Hello, dear friends,

Hope you must be working hard to revise all the papers. In continuation of our efforts for your success, Revisionary test paper is being sent to you. This contains few conceptual and important questions and all the recent cases and amendments made by circulars and notifications upto 30th April, 2009.

An Answered Prayer

I asked for prosperity,
And God gave me brain,
And brawn* to work! ***Physical strength**

I asked for love,
And God gave me,
Troubled people to help!

I asked for favours,
And God gave me,
Opportunities to grab!

I asked for strength,
And God gave me diffi-
-culties to make me strong!

I asked for wisdom,
And God gave me,
Problems to solve!

I asked for courage,
And God gave me,
dangers to overcome!

I received nothing I wanted
I got everything I needed

Friends you must be feeling very tense. This tension is created by the institute to develop more capabilities in you, so that you are prepared for the future challenges.

It is said that the maximum development of the world took place during two world wars. Because it is only during challenges that our mind becomes creative and our capabilities increase.

Therefore take this tension as a challenge and just think that God has given you this opportunity to grow.

Here are few important tips:-

Before the examination day

1. ***Don't waste any time on checking the paper of direct taxes***, you can wait for one day. Just think what next.

2. Allocate time for each and every topic before starting the revision and don't at all exceed those limits. A tentative plan is being given for revision.

   To get maximum utility of this plan try to devote two days during October in revising the entire syllabus as per this plan.

   Start revision at 6.00 p.m., as you would in the exams, upto 11.00 a.m. on the examination day.

Excise:-		**Minutes**
(i)	Basic Concepts	30
(ii)	Valuation & Basis of calculation	60
(iii)	CCR 2004	160
(iv)	SSI	30
Customs:-		
(v)	Basic Concepts	30
(vi)	Type of Duties	30
(vii)	Valuation	90
(viii)	Warehousing	30
(ix)	Duty Drawback	30
Others		
(x)	Demand and Refund	90
(xi)	Service Tax Concepts other than services	120
(xii)	Chapter X, CER, Export Procedure	90
(xiii)	Transit, coastal goods, stores, postal articles & SEZ	60
(xiv)	Baggage and transportation	40
(xv)	Classification	30
(xvi)	Appeal, advance ruling & settlement commission	30
(xvii)	Excise warehousing and penalties	30
(xviii)	Services	40
	Total	17hrs

3. Don't get stuck to one particular point. If you are not able read any concept quickly and that is disturbing you, just leave it and move ahead.

4. Don't try to recall the things; just try to read the topic. Just keep on reading, don't think whether you will be able to recall or not in the examination hall. You will be definitely able to recall the topics provided you have gone through that topic before examination day.

Don't at all compromise on your sleep.

Generally students think that as this is the last paper they can work for the entire night. But this doesn't help in any way, rather this will reduce your efficiency in the examination hall. If you are fresh then you will solve even the most difficult questions and vice-versa.

So, please, take proper sleep and not only in this paper but in all the papers.

In the examination hall:-

1. Don't rush to attempt the question paper. First go through the entire question paper and select your best and shortest possible question.

2. Even in the most difficult papers, there are always few questions which are very easy. If you once start doing easy questions, your confidence boosts up and you are able to do even the difficult ones. Therefore, instead getting demoralized from difficult questions, try to search for the easier ones.

3. Allocate time for each question and don't exceed the limits.

4. Don't leave the case studies or numerical questions for the end, try to attempt them somewhere in the middle of the paper.

How to present Answers

1. Read the question carefully – underline important words.

2. Try to understand what the examiner wants. Identify the key point asked in the question and underline it.

3. Answer according to marks assigned to that question. Do not write irrelevant point or things just to increase length.

4. Try to make more heading, subheading, points and small paragraphs.

5. Use underlining for key words in the answer.

And finally friends, it is said that great battles are always won at the end. You still have lots of time. If you work with regularity and discipline then your success is definite. Relax and work hard.

For successful people there is only one second of tension and all, all the remaining seconds of work

With Best Wishes

Ajay Jain.

AMENDMENTS APPLICABLE FOR NOVEMBER 2009 (up to 30th April, 2009)

Note – Page No. given in these amendments belong to 10th edition of IDT notes by CA. Ajay Jain.

EXCISE

1. Rule 3(7)(a) of Cenvat Credit Rules, 2004 (page 55)

AV multiplied by [(1+BCD / 200) multiplied by (CVD / 100)]

2. Rule 6(6) of Cenvat Credit Rules, 2004 (page 69)

→ The provisions of sub-rule (1), (2), (3) and (4) shall not be applicable

→ in case goods are cleared to SEZ or to a developer of SEZ for their authorized operations, 100% EOU, EHTP, STP, UNO etc.

3. Circular No. 868/6/2008 – CX – Clarifications under Rule 6(3) of Cenvat Credit Rules, 2004

(i) If an assessee avails option (i) or (ii) under Rule 6(3) of Cenvat Credit Rules, 2004, he shall be allowed to take credit of inputs and input services used in both exempted and dutiable goods.

(ii) An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him and all the exempted services provided by him and the option once exercised during a financial year cannot be withdrawn during the remaining part of the financial year.

(iii) Value of the exempted goods is the transaction value as determined in terms of section 4 of the Central Excise Act, 1944 or value determined under section 4A. Value of the exempted service is the gross amount charged for providing the exempted service [without abatement].

(iv) As ISD does not provide any service, and is like a trader, therefore, the question of availing either of the options would not arise in case of an ISD.

(v) Export of services without payment of service tax is not to be treated exempted services.

4. Circular No. 870/8/2008 – CX

It has been clarified that Rule 11D is not applicable to amount collected under Rule 6(3) of the Cenvat Credit Rules, 2004 because the amount paid under Rule 6(3) is not a payment of duty.

5. Circular No. 877/15/2008 – CX

Sometimes, the supplier allows trade discount to the manufacturer. However, the manufacturer avails the CENVAT credit of the entire excise duty paid by the supplier as reflected in the invoice.

It has been clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice, would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise.

However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit. It may however be confirmed that the supplier, who has paid duty, has not filed / claimed the refund on account of reduction in price.

6. Circular No. 878/17/2008 – CX

The Large Taxpayer Units (LTUs) shall pay the central excise and service tax dues electronically only, through internet banking.

However, in case of difficulties in e-payment, a large taxpayer is permitted to pay the duty through banks (except in such cases where e-payment is mandatory) in the jurisdiction of the LTU Commissionerate only.

SERVICE TAX

7. Notification No. 1/2009

(to be inserted on page 111)

The following services provided to a GTA for use of transport of goods by road shall be exempt

(i) C&F agent
(ii) manpower recruitment and supply agency
(iii) cargo handling
(iv) storage and warehousing
(v) business auxiliary service
(vi) business support service

subject to the condition that the invoice issued by such service provider should mention

→ the name and address of the goods transport agency and
→ the name and date of the consignment note, by whatever name called, issued in his behalf.

8. Section 66 of Finance Act, 1994 (pg. 100)

There shall be levied a tax @ 10% of the value of taxable service.

9. Abatement/ Deduction allowed in various services (pg. 111)

12.	Chit Fund (banking and financial services)	70	30

10. Exemptions (pg. 106)

Service tax is fully exempt if

(ii) Services rendered to –

3) Units of special economic zone subject to conditions

Conditions have been specified w.e.f 3/3/2009. The conditions are:-

(a) The services should be received only in relation to the authorized operations in the SEZ.
(b) The services should be actually used in relation to the authorized operations in the SEZ.
(c) The exemption shall be provided by way of refund only.
(d) The service tax on the services received should have been actually paid.
(e) Cenvat credit of the service tax paid on the said services shall not be allowed.
(f) The benefit of any other exemption notification has not been availed in respect of these services.

11. Service Tax (Provisional Attachment of Property) Rule, 2008

Rule 3 - Procedure for provisional attachment of property

(a) The AC/DC, after due verification of the facts and circumstances of the case, for the purpose of protecting the interest of revenue, during the pendency of any proceeding under section 73/73A of the Finance Act, 1994, may forward a proposal for provisional attachment of property belonging to a person on whom a notice has been served under section 73(1)/73A(3) of the Act, to the Commissioner in the format prescribed in these Rules.
(b) The Commissioner may cause service of a notice on such person who can make a submission in this regard within 15 days of service of the notice.
(c) Upon consideration of submission, the Commissioner may pass an order to attach the property provisionally.

Rule 4 - The property that can be attached

(1) Value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue against such person.

(2) The movable property of such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue.

Rule 5 - Obligations of person whose property has been attached provisionally

The said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the CCE.

Rule 6 - Period for which order of provisional attachment of property remains in force

Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the service of the order passed.

However, Chief CCE may grant an extension for a maximum period of two years.

12. Circular No. 104/07/2008 – ST – Clarifications on issues relating to service tax levy on GTA

(i) Services provided by a GTA includes many ancillary services like loading/unloading, packing/unpacking, transshipment, temporary warehousing. The GTA raises an invoice for an amount which includes the value of such ancillary services also. Will the above ancillary services be classified as part of GTA service? Will the benefit of abatement of 75% be available for the ancillary service as well?

Ans. It has been clarified that GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.

Thus,

Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the amount charged for the service provided is inclusive of packing, unloading etc., then the service shall be classified as GTA service and not as cargo handling service.

Accordingly, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

(ii) Whether time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified under courier service and not GTA service?

Ans. On this issue, it is clarified that so long as, (a) the entire transportation of goods is by road; and (b) the person transporting the goods issues a consignment note, it would be classified as 'GTA Service'.

13. List of New Services introduced by Finance Act, 2009

(b) Cosmetic or Plastic Surgery Service

(c) Transport by Sea

(d) Legal consultancy Service

AMENDMENTS APPLICABLE FOR JUNE 2009 (upto 31st October, 2008)

These amendments were present in the 10th edition also, but it is advisable to go through these amendments again

Note – Page No. given in these amendments belong to 9th edition of IDT notes by CA. Ajay Jain.

2. Explanation to Section 2(d) of Central Excise Act, 1944 (Pg. 4)

- *"Goods" 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.*

14. Section 3A of Central Excise Act, Duty Based on production capacity

(To be incorporated after Rule 15 of CER at Page 30)

Duty Based on production capacity *Section 3A of Central Excise Act*

Notwithstanding anything contained in Section 3,
where the Central Government, is of the opinion that it is necessary to safeguard the interest of revenue

→ *having regard to the nature of manufacture or production of excisable goods,*
→ *the extent of evasion of duty in regard to such goods*

Provide for the manner of determination of duty

→ *on the basis of annual capacity of production of the factory*
→ *by an officer not below the rank of AC*
→ *and such capacity shall be deemed to be the annual production capacity.*

Provided that where the factory producing notified goods is in operation during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production
Provided further that where a factory producing notified goods

→ *did not produce the notified goods*
→ *during any continuous period of fifteen days or more,*
→ *the duty calculated on proportionate basis*
→ *shall be abated in respect of such period.*

15. Rule 12 of Central Excise Rules, 2002 (Pg. 37)

1. Return:-

*Provided that in case where an assessee is availing **area based exemption**, he shall file a **quarterly return**, in the form specified, of production and removal of goods and other relevant particulars, within **20** days after the close of the quarter.*

(2A)

(a) *Every assessee shall submit to the Superintendent, an **Annual Installed Capacity** Statement in Form ER-7 declaring the annual production capacity of the factory for the F/Y to which the statement relates by 30th April of the succeeding F/Y.*

(b) *The CG may, specify class of assessees who may not require to submit such an Annual Installed Capacity Statement**.***

2. Annual Financial Information Statement:-

Every assessee shall submit, an Annual Financial Information Statement for the every financial year in the specified form[ER-4] by 30th day of November of the succeeding year.

Any assessee who paid duty less than one crore [~~from account current~~] has been exempted from such statement.

Indian Ordnance Factories, Department of Defence Production, Ministry of Defence have also been exempted from filing annual information financial statement.

16. Rule 17of Central Excise Rules, 2002 (Pg. 39)

(1) If any goods are removed from 100% EOU to domestic tariff area,

→ then such removal shall be made under an invoice by following procedure of rule 11 and

→ on payment of appropriate duty ~~before removal~~ of goods by debiting the account current or utilizing the CENVAT credit *in the manner specified in Rule 8*.

(4) *The proper officer may on the basis of information contained in the return filed by the unit,*

→ *and after such further enquiry as he may consider necessary,*

→ *scrutinize the correctness of the duty*

→ *assessed by the assessee on the goods removed,*

→ *in the manner to be prescribed by the Board.*

(5) *Every assessee shall make available to the proper officer*

→ *all the documents and records for verification*

→ *as and when required by such officer.*

17. Proviso to Section 3 of Central Excise Act, 1944 (Pg. 50)

Exemption

→ Goods manufactured or produced by a 100% EOU/STP/EHTP and sold in Domestic Tariff Area

→ are exempt from *50%* of Basic Custom Duty.

18. Rule 3(7)(b) of Central Credit Rules, 2004 (Pg. 52)

Restrictions on utilisation

NCCD on mobile phones

Provided that credit of any duty of excise except the NCCD on mobile phones, shall not be utilised for the payment of said NCCD.

19. Rule 9A of Central Credit Rules, 2004 (Pg. 68)

Applicability:-

But this rule is applicable only to those assessees

(i) who are manufacturing goods specified under this rule and

(ii) who have paid duty of one crore or more [~~through account current~~] during the preceding F/Y.

20. Exemption of goods bearing brand names (Pg. 77)

However in the following cases. even if the goods are bearing the brand name of other person still they shall be included in the limits:-

(e) Packing Materials

Where the specified goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, adhesive tapes, stickers, metal labels etc.

21. Appeals to CESTAT (Pg. 97)

3. Departmental appeal

provided that

→ *where the committee of commissioners differs in its opinion regarding the appeal against the order of the Commissioner (Appeals),*

→ *it shall state the points on which it differs to the Jurisdictional CCE who shall*

→ *after considering the facts of the order if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct any CEO to appeal to the Appellate Tribunal*

22. <u>Section 35FF of Central Excise Act, 1944</u>

(To be incorporated after Section 35F of CEA at Page 99)

Interest on delayed refund of amount deposited

→ *Where the amount deposited by the appellant u/s 35F is required to be refunded consequent upon the order of the appellate authority,*
→ *there shall be paid to the appellant, interest at the rate specified in Section 11BB*
→ *after the expiry of three months*
→ *from the date of communication of the order of the appellate authority ,*
→ *till the date of refund of such amount.*

23. <u>Section 35E of Central Excise Act, 1944 (Pg. 100)</u>

3. <u>Direction to assessing officer</u>

Provided that where the committee of chief CCE differs

→ *in its opinion as to the legality or propriety of the decision or order of the CCE,*
→ *it shall state the points on which it differs to the board which,*
→ *after considering the facts of the decision or order,*

if is of the opinion that the decision or order passed by the CCE is not legal or proper, may direct such Commissioner to apply to the Appellate Tribunal.

24. <u>Section 86 of Finance Act, 1994 (Pg. 102)</u>

1A. The Board, may by notification, constitute such committees (each consisting two Chief CCE or two CCE) as may be necessary for the purpose of Appeal.

Provided that where the committee of chief CCE differs

→ *in its opinion against the order of the CCE,*
→ *it shall state the point on which it differs and make a reference to the board which shall,*
→ *after considering the facts of the order,*
→ *if it is of the opinion that the order passed by the CCE is not legal or proper,*
→ *direct the CCE to appeal to the Appellate Tribunal against the order.*

2. <u>Departmental Appeal</u>

(a) The <u>Committee of Chief CCE</u> may, if it objects to any order passed by the CCE, direct the CCE to appeal to the Appellate Tribunal against the order.

(b) The <u>Committee of Commissioners</u> may, if he objects to any order passed by the CCE (A), direct the AC / DC to appeal to the Appellate Tribunal against the order.

Provided that where the committee of commissioners differs

→ *in its opinion against the order of the CCE(A),*
→ *it shall state the point or points on which it differs and make a reference to the jurisdictional Chief commissioner who shall,*
→ *after considering the facts of the order,*
→ *if he is of the opinion that the order passed by the CCE(A) is not legal or proper,*
→ *direct any CEO to Appeal to the Appellate Tribunal against the order.*

25. <u>Section 11DD of Central Excise Act, 1944 (Pg. 110)</u>

→ Where an amount has been collected in excess of the duty from the *buyer of such goods or from any person or where a person has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to* NIL *rate of duty,* the person,
→ the assessee shall, in addition to the amount u/s 11D, be liable to pay interest
→ @ not below 10%, and not exceeding 36% p.a., fixed by Central Government, [Presently 15%]
→ from the first day of the month succeeding the month in which the amount ought to have been paid, till the date of payment.

26. Section 11D of Central Excise Act, 1944 (Pg. 110)

(1A) *Every person, who has collected any amount*

- ✓ *in excess of the duty assessed or determined and paid on any excisable goods or*
- ✓ *has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to NIL rate of duty from any person in any manner,*
- ✓ *shall forwith pay the amount so collected to the credit of the central government.*

27. Section 74 of Customs Act, (Pg. 173)

Reduction of drawback:-

Third Notification:-

In respect of other goods used after their importation and which have been out of Custom Control the rate of duty draw back shall be as follows:

Length of period between → date of clearance for home consumption and → date when goods are placed under Customs Control for export	Percentage of import duty to be paid as drawback.
not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18	NIL

28. Assessment under Service Tax (Pg. 112)

72	*Best Judgment Assessment*	*If any person, liable to pay service tax –* *(a) fails to furnish the return or* *(b) having made a return, fails to assess the tax in accordance with the provisions.* → *The CEO may require the person to produce such accounts, documents or other evidence as he may deem necessary and* → *after taking into account all the relevant material which he has gathered,* → *shall by an order in writing,* → *after giving the person, an opportunity of being heard* → *make an assessment to the best of his judgment* → *determining the sum payable by or refundable to the assessee on the basis of such assessment.*
77	→ *Failure to furnish any information or produce any documents called for by the CEO or appear before any CEO etc.* → *Failure to take registration.*	*Rs. 5,000 or Rs. 200 per day during which the offence continues, whichever is higher.*
	→ *Person required to pay tax electronically fails to do so* → *Failure to keep, maintain books of accounts or other documents* → *Issues incorrect or incomplete invoices or fails to account for an invoice.* → *Contravention of any provision for which no penalty is prescribed.*	*upto Rs. 5,000*

78	Tax not paid by reason of fraud etc. [As sec. 11AC in excise]	Not less than, but not exceeding twice, the service tax sought to be evaded. If service tax, interest and penalty are paid within 30 days of communication of order, penalty shall be 25%. *Provided that if the penalty is payable under this section, Section 76 shall not apply.*

29. Rule 6 of Service Tax Rules, 1994 (Pg. 192)

(1) Due Date for payment:-

Explanation:-

Gross amount *charged also includes,*

→ *"book adjustment and any amount credited, or debited, as the case may be,*
→ *to any account, whether called "Suspense Account" or by any other name,*
→ *in the books of account of a person liable to pay service tax,*
→ *where the transaction of taxable service is with any associated enterprise.*

30. Section 67 of Finance Act, 1994 (Pg. 197)

Explanation:-

Gross amount *charged also includes,*

→ *"book adjustment and any amount credited, or debited, as the case may be,*
→ *to any account, whether called "Suspense Account" or by any other name,*
→ *in the books of account of a person liable to pay service tax,*
→ *where the transaction of taxable service is with any associated enterprise.*

31. Section 71 of Finance Act, 1994 (Pg. 4)

(To be incorporated after Section 82 of Finance Act, 1994 at Page 196)

Service Tax Return Preparer

1. *The Board may frame a scheme enabling specified persons to prepare and furnish a return u/s 70 through a Service Tax Return Preparer authorized to act as such under the Scheme.*

2. *Scheme framed shall specify the manner in which the Service Tax Return Preparer shall assist the persons furnishing the return of income.*

3. *The scheme shall provide:-*

- *the manner in which a Service Tax Return Preparer shall be authorized,*
- *educational and other qualifications to be possessed,*
- *training and other conditions to be fulfilled by a person to act as a Service Tax Return Preparer,*
- *the code of conduct for the Service Tax Return Preparer,*
- *the duties and obligations of the Service Tax Return Preparer.*

32. Changes in Existing Services

1. "**Consulting engineer**"

→ Who is professionally qualified
→ Includes any firm, body corporate
→ advice, consultancy or technical assistance.
→ in one or more disciplines of engineering.
→ including hardware and *software* engineering.

Cess paid on transfer of technology under Research and Development Cess Act is also exempt.

2. Technical testing & analysis

→ physical, chemical, biological

→ or other scientific testing or analysis of goods or material or *information technology software* or any immovable property.

→ includes clinical testing of drugs and formulation

doesn't include

→ testing of humans beings or animals for identification or prevention of any disease.

→ Service related to Water quality testing undertaken by Laboratories run by Government.

→ Testing of newly developed drugs or vaccines by approved clinical research organisation.

3. Cargo Handling service

Means

→ packing

→ loading,

→ unloading,

→ or unpacking

and includes

service of packing together with transportation of cargo, with or without one or more of other services like loading, unloading, unpacking.

does not include

✓ export cargo or

✓ passenger baggage, Passenger baggage includes unaccompanied baggage or

✓ handling of agricultural produce or

✓ goods to be stored in cold storage.

4. Business auxiliary service

(a) Promoting, marketing goods or services *including game of chance, by whatever name called*,

Issue of consignment note
Rule 4B

Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the *recipient of service*:

5. Banking and other financial services

→ banking co. or a financial institution including NBFC or commercial concern

→ cover following services

✓ leasing, transfer of money in any mode

✓ services rendered as banker to an issue, merchant banking services,

✓ securities and forex broking, *purchase and sale of foreign currency, including money changing.* (by any person), *whether or not the consideration for such sale or purchase is specified separately.*

✓ asset management including portfolio management

✓ advisory and other auxiliary financial services including and portfolio advice,

✓ advice on mergers and acquisitions and on corporate restructuring and strategy;

✓ provision and transfer of information and data processing,

- ✓ cash management and chit fund
- ✓ other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts.

➢ *Option to pay tax @ 0.25% of gross amount of currency exchanged in case of services in relation to purchase and sale of foreign currency. However this option is not available is not available in cases where the consideration for service is shown separately in the invoice.*

Example -

Buying Rate $US 1 = Rs. 38
Selling Rate $ US 1 = Rs. 40

(i) Person exchanged $100 for equivalent rupees
Transaction Value = Rs. 3,800 (Rs. 38 x 100)
Service Tax Payable = Rs. 9.5 (0.25% x 3,800)

(ii) Person exchanged equivalent rupees for $100
Transaction Value = Rs. 4,000 (Rs. 40 x 100)
Service Tax Payable = Rs. 10 (0.25% x 4,000)

➢ Any services provided to Govt of India or state govt. in relation of collection of any duties or taxes levied by such govt. shall be exempt.

➢ value of taxable service provided in relation to,-
(a) overdraft facility;
(b) cash credit facility; or
(c) discounting of bills, bills of exchange or cheques,
equal to interest on such overdraft, cash credit, shall be exempt if shown separately.

List of 32 services applicable for November 2009 attempt.

As per the announcement by ICAI only the following 32 services are applicable for November 2009 exams.

Intellectual Property Services

1. Franchise services
2. Intellectual property services

Financial services

3. Banking &other financial services
4. Credit rating agency's services
5. Stock broking services

Transport of goods services

6. Goods transport agency's services
7. Courier services
8. Mailing list compilation and mailing services
9. Transport of goods by air services
10. Clearing and forwarding services
11. Cargo handling services
12. Customs house agent's services
13. Storage and warehousing services
14. Transport of goods through pipeline or other conduit
15. Transport of goods in containers by rail by any person, other than government rail way

Professional Services

16. Practising chartered accountant's services
17. Management or business consultancy services
18. Consulting engineer's services
19. Scientific and technical consultancy services
20. Technical testing and analysis services
21. Market research services
22. Opinion poll services
23. Public relations services

Real estate &infrastructure services

24. Construction services in respect of commercial or industrial buildings or civil structures
25. Construction services in respect of residential complexes
26. Architect's services
27. Real estate agent's services
28. Site preparation and clearance, excavation, earthmoving and demolition services
29. Interior decorator's services

Business services

30. Business auxiliary services
31. Business support services
32. Manpower recruitment or supply agency's services

RECENT CASE LAWS

There is no need to remember the names of the case laws.

EXCISE

Basic Concepts

1. XYZ Ltd. manufactured crayons. During the course of production an intermediate product known as crayplas compound was manufactured.
The Department had evidence to show that one of the competitors of XYZ Ltd. i.e. ABC Ltd. had been importing into India a product identical to the crayplas manufactured by the assessee and hence, crayplas was marketable. Is the department's contention correct?

Ans. Yes, the contention raised by department is correct.
In the famous case of DCM Supreme Court held that
To attract duty the goods must be marketable. The word marketable signifies that capability of being bought and sold.
The department has evidence to prove that one of the major manufacturers was importing the same product. It was observed by the Apex Court that when one of the major manufacturers in the country was importing this material, the marketability of the material was established.
Very recently in the case of

Camlin Ltd.

the Supreme Court has decided that *once it is shown that a product had actually been brought, marketability gets established.* Therefore, XYZ Ltd has to pay excise duty on crayplas manufactured by them.

2. M/s ABC Ltd. is manufacturer of pipes. They make pipes of different dimensions. They have got an order to manufacture pipes of a specific length. To meet this order they carry out a process of joining of three pipes of different diameters with one another to obtain the desired length. This is done by a process of welding of pipes. The department is of the view that the process of welding to obtain the desired length will also amount to manufacture. Do you agree?

Ans. No, I do not agree with the department's view.
As per the famous judgment in the case of DCM, the Supreme Court held that

→ Manufacture implies a change but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation.
→ But something more is necessary and
→ there must be some transformation;
→ a new and different article must emerge
→ having a distinctive name, character or use.

Therefore only because some change has been brought in an article by any process, that process will not automatically become manufacture. The process should bring such change in the article that an entirely new product emerges which was not previously present.
In the case of

Hindustan Poles Corporation

Supreme Court held that ***The process of mere joining of three pipes of different diameters with one another to obtain the desired length does not amount to manufacture.*** The pipes do not lose their original character, and get converted into something, which is a commercially distinctive product. Pipes/poles do not lose their original character and identity as pipes. The pipes retain their character as pipes, hence, no process of manufacture as per Section 2(f) of the Central Excise Act is carried out.

3. The assessee was engaged in the activity of cutting/ slitting of jumbo rolls of toilet/ tissue paper of a width exceeding 36 cms. The jumbo rolls were purchased on payment of excise duty from various suppliers. The process undertaken by assessee reduced the width of the jumbo rolls to less than 36 cms. The rolls with width less than 36 cms and 36 cms and more were covered under two different headings. Does the activity of cutting/ slitting amount to manufacture?

Ans. No, the activity of cutting/ slitting does not amount to manufacture. As per the famous judgment of the Supreme Court in Delhi Cloth & General Mills Co.

- ✓ Manufacture means bringing a change in an article but every type of change cannot be treated as manufacture.
- ✓ something more is necessary
- ✓ there must be some transformation
- ✓ A new and different article must emerge
- ✓ having a distinctive name, character or use.

Therefore, only because some change has been brought in an article by any process, that process will not automatically amount to manufacture. The process should bring such change in the article that an entirely new product emerges which was not previously present.

Very recently the Apex Court has held in the case of

S. R. Tissues

that ***slitting/cutting of jumbo rolls of plain toilet paper into smaller size would not amount to manufacture*** as its character and end use viz., household purposes, have not undergone any change on account of winding, cutting/sitting and packing.

4. During the process of manufacture of butachlor, two intermediate chemicals viz., DECA and CMBE are formed. The Revenue contended that these intermediate products were liable to excise duty as they were "*coming into existence*" and were *stable.* Further, they were *mentioned in* Chapter 29 of the *CETA*, 1985. The Department had brought on record the test report of a chemical examiner, according to which both the products DECA and CMBE were organic chemicals. ***It was stated that since the sample was tested, this showed that the products were stable and had adequate shelf life and thus, could be brought to the market for sale.*** This, according to the Department fulfilled the test of marketability. Discuss whether these intermediate chemicals are liable to excise duty or not.

Ans. No, the contention of the revenue is not correct if the department is not able to prove that wash is marketable.

In the case of Moti Laminates (SC)

it was held that intermediate goods produced and used for captive consumption are not liable to duty if not marketable.

In the case of Ambalal Sarabhai the apex court held that the goods with unstable character can be theoretically marketable if there was a market of such transient type of articles. Therefore even those items which have very short life can be treated as goods provided they are capable of being marketed during that short period. In the case supra it was also held that onus to establish that an article is movable and marketable is on the department.

The only piece of evidence produced by the Revenue was a test report, which merely, stated that the items were organic chemicals. ***This did not in anyway establish marketability as marketability could not be established on the basis of mere stability.*** Sufficient proof that product was commercially known as such, was also necessary. Thus, DECA and CMBE were not liable to excise duty.

Recently Supreme Court has given a similar view in the case of **Gujrat Nermada Valley Fertilizers** and had held that marketability cannot be established merely on the basis of stability.

5. M/s FLC cleared condensing units from their unit in Delhi to Mumbai, where they purchased cooling units from local manufacturers fabricated on order with motors, etc., supplied by the appellant. After carrying out certain tests for quality the complete unit was cleared to various customers from their warehouse/ godown at Mumbai. The invoices were raised by the appellant's Mumbai office for supply of split air-conditioners. The assessee contended that their is no manufacture at the Mumbai Branch. Is the assessee correct?

Ans. No, the view taken by the assessee is not correct.

It is very well settled by various judgments of Supreme Court that any process would amount to manufacture within the meaning of section 2(f) only if a new product having a distinctive name, character or use has emerged. DCM(SC).

If new products have a character and use which it did not bear earlier then the process would amount to manufacture.

In the given case condensing units were manufactured by the appellant at its factory at New Delhi and the cooling units were procured from the local market for which the electrical motors were supplied by the appellant. Neither the condensing unit nor the cooling unit by itself is a complete air conditioner. It is only when these two, i.e. condensing unit and cooling units are put together the complete unit of air conditioner fit for use came into existence.

Recently in the case of

Fedders Llyod Corporation

the Apex Court gave a similar judgment that Air-conditioner is a commercially new article than either the condensing unit or cooling unit.

6. Assessee manufactured C. I. castings which were captively consumed for producing C. I chilled rolls. These Chilled Rolls were exempted from payment of excise duty. Revenue alleged that since the final product was exempt from payment of duty, excise duty will have to be paid on the intermediate goods. Assessee in reply had taken the point that C.I. castings which are intermediary product were not marketable and, therefore, excise duty could not be levied. Discuss.

Ans. Demand of excise duty by the department is not justified.

1. In the famous judgment of DELHI CLOTH AND GENERAL MILLS CO. LTD Supreme Court held that to be treated as goods the article must be marketable.
2. Although Marketability does not depend on the actual use or sale of goods [Indian Cable Co. (SC)].
3. Similar view was taken by the SC in the case of [Moti Laminates (SC)]. It was held that intermediate goods are dutiable if marketable.

Therefore marketability is decisive test of dutiability i.e. article must be capable of being sold.
And the test is required to be applied in case of intermediate goods as well.

Also in the case of

AMBALAL SARABHAI ENTERPRISE

it was held that the Onus of proof that goods are marketable is on department.

In the given case the department could not prove that the C. I. castings produced by the assessee and used captively is marketable. Therefore no duty can be levied on the C. I. castings. A similar judgment was given by the Supreme Court in the case of

WHITE MACHINES

where it was held that where there is no record regarding the marketability of the product, excise duty could not be levied on intermediate product.

7. M/s X had fabricated at site centralized air conditioner, refrigerator plant and cold storage plant from duty paid bought out goods. The department contended that such fabrication amounts to manufacture of a new marketable commodity and therefore, excise duty shall be levied. Discuss.

Ans. The contention of the department is unreasonable.

Excise duty is leviable on goods alone. But there is no definition of the term 'goods' in the Central Excise Act.

The principle enunciated by the supreme court in the DCM case has stood the test of time, in which it was held that goods means something which is capable of being brought to the market to be bought and sold.

If any goods installed at site (example paper making machine) are capable of being shifted as such, without dismantling into its components/parts, the goods would be considered to be moveable and thus dutiable.(Order No. 58/1/2002).

Similar judgment was given in the case of **Virdi Brothers** in which the Supreme Court held that refrigerator, air conditioner are basically systems and not machines. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the ***refrigerator/ air conditioning system cannot be considered to be excisable goods***.

8. Mr. A is engaged in the manufacture of Aluminium Billets from Aluminum Ignots and is consuming it captively for the manufacture of Aluminium Irrigation Pipes exempted from payment of duty. The assessee is also selling the said commodity in open market after paying excise duty. The department has contended that conversion of Aluminium Ignots into Aluminium Billets during the intermediate stage by the process of re-melting and adding other alloys amounts to manufacture. Is the department's contention correct?

Ans. Demand of excise duty by the department is absolutely justified.

In the famous case of DCM Supreme Court held that there must be some transformation; a new and different article must emerge having a distinctive name and character or use.

In the given case the assessee is not only captively consuming Aluminum Billets but is also selling them in open market. Therefore Aluminium Ignots and Aluminum Billets are two different commercial commodities. As the process of conversion brings into existence a new product which did not exist earlier then such conversion would amount to manufacture.

Very recently the Apex Court held in the case of **Mahavir Aluminium Ltd.** that ***conversion of Aluminium Ignots into Aluminium Billets during the intermediate stage will amount to manufacture.***

9. M/s ABC is engaged in the business of purchasing various spices. They grind all the spices first and mix them to produce 'masala powder'. The department has raised a demand notice considering such grinding and mixing as manufacture. Is the department correct?

Ans. Yes, the Central Excise Department is justified because the process of mixing and grinding amounts to manufacture as a new product has emerged.

It is very well settled by various judgments of Supreme Court that any process would amount to manufacture within the meaning of section 2(f) only if a new product having a distinctive name, character or use has emerged. DCM(SC)

If new products have a character and use which it did not bear earlier then the process would amount to manufacture.

An identical judgment was given by the Supreme Court in the case of **A. P. Products** where it was held that after grinding and mixing, ingredients loose their own identity/ character and a new product separately known to commercial world comes into existence. Thus, such ***preparation of 'masala powder' would amount to manufacture*** and hence shall be liable to excise duty.

10. M/s XYZ is engaged in the business of export of tea. It purchases tea of diverse grades and brands and blends the same by mixing different kinds of tea. The department has raised a demand notice considering this blending of tea as manufacture. Is the department correct?

Ans. No, the department is not justified in raising a demand notice on the assessee as for a process to be termed as manufacture a new and distinctive commodity must come into existence.

In the famous case of DCM Supreme Court held that
there must be some transformation; a new and different article must emerge having a distinctive name and character or use.

Therefore if the process is such as that it brings into existence a new product which did not exist earlier then the process would amount to manufacture.

The manufacture of tea happens in tea gardens when the tea leaves are plucked from tea bushes and are converted into tea by various mechanical processes.

The Supreme Court has recently decided in the case of
Tara Agencies
that ***blending of tea is not manufacture but is mere processing of tea.***

Therefore the department cannot hold the process of blending as that amounting to manufacture.

11. The assessee was engaged in the manufacture of de-natured Ethyl Alcohol and during the manufacture of de-natured Ethyl Alcohol, a residue known as spent wash comes into existence and the same is reacted in a closed type digester and Methane gas is produced which, in turn, is used by the respondent as fuel in distillery. The revenue issued a notice imposing duty on the Methane gas produced by the assessee and used captively. Assessee took a stand that Methane gas produced by it is not marketable and, therefore, no excise duty could be levied on the same. Is the assessee correct?

Ans. Yes, the contention raised by the assessee is correct.

As per the Supreme Court judgment in
BHOR INDUSTRIES
marketability is an essential ingredient in order to attract excise duty on the excisable goods under the schedule to the Central Excise Tariff Act.

An article does not become liable to excise duty merely because of its specification in the schedule to the Central Excise Tariff Act unless it is salable and known to the market.

Also in the case of
AMBALAL SARABHAI ENTERPRISE
it was held that the Onus of proof that goods are marketable is on department.

In the given case the department could not prove that the methane gas produced by the assessee is marketable. Therefore no duty can be levied on the methane gas.

A similar judgment was given by the Supreme Court in the case of
GURDASPUR DISTILERY
where it was held that since the **Revenue had not been able to lead any evidence to show that the goods in question are marketable, in the absence of the same, it cannot be held that Methane gas was marketable and consequently was not liable to duty**.

Valuation - Excise

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

Ans. Yes, the department is partly correct in including the value of subsidies in assessable value.

As per Rule 6 of Excise Valuation Rules, 2000

- ✓ Where the price is not the sole consideration for sale,
- ✓ the value of such goods shall be deemed to be
- ✓ the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

The board has clarified under Rule 6 that the additional consideration should flow directly or indirectly from the buyer to the seller.

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

A similar judgment was given by the Supreme Court in the case of

Mazagaon Dock Ltd.

where the subsidy received from the buyer directly/indirectly was included in the assessable value.

2. The registered office of Mr. A and one of his bulk buyers is located in the same premises. The ***factory of Mr. A was located in the same industrial area owned by such bulk buyer, for which Mr. A used to pay a suitable rent. Mr. A gave 40% discount to the said bulk buyer***. The department questioned this discount on the ground that the two parties were related. Discuss the validity of department's contention.

Ans. The department's contention is wrong and the discount shall be allowed as deduction.

As per Section 4(3) (b) of Central Excise Act, 1944

Persons shall be deemed to be related if –

(i) they are inter connected undertakings; or

(ii) they are relatives; or

(iii) amongst them the buyer is a relative and a distributor of the assessee or

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

In the very famous judgment of ATIC Industries, Supreme Court had held that Interest should be of financial nature and the interest should be mutual i.e. both manufacturer & buyer should have interest in one another's business. However degree of interest is irrelevant.

In the given case since there is no evidence of any mutuality of interest between the two parties, they would not be deemed to be related just because there registered offices were situated in the same premises and manufacturing unit of Mr. A was situated in the same area owned by the buyer. Further there was no evidence that Mr. A received anything extra from the bulk buyer other than the price charged. Thus there was nothing wrong in giving 40% discount to the bulk buyer.

Very recently Supreme Court has given out a similar judgment in the case of **Damnet Chemicals** Pvt. Ltd. and had allowed the discount of 40% as deduction from the assessable value.

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

Ans. In my opinion the contention raised by the department is not sustainable in law.

As per Section 4(3)(d) of the Central Excise Act, 1944 transaction value means

- ✓ The price actually paid or payable for the goods.
- ✓ Includes any amount, which the buyer is liable to pay to the assessee or on behalf of assessee.
- ✓ The amount may be payable whether at the time of sale or at any other time.
- ✓ The amount payable should be by reason of or in connection with the sale.

As per <u>Circular No. 354/81/2000</u>

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

Therefore, ***<u>the discount given to majority of buyers shall be allowed as deduction.</u>***

A similar view was taken by the Supreme Court in the case of **<u>Elgi Equipments Ltd</u>**. where it was held that the department did not have evidence to prove that the additional 12% discount is given for those buyers who are related to the assessee. The discount of 20% is given to 90% of buyers, so the normal rate of discount shall be 20% and not 8% and hence, discount of 20% shall be allowed as deduction.

4. The appellant is engaged in manufacturing refrigerators. The CBEC has issued a notification according to which the refrigerators in pre packed form are covered up under SWMA Act. The department contended that the valuation of refrigerators shall be done according to section 4A of the Central Excise Act. The assessee is not denying the fact that the valuation shall be done as per section 4A, if SWMA act applies to him. The contention of the assessee is that he is not required to print the MRP on the package of the refrigerator since the refrigerators manufactured by him is not in pre packed form because before being sold they are required to be opened for testing so SWMA Act does not apply in this case. Is the contention of the assessee correct?

Ans. No, the contention of the assessee is not correct.

As per

<u>Section 4A of Central Excise Act, 1944</u>

Valuation based on MRP shall be applicable on those goods which are

(i) Notified by CG and Sold in pre-packed form.
(ii) on which retail sale price is required to be declared on its package.
(iii) Covered up under the Standards of Weights and Measures Act.

Even if the package of the refrigerator is required to be opened for testing, even then it would continue to be a "Pre- Packed" commodity. So, the refrigerators manufactured by the assessee are covered under SWMA.

A similar judgment was given by the Supreme Court in the case of

<u>WHIRLPOOL OF INDIA</u>

where it was held that **where the goods are covered under SWMA Act, the assessee is required to declare the Retail sale price on the package and the valuation of such goods shall be done as per section 4A**.

5. As per

Section 4A of the Central Excise Act, 1994

(1) Notified by CG and Sold in pre-packed form:-

→ The Central Government may, by notification in the official gazette
→ specify any goods
→ on which retail sale price is required to be declared on its package under the Standards of Weights and Measures Act or under any other law.

(2) AV u/s 4A:-

If the goods are specified under sub-section (1) then,
→ notwithstanding anything contained in section 4,
→ such value shall be deemed to be
→ the retail sale price declared on such goods less abatement notified by central government.

With respect to the above section following principles were enunciated by the Supreme Court in the famous judgment of

JAYANTI FOOD PROCESSING (P) LTD.

(a) where the assessee sold four litre ice cream packs to hotels which ultimately sold the ice cream in scoops (not the package) to the individuals, the same packages sold by the assessee could not be termed as retail packages. Therefore, there was no requirement of mentioning RSP on the package and thus Section 4A shall not apply to the sale.

(b) The assessee sold telephone instruments to Department of Telecommunication, MTNL and BSNL who in turn provided such instruments to general public on rental basis. In such case the sale of telephone instruments would be retail sale and hence covered u/s 4A. The contention raised by the assessee that the sale was not made to ultimate consumer was not correct.

(c) Refrigerators were sold to bottling companies like Pepsi, Coca Cola etc., packed in a package declaring MRP on them. However, MRP and contract price were different. It was held that duty should be paid on MRP and not on contract price and hence assessment should be done under section 4A of the Central Excise Act, 1944 and not under Section 4.

(d) The assessee sold 12 mineral water bottles packed in a single pack. The MRP was written on the single pack and not on individual bottles. Instead, on each bottle it was written (a) not for re-sale (b) specially packed for Jet Airways. Supreme Court held that the single pack sold by the assessee would not qualify as wholesale pack, rather it will be considered as a retail pack and hence the assessment should be made under section 4A of the Central Excise Act.

6. The assessee, a manufacturer is not selling the goods produced by him but captively consumes the same. The department has contended that the assessee has to pay excise duty on the basis of Rule 8 of Excise Valuation Rules, 2000. Thus, the department has taken the AV as 110% of cost of production. The assessee is of the opinion that since his unit has been incurring loss, Rule 8 shall not be applied. Discuss.

Ans. The view taken by the department is absolutely justified.

Valuation of the given case shall be done according to Rules made under section 4(1)(b) as the goods are not sold rather used for captive consumption.

Rule 8 of central excise valuation (Determination of price of excisable goods) rules, 2000 deals with the situation where goods are used for captive consumption.

According to which value of goods used for captive consumption shall be <u>110% of the cost of production.</u>

Also, the board has clarified that cost of production shall be determined as per the principles of CAS-4 issued by ICWAI.

For simplification, law maker introduces a fixed amount which may be less than or more than the actual amount. As per the principles for interpretation of statues if the notional amount is introduced then actual amount becomes irrelevant.

The Apex Court also took an identical view in the case of <u>GTC Industries</u> where it was held that ***<u>once notional amount is introduced, actual data is of no relevance</u>***. Hence, department is absolutely correct in assessing the goods as per Rule 8.

7. An assessee is engaged in the manufacture of Ayurvedic medicines which are covered under the SWMA and sold by him to hotels. The hotels in turn, don't sell but, distribute it to their customers individually. The contention of the department is that since the medicines manufactured by him are covered under the SWMA, Retail sale price is required to be declared on it and the valuation of these medicines shall be done under section 4A. But the assessee is of the opinion that since the medicine is not sold in retail but is sold to hotels; section 4A shall not apply to these medicines. Is the contention of the assessee correct?

Ans. No, the contention of the assessee is not correct.

As per

<u>Section 4A of Central Excise Act, 1944</u>

Valuation based on MRP shall be applicable on those goods which are

(i) Notified by CG and Sold in pre-packed form.
(ii) on which retail sale price is required to be declared on its package.
(iii) Covered up under the Standards of Weights and Measures Act.

In the given case the hotels don't use the medicines as their raw material. The hotel merely distributes the medicines. Since there was no special exclusive packing or servicing of hotel industry the sale of medicines to hotels will be termed a retail sale. Thus, Section 4A of Central Excise Act, 1944 shall be applicable.

A similar view was given by the Supreme Court in the case of

<u>ISHAAN RESEARCH LABORATORIES P. LTD.</u>

where it was held that **for goods to be covered under section 4A, the goods need not actually be sold in retail**.

8. The assessee is engaged in the manufacture of Nylon which is manufactured in its factory in U.P. and cleared to its various Depots situated all over India. Turnover Tax was leviable on relevant sale at dual rate of 0.5% for sales in backward areas and at 2% for normal area sales. The concession of 1.5% was given by way of an exemption notification. However the assessee claimed deduction of tax under Section 4 of Central Excise Act, 1944 @ 2% for the entire clearance of goods. Is the assessee correct?

Ans. No, the assessee is not correct.

As per

<u>Section 4(3)(d) of the Central Excise Act, 1944</u>

transaction value means the price actually paid or payable for the goods.

but does not include excise duty, sales tax and other taxes, actually paid or payable on such goods

By the amount of duty of excise what is meant is effective duty of excise payable on such goods under the Act, hence, effective duty of excise is duty calculated on basis of prescribed rate as reduced by exemption notification. Therefore the assessee has to deduct tax @ 2% in respect of other area sales and @ 0.5% for backward area sale.

A similar judgment was given by the Supreme Court in the case of

MODIPON FIBRE COMPANY

where it was held that **in computing the assessable value, one has to go by the actual value of the duty payable** and, therefore, only the reduced duty was deductible from the value of the goods cleared for backward area sale.

9. M/s MUL manufactured cars. They discharged duty liability by including cost of normal two years warranty in the assessable value of the manufactured cars. By way of a separate agreement, they offered a warranty for third and fourth year, which was optional in nature. The department contended that the cost of warranty for third and fourth year shall be includible in the assessable value of the cars. Do you agree?

Ans. No, the argument given by the department is not tenable in law.

As per Section 4(3)(d) of CEA,

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 assessee

→ by reason of or in connection with the sale.

In the given case the extended warranty was optional; it was not a condition of sale. The sale of the car and sale of extended warranty were two different businesses, which had no direct or proximate connection. Thus only the first sale transaction is relevant for the purpose of valuation of manufactured goods.

A similar judgment was given by the Supreme Court in the case of Maruti Udyog Ltd. where it was held that cost of extended warranty was not includible in the assessable value of the cars.

CER & CCR

1. The assessee claimed certain exemption, which was available subject to non availment of Cenvat credit. The assessee initially availed the Cenvat credit, but before utilization reversed the same. The department denied the exemption contending that once Cenvat credit is availed, the condition of exemption is violated and no exemption is available even if the Cenvat credit is reversed. Is the department correct?

Ans. No, the contention raised by the department is not correct.

Availment and utilization of credit are two different stages and the two cannot be interchanged. In the given case the assessee, although, availed the credit but he reversed it before its utilization. Thus reversal of credit amounts to not taking credit. Therefore, the assessee was entitled to the exemption.

A similar view was taken by the Supreme Court in the case of Bombay Dyeing & Mfg. Co. Ltd. where it was held that the act of reversal of credit by the assessee before utilization thereof amounts to non-availment of Cenvat credit.

2. Mr. A applied for registration of his factory in the prescribed manner under Rule 9 of the Central Excise Rules, 2002. However, the application was rejected by the department on the ground that the earlier holder of the registration certificate had not paid their outstanding dues and failed to surrender their registration certificate with Respect to the same factory premises. Thus, it was contended by the revenue that no other unit in the same premises could be registered under the rules unless the original registration was deregistered or cancelled or surrendered by such registrant and all excise dues cleared. Do you agree with the department?

Ans. Yes, the department is correct in not accepting the application for registration.

As per Rule 9 of Central Excise Rules, 2000

Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered.

However, Rule 9(3) prescribes certain conditions for registration and one of the conditions contained therein states that, whenever a business is transferred, fresh registration is required to be taken by the assessee and whenever a manufacturer ceases to carry on his business, he should apply for de-registration.

In the given case, the earlier holder has not applied for de-registration and hence, fresh registration cannot be done for the same premises.

A similar judgment was given by the Bombay High Court in the case of

Manibhadra Processors

where it was held that ***the person holding earlier registration certificate must surrender registration certificate in respect of that premises, then only, a new person could get registration in respect of that premises.***

3. Mr. A has been selling goods from his registered premises at Delhi. He issues all the invoices from that premise. Now he has shifted to Noida and issues the invoices from that place. The buyer of the goods had taken the credit of duty paid on the basis of the invoice issued from such previous premises. The department had raised a demand notice on the buyer alleging that he was not allowed to take credit on the basis of the invoice which was issued from such premise. Is the department correct?

Ans. No, the contention raised by the department is not sustainable in law.

Rule 9(1) of Cenvat Credit Rules, 2004 states that Cenvat credit can be taken on the basis of an invoice issued by a manufacturer for clearance of inputs or capital goods from his factory or from his depot or from the premises of the consignment agent.

Therefore, credit can be allowed to the buyer of the goods on the basis of the invoice issued from the previous premises.

A similar view was taken by the Punjab & Haryana High Court in the case of Myron Eletricals Pvt. Ltd. where it was held that ***the manufacturer can avail credit on inputs on the strength of invoices issued by a dealer from the premises other than for which Central Excise registration has been granted.***

4. M/s ABC manufacture certain products which are chargeable to 16% rate of excise duty. M/s ABC inadvertently paid duty at the rate of 24%. The manufacturer sells goods to M/s PFL. The buyer of the goods wants to avail credit of duty that was paid by the manufacturer. The revenue contended that the M/s PFL could only take credit of duty that should have been paid i.e. @ 16%. Discuss whether the department's contention is correct or not?

Ans. No, the contention raised by the department is not correct.

As per Rule 3 of CCR, 2004

assessee can take credit of duty paid on the inputs, capital goods or input services used in the manufacture of the final products.

It is a settled law that the duty paid by the manufacturer is eligible to be taken as credit at the receiver's end.

In the given case M/s ABC has paid duty @ 24%. Since the department did not initiate a dispute at M/s ABC's end, the Central Excise Authorities having jurisdiction over M/s PFL cannot dispute the duty liability of M/s ABC and cannot restrict the credit on the ground that inputs manufacturer should have paid lesser amount of duty.

Very recently in the case of

Purity Flexpack Ltd.

the Gujarat High Court has a similar judgment where it was held that the buyer of goods can take credit of duty paid at a higher rate.

5. M/s ACL had to shift its factory from Kalyanpuri to Greater Kailash. It transferred its input and capital goods to the new site. The inputs, capital goods and the balance of unutilized CENVAT credit were duly received and accounted for in the registers of the new unit. The balance of unutilized CENVAT credit transferred was Rs 6,00,000. However, the CENVAT credit corresponding to inputs and capital goods transferred to the new site amounted to Rs. 4,50,000 only. The Department contended that M/s ACL was entitled to transfer only Rs 4,50,000 of CENVAT credit and not the entire balance of unutilised credit of Rs. 6,00,000. Do you agree with the department?

Ans. No, the contention raised by the department is not correct.

As per

Rule 10 of Cenvat Credit Rules, 2004

1) If a manufacturer or output service provider shifts his factory account of change in ownership, sale, merger, lease, amalgamation or transfer to a joint venture

2) then the manufacturer or the output service provider shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such new factory or business

- → If there is a specific provision for transfer of liabilities of such factory
- → the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business to the new site or ownership and
- → the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the *Assistant* Commissioner or *Deputy* Commissioner.

In the given case the inputs, capital goods and the balance of unutilized CENVAT credit were duly received and accounted for in the registers of the new unit. All the above conditions have been complied with. Further there is not such condition that the credit shall only be allowed of that part which corresponds with the inputs and capital goods transferred. Thus the entire credit of Rs. 6,00,000 shall be allowed.

Similar view was taken by the Madras High Court in the case of

Commissioner of Central Excise, Pondicherry Versus CESTAT

where it was held that the **entire credit available to the assessee can be taken if all the conditions specified in Rule 10 of CCR, 2004 are complied with**.

6. LMP Ltd. uses cement in constructing foundation for machinery and as a building material. LMP Ltd. wants to avail CENVAT credit of duty on such cement. Can LMP Ltd. avail such credit?

Ans. No, LMP Ltd. cannot claim credit of duty paid on cement used in constructing foundation for machinery.

As per

<u>Rule 2 of Cenvat Credit Rules, 2004</u>

Inputs mean all goods
- ✓ used in or in relation to the manufacture of final products
- ✓ whether directly or indirectly and
- ✓ whether contained in the final product or not.

Cement used as building material for laying foundation could not be directly or indirectly said to be an integral part in connection with the manufacture of final product.
Further, foundation made of cement would not fall under the category of capital goods also.

A similar judgment was given by the Rajasthan High Court in the case of

<u>HINDUSTAN ZINC LTD.</u>

where it was held that **LMP Ltd. cannot avail Cenvat credit of the duty paid on cement used in constructing foundation for the machinery and used as a building material**.

7. M/s BL is engaged in the manufacture of both dutiable and exempted final products. He transfers the final products to his depot. The department issued a show cause notice saying that M/s BL is required to pay 10% of sale price of exempted final product. M/s BL contends that he is not selling the final product but is just transferring the goods, so he is not required to pay an amount equal to 10%. Discuss whether Rule 6(3) would apply when there is not sale but only stock transfer.

Ans. Yes, M/s BL will have to pay an amount equal to 10% of sale price of exempted final product.

As per

<u>Rule 6(3) of Cenvat Credit Rules, 2004</u>

A manufacturer opting not to maintain separate accounts shall follow either of the following conditions, as applicable to him, namely :-

(i) pay an amount = 10% of sale price of exempted final product or

Rule 6(3) is a provision which sought to recover presumptive amount @ 10% of the price of exempted final product at the time of removal for sale. The rate of 10% is a measure to calculate the presumptive sum. Thus, the words '10% of sale price of exempted goods' must be read as '10% of the value of exempted goods'.

The Supreme Court also gave a similar judgment in the case of

<u>BALLARPUR INDUSTRIES</u>

where it was held that **Rule 6(3) would apply to stock transfer as well.**

<u>SSI</u>

1. M/s. Superior Products and M/s. Superior Pets (P) Ltd., are small scale industries which have been granted SSI exemption. Show cause notices were issued on both to show cause as to why clearance of both the units should not be clubbed together as both the units had common Directors and that one person was looking after the affairs of both the units. It was alleged that second unit was created only to get the loan and did not have even complete machinery in its premises to manufacture the final product. Is the Show cause notice valid?

Ans. No, the show cause notice shall not be valid under law.

As per

N.No. 8/2003 as amended by N.No. 8/2007

In order to claim exemption, inter alia following conditions have to be followed

[1] The turnover of all factories of same manufacturer shall be clubbed.

[2] The turnover of one factory belonging to different manufacturer shall be clubbed and shall not be calculated for each manufacturer separately.

In the case of

Jagjivandas & Co (T)

it was held that Factors such as common expenses, common partners, common trade mark, sharing machinery, mutual financial transaction without interest are not enough to club clearances.

In the given case, the two companies have common directors. It does not in anyway show that both are related and are owned by a single manufacturer. Hence, the SSI status shall be available.

Recently the Apex Court also gave a similar judgment in the case of

SUPERIOR PRODUCTS

where it was held that **SSI exemption cannot denied where two companies are managed by common directors.**

2. M/s XYZ manufactures fan regulators and sells them in corrugated boxes under their own brand name which is affixed/printed on such boxes. However, after some time M/s XYZ starts printing hexagonal artistic design of its marketing company 'Super Sales' on such boxes along with its brand name. The said hexagonal shape/design is only printed on the visiting cards of the executives of the 'Super Sales'. The design printed on the letterhead and sales invoices of the 'Super Sales' is different. 'Super Sales' has not claimed that the hexagonal design belongs to them and that they have permitted M/s XYZ to use the same on their corrugated boxes.

The Commissioner of Excise contends that the benefit of small scale exemption would not be available to M/s XYZ as they are using a brand name of another person on their goods.

Is the department's contention correct?

Ans. No, department's view is not correct. Assessee can avail the benefit of said exemption notification

In the case of

BHALLA ENTERPRISES

Supreme Court has held that assessee will be debarred only if it uses on goods in question, the brand name with intention of indicating a connection with the assessee's goods and such other person or uses the name in such manner that it would indicate such connection. If assessee is able to satisfy the assessing authorities that there was no such intention it would be entitled to benefit of exemption.

In the given case M/s XYZ did not affix the said hexagonal artistic design with an intention to indicate a connection with 'Super Sales'.

The Supreme Court also gave a similar judgment in the case of

NIRLEX SPARES PVT. LTD.

where it was held that the **printing of hexagonal design on packing of the goods of assessee, where such design was not owned by the marketing company would not disentitle the assessee from the benefit of small scale exemption**.

3. The assessee was engaged in the manufacture of plywood. The CEO found that the assessee was also using others brand / logo "MERINO" along with own brand name "Pelican" on the plywood being manufactured by him and the officers of the Department entertained a view that as the logo of "MERINO" is also being shown on the plywood being manufactured by him, apart from his own logo of "Pelican", the assessee was not entitled to the benefit of exemption Notification. Is the department's contention correct?

Ans. Yes, Department's view is correct. Assessee cannot avail the benefit of said exemption notification as one of the conditions of this notification is that the goods manufactured by SSI should not bear the brand name of other person.

Very recently in the case of BHALLA ENTERPRISES supreme court has held that assessee will be debarred only if it uses on goods in question, the brand name with intention of indicating a connection with the assessee's goods and such other person or uses the name in such manner that it would indicate such connection. If assessee is able to satisfy the assessing authorities that there was no such intention it would be entitled to benefit of exemption.

From the facts given in the question, it appears that even though product contained brand name / trade name / logo of manufacturer, the product contains the brand name of other person which shows connection between assessee's goods and person using MERINO Logo.
Thus, assessee cannot avail the benefit of exemption.

Recently Supreme Court in the case of Emkay Investments (P) Ltd. held that assessee using brand / logo "MERINO" along with his own brand name "Pelican" on plywood manufactured by him ***cannot avail the benefit of SSI Exemption even though product also contained brand name/trade name/logo of manufacturer.***

4. The appellant were selling biscuits under the brand name "Meghraj". A SCN was issued alleging that the appellant had sold the biscuits under the brand name "Meghraj", which was a registered trade mark of Kay Aar Biscuits (P) Ltd. who was using the said trade mark on manufacture of biscuits themselves, and therefore, the appellant were not eligible to the benefit of SSI notification. The appellant had contended that he had applied for ownership of the brand name "Meghraj" and the registrar had issued registration certificate with retrospective effect. Discuss.

Ans. Yes, department's view is correct. Assessee cannot avail the benefit of said exemption notification as one of the conditions of this notification is that the goods manufactured by SSI should not bear the brand name of other person.

Very recently in the case of BHALLA ENTERPRISES supreme court has held that assessee will be debarred only if it uses on goods in question, the brand name with intention of indicating a connection with the assessee's goods and such other person or uses the name in such manner that it would indicate such connection. If assessee is able to satisfy the assessing authorities that there was no such intention it would be entitled to benefit of exemption.

In the given case discontinuation of business in respect of a product dies not necessarily amount to abandonment. The abandonment of the trade mark by the other company has to be proved by the appellants. The burden to satisfy the adjudicating authority that there was no intention of indicating a connection with the goods of the assessee and such other person was on the assessee.
Thus, the issuance of registration certificate with retrospective effect will not tantamount to conferment of exemption benefit under the Excise Law once it is found that the appellants had wrongly used the trade mark.

The Supreme Court also gave a similar judgment in the case of **Meghraj Biscuits Industries Ltd.** Where it was held that issuance of registration certificate with retrospective effect cannot allow the benefit of SSI exemption.

5. The appellant were using the brand name of another person. The brand name owner was not paying excise duty as his goods were exempt and was not registered with the excise department during the disputed period. The appellant contended that they were eligible for the small scale exemption as they were using the brand name of person who, according to the appellant, was entitled to the small scale exemption under the said exemption. Is the appellant's contention correct?

Ans. ***The Supreme Court held in the case of Super Delicacies that merely because the owner of the brand name manufactured goods which were exempt from excise duty, it did not mean that such owner was a small scale industry entitled to the benefit of the notification.*** Further, it could not be presumed that just because the owner of the brand name was not registered during the disputed period, it was a small scale industry during the period in question.

6. The assessee manufactured and cleared products on their own account and on job work basis for other parties. The goods manufactured for third parties bore the brand name of such third parties. The assessee availed the SSI exemption for goods manufactured on its account and took CENVAT credit of goods manufactured on job work basis. The department issued show cause notices on the assessee. Discuss.

Ans. NEBULAE HEALTH CARE LTD. (Tri. Chennai)

In SSI notification, while defining the term "aggregate value of clearances" for the purpose of determination of exemption, as well as eligibility limit (i.e. value of clearances during the preceding financial year), the value of clearances of the specified goods, bearing the brand names of other persons had been excluded, for the reason that manufacturers were required to pay full duty on such goods. Therefore, the Notification itself recognized that a manufacturer while availing the benefit of exemption under the said Notification could also manufacture goods bearing the brand name of other persons on which full rate of duty was payable. The assessee had correctly availed the exemption under the notification and the impugned order is passed on incorrect reasoning.

SSI unit not prohibited from availing CENVAT benefit for goods cleared under the brand name of third parties and full exemption for other specified good under the SSI notification.

7. The department has contended that the assessee were using the name of M/s. Grasim Industries Ltd. with the purpose of indicating a connection between the product i.e. the cement manufactured by them, and M/s. Grasim Industries Ltd. which is a well known cement manufacturer. In reply, it has not been denied that M/s. Grasim Industries Ltd. is a well known cement manufacturer. It has also not been denied that the purpose of putting the name "M/s. Grasim Industries Ltd." was to show a connection between the product and M/s. Grasim Industries Ltd. However, what has been contended is that the words "M/s. Grasim Industries Ltd." are neither a brand name nor a trade name. ***It is contended that mere use of the name of a company does not amount to using a brand name*** *or trade name of some other company. Do you agree with the department's contention?*

Ans. No, contention of Department is not correct. Assessee cannot avail the benefit of exemption under notification no. 8/2007 as this notification provides that clearance of goods bearing the Brand name of other person shall not be included in the calculation of limit of 150 lakhs/400 lakhs.

Very recently in the case of BHALLA ENTERPRISES supreme court has held that assessee will be debarred only if it uses on goods in question, the brand name with intention of indicating a connection with the assessee's goods and such other person or uses the name in such manner that it would indicate such connection. If assessee is able to satisfy the assessing authorities that there was no such intention it would be entitled to benefit of exemption.

And from the given facts it appears that this name indicated connection in course of trade between the product and 'Grasim Industries Ltd.' which is well known manufacturer.

On the basis of above discussion, assessee cannot avail the exemption.

Supreme Court in the recent case of

Grasim Industries

held that the brand name indicated a connection in course of trade between the products and 'Grasim Industries Ltd.', which is a well known manufacturer, and ***the exemption will not be available***

8. M/s. Electro Mechanical Engineering Corporation (for short, 'M/s. EMEC') was engaged in the manufacture of iron and steel structure, steel doors, windows and structure etc. On a surprise visit undertaken by the officers of the Central Excise Division, it was found that M/s. EMEC had floated two front units, viz., M/s. Cold Steel Corporation and M/s. Super Steel Corporation in order to fraudulently avail the benefit of SSI exemption. The revenue contended that since M/s EMEC had fraudulently claimed the SSI exemption, the same shall be withdrawn and penalty be levied. M/s EMEC stated that all the three units were in existence and were independent of each other. Each of the units was separately registered and there was no flow back of money from one unit to another and that they had not suppressed any facts from the Department. Also, the proprietor of M/s. EMEC was partner in the other two firms which were undertaking their business independently. Discuss.

Ans. M/s EMEC shall be allowed the benefit of SSI

As per the provisions applicable to a small scale industry, where a manufacturer clears the goods from one or more factories, the exemption in his case shall apply to the aggregate value of clearances and not separately for each factory.

However in the case of

JAGJIVANDAS & CO

it was held that Factors such as common expenses, common partners, common trade mark, sharing machinery, mutual financial transaction without interest are not enough to club clearances.

In the given case M/s EMEC and the other two units have common partner. The fact that the units have common partner is not enough to club the clearance.

A similar judgment was given by the Supreme Court in that case of

ELECTRO MECHANICAL ENGG. CORPN.

where it was held that **two or more units cannot be clubbed simply for the reason that they have common employees or adjoining premises**.

DEMAND & REFUND

1. The assessee is engaged in the manufacture of LPG gas stoves under the brand name 'Surya Flame' and are availing the benefit of small scale units. The assessee was not entitled to the benefit as the brand name belonged to some other industry. The respondent paid the duty before a show cause notice was issued. The department imposed a penalty under Section 11AC. The assessee deposited the duty along with interest and 25% penalty. The department contended that the assessee was liable to pay 100% penalty as no SCN was issued to him. Is the department correct?

Ans. No, the department is incorrect.

According to Section 11AC of Central Excise Act, 1944

- If duty u/s 11A and interest u/s 11AB is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the penalty shall be 25% of the duty so determined.
- To avail the benefit of reduced penalty, the penalty should also be deposited within the period of 30 days referred above.
- If the duty is increased or reduced the penalty shall be increased or reduced.

In the present case, the assessee had paid the duty before the SCN was issued. So there was no reason to levy a penalty of 100%.

Recently in the case of

Malbro Appliances,

the Delhi High Court gave a similar judgment that penalty of 25% will be levied.

2. The assessee used to label its product with a foreign brand name and claimed exemption under a notification. The classification list was approved by the department after carrying out verifications. The invoices containing description of goods were also regularly approved by department. The department denied the benefit of exemption to the assessee by invoking extended period of limitation under section 11A on the ground that it failed to declare the particulars regarding affixing of labels. Is the department justified?

Ans. No, the contention raised by the department is invalid.

This is because as per section 11A of Central Excise Act

Show cause notice has to be served within one year from the relevant date.

- → But it can be served within 5 years
- → if manufacturer had with the intention of evading payment of duty,
- → committed fraud, collusion or willful mis-statement or suppression of facts or contravention of any provisions.

Chemphar Drugs & Liniments (SC) It was held that conscious or deliberate withholding of information by manufacturer is necessary to invoke larger limitation of five years. If department had full knowledge or manufacturer had reasonable belief that he is not required to give a particular information then one year limitation is applicable.

And in the given case the assessee was under bona-fide belief that it was not liable to pay duty and it had not deliberately suppressed the facts.

Recently in the case of

Pahwa Chemicals Private Limited

the Apex Court held that since all facts were in knowledge of the department, there was no willful mis-declaration or willful suppression of facts. Therefore, extended period of limitation could not be applied.

3. M/s. ITC Ltd. manufactures cigarettes. It gets the work done also by way of job work through various factories. M/s ITC paid excise duty on provisional basis. The department issued a show cause notice before finalization of provisional assessment on the ground that M/s ITC had undervalued goods. The assessee contended that the show cause notice issued prior to the finalization was invalid. Discuss.

Ans. No, The show cause notice issued on M/s ITC Ltd. is not valid.

Section 11A (1) provides the time limit within which SCN must be served.

Time for issue of SCN

If any excise duty has not been levied or paid or short paid or erroneously refunded

→ Central Excise Officer may serve a Show Cause Notice

→ within *one year* (5 years in cases of fraud)

→ from the *relevant date*

→ to show cause that why he should not pay the duty.

If Department fails to serve the SCN within the aforesaid time limit, then demand becomes time-barred by limitation and no duty can be recovered in pursuance of such SCN.

Section 11A also provides the relevant date in case where the duty is assessed provisionally, is the date of adjustment after final assessment.

Therefore, a proceeding u/s 11A cannot be initiated without completing the assessment proceedings.

A similar view was taken by the Apex Court in the case of

I.T.C ltd.

where it was held that show cause notice issued before finalization of provisional assessment is not valid under law.

4. M/s RIL are engaged in the manufacture of gelatin. While manufacturing gelatin a by-product named mother liquor gets emerged. Mother liquor is an exempted product whereas gelatin is a dutiable commodity. The assessee contended that since the entire quantity of input is used in the manufacture of gelatin and the by-product gets emerged on its own, Rule 6 of CCR does not apply to him.

The mother liquor is in the nature of by-product and hence cannot be considered to be a final product manufactured by him. Do you agree with the contention of the assessee?

Ans. No, the contention raised by the assessee is not correct.

Rule 6 of CCR provides the obligations of manufacturer of dutiable and exempted final product. It does not make any distinction between an intended final product and unintended emergence of a by-product.

Rule 6(3)(b) provides that if the exempted goods are other than those described in clause (a) above, the manufacturer shall pay an amount equal to 10%of the total sale price of the exempted final product, excluding sales tax and other taxes, if any, paid on such goods.

The said rule in simple terms requires the assessee to pay an amount equal to 10% of the value of the goods cleared at NIL rate of duty, even where the inputs have been used in the manufacture of such final product.

A similar judgment was given by the Larger Bench of the Tribunal in the case of

Rallies India Ltd.

where it as held that where an input was used in manufacture of a dutiable final product and a non dutiable product gets emerged the manufacturer will be liable to pay 10% of the sale price of the non-dutiable product.

5. The assessee was engaged in the manufacture of both dutiable and non dutiable goods. As per Rule 6 of CCR, 2004 the assessee paid 10% of the sale price of the exempted final product to avail 100% credit of the inputs used in manufacture of exempted final product. The assessee then recovered this 10% from its buyers. The department was of the view that as per Section 11D, the assessee is required to deposit the duty collected by the buyer to the Central Government. Is the department correct?

Ans. No, the stand taken by the department is not correct.

As per Section 11D
every person who is liable to pay duty, has collected any amount from buyer as duty of excise in excess of duty assessed and paid, must pay the amount immediately to the credit of Central Government.

→ If the amount is not so paid, the officer may serve on such person a notice requiring to show cause why the said amount should not be paid by him.

→ Officer shall, after considering the representations made by such person, determine amount due.

In the present case the manufacturer does not retain any part of the duty collected from the buyer. Section 11D has application only when equivalent duty has not been deposited at the time of removal of goods from the factory. Therefore, the manufacturer cannot be made liable to pay the amount collected from the buyer.

The Larger Bench of the Tribunal has also taken a similar view in the case of Unison Metals Pvt. Ltd. Where it was held that since the 10% amount is already paid to the revenue, and the assessee does not retain any amount, Section 11D has no application.

6. Assessee is engaged in the manufacture of PSC girders at site to be used in the construction of Railway Bridge for konkan Railways during the period of June 2005 to February 2006 and the department was known with this fact. Assessee cleared these girders without payment of duty. A show cause notice was issued which was withdrawn and it issued another show cause notice on 8.5.2007 demanding duty and penalty. The assessee appeal before the CESTAT that the show cause notice was barred by limitation, as it is issued after a period of 1 year and the assessee also submitted that he is not liable to pay excise duty as the girders manufactured by him are not marketable. The CESTAT stated that the larger period of limitation is available. Is the second show cause notice valid?

Ans. No, the Second show cause notice is not valid, it is time barred.
As per

Section 11A of Central Excise Act, 1944

Time for service of SCN

If any excise duty has not been levied or paid or short paid or erroneously refunded

→ Central Excise Officer may serve a Show Cause Notice

→ within one year

→ from the relevant date

→ to show cause that why he should not pay the duty.

Extended Time period

→ Provided that period of one year shall be substituted by 5 years

→ if manufacturer had with the intention of evading payment of duty,

→ committed fraud, collusion or willful mis-statement or suppression of facts or contravention of any provisions.

In the case, As per the judgment of

Chemphar Drugs & Liniments (SC)

the larger period of limitation can be invoked only if there is deliberate withholding of information with the intention of evading payment of duty, and the assessee committed fraud, collusion or willful misstatement or suppression of facts or contravention of any provisions.

Here the department is aware of the fact that the assessee is manufacturing PSC girders and in the original show cause notice it was not contended that the assessee has misstated the fact that he is manufacturing PSC girders and the department was known of it.

Therefore, it was held in the case of

GEO TECH FOUNDATIONS

that the larger period of limitation shall not apply.

7. The assessee manufactured goods and cleared them on payment of excise duty. After the clearance of the goods the assessee came to know about the enhancement of the duty rate with retrospective effect. The assessee therefore calculated and paid the differential duty by issuing the supplementary invoice to the customer. The Department contented that since the goods were cleared earlier the entire duty was payable on the date of clearance of the goods. Therefore, interest u/s 11AB would be payable on the differential duty paid by the assessee voluntarily. Is the department correct?

Ans. No, the contention raised by the department is not correct.

As per

Section 11AB of the Central Excise Act, 1944

Where duty of excise has not been paid, short paid or erroneously refunded

→ the person who is liable to pay duty as determined under Section 11A

→ shall be liable to pay interest alongwith duty u/s 11A.

→ @ 10% to 36% p.a.

→ for the period,

✓ after end of month in which it was payable, or from the date of erroneous refund,

✓ till the actual payment.

The above section comes into play if the duty paid/levied is short. The assessee paid the duty on its own accord immediately when the revised rates became known to him. Though the differential duty was due at that time i.e. when the revised rates applicable with retrospective effect were learnt by the assessee which was much after the clearance of the goods, still the question of payment of interest would not arise as the duty was paid as soon as it was learnt that it was payable.

The instant case was not a case where duty of excise has not been paid or short-paid. Therefore the provisions of Section 11A were not applicable and hence section 11AB was not at all applicable. Therefore, interest cannot be levied.

A similar view was taken by the Madras High Court in the case of

MARIS SPINNERS LTD.

where it was held that **no interest would be payable on delayed payment of duty when differential duty is paid on own accord on retrospective revision of duty rate.**

APPEAL

1. The department issued a show cause notice on the assessee which the assessee challenged. The department filled an appeal against the assessee. The assessee contended that the department cannot file an appeal since the department had not preferred an appeal in similar cases earlier. Is the contention raised by the assessee correct?

Ans. No, the contention raised by the assessee is not correct.

Merely because in some cases the Revenue has not preferred appeal that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so.
Department may not file an appeal in cases involving small amount. Appeal may not be further preferred where effect of decision is revenue neutral. Thus, there is no bar for Revenue to prefer appeal in another case when same not preferred in some cases.

A similar judgment was given by the Apex Court in the case of
C. K. Gangadharan
where it was held that **non-filing of appeals in similar cases does not bar filing of appeal in other case**.

CLASSIFICATION

1. The assessee was a manufacturer of petroleum jelly and cleared his final product classifying it as a cosmetic. The department contended that petroleum jelly is not a cosmetic but a drug. The department issued a SCN to the assessee asking why the petroleum jelly should not be classified as a drug.
As per the Wikipedia "*Petroleum jelly*, vaseline, *petrolatum* or *soft paraffin*………….. it is recognized by the U.S. Food and Drug Administration (FDA) as an approved over-the-counter (OTC) skin protectant and remains widely used in cosmetic skin care." On the basis, the assessee contended that it should be classified as a cosmetic. Is the assessee justified?

Ans. No, the assessee is not right in contending that the petroleum jelly is a cosmetic.

As per the
General Rules of Interpretation
Dictionary meaning or meaning in technical literature can be looked into if conclusion cannot be derived from trade parlance.

Also if the tariff entry is used in a scientific or technical sense or when there is conflict between entries in the tariff, common parlance would not prevail, but technical meaning will prevail.

Like all other external aids to construction, like dictionaries, etc. wikipedia not an authentic source, although it may be looked at for gathering information. Where an express statutory definition of a word exists, a Wiki definition cannot be preferred. It cannot normally be used for the purpose of interpreting a taxing statute or classification of a product vis-à-vis an entry in statute.

The Supreme Court also gave a similar judgment in the case of
PONDS INDIA LTD.
where it was held that **petroleum jelly is not a cosmetic but a drug**.

2. Alpha Ltd. imported laptops containing preloaded Hard Disc Drives (HDD). The said drives were preloaded with software. The assistant commissioner of Customs claimed the said laptop along with the operating software was classifiable as a machine under the Heading 84.71. However, the assessee contended that the software loaded hard disc should be classified separately from the laptop under Heading 85.24. The assessee classified the software separately and claimed exemptions from duty payable on the software vide an exemption notification. Discuss.

Ans. Yes, the stand taken by the department is tenable in law.

The pre-loaded operating system recorded in Hard disc in the laptop forms an integral part of the laptop as the laptop cannot work without the operating system. The computer cannot even open without the operating system. A laptop without an operating system is like an empty building.

Hence, laptop should be treated as one single unit classifiable under Heading 84.71. However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24.

A similar view was taken by the Apex Court in the case of

Hewlett Packard India Sales (P) Ltd.

where it was held that when a laptop is imported with in-built pre-loaded operating system recorded on HDD, the said item forms a part of laptop.

Thus, view taken by the Assistant Commissioner of Custom is absolutely justified.

3. The assessee is manufacturer of Glass Filled Nylon Insulating Liners. These Glass Filled Nylon Insulating Liners can be classified under the heading of 'Electrical Insulators of any Material' @ 16% as contended by the Department and also under the heading of 'Other Articles of Plastics' @ 12% as contended by the assessee. What should the assessee do?

Ans. The assessee should classify the goods under the heading of 'Other Articles of Plastics' and pay duty @ 12%.

As per the

Principles for Interpretation of Statues

if there are two interpretations and both are equally good under the law then that interpretation shall be adopted which is more beneficial to the assessee.

In the given case Glass Filled Nylon Insulating Liners can be classified under both the headings. Therefore the assessee should classify his goods under that heading which is more beneficial to the assessee i.e. classify his product as 'Other Articles of Plastics' and pay duty @ 12%.

The Supreme Court also gave a similar judgment in the case of

CALCUTTA SPRINGS LTD.

where it was held that **where the product in question is capable of falling simultaneously under two entries, benefit should go to assessee**.

CUSTOM – VALUATION

1. The assessee had been importing "Orange Shock Tube" from the exporter at a unit price of US$ 0.0150 per ft till November, 2000 when the price was reduced to US$ 0.0141per ft. However in June 2001, the importer declared the value of the imported tubes at a unit price of US$ 0.0100per ft. Revenue contended that declared value was substantially lower than the actual value i.e. the assessee had under-valued the goods, Therefore the value had to be determined as per erstwhile Rule 4 of Customs Valuation (Determination of value of Imported Goods) Rules, 2007, viz., transactional value of identical goods. In this regards the assessee provided the explanation that the reduction in price was subject to the mutual agreement that he would purchase 100% of its annual requirement from the same exporter. Will the assessee succeed?

Ans. Yes, the assessee will succeed.

As per

Rule 3(2) of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007

The transaction value can be accepted under Rule 3(2) of Custom Valuation Rules, 2007 when;

- **a.** there are no restrictions on disposal or use of the goods by the buyer other than restrictions which
  - → Are imposed under any law in India or
  - → Limit the geographical area in which the goods may be resold or
  - → Do not substantially affect the value of the goods.
- **b.** The sale price is not subject to a condition for which value cannot be determined.
- **c.** Quantifiable data exist for adjustments required to be made under rule 10
- **d.** The buyer and seller are not related

The assessee's contention that the said increase in the volume of import had been the reason for decrease in the price was tenable. Further the Revenue had failed to place any contemporaneous imports of identical goods by any other importer during the material time showing the purchase to be at more than US$0.0100 per ft. The burden to prove that the goods in question were under-valued, by the respondent, lied on the Revenue which it had failed to discharge.

Hence transactional value should be accepted as assessable value.

The Supreme Court also gave a similar judgment in the case of

Initiating Explosives Systems (I) Ltd.

where it was held that **price reduction due to increased volume does not amount to under valuation.**

2. Assessee imported a second hand Rolls Royce car into India in the year 1998. He filed the Bill of entry for clearance thereof in 1998 itself. However, Customs Authority gave clearance of car in 2007 only. The assessee valued the car for the purposes of custom duty by taking "depreciated value" as assessable value. The department rejected the same and argued that value of the car shall be taken to be its value in the year 1998. Is the department correct?

Ans. Yes, the department is absolutely justified.

As per Section 14(1) of the Custom Act, 1962 value of imported and exported goods shall be the Transaction Value of such goods.

Transaction Value means

a. the price actually paid or payable
b. when goods are sold for
   i. export to India — at the time and place of importation
   ii. export from India — at the time and place of exportation

where

1. the buyer and seller are not related
2. price is the sole consideration for sale
3. subject to such conditions as may be prescribed.

Therefore the transaction value has to be declared by the assessee in the year 1998.

A similar view was taken by the Apex Court in the case of

M.S. Shoes East Ltd.

where it was held that the post import depreciation cannot be taken into account, despite the fact that while Bill of Entry was presented earlier but the clearance was given after 9 years.

3. The assessee entered into an agreement with its Japanese counterpart to acquire TV components from it. It also entered into an agreement for obtaining technical assistance and know how agreement. The technical assistance agreement required the assessee to pay US$ 2 lakhs along with royalty at 3% on net ex-factory sale price of the colour TV, exclusive of taxes, freight and insurance but including the cost of imported components. The department contended that royalty of 3% would be includible in the assessable value. Do you agree?

Ans. Yes, the department is right in including the value of royalty in the assessable value.
As per Rule 10(1) of Custom Valuation Rules, 2007, royalties and license fee related to the imported goods that the buyer is required to pay as a condition of sale of goods being valued, is added to transaction value. Therefore as per this Rule only royalties & fees which are relatable to imported goods are required to be added.

In the present case since the 3% royalty was computed on the net ex-factory price of manufactured goods after expressly including the value of imported components therein, it could safely be inferred that such royalty was paid as a condition of sale. Further, such royalty was related to the imported goods.
Therefore, the said royalty shall be included in the assessable value.

The Supreme Court also gave a similar judgment in the case of

Matasuhita Television & Audio,

where it was held that the royalty payments were included in the assessable value.

4. The assessee had imported certain equipment from a foreign supplier after a hectic bargain of US$ 15,000. The equipment required specialized knowledge for its installation. Such expertise was available with subsidiary of foreign supplier which signed an agreement with the importer. The agreement provided that the importer would pay Rs. 59 lakh as technical and installation fee to the said subsidiary of the foreign supplier over a period of 3 years. The Department contended that the whole practice was undertaken to bifurcate the cost of the equipment in order to pay less duty. Department relied on 9 imports of similar equipments during the relevant period. However, none of the nine transactions were of the similar technical specifications as that of the one imported by the assessee. Is the department correct?

Ans. No, the contention raised by the department is not justified.

As per the <u>interpretative notes</u>

The value of imported goods shall not include the following costs, provided that they are <u>distinguished from the price</u> of the goods:

(a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(b) The cost of transport after importation;

(c) Duties and taxes in India.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

In the given case there is no evidence of any flowback or extra – consideration deflating the price. Therefore, technical & installation charges should not be includible in the assessable value.

A similar view was taken by the Apex Court in the case

<u>Galaxy Entertainment (I) P. Ltd.</u>

where it was held that technical and installation charges agreement was a post clearance revenue generation agreement which had no nexus with the sale proceeds of the equipment.

5. Assessee imported a film and had to pay not only the cost of the movie materials, but also the royalty and the rights specified in the distribution agreement as a condition of sale. Without the right of exploitation, the print or trailer could not be of any use to the assessee to enjoy theatrical or video right. The department contended that the royalty shall be includible in the assessable value. Do you agree?

Ans. Yes, the department is absolutely justified.

As per rule 10(1) of the Valuation Rules, 2007

The following costs and services <u>incurred by buyer but not included</u> in price actually payable <u>shall be added</u> to price in determination of transaction value.

(i) Commissions and brokerage except buying commission.

(ii) The cost of containers & cost of packing whether for labour or materials.

(iii) Value of goods and services to the extent to which they are not included in price payable, by way of materials, components, tools, dies or moulds, engineering designs, etc necessary for production of goods.

(iv) Royalties on sale of goods.

(v) Any other payments to be made as condition of sale by buyer to the seller or to any third party to satisfy the obligation of seller.

However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price for the imported goods.

Hence, in the light of statutory provisions and peculiar facts and circumstances of the present case, royalty paid is includible in the assessable value of imported goods.

Supreme Court also took a similar view in the case of

<u>Indo Overseas Films</u>

where such royalty was included in the assessable value.

6. XYZ Ltd. entered into technical collaboration with ABC Ltd. of Netherlands and imported drawings and designs in paper form through professional courier and post parcels. XYZ ltd. declared the value of these drawings and designs at a very nominal value. However commissioner valued these drawings and designs at a high value and levied duty on them. XYZ ltd. contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act. Do you feel that the stand taken by the XYZ ltd. is tenable in law?

Ans. No, the stand taken by XYZ Ltd. is not tenable in law.

As per

Section 2 of the Customs Act, 1962

Goods includes -

(a) vessels, aircrafts and vehicles;
(b) stores;
(c) baggage;
(d) currency and negotiable instruments; and
(e) any other kind of movable property;

In the given case the drawings and designs shall fall in the category of any other kind of movable property. Thus can be classified as goods.

The Supreme Court also gave a similar judgment in the case of

ASSOCIATED CEMENT COMPANIES LTD.

where it was held that Technical advice or information technology, though an intangible asset, but the moment the information or advice was put on a media, whether paper or cassettes or diskettes or any other thing, that what is supplied becomes movable property and is goods and hence drawings, designs, manuals and technical material are goods liable to customs duty.

Hence duty shall be levied on the total value and not on the nominal value of paper only.

WAREHOUSING & DRAWBACK

1. X an importer (other than 100% EOU) imported some goods and deposited them in the warehouse on 12.04.2006. These goods were re-exported on 15.08.2006 without payment of duty. The department has contended that X will have to pay interest u/s 61 of the Customs Act, 1962. Is the contention raised by the department correct?

Ans. No, the contention raised by the department is not correct.
As per section 61 (2)(ii) of the Customs Act, 1962,

- if goods (belonging to importer other than 100% EOU)
- remain in a warehouse beyond 90 days,
- interest at specified rate shall be payable,
- on the amount of duty payable at the time of clearance of the goods ,
- for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In Pratibha Processors, the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section 61(2) of the Customs Act is solely dependant upon the exigibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil.

In the present case, since the goods have been re-exported without payment of duty, no interest is payable by 'X'.

A similar view was taken by the Gujarat High Court in the case of SWIL Ltd. where it was held that since no duty was payable, the assessee could not be asked to pay the interest also.

2. The assessee imported certain goods and filed Warehousing Bills of Entry. The Assistant Commissioner of Customs (Bonds) ordered warehousing of the goods under Section 60 of the Customs Act on 31/5/2007. The appellants completed all the formalities under the Customs Act and the goods were physically warehoused on 18/6/2007. At the time of clearance of the goods from the warehouse, the appellants were required to pay interest under Section 61 of the Customs Act. The department contended that the while calculating the interest the period shall commence from 31/5/2007. Is the stand taken by the department correct?

Ans. No, the contention raised by the department is not tenable in law.

As per section 61 (2)(ii) of the Customs Act, 1962,

- if goods (belonging to importer other than 100% EOU)
- remain in a warehouse beyond 90 days,
- interest at specified rate shall be payable,
- on the amount of duty payable at the time of clearance of the goods ,
- for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Section 61(2) clearly contemplates payment of interest only in cases where the goods have been physically warehoused and have remained physically in such warehouse. It is also clear that no interest needs be paid for the period when goods were actually lying in docks and not physically warehoused.

Therefore, the period under section 61 shall be calculated from 18/6/2007.

An identical view was taken by the Bangalore Tribunal in the case of Jindal Vijaynagar Steel Ltd. where it was held that that for calculation of interest, the period commences only on the date of actual physical warehousing and not on the date on which an order for permission is given under Section 60 of the Customs Act.

Time Allowed – 3 Hours **Maximum Marks - 100**

Answers to questions are to be given only in English except in cases of candidates who have opted for Hindi medium. If a candidate who has not opted for Hindi medium, answers in Hindi, his answer in Hindi will not be valued.
All questions are compulsory.

QUESTIONS

Part – A

1. (a) Rishabh Dev & Co. is engaged in the manufacture of liquid mosquitoes' destroyer. It obtains concentrated alletherin and converts it into diluted alletherin by adding solvent deodorized kerosene oil, perfume (as a masking agent) and DHT (as a stabilizing agent). Revenue alleges that the addition of stabilizing agent, masking agent etc. amounts to manufacture within the meaning of section 2(f) of the Central Excise Act, 1944.
Do you think that Revenue's allegation is tenable in law? **(4 Marks)**

(b) Briefly enumerate the cases in which the payment of excise duty through cheques is not permitted. **(3 Marks)**

(c) Robinson Foods is engaged in manufacturing Robinson soft drinks. Valuation of the soft drinks is done as per section 4A of the Central Excise Act, 1944. In order to sustain the tough market competition, the company reduced its prices from Rs. 12 to Rs. 10. Hence, on the existing stock of the soft drink bottle, MRP of Rs. 12 is scored out and MRP of Rs. 10 is printed. However, the crossed out MRP of Rs. 12 is clearly visible. Which MRP shall be considered for valuation purposes? **(4 Marks)**

(d) Tanco Products Ltd. was using plastic crates as a material handling device within their factory premises. Such plastic crates were used for internal transportation of the raw material from stores to the processing machine, semi-finished goods from one machine to other machine and finished goods to their storage area. The appellant contended that the plastic crates were eligible capital goods for the purposes of CENVAT credit and alternatively as input. Department rejected the assessee's claim of CENVAT credit in respect of the duty paid on such plastic crates.
Explain, with the help of a decided case law, if any, whether the stand taken by Department is sustainable in law. **(4 Marks)**

2.(a) Briefly explain the procedure for removal of goods from a hundred percent export oriented unit to the domestic tariff area. **(3 Marks)**

(b) The small scale units producing the goods bearing the brand name / trade name of others are not eligible for exemption under *Notification No. 8/2003 dated 01.03.2003*.
Briefly discuss, the cases where the units producing the goods bearing the brand name / trade name of others are also eligible for exemption under said notification. **(4 Marks)**

(c) What is a Consumer Welfare Fund? How is this fund utilized? **(4 Marks)**

(d) When entries in Harmonised System of Nomenclature (HSN) and the Excise Tariff are not aligned, can reliance be placed upon HSN for the purpose of classification of goods? **(4 Marks)**

3.(a) An appeal filed under section 35(2) of the Central Excise Act, 1944 by the Committee of Commissioners themselves and not by subordinate officer based on authorization is not maintainable.
Examine, with the help of a decided case law, if any, the validity of the statement. **(5 Marks)**

(b) Can goods lost by 'theft' or 'dacoity' be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules,2002? **(5 Marks)**

Part – B

4.(a) Explain the validity of the following statements with reference to the service tax provisions:-

(a) Saurabh Sinha, an architect, has provided services in the area of landscape designing. The said services are taxable under the category of 'architect's services'.
(b) Depository services and Electronic Access to Securities Information (EASI) services provided by Central Depository Services (India) Ltd. (CDSL) is liable to service tax under 'banking and other financial services'.
(c) Business auxiliary services provided by a commission agent in relation to sale and purchase of the agricultural produce are exempt from the payment of service tax.
(d) The cargo handling services provided in relation to agricultural produce or goods intended to be stored in a cold storage are taxable under the category of 'cargo handling service'.

(4 Marks)

(b) M/s Ojha Cements Limited (OCL) was engaged in the business of manufacturing and selling of cement and had been duly paying the excise duty in respect of cement produced by it. OCL supplied cement to its customers "FOR destination" and bore the freight up to the door steps of the customer i.e. the destination point. The assessee had taken the CENVAT credit of the service tax paid on the aforementioned freight by it. The Department contended that the payment of service tax on the freight incurred by the assessee was not input service as per rule 2(l) of the CENVAT Credit Rules, 2004 and hence the CENVAT credit was not admissible on it under the said rules.
Explain, with the help of a decided case law, if any, whether the stand taken by Department is tenable in law. **(4 Marks)**

(c) Answer the following questions, with reference to the *Notification No. 41/2007 dated 06.10.2007*:-

(a) What is the time limit for filing the refund claim?
(b) Whether the limitation period for filing the refund claim would be counted from the date of exports or from the date of receipt of remittances?
(c) Whether refund would be admissible on specified taxable service received prior to the date it is notified in the said notification, if such services are used in relation to goods which are exported subsequent to the date on which such taxable services are notified under *Notification No. 41/2007-ST*? **(4 Marks)**

(d) Business or industrial organizations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether service tax is liable on such services under manpower recruitment or supply agency's service? **(3 Marks)**

5.(a) Briefly discuss, the conditions to be satisfied by a service provider providing taxable service in relation to commercial or industrial construction service to any person in order to exercise the option to avail the abatement up to 67% of the gross amount charged while computing the service tax. **(4 Marks)**

(b) Briefly explain the procedure of self-assessment of VAT liability. **(4 Marks)**

(c) Explain the validity of the following statements:-

(a) VAT has harmonized the tax structure.

(b) VAT system is a cost-effective system. **(4 Marks)**

(d) Illustrate the salient features of Tax Identification Number (TIN) under VAT. **(3 Marks)**

6.(a) Compute the purchases eligible for availing input tax credit from the following particulars:-

Purchases	***Rs.***
Goods for resale within the State	10,000
Capital goods required for the purpose of the manufacture or resale of taxable goods	14,000
Goods purchased from the unregistered dealer	3,200
Goods which are being utilized in the manufacture of exempted goods	6,600
High seas purchases	2,300

(5 Marks)

(b) Briefly explain, the three variants of VAT. **(5 Marks)**

Part – C

7.(a) Whether custom authorities are authorized to auction the confiscated goods during the period of pendency of appeal? **(4 Marks)**

(b) Gulf Corporation Limited imported some goods from USA. The details of the transaction are as follows:-

Authority Rate of exchange

CBEC 1 US $=Rs 45

RBI 1 US $=Rs 46.10

CIF value of the goods is $ 20,000

Rate of basic custom duty is 40% , Rate of education cess is 3%

If similar goods were manufactured in India, excise duty payable as per Tariff is 8%.

Calculate assessable value and total duty payable thereon. **(4 Marks)**

(c) Briefly explain, the procedure in respect of clearance of goods from the warehouse for home consumption under section 68 of the Customs Act, 1962. **(4 Marks)**

(d) (a) What is the composition of the Authority for Advance Ruling?

(b) Is the applicant bound to actually undertake the proposed activity in relation to which he has obtained an advance ruling?

(c) At what stage can an application for advance ruling be preferred?

(d) On which questions under customs, can an advance ruling be sought? **(4 Marks)**

(e) Answer the following question with reference to the Baggage Rules, 1998:-

Amarnath, an IT professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used microwave oven (costing approximately Rs. 4,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months back and he has been using that oven for his personal use in his kitchen. He is not aware of Indian customs rules. Could you please provide him some help in this regard? **(4 Marks)**

ANSWERS

1.(a) The facts of the given case are similar to the case of

CCE v. Karam Chand 2009 (236) E.L.T. 647 (H.P.).

The High Court held that mere processing of the goods was not manufacture and in order to fall within the definition of manufacture, a new substance should be formed. In the present case, no new substance was formed and only a diluted form of original substance was packaged under a different brand name. Alletherin in its concentrated form was an insecticide. The final product manufactured by the respondent was a diluted form of insecticide-alletherin which would only kill small insects like mosquitoes. Hence, only the potency of the insecticide was being reduced. Therefore, it could not be termed to be manufacture. Therefore, it can be inferred that the Revenue's allegation is not tenable in law.

(b) The payment of duty / other dues through cheques is not permitted in the following cases: -

(i) If there is a strike in or closures of only one nominated bank of the Commissionerate and the assessee still remains in a position to deposit money in the other nominated banks or Departmental Treasury (wherever they exist) – unless the assessee's bank is the only nominated bank in the Commissionerate.

(ii) In the case of declared bank holidays. The reason is that such holidays are known well in advance.

(iii) Where the public has been given advance intimation of a strike, unless the strike is unduly prolonged (say over 3-4 days).

(iv) Where bank employees adopt "go-slow" tactics.

(c) *Circular no. 673/64/2002-CX dated 28.10.2002* provides that once MRP is scored out, (even if it remains visible) and another MRP is printed on the package, it can not be said that the package has two MRPs printed on it, since the scored out MRP could not be considered as an MRP either by the seller or by the consumer. Hence, the scored out MRP is to be ignored. Therefore, in the instant case, the new MRP of Rs. 10 shall be considered for the purpose of valuation.

(d) The facts of the given case are similar to the case of

Banco Products (India) Ltd. v. CCEx., Vadodara-I 2009 (235) ELT 636 (Tri-LB).

The Tribunal first analyzed the definition of "accessories" in order to decide whether plastic crates got covered under in the definition of capital goods under erstwhile rule 2(a) of the CENVAT Credit Rules,2004. After meticulous consideration of various relevant judgments, the Tribunal observed that the only criteria for an object to be held as an accessory is that that a particular item should be capable of being used with a machine and should advance the effectiveness of working of that machine.

The plastic crates in question were used for transportation of the raw material to the processing machine and all the finished goods from the machine to storage area. If instead of using plastic crates manual transportation of the inputs or semi-finished goods had been opted for, practically, it would have hampered the continuous working of the machine on account of delays in the delivery of the raw material / semi-finished goods etc. Hence, viewed and judged in the light of the interpretation of the term "accessory" by various Courts, the Tribunal concluded that the plastic crates could be held as accessory. While dealing with the expression "in the manufacture of the goods" in the definition of inputs under erstwhile rule 2(k) of the CENVAT Credit Rules, 2004 the large bench of the Tribunal referred to the case of *Collr. of C.E. v. M/s. Rajasthan State Chemical Works 1991 (55) E.L.T. 444 (SC)* wherein the Apex Court had observed that the said expression encompassed all processes which were directly related to the actual production.

The process of handling/lifting/pumping/transfer/transportation of the raw material was also a process in or in relation to manufacture, if integrally connected with further operation leading to manufacture of the goods.

By applying the ratio as enacted by the Supreme Court to the issue in dispute, the Tribunal held that process started with the issuance of the inputs from the stores and their further transportation to the production platform was only a part of the process of manufacture integrally related to the final production. In absence of the delivery of the raw material to the manufacturing platform, the process could not start. Such delivery of the goods included transportation of the goods by plastic crates. Similarly, finished products were required to be stored in a bonded store room. The plastic crates were again used for such transportation.

Hence, the Tribunal opined that the plastic crates would also be eligible for CENVAT credit as input. In the light of aforesaid discussion, the large bench of the Tribunal held that CENVAT credit was available on the plastic crates used as material handling equipment in the factory premises as capital goods as also as input.

Hence, the stand taken by Department is not sustainable in law.

2.(a) Rule 17 of the Central Excise Rules, 2002 provides that where any goods are removed from a hundred percent export oriented unit to domestic tariff area, such removal shall be made under an invoice in the procedure specified under rule 11 of the said rules. Further, removal shall be made only after payment of appropriate duty by crediting the duty payable to the account of the Central Government in the manner specified in rule 8 or by utilizing the CENVAT credit. Such unit is required to maintain appropriate accounts related to production in the prescribed form giving the following details :

(i) description of goods
(ii) quantity removed
(iii) duty paid.

Such unit shall submit a monthly return in the specified form (E.R - 2) in respect of the excisable goods manufactured, and receipt of inputs and capital goods, in the unit, to the Superintendent of Central Excise within 10 days from the close of the month to which the return relates.

The proper officer may on the basis of information contained in the return filed by the unit, and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board. Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(b) The units producing the goods bearing the brand/trade name of others are eligible for exemption under *Notification No. 8/2003 dated 01.03.2003* where:-

(a) The goods bear the brand name or trade name of:-

(i) Khadi and Village Industries Commission
(ii) State Khadi and Village Industries Board
(iii) National Small Industries Corporation (NSIC)
(iv) Small Scale Industries Corporation

(b) The goods are manufactured in a factory located in a rural area.

(c) The goods are account books, registers, writing pads and file folders.

(d) The goods are in the nature of packing materials, namely printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels.

(e) The goods are in the nature of the components or parts of any machinery, equipment or appliances cleared for use as original equipment in the manufacture of the said machinery, equipment, or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

(c) Meaning of Consumer Welfare Fund:-

The Consumer Welfare Fund has been established by the Central Government under the provisions of 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, and

(iii) surplus amount of service tax referred to in section 73A(6) of the Finance Act, 1994 as amended.

Utilization of funds**:-**

Section 12D of the Central Excise Act, 1944 provides that:-

(1) any money credited to the fund shall be utilized by the Central Government for the welfare of the consumers in accordance with such rules framed in this behalf.

(2) The Central Government shall maintain or, if it thinks fit, specify the authority, which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor General of India.

(d) The Supreme Court in case of

Camlin Ltd. v. CCEx., Mumbai 2008 (230) E.L.T. 193 (SC)

has held that when the entries in the Harmonised System of Nomenclature (HSN) and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff. It further added that in the instant case, the Tribunal erred in relying upon the HSN for the purpose of classification of the impugned product. The Tribunal failed to appreciate that since the entries under the HSN and the entries under the said Tariff are completely different, the Tribunal could not base its decision on the entries in the HSN.

3(a) The statement is not valid. The Gujarat High court, in case of

Commr. Of C.Ex. & Cus. v.Shree Ganesh Dyeing & Ptng. Works 2008 (232) ELT 775 (Guj.),

has decided the issue as to whether the appeal filed by Commissioner himself and not by subordinate officer based on authorization, is maintainable. In the instant case, the assessee raised a preliminary objection as to maintainability of the appeal on the ground that the appeal had been filed by Commissioner himself, instead of by the Central Excise Officer authorised by the Commissioner, as required by section 35B(2) of the Central Excise Act, 1944.

The Court, while analyzing section 35B(2) of the Central Excise Act, 1944, held that section 35B(2) is made up of two parts or two stages. The first stage is formation of an opinion by Commissioner that the order made by the appellate authority is not legal or proper. The second stage is filing of an appeal against order of appellate authority by directing any Central Excise Officer authorised by the Commissioner in this behalf to file an appeal on behalf of the Commissioner. Thus, the Commissioner is vested with a discretion, in the first instance to form an opinion as to whether appellate order is legal or proper and then exercise the discretion to decide whether an appeal should be preferred or not, having come to the conclusion that the order is not proper or legal.

The High Court furthe r clarified that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise. Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorising another officer to file appeal on behalf of the Commissioner. The language of the latter part of sub-section (2) of section 35B of the Act itself makes this more than abundantly clear when the provision uses the phrase ‘to appeal on his behalf’.

Therefore, if an appeal has been preferred by Commissioner or the authorised officer, the appeal would be valid and shall be treated to be a valid appeal in eyes of law.

Note : Section 35B(2) was amended vide the Finance Act, 2005 to provide that instead of Commissioner of Central Excise, a Committee of Commissioners of Central Excise shall review the orders of Commissioner of Central Excise (Appeals) and direct any Central Excise Officer authorized by him to appeal on its behalf to the Appellate Tribunal.

However, the principle enunciated in this judgment will hold good in respect of amended section 35B (2) as well.

(b) The question as to whether goods lost by 'theft' or 'dacoity' can be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002 was decided by the larger bench of the Tribunal in case of

Gupta Metal Sheets v. CCE 2008 (232) E.L.T. 796 (Tri.-LB).

It clarified that the term 'loss' cannot be understood in the limited sense of 'loss to the manufacturer'. In the context of the Central Excise Law, it has to be understood as being unavailable for consumption in the market. In case of theft or dacoity, the goods are not 'lost' or 'destroyed'; they rather enter the market for consumption, albeit stealthily, after being removed from the approved premises or the place of storage. As per rule rule 21 of the Central Excise Rules, 2002 loss must be attributable to any natural cause or unavoidable accident.

'Natural cause' refers to some natural phenomenon i.e. vagary of nature or some act of nature like fire, flood or a similar natural calamity. The act of forcibly removing the goods by any means - non-violent or violent - amounting to theft or dacoity under the Indian Penal Code cannot be said to be a natural cause. Considering the definitions of 'theft' and 'robbery' in the Indian Penal Code, the Tribunal held that 'theft' or 'dacoity' involves forcible removal of goods by non-violent or violent means, as the case may be, and this cannot be said to be a natural cause. The Tribunal opined that theft or dacoity is an incident and not an accident, much less unavoidable. Theft and dacoity are committed by a design and they cannot be said to be accident by any logic. By taking due care and caution, they can be avoided and, therefore, it cannot be said that theft or dacoity is 'unavoidable accident'. In view of the above, the Tribunal held that 'theft' or 'dacoity' cannot be called unavoidable accident within the meaning of the rule 21 of the Central Excise Rules, 2002 and the goods lost in theft or dacoity would not be eligible for remission.

4.(a)(a) The statement is invalid. The services provided by Saurabh Sinha in relation to the landscape designing shall be taxable under the category of 'interior decorator's services' because the definition of the 'interior decorator' under section 65(59) of the Finance Act, 1994 as amended specifically includes a landscape designer.

(b) The statement is absolutely valid. *Circular No. 96/7/2007 ST dated 23.08.2007*provides that the definition of 'banking and other financial services' specifically includes "provision and transfer of information and data processing". Services provided by CDSL falls within the scope of "provision and transfer of information and data processing". These services are not in the nature of "on-line information and data base access or retrieval services". Therefore, the depository services provided by CDSL including Electronic Access to Securities Information (EASI) for a fee are liable to service tax under 'banking and other financial services' [Section 65(105)(zm) of the Finance Act, 1994 as amended].

(c) The statement is absolutely valid. *Notification No. 13/2003-ST dated 20.06.2003* as amended provides that the business auxiliary services provided by a commission agent in relation to sale and purchase of the agricultural produce are exempt from the payment of service tax.

(d) The statement is invalid. *Notification No. 10/2002-ST dated 01.08.2002* exempts the cargo handling services provided in relation to agricultural produce or goods intended to be stored in a cold storage from whole of the service tax leviable thereon.

(b) No, the stand taken by the Department is not tenable in law.

The facts of the given case are similar to the case of

Ambuja Cements Ltd. v. UOI 2009 (14) S.T.R. 3 (P & H).

In this case, the High Court observed that the 'input service' has been defined under rule 2(l) of the CENVAT Credit Rules, 2004 to mean any service used by the manufacturer whether directly or indirectly and also includes, *inter alia,* services used in relation to inward transportation of inputs or export goods and outward transportation up to the place of removal.

Further, the Board's *Circular No. 97/8/2007-ST dated 23-8-2007* contemplates compliance of certain conditions where the sale has taken place at the destination point. These conditions are as follows:-

1. The ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;
2. The seller bore the risk of loss of or damage to the goods during transit to the destination; and
3. The freight charges were an integral part of the price of goods.

The first requirement was fulfilled because:-

(i) The supply of cement by appellant to its customer was 'FOR destination',

(ii) The freight up to the door step of the customer was borne by the appellant, and

(iii) The service tax on the freight charges was paid by the appellant.

Moreover, for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, the second condition also stood fulfilled.

Since, the delivery of the goods is "FOR destination' price, the third condition that the freight charges were integral part of the excisable goods also stood fulfilled.

In view of above discussion, the High Court opined that the questions of law deserved to be answered in favour of the assessee-appellant and against the Revenue. Hence, it held that the assessee was entitled to the credit of the service tax paid on the freight up to the door steps of the customer.

(c)(a) *Notification No. 32/2008 ST dated 18.11.2008* has extended the time-limit for filing the refund claim from sixty days to six months from the end of the relevant quarter during which the said goods have been exported.

(b) *Circular No. 112/06/2009 dated 12.03.2009* clarifies that it is clearly prescribed in the notification that limitation period of six months is to be computed from the date of exports.

(c) *Circular No. 112/06/2009 dated 12.03.2009* clarifies that being prospective in nature refund is not admissible on such services received prior to the date they are notified in the said notification, even if the goods, in relation to which these services are used, are exported after the date when such services are notified under *Notification No. 41/2007-ST*.

(d) *Circular No. 96/7/2007 ST dated 23.08.2007* has clarified that in the case of supply of manpower; individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual.

Such cases are covered within the scope of the definition of the taxable service [Section 65(105)(k) of the Finance Act, 1994 as amended] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [Section 65(68) of the Finance Act, 1994 as amended] and are liable to service tax.

5.(a) *Notification No. 1/2006-ST dated 01.03.2006* lays down the conditions to be satisfied by a service provider providing taxable service in relation to commercial or industrial construction service to any person in order to exercise the option to avail the abatement up to 67% of the gross amount charged while computing service tax. The conditions are as follows:-

(a) The service provider has not availed the CENVAT credit of the duty paid on the inputs and capital goods used for providing the service.

(b) The service provider has not availed the CENVAT credit of the service tax paid on the input services used for providing the service.

(c) The service provider is not exclusively providing completion and finishing services and no other service in respect of building or civil structure.

(d) The service provider has not availed the exemption under *Notification No. 12/2003 dated 20.06.2003* in respect of the value of the goods and materials sold during the course of providing the service.

(e) The gross amount charged includes the value of goods and materials supplied or provided or used by the service provider for providing the service.

(b) According to White Paper on State Level VAT, procedure for self-assessment of VAT liability has been given as under:-

The VAT liability will be self-assessed by the dealers themselves in terms of submission of returns upon setting the tax credit. Return forms as well as other procedures will be simple in all States. There will no longer be compulsory assessment at the end of each year. If no specific notice is issued proposing department audit of the books of accounts of the dealer within the time limit specified in the Act, the dealer will be deemed to have been self-assessed on the basis of returns submitted by him.

(c) (a) The statement is correct. VAT has an in-built advantage of harmonizing the tax structure. It leaves very small room for interpretation. Even the entries prone to varied interpretations, under VAT, do not make any difference to either dealers or the Government. Ideally, under VAT, there should be only one basic rate. In any case, typically, VAT involves lowering the number of tax slabs / rates resulting in reduction of litigation.

(b) The statement is not valid. VAT system increases the costs in the following manner:-

(i) Cost of administration to the State:-VAT introduction may increase the administration cost to the State as the number of dealers to be administered will go up significantly.

(ii) Compliance cost to dealers:- For compliance of VAT provisions, the accounting cost may increase. The burden of this increase may not be commensurate with the benefits to traders and small firms.

(d) TIN (Tax Payer's Identification Number) is a code to identify a tax payer. It is the registratio number of the dealer. The salient features of Tax Identification Number are as follows:-

(1) The taxpayer's identification number will consist of 11 digit numerals throughout the country.

(2) First two characters will represent the State code as used by the Union Ministry of Home Affairs.

(3) The set-up of the next nine characters will be, however, different in different States.TIN will facilitate computer applications, such as detecting stop filers and delinquent accounts.

(4) TIN will help cross-check information on tax payer compliance, for example, the selective cross-checking of sales and purchases among VAT taxpayers.

6.(a) Computation of purchases eligible for input tax credit:-

Particulars	Rupees
Goods for resale within the State	10,000
Capital goods required for the purpose of the manufacture or resale of taxable goods	14,000
Purchases eligible for input tax credit	24,000

Note: For the purpose of computation of value of purchases eligible for input tax credit, following are not be included:-

(1) Goods purchased from the unregistered dealer of worth Rs. 3,200.
(2) Goods which are being utilized in the manufacture of exempted goods of worth Rs. 6,600.
(3) The inputs imported from outside the territory of India commonly known as high seas purchases of worth Rs.2,300.

(b) Different variants of VAT:-

1. Gross product variant: Tax is levied on all sales and deduction for tax paid on inputs excluding capital inputs is allowed.
2. Income variant: Tax is levied on all sales with set-off for tax paid on inputs and only depreciation on capital goods.
3. Consumption variant**:** Tax is levied on all sales with deduction for tax paid on all business inputs (including capital goods).

7.(a) Bombay High Court, in case of

Shabir Ahmed Abdul Rehman v. UOI 2009 (235) ELT 402 (Bom.),

decided the similar issue in favour of assessee. In this case, Revenue confiscated the gold carried by the petitioner from Muscat. The petitioner informed the custom authorities that he was filing an appeal against the order of confiscation.

Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods.

The High Court held that handing over the confiscated gold immediately after serving the order of confiscation itself was improper. In any event, after receiving letter from the petitioner, the custom authorities ought to have stopped the auction sale of the confiscated gold. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified.

Hence, it can be concluded that the custom authorities are not authorized to auction the confiscated goods during the period of pendency of appeal.

(b) Computation of assessable value and total custom duty payable:-

CIF Value	$ 20,000
Add : Landing charges @ 1% of CIF value (Note – 1)	$ 200
	$ 20,200
Assessable value (in Rupees) =$20,200 × Rs. 45 (Note -2)	9,09,000
Add : Basic custom duty @ 40% (Rs. 9,09,000 × 40%)	3,63,600
	12,72,600
Add : Countervailing duty (Rs. 12,72,600 × 8.24%)	1,04,862.20
	13,77,462.24
Education cess [(Rs. 3,63,600 + Rs. 1,04,862.20) × 3%]	14,053.87
Total custom duty payable (Rs. 3,63,600 + Rs. 1,04,862.20 + Rs. 14,053.87)	4,82,516.11

Notes :-

(1) Landing charges at the rate of 1% of the CIF value of the imported goods, shall be added, whether ascertainable or not [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

(2) Applicable exchange rate is Rs. 45/- per $ as notified by CBEC because explanation to section 14(1) provides that rate of exchange shall be the rate as notified by CBEC.

(c) Clearance of warehoused goods for home consumption (Section 68 of the Customs Act, 1962)

The importer of any warehoused goods may clear them for home consumption, if -

(a) bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

(b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

However, the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon. Moreover, the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(d)(a) The Authority is a high level quasi-judicial body headed by a retired judge of the Supreme Court of India. Besides the Chairperson, there are two other members – who have wide experience in technical and legal matters; namely:-

(a) An officer of the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Central Board of Excise and Customs.

(b) An officer of the Indian Legal Service who is, or is qualified to be an Additional Secretary to the Government of India.

(b) No, the applicant is not bound to actually undertake the proposed activity in relation to which he has obtained an advance ruling. As long as an advance ruling has been obtained by an applicant in accordance with the legal provisions stipulated for this purpose, the decision thereafter to actually undertake the proposed activity would be entirely his.

(c) An applicant may prefer an application for advance ruling at a stage when an activity is proposed to be undertaken in India by the applicant.

(d) The rulings can be sought in respect of:-

(i) Classification of goods under the Customs Tariff Act, 1975;

(ii) Principles of valuation under the Customs Act, 1962;

(iii) Applicability, of notifications issued in respect of duties under the Customs Act, 1962, Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under the Customs Act, 1962 having a bearing on the rate of duty;

(iv) Determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975 and matters relating thereto.

(v) Applicability of notification issued under section 25(1) of the Customs Act, 1962 having a bearing on the rate of duty.

(e) As per rule 5 of the Baggage Rules, 1998, Amarnath is entitled to bring the used household articles upto an aggregate value of Rs. 12,000 free of duty. Hence, Amarnath can clear the used Microwave oven free of duty within the permissible allowance.