



STUDY NOTE - 2

SOME CRITICAL ISSUES IN CENTRAL EXCISE

This Study Note includes

- Software is 'goods' but unbranded software is Service
- Plant and Machinery assembled at Site
- Dutiability of Steel and Concrete Structures
- Goods with Blank Duty Rate in Central Excise Tariff are 'Excisable Goods'
- Manufacture
- Classification of Goods
- MRP based Valuation
- Assessable Value under Section 4
- Other Issues
- Exemption to SSI

2.1 SOFTWARE IS 'GOODS', BUT UNBRANDED SOFTWARE IS SERVICE

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

In *Bharat Sanchar Nigam Ltd. v. UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 145 STC 91 = 282 ITR 273 (SC 3 member bench), following extract from decision in case of *Tata Consultancy Services v. State of Andhra Pradesh* was quoted with approval and adopted, 'A 'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes

1.1-3 Manufacture

- Taxable event for central excise duty is manufacture or production in India.

thereof having regard to (a) its utility; (b) capable of being bought and sold and (c) capable of being transferred, delivered, stored and possessed. If a software, whether customised or non-customised satisfies these attributes, the same would be goods’.

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

In *State Bank of India v. Municipal Corporation* 1997(3) Mh LJ 718 = AIR 1997 Bom 220, it was held that ‘computer software’ is ‘appliance’ of computer. It was held that it is ‘goods’ and octroi can be levied on full value and not on only value of empty floppy. [In this case, it was held that octroi cannot be levied on license fee for duplicating the software for distribution outside the corporation limits].

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

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

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

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

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

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

Classification of encyclopedia, books on CD - In case of encyclopedia and books, there is hardly any ‘interactivity’, except that search engine helps in locating particular information. Further, search engine, which can be termed as ‘software’ forms insignificant part of the whole goods.



Applying the criteria of ‘essential character’ in case of mixture of goods, in my view, these cannot be termed as ‘software’. These have to be classified as books.

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

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

2.1.1 Unbranded software is service

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

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

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

Departmental clarification – CBE&C TRU letter F. No.334 / 1 / 2008-TRU dated 29-1-2008 clarifies as follows -

2.1.2 Software consists of carrier medium such as CD, Floppy and coded data. Softwares are categorized as “normal software” and “specific software”. Normalised software is mass market product generally available in packaged form off the shelf in retail outlets. Specific software is tailored to the specific requirement of the customer and is known as customized software.



2.1.3 Packaged software sold off the shelf, being treated as goods, is leviable to excise duty @ 8%. In this budget, it has been increased from 8% to 12% vide notification No. 12/2008-CE dated 01.03.2008. Number of IT services and IT enabled services (ITeS) are already leviable to service tax under various taxable services:

- Consulting engineer's service - advice, consultancy or technical assistance in the discipline of hardware engineering [section 65(105)(g)].
- Management or business consultant's service - procurement and management of information technology resources [section 65(65)].
- Management, maintenance or repair service - maintenance of software, both packaged and customized and hardware [section 65(64)].
- Banking and other financial services - 'provision and transfer of information and data processing' [section 65(12)].
- Business support service - various outsourced IT and IT enabled services [section 65(105)(zzzq)].
- Business auxiliary service - services provided on behalf of the client such as call centres [section 65(19)].

2.1.4 IT software services provided for use in business or commerce are covered under the scope of the proposed service. Said services provided for use, other than in business or commerce, such as services provided to individuals for personal use, continue to be outside the scope of service tax levy. Service tax paid shall be available as input credit under Cenvat credit Scheme.

2.1.5 Software and upgrades of software are also supplied electronically, known as digital delivery. Taxation is to be neutral and should not depend on forms of delivery. Such supply of IT software electronically shall be covered within the scope of the proposed service.

2.1.6 With the proposed levy on IT software services, information technology related services will get covered comprehensively.

2.2 PLANT AND MACHINERY ASSEMBLED AT SITE

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

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



[followed in *Mittal Works v. CCE* (1997) 1 SCC 203 = 1996 (88) ELT 622 (SC) = 106 STC 201 - quoted with approval in *Thermax Ltd. v. CCE* 1998(99) ELT 481 (SC) - same view in *Triveni Engineering v. CCE* AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC) * *CCE v. Damodar Ropeways* 2003(151) ELT 3 = 54 RLT 125 (SC 3 member bench).

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

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

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

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

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

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



Article can be 'goods' if marketable before erection - An article will be liable to duty if its manufacture is complete before it is fastened to earth. Similarly, if 'machinery' is in marketable condition at the time of removal from factory of manufacture, duty will be leviable, even if subsequently, it is to be fastened to earth.

2.3 DUTIABILITY OF STEEL AND CONCRETE STRUCTURES

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

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

- (i) Immovable iron and steel structures are not goods.
- (ii) Structures and parts mentioned in parenthesis of 7308 like bridges, lock-gates, towers, trusses, columns frames etc., *in their movable state* will be subject to excise duty, even if latter they get permanently fixed in the structures.
- (iii) Plates, rods, angles, sections, tubes and the like, prepared for use in the structures will also be excisable goods subject to duty *in their pre-assembled or disassembled state*.

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

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

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

2.4 GOODS WITH BLANK DUTY RATE IN CENTRAL EXCISE TARIFF ARE 'EXCISABLE GOODS'

Some goods are mentioned in Central Excise Tariff but column of rate of duty is blank (e.g. live animals in Chapter 1, Electrical Energy in chapter 27, Newspaper and maps in Chapter 49).

As per additional note No. 1(c) to Central Excise Tariff, 'tariff item' means description of goods in the list of tariff provisions accompanying either eight-digit number and the rate of duty or eight-digit number with blank in the columns of the rate of duty. Hence, goods where duty rate is blank is excisable goods – para 22 of *Geetanjali Woolens v. CCE* (2007) 218 ELT 152 (CESTAT)



[Interestingly, in case of Customs Tariff, the note 1(c) does not make mention of 'blank' rate in the column of rate of duty].

However, in *CCE v. Solaris Chemtech* (2007) 9 STT 412 = 214 ELT 481 (SC), it is observed that electricity is not an excisable item.

In excise tariff, rate is 'blank' in items like rice, wheat, soya bean, cotton seed etc. These are 'produced'.

In excise tariff, rate is 'blank' in items like rice, wheat, soya bean, cotton seed etc. These are 'produced'.

Goods mentioned as 'free' in Customs Tariff - In *Associated Cement Companies Ltd. v. CC* 2001 AIR SCW 559 = AIR 2001 SC 862 = (2001) 4 SCC 593 = 128 ELT 18 = 124 STC 59 = (SC 3 member bench), it was held that if duty rate specified in Customs Tariff Act is 'FREE' (i.e. no duty is payable), no duty is payable on such goods and hence these are not 'dutiabale goods'. [In Central Excise Tariff, the duty rate indicated is 'Nil'. Hence, these are 'excisable goods'].

2.5 MANUFACTURE

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

This decision was discussed in *Anil Dang v. CCE* (2007) 213 ELT 29 (CESTAT 3 member bench). It was held that this was no mere cutting and slitting but the roll was spooled on metal spools, plaster packed and sealed with aluminium foils. Hence, this decision will not apply where only slitting and cutting is involved.

Betel Nut to supari powder is not manufacture – Crushing betel nuts into smaller pieces and sweetening them does not result in a distinct product, as 'betel nut remains a betel nut' – *Crane Betel Nut Powder Works v. CCE* 2007 (210) ELT 171 = 6 VST 532 (SC) – decision of Tribunal in *CCE v. Crane Betel Nut Powder Works* 2005 (187) ELT 106 (CESTAT) is now not valid.

Upgradation of computer system is not manufacture - Upgradation of computer system by increasing its storage / processing capacity by increasing hard disk capacity, RAM or changing processor chip is not manufacture as new goods with different name, character and use do not come into existence. - CBE&C circular No. 454/20/99-CX dated 12-4-1999 – view confirmed in *Maxim Information Tech v. CCE* 2005 (184) ELT 78 (CESTAT) * *CCS Infotech v. CCE* (2007) 216 ELT 107 (CESTAT).

2.6 CLASSIFICATION OF GOODS

Classification of parachute coconut oil – In *Amardeo Plastics Industries v. CCE* (2007) 210 ELT 360 (CESTAT 2 v. 1 order), on the basis of chapter notes, it was held that parachute coconut oil

is 'vegetable oil' under chapter 15 and not 'preparation for use on the hair', since the marking on package did not say that it is for 'such specialized use', though advertisements did indicate so.

However, in *Shalimar Chemical Works v. CST* (2008) 12 VST 485 (WBTT), it has been held that except in a few Southern States, coconut oil is not treated as edible oil for use of daily cooking. In West Bengal, considering consumption pattern, coconut oil cannot be treated as 'edible oil'. It has to be treated as 'hair oil'.

Plastic name plate - Plastic name plate for motor vehicle is to be classified as 'accessory of motor vehicle' in chapter 87 and not 'other articles of plastic' in chapter 39, since 'name plate' is not specified in any heading in chapter 39 – *Pragati Silicons P Ltd. v. CCE* (2007) 8 VST 705 = 211 ELT 534 (SC).

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

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

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

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

Principles of classification irrelevant for valuation – Classification decides the applicable rate. It is followed by valuation i.e. value at which rate is to be applied. The concept of 'classification' is therefore different from the concept of valuation. Section and chapter notes in Tariff and interpretative rules do not provide guidelines for valuation – *CCE v. Frick India Ltd.* (2007) 216 ELT 497 (SC).



2.7 MRP BASED VALUATION

Same product partly sold in retail and partly in wholesale - CBE&C has further clarified in circular No. 737/53/2003-CX dated 19-8-2003 that when goods covered u/s 4A are supplied in bulk to large buyer (and not in retail), valuation is required to be done u/s 4. Provisions of section 4A apply only where manufacturer is legally obliged to print MRP on the packages of goods. Thus, there can be instances where the same commodity would be partly assessed on basis of section 4A and partly on basis of transaction value u/s 4 – view noted and approved in *Jayanti Food Processing v. CCE* (2007) 10 STT 375 = 215 ELT 327 (SC).

Valuation on MRP basis even if package is not really intended for retail sale - In *Jayanti Food Processing v. CCE* (2007) 10 STT 375 = 215 ELT 327 (SC), it was observed that nature of sale is not the relevant factor for application of section 4A but application would depend on five factors i.e. (i) goods should be excisable goods (ii) They should be such as are sold in the package (iii) There should be requirement of SWM Act or rules or any other law to declare price of such goods relating to their retail price on package (iv) The Central Government must have specified such goods by notification of Official gazette and (v) Valuation of such goods would be as per the declared retail price on the package less the amount of abatement.

In *ITEL Industries P Ltd. v. CCE* 2004 (163) ELT 219 (CESTAT 2 v. 1 decision), telephone instruments were supplied to DOT/MTNL in bulk with MRP duly marked. DOT/MTNL lent these to subscribers retaining their ownership. It was held that since goods were packed, the valuation is required to be done u/s 4A on basis of MRP, even if goods were not sold to customers – followed in *BPL Telecom v. CCE* (2004) 168 ELT 251 = 60 RLT 664 (CESTAT), where it was held that there is no requirement under Packaged Commodities Rules that goods covered by those provisions must be actually sold in retail – view confirmed in *Jayanti Food Processing v. CCE* (2007) 10 STT 375 = 215 ELT 327 (SC).

This was followed in *CCE v. Liberty Shoes* (2007) 216 ELT 692 (CESTAT), where it was held that MRP provisions apply even when sale is in bulk to institutional buyers.

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

Two items in combi-pack with one item free - In *Icon Household Products v. CCE* (2007) 216 ELT 579 (CESTAT), assessee was selling Mosquito Repellent Liquid (MRL) and Liquid Vapourising Device (LVD) as combi-pack. MRP was contained only on plastic container of MRL and not on LVD. It was held that this MRP will be taken for valuation of multipack. LVD supplied free in the multipack is not liable to assessment separately – relying on *Himalaya Drug Company v. CCE* (2006) 195 ELT 109 (CESTAT) - same view in *CCE v. J.L. Morison* (2008) 223 ELT 655 (CESTAT SMB).

No MRP on free gifts/samples, hence valuation as per section 4 – In *Jayanti Food Processing v. CCE* (2007) 10 STT 375 = 215 ELT 327 (SC), assessee was selling Kitkat chocolates to Pepsi. These were distributed as free gift along with Pepsi bottle as a marketing strategy. It was held that



even if product (chocolate) is covered under MRP provisions, since the product was not to be sold in retail, MRP is not required. Hence, valuation should be on basis of section 4.

2.8 ASSESSABLE VALUE UNDER SECTION 4

Factory can be place of removal even if insurance taken by assessee as service to customers - In *Blue Star Ltd. v. CCE* (2008) 224 ELT 258 (CESTAT), transport was arranged by assessee since individual customer cannot arrange for transportation. Insurance was taken for safe transport of goods, as a service to customers. It was held that insurance cover cannot be taken as criteria for determining ownership of goods. It was held that there was sale at factory gate and freight is not includible in assessable value.

Minimum charges if assured quantity not purchased, are not part of excise assessable value - In *Jindal Praxair Oxygen v. CCE* (2007) 208 ELT 181 (CESTAT), MTOP charges were payable to assessee if buyer fails to purchase minimum quantity assured, as in such cases, assessee is not in position to operate his plant at optimum capacity. It was held that these are not includible in assessable value - followed in *CCE v. Praxair India* (2008) 223 ELT 596 (CESTAT).

Place of removal in case of exports – In case of exports, the place of removal is port where export documents are presented to customs office – *Kuntal Granites v. CCE* (2007) 215 ELT 515 = 2007 TIOL 930 (CESTAT) – quoted and followed in *Rajasthan Spinning & Weaving Mills v. CCE* (2007) 8 STR 575 (CESTAT).

Cash discount admissible whether availed or not - In *CCE v. Arvind Mills Ltd.* (2006) 204 ELT 570 (CESTAT 3 member bench), it has been very clearly held that cash discount and finance cost are admissible under new section 4 of CEA also. Differential price represents interest for delayed payment. Cost of finance and cash discount whether availed or not are to be granted as abatement even after 1-7-2000.

Self insurance charges addible - In *Gujarat Borosil v. CCE* (2007) 217 ELT 367 (CESTAT), assessee was collecting 7% amount was 'insurance charges'. Actual insurance premium paid was much less. The charge was to cover breakage of goods in transit. It was held that this cannot be permitted as deduction since assessee was not an insurance company.

Valuation of free samples – CBE&C, vide circular No. 813/10/2005-CX dated 25-4-2005 has clarified that in case of samples distributed free, valuation should be done on basis of rule 4 i.e. value of similar goods. The revised circular dated 25-4-2005 stating that valuation of samples should be on basis of rule 4, has been upheld as valid in *Indian Drugs Manufacturers' Assn v. UOI* (2008) 222 ELT 22 (Bom HC DB).

Valuation in case of stock transfer - In case of stock transfer, value to be adopted is the price prevailing in depot at the time of clearance from factory. Once goods are cleared from factory to depot on payment of duty (on basis of price prevailing at the time of removal from factory), it is not necessary to chase the goods and see at what price the goods were subsequently sold - *CCE v. Carborandum Universal Ltd.* (2008) 224 ELT 290 (CESTAT).

Sale to parent company both as spares as well as for maintenance – In *CCE v. Aquamall Water Solutions* (2008) 223 ELT 385 (CESTAT), assessee sold its water purifying equipment to its par-



ent company (Eureka Forbes Ltd.). Assessee also supplied parts of the water purifying equipment to its parent company, both for sale as spares and also for maintenance purposes. In case of spares for sale, duty was paid on the basis of selling price of spares of parent company. In case of parts supplied for use in maintenance, duty was paid on the basis of cost of production plus 10%. Department contended that in case of parts supplied for maintenance also, duty should be paid on basis of selling price of parent company. However, Tribunal held that when parts are not sold by parent company, duty should be paid under rule 8 on basis of cost of production plus 10% since no other specific rule to cover this (The decision is based on a Board circular which has since been withdrawn).

Part sale and part consumption – in *Ispat Industries Ltd. v. CCE* 2006 (201) ELT 65 (CESTAT), it was held that if goods are partially sold to unrelated buyers and partially supplied to sister concern, valuation should be under rule 4 i.e. on the basis of price at which goods are sold to other independent buyers – relying on *Aquamall Water Solutions v. CCE* 2003 (153) ELT 428 (CEGAT).- view upheld in *Ispat Industries v. CCE* 2007 (209) ELT 185 (CESTAT 3 member bench).

2.8.1 Valuation in case of job work

Excise duty will not be payable if raw material/semi-finished components are sent for job work under Cenvat provisions or under notification No. 214/86-CE. However, in other cases, if job work results in ‘manufacture’ of a product, duty will become payable by job worker.

Rule 10A of Valuation Rules, as inserted w.e.f. 1-4-2007 provides that in such cases, excise duty will be payable on the basis of price at which the raw material supplier (termed as ‘principal manufacturer’ in valuation rules) sales the goods.

Rule 10A has been inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 to provide 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 present provision where the value is taken as cost of raw material plus the job charges - *Para 32.1 of DO letter F. No. 334/1/2007-TRU dated 28-2-2007*.

Provisions relating to valuation - The liability to pay duty will rest with the job-worker as per the present practice - *Para 32.2 of DO letter F. No. 334/1/2007-TRU dated 28-2-2007*.

The value in such cases shall be as follows, w.e.f. 1-4-2007 -:

When goods are sold at the factory of job worker by Principal Manufacturer – If the goods are sold by ‘Principal Manufacturer’ (raw material supplier) from factory of job worker, the value will be the ‘transaction value of the goods at which the goods are sold’ by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker.

This would be so if the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale [rule 10A(i) of Valuation Rules].

Proviso to rule 10A of Valuation Rules clarifies that cost of transport from premises from which goods are sold to place of delivery will not be included in the assessable value.



When goods are sold by Principal Manufacturer from some other place – If goods manufactured by job worker are delivered at other place (e.g. depot, branch, godown etc. of Principal Manufacturer) and sold from there, the valuation will be on the basis of ‘normal transaction value of goods sold at or about the same time’ by the Principal Manufacturer from such place.

This would be so if the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale [rule 10A(ii) of Valuation Rules].

Proviso to rule 10A clarifies that cost of transport from premises from which goods are sold to place of delivery will not be included in the assessable value.

This methodology is similar to valuation in case of sale through depot.

When valuation as per rule 10A(i) or 10A(ii) of Valuation Rules is not possible – If valuation is not possible as per rule 10A(i) or 10A(2) of Valuation Rules, ‘value’ will be determined in accordance with the principles enunciated in the Valuation Rules on a case-to-case basis [rule 10A(iii) of Valuation Rules].

For example, if the excisable goods manufactured on job-work are sold by the principal manufacturer where the price is not the sole consideration for sale, the value of such goods shall be determined in terms of principles laid down in rule 6.

If goods are captively consumed by Principal Manufacturer, valuation can be on basis of rule 8.

Meaning of job worker – As per *Explanation* to rule 10A, for the purposes of rule 10A, ‘job worker’ means a person engaged in manufacture or production of goods on behalf of a principal manufacturer, from any inputs or capital goods supplied by the said principal manufacturer or by any other person authorised by him.

Question : A Trader supplies raw material of Rs. 1,150 to processor. Processor processes the raw material and supplies finished product to the trader. The processor charges Rs. 450, which include Rs. 350 as processing expenses and Rs. 100 as his (processor’s) profit. Transport cost for sending the raw material to the factory of processor is Rs. 50. Transport charges for returning the finished product to the trader from the premises of the processor is Rs. 60. The finished product is sold by the trader at Rs. 2,100 from his premises. He charges Vat separately in his invoice at applicable rates. The rate of duty is 16% plus education cess as applicable. What is the AV, and what is total duty payable ? (CA Final May 2005 adopted)

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

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

Material cost is not required to be added if parent manufacturer had sent material under Cenvat,



as per decision of Supreme Court in *International Auto Ltd. v. CCE* 2005 (183) ELT 239 = 68 RLT 341 (SC 3 member bench).

2.8.2 Practical examples

1,500 pieces of a product 'A' were manufactured during the financial year. Its list price (i.e. retail price) is Rs. 250 per piece, exclusive of taxes. The manufacturer offers 20% discount to wholesalers on the list price. During the year, 840 pieces were sold in wholesale, 510 pieces were sold in retail, 35 pieces were distributed as free samples. Balance quantity of 115 pieces was in stock at the end of the year. The rate of duty is 16% plus education cess and SAH education cesses as applicable. What is the total duty paid during the financial year? Assume that the manufacture is not eligible for SSI concession.

The total selling price is as follows –

Qty	Price	Total
510	250	1,27,500
840	200	1,68,000
35	200	7,000
Total		3,02,500

Duty payable is 16% of Rs 3,02,500 i.e. Rs 48,400, plus education cess @ 2% i.e. Rs 968.00 plus SAH education cess @ 2% is Rs 484.00.

Note – (a) Since 115 pieces were in stock at year end, no duty will be payable. Duty will be payable only when goods are cleared from factory. (b) In case of samples, as per rule 4 of Valuation Rules, value nearest to the time of removal, subject to reasonable adjustments is required to be taken. However, since prices are varying, value nearest to the time of removal may not be ascertainable and will not be acceptable for valuation as the prices are changing. In such case, recourse will be taken to rule 11 of Valuation Rules, i.e. best judgment assessment. We can take recourse to rule 7 and 9 where principle of 'normal transaction value' is accepted, when prices are varying. As per rule 2(b) of Valuation Rules, 'normal transaction value' means the transaction value at which the greatest aggregate quantity of goods are sold. Since greatest quantity of 840 pieces are sold at Rs 200, that will be 'normal transaction value', which can be taken for valuation of free samples.

A manufacturer has appointed brokers for obtaining orders from wholesalers. The brokers procure orders for which they get brokerage of 5% on selling price. Manufacturer sells goods to buyers at Rs. 250 per piece. The price is inclusive of State Vat and Central excise duty. State Vat rate is 4% and excise duty rate is 16% plus education cess and SAH education cess as applicable. What is the AV, and what is duty payable per piece?

Assume that Assessable Value = Z. No deduction is available in respect of brokerage paid to third parties from Assessable Value.



Since Excise duty is 16%, education cess is 2%, SAH education cess is 1% and State Vat rate is 4%, price including excise will be 1.1648 Z

State Vat @ 4% of 1.1648Z is 0.046592Z. Hence, price inclusive of sales tax and excise duty will be 1.211392Z.

Now,	1.211392Z	=
Hence,	Z	=
Check the answer as follows –		
Assessable Value		=
Add duty @ 16.48% of		=
Rs 206.37		
Add State Vat @ 4% on		=
Rs 240.38		
(206.37+34.01)		
Total Price (Including		=
duty and tax)		

A manufacturer has to supply a machinery on following terms and conditions : (a) Price of machinery : 3,40,000 (net of taxes and duties) (b) Machinery erection expenses : 26,000 (c) Packing (normally done by him for all machinery) : 4,000 (d) Design and drawing charges relating to manufacture of machinery : 30,000 (Net of taxes and duties) (e) Central Sales Tax @ 4% (f) Central Excise Duty @ 16% plus education cess of 2% plus SAH education cess of 1% (g) Cash discount of Rs. 5,000 will be offered if full payment is received before despatch of goods. (h) the machine will be supplied along with bought out accessories @ Rs. 8,500. The accessories were optional.

You are informed that (a) The buyer made all payment before delivery. (b) The manufacturer incurred cost of Rs. 1,200 in loading the machinery in the truck in his factory. These are not charged separately to buyer. - - Find the 'Assessable Value' and the duty payable.

Erection expenses are not includible in AV. Cash discount is allowable as deduction. Duty is not payable on optional bought out accessories supplied along with the machinery. The cost of Rs 1,200 is already included in the selling price of machinery (as it is not charged separately) and hence is not to be added again.

Hence, AV is Rs 3,69,000 [Rs 3,40,000 + 4,000 + 30,000 – 5,000]. Duty @ 16% will be Rs 59,040, plus education cess @ 2% i.e. Rs 1,180.80 and SAH education cess @ 1% i.e. Rs 590.40.

Find Assessable Value and duty payable. The product is not covered under section 4A. . - Maximum Retail Trade Price : Rs. 1,100/- per unit. - State Vat, Octroi and other Local Taxes : 10% of net price- Cash Discount : 2% - Trade Discount: 8% - Primary and Secondary packing cost included in the above MRP : Rs. 100 - Excise duty rate : 8% *ad valorem* plus education cesses as applicable. (ICWA Inter - December 1997 adopted)



SOME CRITICAL ISSUES IN CENTRAL EXCISE

Cash discount Rs 22 (2% of Rs 1,100) and trade discount 88 [8% of Rs 1,100] are available as deduction. Packing cost is not allowable as deduction. Hence, price of excise purposes is Rs 990. [Rs 1,100 – 22 – 88]. - - Now, if X is the assessable value, excise duty is 0.0824 X and price including Excise duty is 1.0824 X. State Vat and local taxes @ 10 % of 1.0824 X will be 0.10824 X. Thus, price inclusive of excise duty and sales tax will be 1.19064 X.

Now,	1.211392Z	=	R
Hence,	Z	=	R
Check the answer as follows –			
Assessable Value		=	R
Add duty @ 16.48% of		=	R
Rs 206.37			
Add State Vat @ 4% on			
Rs 240.38		=	R
(206.37+34.01)			
Total Price (Including		=	R
duty and tax)			

A manufacturer has to supply a machinery on following terms and conditions : (a) Price of machinery : 3,40,000 (net of taxes and duties) (b) Machinery erection expenses : 26,000 (c) Packing (normally done by him for all machinery) : 4,000 (d) Design and drawing charges relating to manufacture of machinery : 30,000 (Net of taxes and duties) (e) Central Sales Tax @ 4% (f) Central Excise Duty @ 16% plus education cess of 2% plus SAH education cess of 1% (g) Cash discount of Rs. 5,000 will be offered if full payment is received before despatch of goods. (h) the machine will be supplied along with bought out accessories @ Rs. 8,500. The accessories were optional.

You are informed that (a) The buyer made all payment before delivery. (b) The manufacturer incurred cost of Rs. 1,200 in loading the machinery in the truck in his factory. These are not charged separately to buyer. - - Find the 'Assessable Value' and the duty payable.

Erection expenses are not includible in AV. Cash discount is allowable as deduction. Duty is not payable on optional bought out accessories supplied along with the machinery. The cost of Rs 1,200 is already included in the selling price of machinery (as it is not charged separately) and hence is not to be added again.

Hence, AV is Rs 3,69,000 [Rs 3,40,000 + 4,000 + 30,000 – 5,000]. Duty @ 16% will be Rs 59,040, plus education cess @ 2% i.e. Rs 1,180.80 and SAH education cess @ 1% i.e. Rs 590.40.

Find Assessable Value and duty payable. The product is not covered under section 4A. . - Maximum Retail Trade Price : Rs. 1,100/- per unit. - State Vat, Octroi and other Local Taxes : 10% of net price- Cash Discount : 2% - Trade Discount: 8% - Primary and Secondary packing cost included in the above MRP : Rs. 100 - Excise duty rate : 8% *ad valorem* plus education cesses as applicable. (ICWA Inter - December 1997 adopted)

Cash discount Rs 22 (2% of Rs 1,100) and trade discount 88 [8% of Rs 1,100] are available as deduction. Packing cost is not allowable as deduction. Hence, price of excise purposes is Rs 990. [Rs 1,100 – 22 – 88]. - - Now, if X is the assessable value, excise duty is 0.0824 X and price including Excise duty is 1.0824 X. State Vat and local taxes @ 10 % of 1.0824 X will be 0.10824 X. Thus, price inclusive of excise duty and sales tax will be 1.19064 X.

Now,	1.19064 X	=	R
Hence,	X	=	R
Excise duty @ 8.24 %		=	R
of X			
Check the answer as follows –			
Assessable Value		=	R
Add Excise Duty @		=	R
8.24%			
Add State Vat @ 10%			
on Rs 900 (831.49 +		=	R
68.51)			
Selling Price (After		=	R
allowable deductions)			

Ram & Co. are dealers in engineering goods. They obtained an order for an engineering item 'A'. They quoted a price of Rs 5,000 per piece for 'A' plus Vat at applicable rate. Ram & Co. then approached Laxman & Co. who was manufacturer of engineering items. It was agreed that Ram & Co. will supply raw material required for manufacture of 'A' to Laxman & Co. free of cost. Laxman & Co. will manufacture product 'A' and supply it to Ram & Co. It was agreed that Laxman & Co. will charge Rs 1,500 per piece as their job charges per piece. Other information is as follows – (i) Raw material supplied by Ram & Co. to Laxman & Co. was purchased by Ram & Co. from the manufacturer 'Z'. The breakup of the invoice of 'Z' was as follows – Net Price per Kg of raw material – Rs 40. Excise duty – Rs 6.40 Sales Tax – Rs 1.86. Total – Rs 48.26. Ram & Co. generally sales goods after adding 10% to their purchase price (ii) Product A requires 50 Kg of raw material per piece, including normal wastage of 5%. (iii) Transport charges incurred by Ram & Co. for delivering raw material to factory of Laxman & Co – Rs 100 per piece (iv) Transport charges for returning the finished product to the Ram & Co – Rs 130 per piece. These are paid by Laxman & Co. and recovered from Ram & Co. by issuing a separate debit note. - - The rate of duty is 16% plus education cess as applicable. Who is liable for payment of excise duty ? What will be the assessable value ? [ICWA Inter June 2004 adopted]

The manufacturer is Laxman & Co.

Valuation on and after 1-4-2007 - Duty is payable on basis of selling price of Ram & Co. which is Rs 5,000 per piece. Hence, assessable value will be Rs (5000 x 116.48) / 100 i.e. 4,292.58. Basic duty is Rs 686.81. Education Cess (2%) is Rs 13.74 and Secondary and Higher Education Cess is Rs 6.87. Total duty is Rs 707.42.



2.9 OTHER ISSUES

When two exemption notifications are available, assessee can select either - If applicant is entitled to claim benefit under two different notifications, he can claim more (i.e. better) benefit and it is the duty of authorities to grant such benefit to applicant – *Share Medical Care v. UOI* 2007 (209) ELT 321 (SC).

Benefit of exemption can be claimed at any stage - Even if an applicant does not claim benefit under a particular exemption notification at initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage - *Share Medical Care v. UOI* 2007 (209) ELT 321 (SC) – quoted and followed in *Cipla Ltd. v. CC* (2007) 218 ELT 547 (CESTAT), where it was held that benefit of exemption notification can be claimed at appellate stage also.

2.9.1 Manufacturer not liable for duty liability of scrap / waste generated at end of job worker

Earlier rule 57F provided that waste and scrap arising during job work is required to be returned to raw material supplier. New Cenvat Credit Rules make no such provision. Hence, in *Rocket Engineering Corporation v. CCE* 2006 (193) ELT 33 (CESTAT), it has been held that the scrap is not required to be returned to raw material supplier and the raw material supplier is not required to pay any duty on the scrap, since Cenvat Credit Rules after 1-4-2000 do not make any such provision – view confirmed in *CCE v. Rocket Engineering Corporation* (2008) 223 ELT 347 (Bom HC DB) - followed in *Emco Ltd. v. CCE* (2008) 223 ELT 613 (CESTAT).

In *Preetam Enterprises v. CCE* 2004 (173) ELT 26 (CESTAT), it was held that even in respect of inputs sent under Cenvat Credit Rules, job worker is manufacturer of scrap and he is liable to pay duty on scrap. Duty on scrap cannot be demanded from raw material supplier after 1-4-2000 – same view in *Rocket Engineering v. CCE* 2006 (193) ELT 33 (CESTAT) [Scrap is treated as a final product if mentioned in the Tariff. However, it is 'final product' of job worker and not of raw material supplier].

In *Silicon Cortec v. CCE* (2004) 166 ELT 473 (CESTAT SMB), it has been held that waste and scrap is final product of job worker and he can clear the same on payment of duty.

In *Timken India v. CCE* (2007) 215 ELT 182 (CESTAT), it was held that duty liability on scrap is of the job worker. If he is under SSI exemption, no duty is payable by him.

In *GKN Sinter Metals v. CCE* 2007 (210) ELT 222 (CESTAT SMB), it was held that if waste and scrap is only burr in nature of floor sweeping, and if there is invisible loss, no duty is required to be paid on such scrap.

2.9.2 Service tax on job work

Job work falls under 'Business Auxiliary Service', if the job work is not 'manufacture'. Service tax will be payable. Job work done under Cenvat provisions is exempt from service tax.

If the job worker is not availing any Cenvat credit of any common input or input services, question does not arise. However, if the job worker is availing Cenvat credit on inputs or input services, he will be liable to pay 8% 'amount' on job charges under rule 6(3) of Cenvat Credit



Rules, or he may have to go in for proportionate reversal of Cenvat Credit as per rule 6(3A) of Cenvat Credit Rules effective from 1-4-2008.

If the job worker thinks that the rule 6(3A) is cumbersome, it may be advisable to pay service tax @ 12.36% on job charges, since the customer will be in a position to avail Cenvat credit.

If job worker charges 8% 'amount', customer cannot avail Cenvat credit, but if job worker charges regular service tax, the customer will be eligible to avail Cenvat credit.

2.10 EXEMPTION TO SSI

Question - An SSI unit (manufacturing goods eligible for benefits of SSI exemption notification) has cleared goods of the value of Rs. 60 lakhs during the financial year 2007-08. The effective rate of Central Excise Duty on the goods manufactured by it is 8% *Ad valorem*. Education cesses are payable at applicable rates. What is the correct amount of duty which the unit should have paid on the above clearances for 2007-08 ? (CA Final - November 1996) (Question adopted)

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

Question - The value of excisable goods viz. Iron and Steel articles manufactured by M/s. Alpha Ltd., was Rs. 120 lakhs during the financial year 2007-08, net of taxes and duties. The goods attract 16% *ad valorem* basic duty plus education cess of 2% plus SAH education cess as applicable. Determine the excise duty liability when the assessee opts for 'CENVAT' and 'opts for not to avail CENVAT' under SSI exemption notifications respectively. (ICWA Inter - December 1997 adopted).

Answer - If the assessee does not avail Cenvat, duty payable is Nil. If assessee avails Cenvat credit, duty payable will be - Basic - Rs 19.20 lakhs, Education Cess - Rs 38,400 and SAH education Cess - Rs 19,200.

Question : A small scale manufacturer had achieved sales of Rs. 73 lakhs in 2006-07. Turnover achieved during 2007-08 was Rs 1.52 crores. Normal duty payable on the product is 16% plus education cesses as applicable. Find the total excise duty paid by the manufacturer during 2007-08 (a) If the unit has availed Cenvat credit (b) If the unit has not availed Cenvat credit. [The turnover is without taxes and duties] [ICWA Inter December 2004 adopted].

Answer :

- (a) If the unit has availed Cenvat credit, it has to pay full duty on entire turnover. Hence, duty payable is 16% of Rs 1.52 crores i.e. Rs 24.32 lakhs, plus education cess @ 2% of Rs 24.32 lakhs i.e. 48,640, plus SAH education cess @ 1% of Rs 24.32 lakhs i.e. Rs 24,320. Total – Rs 25,04,960.
- (b) If the SSI unit has not availed Cenvat, the duty payable is as follows: (i) On first Rs. 150 lakhs : Nil (ii) On subsequent sales : Normal duty of 16% plus education cesses as appli-



cable. Thus, duty on remaining Rs 2 lakhs will be Rs 32,000. Thus, excise duty paid is Rs 32,000, plus education cess of Rs 640 plus SAH education cess of Rs 320 Total – Rs 32,960.

Question : 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, he can do so. He can avail Cenvat on inputs. (b) He would like to do so if his customer wants to avail Cenvat and if duty paid on his inputs is high. In such case, effective cost of the buyer is reduced, if the manufacturer pays duty. (c) Duty payable will be normal rate, less concession available, if any, under any exemption notification.

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

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

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

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

- (A) Find the total duty paid by the manufacturer in 2007-08, if (a) Inputs are common but SSI unit is able to maintain separate records of inputs in respect of final products under his brand name and those with other's brand name (b) The inputs are common and SSI unit is not able to maintain separate records on inputs used in final products manufactured under his brand name and with other's brand name.
- (B) What will be the rate of excise duty payable by him in April 2008 (a) on product bearing his own brand name and (b) on product bearing his customer's brand name.
- (C) Will there be any difference in duty payable in April 2008 if all his clearances of Rs. 445 lakhs in 2007-08 were of product under his own brand name ?

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



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

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