

	When	AV	Special Points
Sec 4(1)(a)	4 conditions: 1) Goods are SOLD 2) Sale provides for Delivery at "PLACE OF REMOVAL" 3) Buyer and seller are not "RELATED PERSONS" 4) Price is the SOLE CONSIDERATION for the sale.	Transaction Value [SEC 4(3)(d) of CEA] Sale Price for goods XXX + Addl. Recoveries XXX - Sales Tax (XX) - Other Taxes (XX) - Excise Duty (XX) Transaction Value XXXX	1. ELEMENTS INCLUDIBLE: a) Recoveries in connection with manufacturing, marketing, selling of EG (as they enrich marketability); b) WARRANTY EXPENSES (Mandatory – in every case & Optional – whenever option exercised); IMARUTI UDYOG LTD. – 2007- SC:-- EXTENDED WARRANTY is not includible as charges for extended warranty can not be said to be charges by reason of, or in connection with, sale of goods under consideration.] c) PACKING CHARGES (whether primary, secondary, special secondary/protective packing or any other packing); ⇒ Apportioned cost of durable & returnable packing inbuilt in Sale Price (so no need of any addition separately) ⇒ Even Rental Charges for DURABLE + RETURNABLE packing --- includible (But <u>their cost</u> as such or security deposits for that is not includible) d) INSTALLATION/ERECTION/COMMISSIONING (i) Incurred to bring into existence any movable goods → Includible (ii) Goods cleared from factory → then not includible e) Dharmada Charges collected Compulsorily from buyers (SC); f) VALUE OF PART: (Value of part is mandatorily includible) On the contrary, inclusion of value of accessory is optional for assessee) 2. ELEMENTS NOT INCLUDIBLE: a) INTEREST FOR DELAYED PAYMENTS/ Interest on Receivables (Financing Charges): C1: Clearly distinguished from price for the goods; C2: Written Financing arrangement C3: Whenever required – assessee can establish that declared sale price is the actual sale price for goods; b) TRADE DISCOUNT; ⇒ Be it of any type or description (even cash discount is allowable) C1: Discount is from the normal price; C2: Actually passed on to the buyer; [even QUANTITY DISC // DAMAGE DISCOUNT IS DEDUCTIBLE] ⇒ Differential Discount to Different Customers – Allowable C1: Discount is as per commercial considerations; C2: Allowed to unrelated buyers; ⇒ YEAR END DISCOUNT (TurnOver Discount) --- not passed on at the time of transaction but given separately by credit note --- Also allowable → Resort to PA (Provisional Assessment)

SHORT REVISIONARY KONCEPTS

c) TAXES AND DUTIES (Actually paid or payable):

- ⇒ Excise Duty;
- ⇒ Sales Tax;
- ⇒ Other taxes (like Octroi/Entry Tax)

Note:

- ⇒ Nomenclature is not relevant

E.g.:

- i. **ADMINISTRATIVE CHARGES** levied on molasses – under UP SHEERA NIYANTARAN ADHINIYAM, --- Deductible (Being compulsory exaction of money under force of an enactment) **[KISAN SAHKARI CHINI MILLS - SC]**
- ii. **Steel Development Charges** levied due to direction by Joint Plant Steel Committer --- Not Deductible (as don't Have the force of law) [TISCO-SC]

Sec 4(1)(b)

[Value as per CE Valuation (Determination of Price of EG) Rules, 2000]

Rule 4	Free samples valuation	AV = Value of Identical/ Similar goods (*such goods) sold by same assessee at the time of removal [If there is no sale of Identical / Similar comparable goods (*such goods) at the time of removal of samples --- then, value of identical or similar goods sold on nearest date shall be used]	- Rule 4 is applicable only for valuation of free samples (and not on nominally price samples—disputed issue) New sample (Product developed for first time and its not being sold into the market commercially at present, but will be sold only later on): At time of removal TV of identical / similar goods is not available, but will become available subsequently – so at time of removal from factory, provisional assessment shall be resorted to by assessee. [CWA June 2007] Old Sample (Product already being sold into the market commercially at present, but in commercially different form, e.g., bigger quantity, different packing): The form in which it is being sold commercially can not be treated as identical goods and thus their TV can not be used under Rule 4. – Assessment shall be made in Rule 11 (there TV of identical goods can be used after making adjustments)
Rule 5	All conditions of 4(1)(a) are satisfied Except: Sale provides for delivery at a place other than the 'place of removal'	TV less: COT [POR – TO – PLACE OF DELIVERY] Return freight is not deductible Expl 1: CoT= Actual cost Or Average Cost	"Point of sale" should be the place of removal. And 'Point of Delivery' shall be a place other than the 'Place of Removal'. COT = Freight + Transit Insurance COT – deductible even if Not Charged separately in Invoice; Where transportation charges are recovered in transaction basis: Only Actual COT is deductible --- i.e., profit on transportation activity is includible in AV. Similarly, loss on transportation activity is deductible from AV. [Also, charges collected but not expended --- no deduction allowable.] Where transportation charges are recovered on average freight (to ensure uniformity in pricing of goods throughout India) --- Average Freight (Equalized freight) deductible. COT from factory to Warehouse/Depot ---- Not deductible COT from Warehouse/Depot to Buyer's Premises --- Deductible
Rule 6	All conditions of 4(1)(a) are satisfied Except: Sale price is not the sole consideration for sale'	TV Add: Additional Consideration (buyer - ---TO – assessee) Expl 1: Goods/ Services supplied free of cost or at concessional rate	Additional Consideration: Anything flowing from buyer to assessee in addition to the declared Invoice Price because of which price otherwise paid/payable is reduced by seller e.g. MAZAGON DOCK LTD.- 2005-SC: Ship manufactured & sold for a particular price --- Certain subsidy received from the Govt. and certain subsidy received from the buyer Subsidy received from Govt: Not includible Subsidy received from Buyer: Includible (as it will constitute additional consideration flowing from buyer to the assessee manufacturer)

SHORT REVISIONARY KONCEPTS

Expl 2:

Notional Interest on Advance Deposit -- Addition only when Dept can prove that it has influenced fixation of sale price (by way of reduction of SP or by offering a Special Discount)

E.g.

- Advance deposit – saving in borrowing cost --- reflected in SP as it was lowered down --- Notional Int includible [METAL BOX INDIA-SC]
- Advance deposit – taken as security – to cover risk of credit sale--- SP to credit customer same as charged on cash sale – Notional Int not includible [VST INDUSTRIES – SC]
- Advance deposit – taken as security – to cover risk of failure to take tailor-made goods -- Notional Int not includible [ISPL INDUSTRIES – 2003 -- SC]

IFGL Refractories – 2005-SC:

Advance license surrendered by buyer in favour of manufacturer

- Monetary value of such consideration:** the value by which price otherwise paid/payable is reduced by the manufacturer, shall be treated as monetary value of additional consideration.
- initially if duty is paid on some value and additional consideration is found out later, then while demanding duty on such additional consideration , it shall be treated as cum-duty consideration --- Explanation to Sec 4(1)**

Rule 7 Redundant

Rule 8 When EG are not sold – but are further used in manufacture of other EG (whether such use is by him or on his behalf)

110% of COP

Expl 1:

COP/M --- to be determined as per **general principles of costing**

...

As per CAS-4

[CBEC Circular]

CAS-4

1. Material consumed
2. Direct wages/salaries
3. Direct Expenses
4. Works OH
5. Quality control cost
6. R & D cost
7. Adm OHs
- Less: Recoveries from Waste/Scrap**
8. Packing cost

* Material shall be taken at net value (net of Cenvat credit)

1. Captive Consumption means

- ⇒ Production by one division and consumption by another division of same factory
 - ⇒ Production in one unit/factory and consumption in another related unit/factory
- Where such consumption is for further use in manufacture of excisable goods.

2. E/N 67/95: IG is fully exempt from duty if FP is dutiable. [i.e., IG is dutiable if FP is non-dutiable]

- ⇒ This is applicable only when consumption is within the same factory.
- ⇒ Date of issuance to next process --- Deemed Date of Removal [Explanation to Rule 4 + Rule 5 of CER, 2002]

3. COP : -- Cenvat credit on inputs is not includible (i.e., Inputs shall be taken as purchase price net of cenvat credit) [DAI ICHI KARKARIA-SC --- Now written in CAS-4]

4. AV = 110% of COP/M [Fixed notional profit margin of 10% is includible in the AV]

Even if :

- ⇒ Same goods are partly sold by assessee at a higher profit margin;

Thus, **ACTUAL PROFIT MARGIN IS NOT RELEVANT.**

Rule 9 Sale to or only through 'Related Person' [not being an 'ICU']

Where such RP sells to URP

■ AV = NTV(sale to URP)

Where such RP sells to RP

■ AV = NTV(sale to the RP who sells in retail)

Where such RP captively consumes such goods
AV = 110% of COP/M

1. R 9 is applicable only when all the goods are sold to such related person. (In other words, if goods are partly sold to such related person and partly to unrelated person ---- AV of goods sold to related person shall be determined under Rule 11 & not under Rule 9)

2. Simple understanding of Rule 9

M----(p-1)-> RP ----(p-2)-> URP AV= (p-2)

M----(p-1)-> RP ----(p-2)-> RP----(p-3) retail sale AV= (p-2)

M----(p-1)-> RP ----captive consumption AV= 110% of CoP

Rule 10 Sale to or only through "ICU"

If ICU is :

-- Hol-Subs; or
-- Otherwise ICU but also

1. R-10 is applicable only when all the goods are sold to such related person. (In other words, if goods are partly sold to such related person and partly to unrelated person -

SHORT REVISIONARY KONCEPTS

		<i>related in terms of Sec 4(3)(b) (ii)/ (iii)/ (iv)</i> ■ AV = R 9 Value <u>Otherwise:</u> ■ AV = TV(Sec 4(1)(a) Value	--- AV of goods sold to ICU in such situation shall be determined under Rule 11 & not under Rule 10)
Rule 10-A	Job-Work Valuation <i>[New system from Year 2007]</i>	<u>Rule 10-A(i)</u> Goods sold by PM + Delivery taken by buyer at JW premises + Unrelated buyer + Price sole consideration AV = TV <u>Rule 10-A(ii)</u> Goods brought back by PM + Sold later on from his premises + Unrelated buyer + Price sole consideration AV = NTV <u>Rule 10-A(iii)</u> Other cases AV → applying spirit of other rules mutatis mutandis	1. <u>Old Valuation System:</u> Prior to 2007, goods manufactured on job-work basis were valued under R-11 (residuary rule). The value used to be calculated in following manner: AV = Purchase Price of Material + CoT (Freight & Transit Insurance) upto Job-worker's place + Job-Worker's Charges + Job-Worker's Profit Margin Now, that system is no longer applicable.
Rule 11	When value can't be determined under other rules	Best Judgment Value (as determined in accordance with spirit of ■ Sec 4(1)(a) and ■ Preceding Rules)	<u>Instance where Rule 11 is applicable:</u> ⇒ Goods sold partly to related person and partly to unrelated person → Sales to URP – AV as per Sec 4(1)(a) → But in respect of sales to RP --- AV in terms of Rule 11