from producing, before the adjudicating authority any evidence which is relevant to any ground of appeal, or

(4) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

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

(1) to examine the evidence or document or to cross examine any witness produced by the appellant; or

(2) to produce any evidence or any witness in rebuttal of the additional evidence.

The power of the Commissioner(Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal is independent of the

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above provisions relating to additional evidence and his powers will not be affected by the said provisions.

Question 8

Name the decisions or orders which could be appealed to the Appellate Tribunal under section 35B of Central Excise Act, 1944.Are there any exceptions to the said provision? If yes, mention those exceptions.

Answer

According to provisions of Section 35B of Central Excise Act, 1944 any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-

(a) A decision or order passed by the Commissioner of Central Excise as an adjudicating authority;

(b) An order passed by the Commissioner (Appeals) under section 35A of Central Excise Act, 1944.

Exceptions to above provision

If order passed by the Commissioner (Appeals) under section 35A of Central Excise Act, 1944 relates to any of the following then no appeal shall lie to the Appellate Tribunal:

(a) A case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) A rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) Goods exported outside India (except to Nepal and Bhutan) without payment of duty;

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of Central Excise Act or the rules made thereunder.

Besides, the Appellate Tribunal may, its discretion, refuse to admit an appeal in respect of an order passed by the Commissioner (Appeals) under section 35A where:

(i) In any disputed case (other than a case relating to the determination of rate of duty or valuation of goods) the difference in duty involved or duty involved ; or

(ii) The amount of fine or penalty determined by such order

does not exceed ₹ 50,000/-

Question 9

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

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Answer

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

(a) any judgment of the High Court delivered -

(i) in an appeal made under section 35G or

(ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003 or

(iii) on a reference made under section 35H

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

(b) any order of the Appellate Tribunal [before the establishment of NTT] having relation to the determination of rate of duty or value of goods, among other things.

Further, by Special Leave Petition (SLP) under Article 136 of Constitution of India i.e. permission of Supreme Court, even in cases where High Court does not certify it to be a fit case for appeal to Supreme Court, an appeal can be filed before S.C.

Question 10

Can the Department file an appeal in respect of the same assessee if in respect of some years no appeal was filed in matters involving identical dispute. Write a brief note with reference to the Central Excise Act, 1944.

Answer

It has been held by the Supreme Court in the case of *C.K Gangadharan v. CIT, Cochin, 2008 (228) ELT 497* that merely because Revenue has not preferred an appeal in some cases, it would not prevent the Revenue to prefer an appeal in another case if it is in the public interest or there is just cause for doing so or for a pronouncement by the higher Court when divergent views are expressed by the different High Courts.

However, the Supreme Court has given a conflicting decision in the case of *CIT v. J.K. Charitable Trust 2008 (232) ELT 769 (SC 3 members bench)* wherein it has held that if in respect of some years, in respect of same assessee, no appeal was filed involving an identical dispute, revenue can be precluded from filing an appeal if the fact situation in subsequent years remains the same.

Further, it may be noted that section 35R inserted vide the Finance Act, 2011 provides *inter alia* that where in pursuance of any instruction issued by CBEC with regard to fixing monetary limits for filing appeal etc., Central Excise Officer has not filed any appeal against any decision passed under the provisions of the Act, then it shall not preclude such officer from filing appeal in any other case involving the same or similar issues or questions of law.

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Question 11

Write a brief note on the matters with respect to which an appeal does not lie before the Customs Excise Service Tax Appellate Tribunal against any order passed by Commissioner (Appeals), under section 35B of the Central Excise Act, 1944

Answer

As per section 35B of the Central Excise Act,1944, the matters in respect of which an appeal does not lie before the Customs Excise Service Tax Appellate Tribunal against any order passed by Commissioner (Appeals) are as follows:-

(a) case of loss of goods during transit or during their processing in a warehouse or in storage in a factory or a warehouse

(b) rebate of excise duty on export goods or on excisable materials used in the manufacture of export goods or goods exported without payment of duty (except exports to Nepal or Bhutan);

(c) CENVAT credit which is utilized for payment of excise duty on final products

Question 12

State briefly the procedure for adducing additional evidence in appeal proceedings before the Commissioner (Appeals) under Section 35 of the Central Excise Act, 1944.

Answer

The Commissioner (Appeals) shall not admit any additional evidence unless the adjudicating authority or his authorized person in this behalf has been allowed a reasonable opportunity:-

(a) to examine the evidence or documents or to cross-examine any witness produced by the appellant, or

(b) to produce any evidence or any witness in rebuttal of the additional evidence produced by the appellant.

However, the Commissioner (Appeal) must record in writing the reason for admission of additional evidence.

Question 13

Examine the validity of the statement "Commissioner of Central Excise (Appeals) can enhance the amount of duty demanded or fine in lieu of confiscation or penalty while deciding appeal filed by an assessee".

Answer

The statement is valid. Section 35A provides that Commissioner (Appeals) can enhance penalty or fine in lieu of confiscation or duty demanded after making further enquiry as may be necessary and after giving an opportunity of being heard to the appellant. Further,

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enhancement of duty demand shall be subject to time limit under section 11A of the Central Excise Act, 1944.

Question 14

Rishabh Internationals Limited (RIL) cleared the goods to Sambhav Enterprises (SE) paying excise duty @ 14% in the month of March, 2011 although the rate of duty on the said goods had been reduced to 10% in the Union Budget 2011-12. However, SE refused to pay the higher duty paid by RIL by mistake and subsequently raised a debit note. RIL applied for the refund of excess excise duty paid of ₹ 4,90,000 which was rejected by the Department on the ground that a debit note could not form the basis for refund.

An appeal was filed to the Commissioner of Central Excise (Appeals) which passed an order accepting RIL's refund claim. You are required to examine whether, in the instant case, Revenue being aggrieved by the order of the Commissioner of Central Excise (Appeals) can file an appeal to the CESTAT against such order.

Answer

No, Revenue cannot file an appeal to CESTAT against the order passed by the Commissioner of Central Excise (Appeals). As per the National Litigation Policy, in Revenue matters, appeal shall not be filed if the amount involved is less than the monetary limit fixed by the Revenue authorities for the said purpose. CBEC has issued the instructions fixing the monetary limits of duty below which an appeal shall not be filed in CESTAT, High Court and Supreme Court. Consequently, an appeal cannot be filed in Tribunal if the duty involved in a case is ₹ 5,00,000 or below and these monetary limits apply to cases of refund as well. Since the amount of duty involved in the instant case is less than ₹ 5,00,000, the Revenue cannot file an appeal in the Tribunal.

Exercise

1. *Who can the sign the grounds of appeal and the form of verification as contained in Form No. E.A.-1?*
2. *Briefly explain the provisions relating to revision application.*
3. *What are the matters on which appeal does not lie with CEGAT? Where does redressal lie in such cases?*
4. *Discuss the revisionary powers of the Central Excise Authorities under section 35E and section 35EE of the Central Excise Act, 1944.*
5. *What are the orders that are appelable to the Supreme Court?*
6. *Write a note on production of additional evidence before Commissioner (Appeals).*
7. *When revision power under section 35EE can be exercised by the Central Government?*

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CHAPTER 11

Remission of Duty and Destruction of Goods

Question 1

Briefly explain the provisions of Rule 21 of the Central Excise Rules, 2002 regarding Remission of Duty.

Answer

The term 'Remission' means waiver or cancellation of excise duty legally payable. According to Rule 21 of Central Excise Rules, 2002 remission of duty can be granted in the following cases:-

(a) Goods have been lost or destroyed by natural causes.

(b) Goods have been lost or destroyed by unavoidable accident.

(c) Goods are claimed by manufacturer as unfit for consumption or for marketing.

It will not be out of context to mention that application for remission should be submitted before removal of goods from factory. In different words, there is no provision for remission of duty after goods are cleared from the factory.

Question 2

Briefly state the powers of various Central Excise Officers to grant 'Remission of Duty'.

Answer

The powers of various Central Excise Officers to grant 'Remission of Duty' have been exhibited in the following brief table:

Rank of Central Excise Officer	Monetary limit on power to remit duty
Commissioner	Without limit but normally any amount exceeding ₹ 5,00,000
Additional/Joint Commissioner	Between ₹ 1,00,000 and ₹ 5,00,000
Deputy/Assistant Commissioner	Between ₹ 10,000 and ₹ 1,00,000
Superintendent	Below ₹ 10,000/-
Inspector	None

Question 3

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

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Answer

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

(i) goods have been lost or destroyed by natural causes or,

(ii) goods have been lost or destroyed by unavoidable accident or

(iii) the goods have become unfit for consumption or for marketing.

at any time before removal, he may remit the duty payable on such goods subject to such conditions as may be imposed by him by order in writing.

Question 4

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

(i) Can remission of duty be granted on goods cleared from the factory after payment of duty, but which were destroyed by fire in transit?

(ii) Upon grant of remission of duty, the CENVAT credit on inputs used in final product has to be reversed.

Answer

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

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

(ii) As per sub-rule (5C) of rule 3 of CENVAT Credit Rules, 2004 inserted vide *Notification No. 33/2007 CE (NT) dated 07.09.2007*, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

Question 5

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

(i) Excisable goods manufactured in the factory are claimed by the manufacturer as unfit for consumption or for marketing.

(ii) Duty paid goods were damaged due to breakage in handling.

(iii) Finished goods entered in Daily Stock Account (DSA) were stolen from the factory.

(iv) Finished goods (fully manufactured) were lost before removal from the factory and the assessee has received a claim from the insurance company.

(v) Finished Goods are destroyed in fire during the process of fire due to spontaneous combustion.

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(vi) Fished Goods kept in open yeard are lost or damaged due to heavy storm and rain.

Answer

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

(i) Remission of duty shall be granted as the goods have been claimed as unfit for consumption or for marketing by the manufacturer.

(ii) Remission cannot be granted on duty paid goods as there is no provision for granting remission of duty after removal of the goods.

(iii) Remission of duty in case of theft is not allowed as the goods are available for consumption somewhere else *[Chapter 18 Part I Para 2.6 of CBE&C's Central Excise Manual, 2001].*

(iv) Remission of duty has is grantable even if the assessee has received insurance claim in respect of fire accident as has been held in the following cases:

(a) *Sarda Plywood Industries Ltd. V CCE 1987 (32) E.L.T. 116(CEGAT);*
(b) *CCE V Jai Bhavani SSK (2008) 222 ELT 370 (CESTAT)*

(v) Remission of duty is grantable if goods are destroyed during process due to spontaneous combustion which is a natural cause as has been held in *CCE Vs Balrampur Chini Mills(2008) 223 ELT 34 (All HC)* wherein it was pronounced that destruction by spontaneous combustion is a natural cause and question of negligence or unavoidable accident does not arise.

(vi) Remission of duty is grantable if goods kept in open yard are lost/damaged due to heavy storm and rain as has been held in the following cases:-

(a) EID Parry V CCE 2004 (167) ELT 336 (CESTAT)
(b) Rajapalavam Cement V CCE (2008) 227 ELT 401 (CESTAT)

Exercise

1. *Briefly outline the manner of destruction of goods.*
2. *Describe the procedure for destruction of goods and remission of duty.*
3. *X an exporter clears goods for export under bond without payment of duty. Goods are destroyed in road accident before export. Whether X is liable to remit duty in terms of Rule 21 of Central Excise Rules, 2002?*

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CHAPTER 12

Warehousing

Question 1

Discuss the provisions governing packing, re-packing, labelling or re-labelling within the warehouse in respect of export warehousing.

Answer

The operations of packing, re- packing, labelling or re-labelling within the warehouse in respect of excisable goods received and stored in the warehouse are governed by the procedure specified under Rule 20 of Central Excise Rules, 2002. Suitable entries must be made in the Export-Warehouse Register. In case of non-reconciliation of quantity, after adjusting any wastage or refuse, the differential quantity shall be treated as unaccounted and action for recovery of duty will be initiated.

The exporter may procure packing or labelling material and bring the same into the warehouse under the warehousing procedure itself .It is also worth mentioning that where the process of packing, repacking, labelling or re-labelling amounts to manufacture in terms of the provisions of the Central Excise Tariff Act, 1985, the goods permitted for clearance for home consumption shall be assessed accordingly.

Question 2

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

Answer

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

(i) With the permission of the Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice prepared under rule 8 on payment of duty, interest and any other charges on TR-6 challans. Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.

(ii) Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse.

(iii) Goods can also be diverted for home consumption even after clearance of goods from warehouse under ARE- 1. The documents will be cancelled as per *Notification No. 46/2001 CE (NT) dated 26.6.2001* as amended. The intimation of such cancellation is to be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running

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Bond Account will be permitted in the same manner as mentioned above.

(iv) The exporter has to pay an interest @ 24% p.a on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.

Question 3

Briefly discuss the provisions in respect of waiver of physical warehousing in case of exigency.

Answer

The officer-in-charge of the warehouse may permit waiver from physical warehousing (i.e. permitting export without physically storing the goods in the warehouse) where the exporter so requests in writing. However, aforementioned permission will be given only if the formalities relating to record-keeping are completed in usual manner with suitable record in the Warehouse Register: 'Warehousing waived'. It is to be kept in mind that aforesaid permission is given in the following exceptional cases:

(i) where delay occurred due to delayed supply from the factory; or

(ii) Longer transit period; or

(iii) Requirement of immediate export; or

(iv) Any other genuine reasons

Besides, it is also essential that the entire consignment is entered for export in the original packing. Such cases of permission granted are required to be reported to the Superintendent-in-charge of the warehouse at the earliest.

Question 4

Write a brief note on statutory provisions in respect of warehousing.

Answer

Rule 20 of Central Excise Rules, 2002 deals with warehousing. The various sub-rules of aforementioned Rule 20 have been given in the following brief table:

Relevant sub-rule of Rule 20 of Central Excise Rules, 2002	Statutory provisions
(1)	Central Government is authorised to extend the warehousing provisions by issue of notifications for the goods specified in the relevant notification. Warehousing provisions allow removal of specified goods from factory to warehouse or from one warehouse to another warehouse without payment of duty.
(2)	CBEC is authorised to prescribe the conditions, limitations and safeguards subject to which warehousing procedure would operate.

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(3)	Consignee has been made responsible for payment of duty on goods removed from factory to warehouse or one warehouse to another warehouse.
(4)	Consignor will be liable to make payment of duty if the goods dispatched for warehousing or re-warehousing are not received in the warehouse.

Question 5

Write a brief note on the warehousing procedure for goods removed from the factory under the Central Excise Act, 1944 and Rules made thereunder.

Answer

The procedure for warehousing of goods removed from a factory is detailed below:

(i) The consignor shall prepare an application for removal of goods from a factory to a warehouse in quadruplicate and also prepare an invoice for goods to be warehoused.

(ii) He has to send original, duplicate and triplicate application and duplicate invoice along with goods to the warehouse of destination. The quadruplicate copy of application has to be sent to the Superintendent of Central Excise in-charge of his factory within 24 hours.

(iii) Within 24 hours of receipt of the goods the consignee shall verify the goods with all the copies of application.

(iv) The consignee has to send:

  (a) Original copy to Superintendent-in-charge of his warehouse.

  (b) Duplicate copy of consignor and retain the triplicate for record.

(v) The Superintendent-in-charge of the warehouse shall countersign the application received by him and send the same to Superintendent-in-charge of the consignor.

(vi) The consignor shall retain the duplicate application duly endorsed by the consignee for his record.

Question 6

Mr. Subodh Mishra, manufactures electronic items for selling them within India as well as exports to Germany. He has stored his goods in the warehouse for the purpose of export. However, on account of certain unforeseen circumstances, goods cannot be exported to Germany. Now, he wishes to divert the goods kept in the warehouse for the purpose of export for home consumption. Explain briefly the procedure under Central Excise Act, 1944 to be adopted by Mr. Subodh Mishra for diverting the said goods kept in the warehouse for the purpose of export to Germany for home consumption.

Answer

The goods kept in a warehouse for being exported can be diverted by Mr. Subodh Mishra for home consumption in the following manner:

(i) With the permission of the Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice prepared under rule 8 on payment of duty,

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interest and any other charges on TR-6 challans. Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.

(ii) Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse.

(iii) Goods can also be diverted for home consumption even after clearance of goods from warehouse under ARE- 1. The documents will be cancelled as per *Notification No. 46/2001 CE (NT) dated 26.6.2001* as amended. The intimation of such cancellation is to be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.

(iv) The exporter has to pay an interest @ 24% p.a. on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.

Exercise

1. *What will happen if the consignor fails to receive the warehousing certificate within 90 days?*
2. *What are the registered person's right to deal with the warehouse goods?*

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CHAPTER 13

Exemption Based on Value of Clearances (SSI)

Question 1

Explain five instances when small scale exemption will be available to the excisable goods bearing the brand name of another person.

Answer

SSI Notification No. 8/2003 dated 1.3.2003 denies the benefit of the exemption for clearances done on products which bear a brand name of another person. This means that such clearances would attract normal rate of duty. However, in the following exceptional situations small scale exemption will be available to the excisable goods bearing he brand name of another person:

(A) Manufacturers of components/parts of any machinery/equipment/appliances for use as original equipment in the factory

Where the manufacturer manufactures components/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.

(B) Goods bearing the brand name of KVIV/NSIC/SSIDC etc.

When the goods bear a brand name of Khadi and Village Industries Commission (KVIC) or a State Khadi and Village Industry Board or National Small Industries Corporation (NSIC) or a State Small Industries Development Corporation (SSIDC) or a State Small Industrial Corporation, such goods are entitled to SSI exemption.

(C) House mark in respect of medicinal preparations

The Supreme Court has held in Astra Pharmaceutical P Ltd. V CCE 1995 (75) E.L.T. 214 that in respect of medical preparations, the mark made by the manufacturers would be called a "house mark" and would not be the brand name. Thus, the monograph which identifies a manufacturer's name would not be a brand name.

(D) Raw materials bearing the brand name

Raw materials received by the manufacturers which may bear a brand name are entitled to benefit of Notification.

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(E) Goods manufactured in Rural Area

When the goods bearing the brand name of another person are manufacturered in a rural area, those goods shall be eligible for SSI Exemption.

Question 2

An SSI manufacturer may like to pay full duty even when he is eligible for SSI exemption

(a) Can he do so?

(b) Why he would like to pay full duty?

(c) What is the duty payable?

Answer

(a) Yes, the concerned manufacturer can do so. In such a situation he can avail CENVAT on inputs.

(b) He would like to pay full duty if his customer wants to avail CENVAT and if duty paid on his inputs is quite substantial. As a result, the effective cost of the buyer will be reduced.

(c) Duty payable will be normal duty less concession, if any available under any other exemption notification.

Question 3

An SSI unit (manufacturing goods eligible for benefit of SSI exemption notification) has cleared goods of the value of ₹ 60 lakhs during the financial year 2012-13. The effective rate of Central Excise Duty on goods manufactured by it is 12% Ad valorem. Education Cesses are payable at applicable rates. What is the correct amount of duty which the unit should have paid on above clearance for 2012-13.

Answer

If the relevant SSI Unit is desirous of availing CENVAT Credit on input, duty will be payable at normal rates i.e. 12.36% on ₹ 60 lakh which works out to be ₹ 7,41,600. Contrarily, if the said unit does not intend to avail CENVAT Credit on input, the duty payable will be NIL.

Question 4

A small scale unit manufacturer had achieved a sales of ₹ 89 lakh during the year 2011-12. Turnover achieved during 2012-13 was ₹ 1.52 crores. Normal duty payable on the product is 12% plus applicable education cesses. Find the total excise duty paid by the manufacturer during 2012-13 in each of the following cases:-

(A) If the unit has availed CENVAT Credit.

(B) If the unit has not availed CENVAT Credit

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Answer

(A) If the unit has availed CENVAT Credit: In this case the unit is required to pay duty at normal rates on the entire turnover i.e. 12.36% [consisting of Excise Duty @ 12%, Primary Education Cess @ 2% on Excise Duty and Secondary and Higher Education Cess @ 1% on Excise Duty] on 1.52 crores which works out to be ₹ 18,78,720/-

(B) If the unit has not availed CENVAT Credit: In this case duty payable will be computed as under:

(i) On ₹ 150 lakhs = NIL

(ii) On subsequent sales= Normal duty @ 12.36% i.e. 12.36% on ₹ 2,00,000 which works out to be ₹ 24,720/-

Question 5

Small & Company, a small scale industry, provides the following details. Determine the eligibility for exemption based on value of clearances for the financial year 2012-13 in terms of Notification No. 8/2003-CE dated 1.3.2003 as amended:

	Particulars	*₹. (Lakhs)*
(i)	*Total value of clearances during the financial year 2011-12 (including VAT ₹ 50 lakhs)*	*870*
(ii)	*Total exports (including for Nepal and Bhutan ₹200 lakhs)*	*500*
(iii)	*Clearances of excisable goods without payment of duty to a unit in Software Technology Park*	*20*
(iv)	*Job work under Notification No. 84/94-CE dated 11.4.94*	*50*
	Job work under Notification No. 214/86-CE dated 25.3.86	*50*
(v)	*Clearances of excisable goods bearing brand name of Khadi and Village Industries Commission*	*200*

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

Answer

Calculation of value of clearances during financial year 2011-12

Particulars	*₹ (in lakhs)*
Total value of clearances during the financial year 2011-12	870
Less : VAT included in above	50
	820
Less : 1. Exports excluding exports to Nepal and Bhutan ₹ (500-200) lakh	300
Clearances of excisable goods without payment of duty to a unit in Software Technology Park	20
Job work done under Notification No. 84/94-CE dated 11.04.94 and under Notification No. 214/86-CE dated 25.3.86 i.e..₹ (50 + 50) lakh	100
Value of clearances during the financial year 2011-12	400

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Notes:-While computing value of clearances during financial year 2011-12 (as shown above),

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

In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. in a financial year, the total turnover of a unit should not exceed ₹400 lakh in the preceding year Since the value of clearances in the previous financial year 2011-12 does not exceed ₹400 lakh, the Small & Company is eligible to claim the benefit of *Notification No. 8/2003 dated 1st March, 2003* in the financial year 2012-13.

Question 6

CTL Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2011-12, the total value of clearances from the unit was ₹ 450 lakh. The break up of clearances is as under:

(i) Clearances worth ₹50 lakh of certain non-excisable goods manufactured by it.

(ii) Clearances worth ₹ 50 lakh exempted under specified job work notification.

(iii) Exports worth ₹ 100 lakh (₹75 lakh to USA and ₹25 lakh to Nepal).

(iv) Clearances worth ₹ 50 lakh which were used captively to manufacture finished products that are exempt under notifications other than Notification No. 8/2003-CE dated 1.3.2003 as amended.

(v) Clearances worth ₹ 200 lakh of excisable goods in the normal course.

Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1.3.03 as amended for the year 2012-13.

Answer

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

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

(ii) Clearances exempted under job work notifications should not be considered. Therefore, exempted clearances of ₹ 50 lakh under job work notification will be excluded.

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(iii) Export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as "clearance for home consumption". Therefore, clearances worth ₹ 75 lakh exported to USA will be excluded while clearances worth ₹ 25 lakh exported to Nepal will be included.

(iv) Value of intermediate products manufactured has to be included if the final product is exempt under any notification other than Notification No. 8/2003-CE dated 1-3-2003*. Therefore, clearances worth ₹ 50 lakh which were used captively to manufacture finished products exempt under notifications other than Notification No. 8/2003 will be included.

(v) Clearances of excisable goods of ₹ 200 lakh in the normal course will be considered.

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

= ₹ 450 lakh – (₹ 50 lakh + ₹ 50 lakh + 75 lakh) = ₹ 275 lakh

Since the turnover is less than ₹ 400 lakh, CTL Ltd. will be eligible for exemption under Notification No. 8/2003 – CE in the financial year 2012-13.

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

Question 7

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

Answer

Notification No. 8/2003-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. 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.

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

(i) *Notification No. 8/2003 dated 01.03.2003* debars those persons from the benefit of the SSI exemption who use someone else name in connection with their goods, either with

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the intention of indicating, or in a manner so as to indicate a connection between their goods and such other person;or

(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 is of no relevance.

Question 8

Y & Co. is a small scale unit located in a rural area and is availing the benefit of small scale exemption under Notification No. 8/2003-C.E. during the year 2011-12. Determine the value of the first clearances of the unit and duty liability on the basis of data given below:-

		₹
(1)	*Total value of clearances of goods with own brand name*	*75,00,000*
(2)	*Total value of clearances of goods with brand name of other parties*	*90,00,000*
(3)	*Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances)*	*35,00,000*
	Normal rate of Excise duty - 12%	
	Education cess @ 2% of Excise duty.	
	Secondary and higher education cess@ 1% of Excise duty.	

Calculations should be supported with appropriate notes.

It may be assumed that the unit is eligible for exemption under Notification No. 8/2003.

Answer

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

	Particulars	*₹.*
1.	Value of clearances of goods with own brand name	75,00,000
2.	Value of clearance of goods with brand name of other parties (Note-1)	90,00,000
	Total value of first clearances	1,65,00,000

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	Value on which duty is chargeable (₹1,65,00,000 – 1,50,00,000) = ₹ 15,00,000	
	Excise duty payable @ 12% (₹15,00,000 × 12%)	1,80,000
	Education cess payable @ 2% (₹1,80,000 × 2%)	3,600
	Secondary and higher education cess @ 1% of Excise duty. (*₹1,80,000 ×1 %)*	1,800
	Total excise duty liability	1,85,400

Notes:

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

Question 9

Mahesh Ltd., which is engaged in manufacturing of excisable goods, started its business on 1st June, 2012. It availed SSI exemption during the financial year 2012-13. The following are the details available to you:

		₹
(i)	*12,500 kg of inputs purchased @ ₹1,190.64 per kg (inclusive of Central excise duty @ 12.36%)*	*1,48,83,000*
(ii)	*Capital goods purchased on 31.5.2012 (inclusive of excise duty @ 12.36%)*	*80,09,400*
(iii)	*Finished goods sold (at uniform transaction value throughout the year)*	*3,00,00,000*

You are required to calculate the amount of excise duty payable by M/s Mahesh Ltd. in cash, if any, during the year 2012-13. Rate of duty on finished goods sold may be taken as 12.36% for the year and you may assume the selling price exclusive of central excise duty.

There is neither any processing loss nor any inventory of input and output. Output input ratio may be taken as 2:1.

Answer

Computation of the excise duty payable by M/s. Mahesh Ltd. during the financial year 2012-13:-

Excise duty on dutiable clearances:-

Particulars	Amount (₹.)
Clearances of finished goods made during the year	3,00,00,000

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Less : Exemption of ₹ 150 lakh under Notification No. 8/2003 dated 01-03-2003	1,50,00,000
Dutiable clearances	1,50,00,000
Excise duty @ 12.36% (.₹1,50,00,000 × 12.36%)	18,54,000

CENVAT credit available on inputs:

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

% of dutiable goods in the finished goods sold = $\frac{1,50,00,000}{3,00,00,000} \times 100$	50%
Excise duty paid on the value of inputs consumed in manufacture of dutiable clearances = (148,83,000 x 12.36)/112.36 x 50% (Since output input ratio is fixed)	8,18,591

CENVAT credit available on capital goods:-

(CENVAT credit will be available @ 100% of total excise duty in current financial year 2012-13)

Particulars	Amount (₹)
(100% of ₹ 80.094 lakh) x12.36/112.36 CENVAT credit can be availed on capital goods, but can be utilized only in respect of duty payable on clearances after first clearances of ₹ 150 lakhs	8,81,063

Excise duty payable

Particulars	Amount (₹)
Excise duty on dutiable goods	18,54,000
Less: CENVAT credit available on inputs	8,18,591
Less: CENVAT credit available on capital goods	8,81,063
Excise duty payable	1,54,346

Question 10

If a manufacturer manufactures various products, can he avail CENVAT credit on some products and exemption under Notification No. 8/2003-CE dated 1.3.03 on some other products?

Answer

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

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

Question 11

Comment on the following:-

SSI units whose turnover exceeds Rupees 140 lakhs per annum have to give a declaration in the prescribed form.

Answer

False. SSI units whose turnover exceeds ₹90 lakhs per annum have to give a declaration in the prescribed form.

Question 12

A SSI unit has effected clearances of goods of the value of ₹ 475 lacs during the financial year 2012-13. The said clearances include the following:

(i)	*Clearance of excisable goods without payment of excise duty to a 100% EOU*	₹120lacs
(ii)	*Job work in terms of Notification No. 214/86 CE, which is exempt from duty*	*₹75 lacs*
(iii)	*Export to Nepal and Bhutan*	*₹50 lacs*
(iv)	*Goods manufactured in rural area with the brand name of the others*	*₹90 lacs*

Examine with reference to the notification governing SSI under the Central Excise Act whether the benefit of exemption would be available to the unit for the financial year 2013-14.

Answer

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

The item wise treatment shall be as under -

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

Calculation of clearances during financial year 2012-13:

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

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As the value of clearances for home consumption in financial year 2012-13 does not exceed ₹ 400 lakhs, the benefit of exemption shall be available to the SSI unit during financial year 2013-14.

Question 13

Choti Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2012. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 1-3-2003 as amended for the financial year 2012-13. The following details are provided:

	₹
15,000 kg of inputs purchased @ ₹ 992.70 per kg (inclusive of Central excise duty @ 12.36%)	*1,48,90,500*
Capital goods purchased on 28-6-2012 (inclusive of excise duty at 12.36%)	*44,12,000*
Finished goods sold (at uniform transaction value throughout the year)	*2,50,00,000*

Calculate the amount of excise duty payable by M/s. Choti Ltd. in cash, if any, during the year 2012-13. Rate of duty on finished goods sold may be taken at 12.36% for the year and you may assume that the selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required.

Answer

Computation of the excise duty payable

Particulars	₹	₹
Finished goods sold during the year		2,50,00,000
Less : Exemption of ₹150 lakh under *Notification No. 8/2003 CE dated 01-03-2003*		1,50,00,000
Dutiable clearances [Note 1]		1,00,00,000
Excise duty payable @ 12.36% (₹1,00,00,000 × 12.36%)		12,36,000
Less: CENVAT credit available on inputs [Note 2] Proportion of inputs consumed in dutiable clearances $=₹\frac{1,00,00,000}{2,50,00,000}=0.4$ Excise duty paid on such inputs $=[1,48,90,500 \times \frac{12.36}{112.36}] \times 0.4$	6,55,203	

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Less: CENVAT credit available on capital goods [Note 3] =₹ [44,12,000x $\frac{12.36}{112.36}$]	4,85,336	11,40,539
Excise duty payable in cash		95,461

Notes:

1. Since there is neither any processing loss nor inventory of input and output, it implies that all goods manufactured have been sold and entire quantity of inputs has been used in manufacturing these goods.
2. In respect of units availing SSI exemption, no CENVAT credit is available on inputs consumed in exempt clearances of ₹150 lakh.
3. In respect of units availing SSI exemption, CENVAT credit on capital goods can be availed but utilized only after clearances of ₹150 lakh.

Further, entire credit on capital goods can be taken in the same financial year by such units.

Question 14

MNO Ltd. is in the manufacture of both excisable and non-excisable goods in their factory building rented by them from October 1, 2012 and have been occupying the same as a tenant. From the following particulars for the period October 1, 2012 to March 31, 2013, state briefly with suitable explanations, whether MNO Ltd. could claim the benefit of exemption in terms of Notification No. 8/2003-CE dated 1-3-2003 for the financial year 2013-14.

		₹ (in lakhs)
(i)	*Clearances of branded goods*	*60*
(ii)	*Export Sales to Nepal*	*80*
(iii)	*Export Sales to USA and Canada*	*120*
(iv)	*Clearances of goods (duty paid based on Annual capacity of production under section 3A of the Central Excise Act, 1944)*	*70*
(v)	*Clearances of goods subject to valuation based on retail sale price under section 4A of the Central Excise Act, 1944(said goods are eligible for 30% abatement)*	*200*
(vi)	*Job work under Notification No. 214/86-CE dated 25-3-86*	*60*

During the period April 1, 2012 to Sept 30, 2012 the previous tenant of the building presently occupied by MNO Ltd. had cleared excisable goods of the aggregate value of ₹120 lakhs.

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Answer

Computation of value of clearances for home consumption in the financial year 2012-13

S.No.	Particulars	₹ (in lakh)
(i)	Clearances of branded goods (Note-1)	Nil
(ii)	Export sales to Nepal (Note-1)	80
(iii)	Export sales to USA and Canada (Note-1)	Nil
(iv)	Clearances of goods on which duty has been paid under section 3A of the Central Excise Act	70
(v)	Clearances of goods subject to valuation under section 4A of the Central Excise Act (Note-2)	140
(vi)	Job work under Notification No. 214/86-CE (Note-1)	Nil
(vii)	Clearances of previous tenant of the building occupied by MNO Ltd. (Note- 3)	120
	Total	410

Notes:

1. In order to claim the benefit of exemption under *Notification No. 8/2003 C.E. dated 01.03.2003* in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding financial year. *Notification No. 8/2003 C.E. dated 01.03.2003* provides that for the purpose of computing the turnover of ₹ 400 lakh,:-

   (a) clearances bearing the brand name or trade name of another person are excluded. It has been assumed that the branded goods are excisable goods and they bear the brand name of another person and not the brand name of MNO Ltd.

   (b) export turnover is excluded. However, exports to Nepal and Bhutan are not excluded as these are treated as "clearance for home consumption". It has been assumed that goods exported by MNO Ltd. to Nepal are excisable goods.

   (c) clearances under specified job work notifications are excluded and *Notification No. 214/86 CE dated 25.03.86* is one of the specified notification.

2. In case of the goods subject to valuation under section 4A of the Central Excise Act, 1944, value for the purpose of the SSI exemption would mean value fixed under section 4A i.e., retail sale price less abatement. Hence, value of such clearances would be ₹ 200 lakh × 70%= ₹ 140 lakh.

3. For the purpose of computing the turnover of ₹ 400 lakh, all the clearances made by different manufacturers from the same factory are to be clubbed together. Hence, clearances, worth ₹ 120 lakh of previous tenant of the building occupied by MNO Ltd. have been added.

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Conclusion: Since the value of clearances for home consumption exceeds ₹ 400 lakh in the financial year 2012-13, MNO Ltd. is not eligible to claim the benefit of exemption under *Notification No. 8/2003 – C.E. dated 01.03.2003* in the financial year 2013-14.

Question 15

SSI & Co. is eligible for exemption in terms of Notification No. 8/2003-CE dated 1-3-2003 for the year 2012-13. It provides the following particulars with regard to the clearances of goods effected during the said year. Determine the duty payable in respect of the year 2012-13:

Aggregate	*₹ (in lakhs)*
Value of domestic clearance of goods with own brand name	*120*
Value of clearance of goods with the brand name of others (including ₹ 30 lakhs in respect of goods manufactured in a rural area)	*100*
Value of clearances for exports	*50*
Value of clearances for captive consumption	*40*
Value of clearances of exempted goods	*20*
(Assume rate of excise duty at 12%)	

Show your workings with explanations where required.

Answer

Computation of excise duty payable by M/s. SSI & Co. during the year 2012-13:-

Particulars	₹ in lakh
Turnover to be excluded:	
Value of clearances for export *[Note – 1]*	50
Value of clearances for captive consumption *[Note – 1]*	40
Value of clearances of exempted goods *[Note – 1]*	20
Value of domestic clearance of goods with brand name of others (excluding goods manufactured in rural area) *[Note – 2]*	70
Turnover to be included:	
Value of domestic clearances with own brand name	120
Value of clearances of goods with brand name of others manufactured in rural area	30
Total	150

Tax liability

On 1st clearance of ₹ 150 lakh duty is	Nil

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On clearances with brand name of others worth ₹ 70 lakh (excluding rural area clearances) duty @ 12% [Note 3]	8,40,000
Add: Education cess and secondary and higher education cess @ 3%	25,200
Total duty liability	8,65,200

Notes:

1. As per *Notification No. 8/2003 CE dated 01.03.2003*, export clearance, captive consumption and exempted clearances are not included in determining the limit of first ₹ 150 lakh for SSI exemption.
2. As per *Notification No. 8/2003 CE dated 01.03.2003,* the clearances with the brand name of others which are ineligible for SSI exemption has to be excluded while determining the limit of ₹ 150 lakh. However, clearances with the brand name of others manufactured in rural area are eligible for SSI exemption and hence, such clearances are included while determining the limit of ₹ 150 lakh.
3. Export clearance, captive consumption and exempted clearances are exempted from excise duty. Thus, duty will be payable only in respect of the goods manufactured with brand name of others.

Question 16

X Ltd. is having a manufacturing unit at Faridabad. In the financial year 2012-13, the value of total clearances from the unit was ₹ 850 lakhs as per the following details:

(i) Exports to USA : ₹ 100 lakhs; to Nepal : ₹ 50 Lakhs

(ii) Clearances to a 100% export oriented unit : ₹ 75 lakhs

(iii) Clearances as loan licensee of goods carrying the brand name of another upon full payment of duty: ₹ 200 lakhs

(iv) Clearance exempted vide Notification No. 214/86-C.E. dated 25.3.86: ₹125 lakhs.

(v) Balance clearances of goods in the normal course : ₹ 300 lakhs.

You are required to state with reasons whether the unit is entitled to the benefit of exemption under Notification No. 8/2003-C.E. dated 1.3.2003 as amended for the financial year 2013-14.

Answer

As per Notification No. 8/2003 dated 01.03.2003, in order to claim exemption as small scale industry in the financial year 2013-14, the total eligible clearances of the manufacturing unit should not exceed ₹ 400 lakh in the previous financial year 2012-13.

For the purpose of computing the eligible clearances:-

(i) Export turnover of ₹ 100 lakh to USA would be excluded, while the export to Nepal of ₹ 50 lakh would be included.

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(ii) Clearances of ₹ 75 lakh without payment of duty to a 100% EOU would be excluded.

(iii) Clearances of ₹ 200 lakh as a loan licensee of goods carrying the brand name of another on payment of duty would not be included.

(iv) Clearances of ₹ 125 lakh exempt under *Notification No. 214/86* would be excluded.

(v) Normal clearances of excisable goods of ₹ 300 lakh would be considered.

Thus, the eligible turnover for exemption is as follows:-

=₹ 850 lakh – ₹ 500 lakh (100 + 75 + 200 + 125)

=₹ 350 lakh

Since the eligible clearances do not exceed ₹ 400 lakh in the financial year 2012-13, the manufacturing unit will be entitled for SSI exemption in financial year 2013-14.

Question 17

XYZ & Co., a SSI unit, manufactures different products and the value of clearances for the financial year 2012-13 is given below:

(₹ in lakhs)

S. No.	*Product*	*AA*	*AB*	*AC*
(i)	*Clearance for home consumption*	*55*	*40*	*60*
(ii)	*Captive consumption in the manufacture of excisable goods*	*100*	*80*	*60*
(iii)	*Export to U.S.A.*	*90*	*80*	*Nil*
(iv)	*Export to Nepal*	*50*	*40*	*39*
(v)	*Job work done under Notification No. 214/86-C.E.*	*55*	*30*	*60*
(vi)	*Goods manufactured in rural area with brand name of others*	*45*	*35*	*35*

The unit seeks your advice as to whether they are eligible for SSI exemption for the year 2013-14.

Explain the basis for your conclusions.

Answer

XYZ & Co. unit will be entitled to exemption in the year 2013-14, if its turnover in the year 2012-13 was less than ₹400 lakhs. As per *Notification No. 8/2003 CE dated 01.03.2003*, which governs the provisions relating to small scale exemption, following items will not be included for calculating the turnover limit of ₹400 lakh of previous year:

(i) Captive consumption in the manufacture of excisable goods

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(ii) Export to USA

(iii) Job work done under *Notification No.214/86 CE*

Only the goods bearing the brand name of others, *which are ineligible for the grant of SSI exemption*, are excluded for the purpose of said limit. Since, goods manufactured in rural area with brand name of others are eligible for SSI exemption; the same will not be excluded for calculating the said limit.

Therefore, the turnover to be considered for the limit of ₹400 lakh will be computed as under:

Product	Clearance for home consumption	Export to Nepal	Goods manufactured in rural area with brand name of others	Total Turnover
		(₹in lakhs)		
AA	55	50	45	150
AB	40	40	35	115
AC	60	39	35	134
				399

Since turnover of the unit during the year 2012-13 is less than ₹400 lakh, the unit is entitled to SSI exemption from excise duty in the year 2013-14.

Question 18

Arigo Ltd. is a small scale industrial unit which is producing 'Fast', a tonic for growing children. Under the Annual Report for the year 2012-13, the SSI unit shows gross sales turnover of ₹ 1,95,10,000, inclusive of excise duty and VAT. The product 'Fast' attracts excise duty @ 12% and VAT @ 1%. Calculate the duty liability under Notification No. 8/2003 dated 01.03.2003.*

**Gross Sales Turnover of ₹ 1,95,10,000 is eligible for exemption under Notification No. 8/2003. Further, for the year 2011-12, the taxable clearances of SSI unit was ₹ 1,60,00,000.*

Answer

Calculation of duty liability under *Notification No. 8/2003.*

Gross sales turnover is ₹ 1,95,10,000 which includes excise duty and VAT.

For first 150 lakh clearances , excise duty is Nil and VAT is 1%.

Therefore, VAT on first ₹ 150 lakh clearances = ₹ 1,50,000.

For Balance sales (including excise duty and VAT)

= ₹ 1,95,10,000 – (1,50,00,000 + 1,50,000) = ₹ 43,60,000

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VAT = 43,60,000 x 1/101 = ₹ 43,168 (rounded off)

Therefore, balance sales excluding VAT but including excise duty

= ₹ 43,60,000 – 43,168

= ₹ 43,16,832

Hence, excise duty (including 2% education cess and 1% secondary and higher education cess)= ₹ 43,16,832 x12.36/112.36 = ₹ 4,74,866.89

Total duty payable = ₹ 4,74,866.89 or ₹ 4,74,867 (rounded off)

Question 19

Aggarwal & Company is a manufacturing company. In the financial year 2012-13, the details of its clearances of excisable goods are as follows:-

	Particulars	*₹. (Lakhs)*
(i)	*Total exports (including for export to Bhutan ₹50 lakhs)*	*600*
(ii)	*Clearances of excisable goods without payment of duty to a 100% EOU*	*10*
(iii)	*Job work under Notification No. 84/94-CE dated 11.4.94*	*50*
(iv)	*Job work under Notification No. 214/86-CE dated 25.3.86*	*50*
(v)	*Clearances of goods bearing brand name of National Small Industries Corporation*	*100*
(vi)	*Clearances of corrugated boxes bearing the brand name of Sugar & Spice Confectioners. Sugar & Spice Confectioners use these corrugated boxes for packing the bakery products produced by them.*	*200*

On the basis of above information, you are required to ascertain the eligibility of Aggarwal and Company for exemption based on value of clearances in terms of Notification No. 8/2003-CE dated 1.3.2003 as amended for the financial year 2013-14.

Answer

Calculation of value of clearances of Aggarwal and Company during financial year 2012-13

Particulars	₹ (in lakhs)
Export to Bhutan (Note-1)	50
Clearances of excisable goods bearing brand name of National Small Industries Corporation (Note-4)	100
Clearances of corrugated boxes bearing the brand name of Sugar and Spice Confectioners used for packing the bakery products by them (Note-4)	200
Value of clearances during the financial year 2012-13	350

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Notes:-As per the Notification No. 08/2003 dated 01.03.2003, while computing the turnover of Aggarwal & Company during financial year 2012-13 (as shown above):-

1. export turnover has been excluded. However, export to Bhutan cannot be excluded as these are treated as "clearances for home consumption".
2. clearances under specified job work notifications are excluded and *Notification No. 214/86 CE* and *84/94-CE* are the specified notifications.
3. clearances of excisable goods without payment of duty to a 100% EOU are excluded.
4. clearances bearing the brand name or trade name of another person are excluded. However, following clearances of excisable goods bearing brand name are included:-
   (a) Goods bearing brand name/trade name of National Small Industries Corporation.
   (b) Goods in the nature of packing materials and meant for use as packing material by or on behalf of the person whose brand name they bear.

   In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding year. Since the value of clearances in the previous financial year 2012-13 does not exceed ₹ 400 lakh, the Aggarwal & Company is eligible to claim the benefit of *Notification No. 8/2003 dated 1st March, 2003* in the financial year 2013-14.

Exercise

1. *What are the reasons for clubbing of clearances of SSI Units?*
2. *What are the provisions regarding general exemption to SSI units?*
3. *Write a note with reference to Notification No. 8/2003 dated 01.03.2003 relating to small scale units:*
   (A) Availability of CENVAT Credit on capital goods
   (B) Determination of 'value' for the purposes of the said notification
   (C) Clearances of excisable goods without payment of duty
4. *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.

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5. *What is the treatment in respect of 'clearances of excisable goods without payment of duty' as specified in the said notification?*

Answer/Hints

(i) The eligible turnover for claiming exemption under the said notification is ₹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).

(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 ₹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 (₹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.

6. *ABC Ltd. is a manufacturing unit situated in Kanpur. In the financial year 2012-13, the total value of clearances for the unit was ₹550 lakh. The break-up of clearances is as under:*

(a) Clearances worth ₹50 lakh without payment of duty to a unit in special economic zone.

(b) Clearances worth ₹50 lakh exempted under job-work Notification No. 214/86 CE, dated 25.03.1986.

(c) Export clearances worth ₹100 lakh (75 lakh to Sweden and 25 lakh to Nepal).

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(d) Clearances worth ₹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 ₹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 2013-14.

Answer/Hint: In order to claim the benefit of SSI exemption the total turnover of a unit must not exceed ₹ 400 lakh. While calculating turnover of ₹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, ₹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 ₹400 lakh.

(b) Exempted clearance under Job work notifications are not to be considered for computing the turnover of ₹400 lakh. Therefore, exempted clearances worth ₹50 lakh under job work notification will not be considered.

(c) Export turnover has to be excluded from the turnover of ₹400 lakh. However, export to Nepal and Bhutan cannot be excluded as it is treated as 'clearance for home consumption'. Therefore, clearances worth ₹75 lakh exported to Sweden will not be included in computing ₹400 lakh while clearances worth ₹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 ₹400 lakh if both intermediate and final products are eligible for exemption under Notification No. 8/2003. .

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

₹ 550 lakh - (50 lakh + 50 lakh + 75 lakh + 50 lakh) = ₹325 lakh.

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

7. 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

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application. Is the stand taken by the Central Excise Officer correct?

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

Answer/Hint: 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.

8. *Can cenvat credit on capital goods be availed by SSI units that avail the benefit of exemption notification No.8/2003-CE?*

9. *Can cenvat credit on input services be availed by SSI units that avail the benefit of exemption notification No.8/2003-CE?*

10. *What are details to be intimated by assessee to Deputy Commissioner/Assistant Commissioner of Central Excise when he wants to opt for Notification No.8/2003-CE?*

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CHAPTER 15

Advance Ruling

Question 1

State briefly as to who can make an application for "Advance Ruling" under section 23A of the Central Excise Act, 1944?

Answer

According to provisions of Section 23A(c) of Central Excise Act, 1944 an application for advance ruling can be made by any of the following, if he or it proposes to undertake any business activity in India:

(i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or

(b) a resident setting up a joint venture in India in collaboration with a non-resident; or

(c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

Who or which proposed to undertake any business activity in India;

(ii) a joint venture in India; or

(iii) a resident falling under any such class or category of persons, as may be specified by Central Government by virtue of issuing a notification in the Official Gazette. It is worth mentioning here that the Central Government has notified Public Sector Company [as defined in Section 2(36A) of Income Tax Act, 1961] as notified person for the purpose of this clause so far.

Question 2

Authority of Advance Ruling under the Income Tax Act, 1961 will be authority for purposes of Central excise also. Explain the validity of the statement with reference to the Central Excise Laws.

Answer

Yes, the statement is valid as per the definition of "authority" provided under section 23A(e) which inter alia provides that Central Government may, by notification in the Official Gazette, authorise an Authority constituted under section 245-O of the Income-tax Act to act as an Authority for Advance Ruling under excise also.

Accordingly, as per *Notification No. 143/2009-Cus. (N.T.) dated 15-9-2009,* Authority of Advance Ruling under the Income Tax Act, 1961 will act as Authority of Advance Ruling under Central Excise Act also.

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Question 3

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

Answer

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

(i) classification of any goods under the Central Excise Tariff Act, 1985.

(ii) notifications issued in respect of excise duty under the Central Excise Act, the Central Excise Tariff Act and duty chargeable under any other law for the time being in force.

(iii) applicability of exemption notification issued under section 5A having effect on rate of duty.

(iv) principles to be adopted for determination of value of goods.

(v) admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of the excisable goods.

(vi) determination of the liability to pay duties of excise on any goods under the Act.

Apart from the above, no other matter can be referred for advance ruling. CBE&C has clarified vide Circular No. 779/12/2004 – CX dated 11.3.2004 that determination of a question as to whether a particular process amounts to manufacture is not within the scope of advance ruling.

Thus, a person cannot obtain an advance ruling to decide whether a process would amount to manufacture or not as such a matter is not covered by section 23C.

Question 4

Briefly explain the binding nature of Advance Ruling.

Answer

According to provisions of Section 23E of Central Excise Act, 1944 the Advance Ruling is binding on the applicant. It is also binding on the Commissioner only in respect of the concerned applicant. In other words, it is binding on the other assessees. Further, the advance ruling will continue to be binding unless there is change in law or facts on the basis of which such Advance Ruling was pronounced.

Question 5

Explain the circumstances when an Advance Ruling will be void under Central Excise Act, 1944 ?

Answer

According to provisions of section 23F(1) of Central Excise Act, 1944 where on a representation from commissioner or otherwise, it is proved that an advance ruling was

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obtained by the concerned applicant by fraud or misrepresentation of facts, the authority for advance ruling can declare the advance ruling as void ab initio [from the beginning]. Consequently, all the provisions of the Central Excise Act shall apply to the applicant as if such ruling had never been made. Copy of such order is sent to the Commissioner of Central Excise.

Question 6

Briefly explain the procedure to be followed by the Authority for Advance Rulings on receipt of application for Advance Ruling under the Central Excise Act, 1944.

Answer

As per section 23D of the Central Excise Act, 1944, following procedure is to be followed by the Authority for Advance Rulings on receipt of application for advance ruling:-

1. On receipt of application for advance ruling, the Authority has to forward a copy to the relevant Commissioner.
2. The Authority may accept or reject the application. The Authority will pass an order of admission or rejection of the application and give a copy of such order to the applicant and the Commissioner.
3. Application can be rejected in the following cases only after giving an opportunity of being heard to the applicant:-
   (i) where the question raised in the application is already pending before any Central Excise Officer, the Appellate Tribunal or any Court; or
   (ii) where the question raised is the same as in a matter already decided by any Appellate Tribunal or any Court.
4. The Authority can further examine any material placed before it after admission of the application.
5. The Authority has to pronounce the final order within 90 days of receipt of application.
6. Duly signed copies of the final order are to be given to the applicant as well as the Commissioner of Central Excise.

Exercise

1. *Briefly explain the applicability of the Ruling by Advance Ruling Authority with the help of a decided case law.*
2. *Enumerate the matters on which the advance ruling can be sought under Central Excise Act, 1944.*

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3 *Ramesh, a non-resident intends to manufacture certain excisable goods but has entertained some doubts about the admissibility of credit of excise duty paid on the goods used in the manufacture of the said excisable goods. He wants to seek an Advance Ruling on this issue under Chapter IIIA of the Central Excise Act from the Authority for Advance Rulings. Can he do so? Discuss.*

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CHAPTER 17

Excise Audit

Question 1

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

Answer

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

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

Question 2

Under Excise Audit, 2000, the selection of unit for audit is based on 'risk factors'. Explain in brief the term 'risk factors' giving any two examples.

Answer

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

For example:

(i) assessee having past duty evasion cases

(ii) late payment of duty/late filling returns

(iii) major audit objections against them

(iv) no cash payment of duty (all CENVAT adjustment)

(v) past duty dues, etc

Note : Any two examples may be given.

Question 3

What is the frequency for conducting audit as per Excise Audit 2000 ?

Answer

The frequency for conducting audit as per Excise Audit 2000 is given in the following succinct table:

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Amount of annual duty [in cash + CENVAT] paid by assessee	Frequency of Audit
Above ₹ 1 crore	Once in every year
Between ₹ 10 lakh and ₹ 1 crore	Once in every two years
Less than ₹ 10 lakh	Once in five years

Question 4

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

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

Answer

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

Question 5

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

Answer

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

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

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

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Question 6

Indicate headings under which excise audit procedure is explained in EA – 2000.

Answer

The headings under which excise audit procedure under EA-2000 is outlined are:

(i) Selection of assessee

(ii) Desk review

(iii) Documenting information

(iv) Tour of the factory

(v) Audit plan

(vi) Verification

(vii) Audit objection and audit plan

(viii) Audit report

Question 7

Briefly explain the procedure for Excise Audit, 2000.

Answer

Procedure of Excise Audit, 2000:-

(a) Selection of Assessee : Depending upon the manpower availability, about 300 to 400 units are selected for conducting audit during a financial year. Selection of the unit is based taking into account the 'risk-factors'.

(b) Desk Review: The auditors are assigned the assessees to be audited at the beginning of the financial year. They are required to gather as much information about the assessee as possible by interacting with the assessee.

(c) Gathering and documenting information: The auditor may also require certain documents or information from the assessee to complete his preliminary investigation. For this, he may write letter to the assessee or send him a questionnaire to obtain this information.

(d) Touring of the premises: The auditor then visits the unit of the assessee to see the actual running of the unit, the systems that are followed for maintaining records in various sections and the system of movement of goods and the related documents within the unit.

(e) Audit Plan: Based on his experiences and the information gathered so far about the assessee, the auditor prepares an 'audit plan'. The idea of developing audit plan is to list the areas which, as per the auditor are the vulnerable areas from the revenue point of view. A well thought audit plan generally increases the success of audit result manifolds.

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(f) Verification: The auditors visit the unit of the assessee on a scheduled date (informed to the assessee in advance) and carry out the scrutiny of the records of the assessee as per the audit plan. The purpose of verification (carried out in presence of the assessee) is to reasonably ensure that no amount, which as per the Central Excise law is chargeable to duty, escapes taxation.

(g) Audit Objection and Audit Para: Where the auditor finds instances of short payment of duty or non-observance of Central excise procedures, he is required to discuss the issue with the assessee. After explanation provided by the assessee, if the auditor is satisfied that such non-tax compliance has occurred, he records the same as an 'Audit Objection' or 'Audit Para' of the 'draft audit report' that he would be preparing at the end of the verification process.

(h) Audit Report: At the end of the process of verification, the auditor prepares an 'Draft Audit Report' which provides (issue or para wise) the issue in brief, the reply or the explanation of the assessee, the reason for the auditor not being satisfied with the reply, the amount of short payment (if tabulated) and the recoveries of the same (if could be made at the spot). It is then submitted to the superior officers for review after which it becomes final and in cases where the disputed amounts have not already been paid by the assessee at the spot, demand notices are issued by the Department for their recoveries.

Exercise

1. *Briefly explain the procedure of conducting Excise Audit 2000 ?*
2. *Discuss the provisions of section 14A in respect of valuation audit.*
3. *Briefly explain the provisions of section 14AA in respect of CENVAT Credit audit.*

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CHAPTER 18

Settlement Commission

Question 1

Who can make an application for settlement under Central Excise Act, 1944 ? Can such an application be withdrawn?

Answer

According to section 32E of Central Excise Act, 1944 an assessee may make an application for settlement under Central Excise Act, 1944. An assessee is defined under section 31(a) as any person who is liable to pay excise duty assessed and includes any manufacturer or producer or a registered person of a private warehouse.

Further, Section 32E (4) provides that an application once made for settlement can not be withdrawn.

Question 2

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

Answer

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

(i) Application only if a 'case' is pending : Application to Settlement Commission can be made only when a 'case' is pending before adjudicating authority on date of application in accordance with section 32E(1) read with section 31(c) of Central Excise Act. The term 'case' means any proceeding under Central Excise Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under section 32E(1) is made.

(ii) Amendment of section 32E putting certain restrictions : No application can be made if proper records are not maintained in daily stock register or when there is clandestine removal of goods. The additional amount of duty accepted by the applicant as payable shall be more than ₹3 lakhs. The appellant is required to pay duty admitted to be payable by him along with interest.

(iii) Application for settlement only once in life time : Section 32-O of the Central Excise Act provides that application for settlement can be made only once during the life time of the applicant. However, w.e.f. 08-05-2010 it has provided that the said provision of one time application applies only in respect of cases as specified in section 32-O(1). In other cases, repeated application can be submitted.

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(iv) Cases involving classification or valuation can not be taken : According to third proviso to section 32E(1) applications involving interpretation of the classification of excisable goods under Central Excise Tariff Act 1985 can not be taken by Settlement Commission.

(v) Application 180 days after seizure : If any excisable goods or books of account or other documents have been seized, application for settlement can be made only 180 days after such seizure.

Question 3

The assessee's premises were searched by the Anti Evasion wing of the Excise Department. A show cause notice was issued alleging that the assessee had cleared goods without the cover of duty paid invoice and without accounting the same in the stock register. The assessee was required to pay the duty demanded with interest. The assessee filed an application before the Settlement Commission to put an end to the litigation and buy peace. The application was dismissed by the Settlement Commission on the ground that the petitioner in its petition had not admitted the entire duty liability. The assessee's contention is that Department is yet to substantiate the allegations made in the show cause notice and the dismissal order is not correct in law. Briefly discuss, with a note, whether the action of the Settlement Commission is correct in law.

Answer

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

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

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Question 4

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

Answer

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

Immunity can be granted only in respect of prosecution for any offence under the Central Excise Act and not in respect of prosecution for any offence under the Indian Penal Code or any other Central law. However, the immunity from prosecution for any offence under the Indian Penal code or any other central law can be granted in cases filed upto 31-05-2007 [Section 32K(1)].

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

Question 5

An assessee made an application under section 32E of the Central Excise Act, 1944 to the settlement commission. The settlement commission was not satisfied saying that the applicant had not made a true and full disclosure of his duty liability and the manner in which same was arrived at was also not correct and rejected the application. The assessee contended that obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not before that. Is plea taken by the assessee acceptable in law? Explain in brief, with the help of a decided case law, if any.

Answer

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

The High Court clarified that the onus is on the applicant to make full and true disclosure of the duty liability and the manner in which the same was arrived at. And the Settlement Commission will admit the application only when the Commission is satisfied on the true and full disclosure of the duty liability and the manner it was arrived at. The High Court also clarified that the object behind the enactment of the provisions of Settlement Commission is the creation of a forum of self surrender and true confession and to have matter settled once for all. The Settlement Commission is not a forum to challenge the

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legality of the order passed under the provisions of the Act. The Settlement Commission, in the case on hand, having found that the applicant did not fully satisfy the mandatory requirements of full and true disclosure of its duty liability, can reject the application.

Question 6

An assessee is barred from making an application for settlement of cases under section 32E of the Central Excise Act, 1944 in certain circumstances. Briefly enumerate these circumstances.

Answer

Under the following circumstances an assessee is barred from making an application for settlement of cases under section 32E of Central Excise Act, 1944:

(a) Where the assessee has filed the application for settlement in respect of a case relating to him after the adjudication thereof;

(b) If the applicant has not filed returns showing production, clearance and central excise duty paid;

(c) Where the application has not received a show cause notice;

(d) Where the case is pending before the Appellate Tribunal or any Court;

(e) Where the dispute relates to interpretation of classification;

(f) Where excisable goods/books/documents are seized, the applicant can not prefer an application for 180 days from the date of such seizure;

(g) The amount in the application should be at least ₹ Three lakh or more. In different words, cases less than ₹ Three lakh can not be settled;

(h) Where the applicant, while filing the application, has not deposited the additional amount of excise duty accepted by him along with interest due under section 11AA.

(i) Where the assessee admits short levy on the goods for reasons other than misclassification, undervaluation, inapplicability of exemption notification or CEN VAT Credit.

Question 7

Briefly explain whether the following statements are correct with reference to the Central Excise Act, 1944 .

(i) Time limit for passing of the settlement order in terms of Section 32F(6) is nine months from the last day of the month in which the application was made and no extension of this period is permissible.

(ii) An assessee cannot apply for settlement more than once under Section 32-O.

Answer

(i) The said statement is incorrect. The Proviso to section 32F(6) provides that Settlement Commission can extend time-limit for passing of the settlement order for a further period

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not exceeding three months for reasons to be recorded in writing by the Settlement Commission.

(ii) The said statement is incorrect. Section 32-O provides that the assessee is now entitled to apply for settlement more than once.

Note: The above statement can also be answered as false on the reasoning that since an application for settlement is made under section 32E, settlement cannot be applied for under section 32-O.

Question 8

M/S Jagannath got its unit Jagannath Internationals Limited (JIL) registered after few days of the search conducted in its unit. Thereafter, it filed consolidated return with the Department for the period prior to search. After that, it filed a settlement application in respect of the proceedings issued by the Commissioner. The Settlement Commission opined that the units were registered only after the search was conducted and prior to that there was no registration and no returns as mandated by clause (a) of first proviso to section 32E(1) of the Central Excise Act, 1944 were filed. Consequently, the Commission rejected the settlement application on the ground that the application did not conform to the parameters as stipulated under section 32E(1) of the Act.

Explain, with the help of a decided case law, whether the rejection order passed by Settlement Commission is valid in law?

Answer

Yes, the rejection order passed by Settlement Commission is valid in law. The facts of the given case are similar to case of *Icon Industries v. UOI 2011 (273) E.L.T. 487 (Del.)* In the instant case, The High Court noted that certain riders have been provided in section 32E(1) of the Central Excise Act, 1944 for entertaining applications for settlement. Clause (a) of first proviso clearly lays down that unless the applicant has filed returns, showing production, clearance and Central Excise duty paid in the prescribed manner, no such application shall be entertained.

The Court referred the case of *M/s. Emerson Electric Company India Pvt. Ltd.* wherein it was held that although section 32E(1) does not refer to rule 12 of the Central Excise Rules, 2002 under which ER-1/ER-3 returns are prescribed, since the said returns contain details of excisable goods manufactured, cleared and duty paid in the prescribed manner, the said return can be deemed to be the 'return' referred to in section 32E(1). Hence, the concept of return has to be understood in context of rule 12 of the Central Excise Rules, 2002. However, in case of consolidated returns filed in the instant case, the applicant would not be able to indicate 'duty paid' in the prescribed manner (or even in any manner) and question would continue to agitate about the details of production and clearance to be filled in such belated returns.

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Considering the above discussion, it rejected the submission of the petitioner that filing of consolidated return covering all the past periods would serve the purpose. Hence, it held that a consolidated return filed by the assessee after obtaining registration, but for the period prior to obtaining registration, could not be treated as a return under clause (a) of first proviso to section 32E(1).

Exercise

1. *Can all cases of disputed excise duty be settled in a Settlement Commission? If not, then enlist the exceptions.*
2. *Describe the procedure to make an application before the Settlement Commission?*
3. *Explain whether the Settlement Commission can grant immunity from prosecution and penalty/interest/fine?*
4. *Can a case be sent back by the Settlement Commission to the Central Excise Officer? Discuss.*

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CHAPTER 16

Organisation Structure of the Excise Department

Question 1

Write a note on the composition, role and powers of Central Board of Excise and Customs.

Answer

Central Board of Excise and Customs (CBEC) is a statutory board constituted under Central Boards of Revenue Act, 1963 and is subordinate to the Department of Revenue under the Ministry of Finance, Government of India. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise Commissionerates and the Central Revenues Control Laboratory.

The Board consists of Chairman plus five members. The Chairman is the first among equals. The Chairman and the Members are currently of the rank of ex-officio Additional Secretaries to the Government of India. The role of CBEC is to deal mainly with the tasks of formulation and implementation of policy concerning to the levy and collection of customs and central excise duties and service tax, prevention of smuggling and administration of matters relating to Customs, Central Excise, Service Tax and Narcotics fall under CBEC's purview.

Section 37B of Central Excise Act, 1944 authroises Board to issue orders, instructions and directions to Central Excise Officers for purposes of uniformity in the classification of excisable goods or with respect to levy of excise duties on such goods. Further, Rule 3(1) of Central Excise Rules authroises CBEC, Chief Commissioner and commissioner to issue written instructions providing for any supplemental matters arising out of the rules. These administrative orders are binding on lower offices.

Question 2

Discuss the organizational structure of the Central Excise Department.

Answer

The organizational structure of the Central Excise Department is as under:

1. Central Board of Excise and Customs (CBEC)
2. Chief Commissioner of Central Excise: Immediately below CBEC are the Chief Commissioners who are responsible for all maters under their jurisdiction and report to the CBEC as a whole.

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3. Commissioner of Central Excise

   (A) Executive Commissioner: He heads the commissionerate and is administrative-in-charge of the 'commissionerate'.

   (B) Commissioner (Adjudication): He is exclusively engaged in passing of adjudicating orders in terms of the powers granted under various sections of the Central Excise Act, depending on jurisdiction and on the monetary amounts involved in the demands.

   (C) Commissioner (Appeals): He acts as an appellate authority and pass orders on appeal in relation to all adjudication orders passed by an authority subordinate to the rank of a Commissioner. In other words, Commissioner (Appeals) has the jurisdiction to hear and dispose of all appeals filed against orders of the Assistant Commissioner,
   Deputy commissioner, Joint Commissioner as well as Additional Commissioner.

   It is pertinent to add that the senior most of above three Commissioners would be Executive Commissioner.

4. Additional Commissioner of Central Excise: He is equivalent to the Commissioner for all purposes other than for the purpose of the appellate procedures. Consequently, appeal against orders of the Additional Commissioner lies with the Commissioner (Appeals) only whereas the appeal against the orders of the Commissioner lies with the Tribunal. On the executive side, he is the immediate most senior officer after the Commissioner.

5. Joint Commissioner of Central Excise: This post has been created in May 1999, subsequent to implementation of the report of fifth pay commission.

6. Deputy Commissioner, Assistant Commissioner of Central Excise: Each Commissionerate of Central Excise is divided into divisions and each division is under administrative control of 'Deputy Commissioner' or 'Assistant Commissioner of Central Excise'. Assistant Commissioner (senior Scale) is designated as 'Deputy Commissioner'. However, both Assistant Commissioner and Deputy Commissioner have same powers, except for issue of show cause notice proposing penalty or confiscation of goods.

7. Superintendent of Central Excise: The division under each Deputy/Assistant Commissioner of Central Excise is further divided into various ranges and each range is under control of Superintendent of Central Excise, who is of the rank of a Gazetted Officer.

8. Sector Officer: Sector Officer (earlier as inspector) work under Superintendent and he is not a Gazetted Officer. He is the functional in charge of day-to-day matters pertaining to assessees.

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Exercise

1 *Write a brief note on the Central Board of Excise and Customs.*

2. *Who is the lowest rank of a Gazetted officer under central excise?*

   Answer/Hint: Superintendent

3. *Who is the administrative in-charge of a zone?*

   Answer/Hint: Chief Commissioner of Central Excise

4. *Under which statute, Central Board of Excise and Customs (CBEC) has been constituted?*

   Answer/Hint.: The Central Boards of Revenue Act, 1963 (54 of 1963)

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CHAPTER 14

Notifications, Departmental Clarifications and Trade Notices

Question 1

Write a note on Power to grant exemption from duty under section 5A of Central Excise Act, 1944.

Answer

Section 5A (1) of Central Excise Act, 1944 authorises Central Government to exempts the excisable goods generally either absolutely or subject to such (to be fulfilled before or after removal) from whole or any part of excise duty leviable. Such exemption should be in public interest and it should be by way of notification published in official gazette. The proviso to section 5A(1) provides that the exemption notification issued under section 5A of Central Excise Act is not applicable in respect of DTA clearances by EOU and SEZ Unit, unless specifically provided in the relevant notification.

According to section 5A(2) Central Government can exempt excisable goods from the payment of duty by a special order if it is satisfied that it is necessary in the public interest to do so under circumstances of exceptional nature which are to be stated in such order. Further, according to section 5A(2A) Central Government is empowered to insert an explanation in such notification or order by issuing a notification in the official gazette at any time within one year of issue of the notification issued under section 5A(1) or (2) for the purpose of clarifying the scope or applicability of such notification. This enables the Central Government to issue clarifications retrospectively.

In Kasinka Trading V U.O.I. 1994 (74) E.L.T. 782 , the Hon'ble Supreme Court held that the power to exempt includes the power to modify or withdraw in terms of section 21 of the General clauses Act, 1897. In addition, in was held in Orient Traders Vs CTO 2009 (237) E.L.T. 447(S.C) that the exemption notifications are to be construed strictly. If the intention of the legislature is clear and unambiguous, then it is not open to the courts to add words in the exemption notification to extend the benefit to other items which do not find mention in the notification.

Question 2

Explain the emergency power of the Central Government under Central Excise Tariff Act, 1985 to increase the duty.

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Answer

Generally, the Government increases the duty only through the Finance Bill. However, as per section3 of the Central Excise Tariff Act, 1985 the Government also has emergency powers to increase the duty by amending the rates in the First and Second Schedules, subject to certain conditions. This is only an emergency power and is rarely used. Section 3 of the Central Excise Tariff Act, 1985 provides that:

Where in respect of any goods, the Central Government is satisfied that the duty leviable thereon under section 3 of the Central Excise Act, 1944 should be increased and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the First Schedule and the Second Schedule to be made so as to substitute for the rate of duty specified in the First Schedule and the Second Schedule in respect of such goods:-

(i) in a case where the rate of duty as specified in the First Schedule and the Second Schedule as in force immediately before the issue of such notification is nil, a rate of duty not exceeding 50% ad valorem expressed in any form or method;

(ii) in any other case, a rate of duty which shall not be more than twice the rate of duty specified in respect of such goods in the First Schedule and the Second Schedule as in force immediately before the issue of the said notification.

However, the Central Government shall not issue any notification for substituting the rate of duty in respect of any goods as specified by an earlier notification issued under these provisions by the government before such earlier notification has been approved with or without modifications.

Question 3

Briefly explain the binding nature of Board Circulars.

Answer

It is well settled that the Board Circulars are not binding on the Supreme Court, High Courts or the Tribunals. Departmental Circulars are also not binding on the assessee. These judicial bodies as well as the assessee can take a view different from that taken in the Board Circular. Since Board Circulars are for the purpose of administration, it can be binding on an officer who is exercising quasi-judicial function as is seen from proviso to Section 37B as also the decision of the Supreme Court in *Orient Paper Mills Ltd. V U.O.I. 1978(2) E.L.T. J 345 (S.C.)*

However, from the recent Supreme Court decisions, it appears that the Department officers can not take a stand contrary to beneficial Board circulars. In *Ranadey Micronutrients V CCE 1996 (87) E.L.T. 19* the Supreme Court held that even if it be contended that a circular is not issued under section 37B, circulars issued have to be treated as if issued that section and the Department will be stopped from arguing that the circular is not valid. The Supreme Court also held that such circulars are not advisory in character but binding on Central Excise Officers.

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Similarly in *Zenith Rubber Ltd. V CCE 2007 (220) E.L.T. 973 (Tri-Delhi)* it has been held that Circulars issued by the Department are binding on the Department and they can not argue against those circulars.

Question 4

Enumerate any five matters in respect of which the Central Government can make rules.

Answer

Section 37 of Central Excise Act, 1944 empowers the Central Government to make rules to carry into effect the purposes of this Act. The rules may lay down the procedures governing several specific situations. Following are the illustrative matters in respect of which the Central Government can make rules:

(i) Charging or payment of interest on the differential amount of duty which becomes payable or refundable upon finalization of all or any class of provisional assessments.

(ii) Remission of duty of excise leviable on any excisable goods, which due to any natural cause are found to be deficient in quantity, the limit(s) of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same excisable goods or for different areas or for different seasons.

(iii) Allowing the credit of duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of excisable goods.

(iv) Exemption to any goods from the whole or any part of the duty imposed by this Act.

(v) Incentives to be allowed for increased production or manufacture of any goods by way of remission of or any concession with respect to duty payable under this Act.

(vi) Appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses.

(vii) Employment of officers of the Government to supervise the carrying out of any rules made under this Act.

(viii) Removal of excisable goods from the place where produced, stored or manufacturered or subjected to any process of production or manufacture and their transport to or from the premises of a registered person or a bonded warehouse or to a market.

(ix) Form and manner in which application for refund shall be made under section 11B.

(x) The manner in which money is to be credited to the Fund.

(Note: Students may write any of the five above listed matters.)

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Exercise

1. *Write a note on exemption notifications in Central Excise.*
2. *Briefly describe whether Central Government can delegate its power to the excise authorities.*
3. *Briefly describe the effect of amendments etc of rules, notifications or orders.*

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