Practice Booklet

AUTHOR

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CASE LAWS

RECENT CASE LAWS

EXCISE LAWS

Basic Concept

SONY MUSIC ENTERTAINMENT (I) PVT. LTD.- 2010- BOM.

Facts-

- The appellant imported recorded audio and video discs packed in boxes of 50. After receipt of the material in its factory, it packed each individual disc in transparent plastic cases known as jewel boxes; an inlay card containing the details of the content of the compact disc was also placed in the jewel box.
- The whole was then shrink wrapped. The appellant thereupon sold such packed compact discs in wholesale.

Issue- Whether the activity of packing imported Compact discs in a jewel box along with inlay card would amount to manufacture under Section 2(f) of the Central Excise Act, 1944?

Decision -Held that-

- The Tribunal has rightly concluded that the activities carried out by the respondent **does not amount to manufacture** since the compact disc were complete and finished when imported by the assessee.
- They were imported in finished and completed form.
- They could be played by any person in order to listen to the sound and view the images that they contained. They were imported in finished and completed form.

Bata India Ltd.-2010-S.C.

Facts of the case-

- The Assessee is a well known manufacturer of foot wear. For the manufacture of foot wear, various raw materials are purchased by the assessee from the market and / or from their respective manufacturers such as fabrics, rubbers, chemicals, solvents etc.
- During the process of manufacturing of foot wear various chemicals / rubbers / solvents etc., are mixed together and a thin layer of such mixed materials is sandwiched in between two sheets of textile fabric, in running length, through a three bowl calendering machine.
- The product is later cut and stitched according to the assessee's requirements and in-process materials are used as shoeuppers in the foot wear.
- Such fabrics are also at times sent to job workers for stitching purposes only and the fabric sandwiched with the mixed materials are inputs of the intermediate stage during the course of manufacture of footwear.
- Vulcanisation of the foot wear takes place only after completing the entire process and then it would be a finished product as a footwear, made available in the market and acquires commercial identity and turns out to be a commercially known product.

- The Collector of Central Excise (in short the Collector) noticed that during the manufacture of foot wear the assessee manufactures an excisable product called double textured fabric which is further used as upper material in the manufacture of foot wear and this double textured fabric is nothing but rubberized, water proof fabric with a thin layer of rubber sandwiched between two sheets of cotton fabric in running length. As a result of that process a double textured fabric emerges as a distinct product with specific properties and character other than that of original fabric used as input which is known in commercial trade parlance as double textured fabric which is used in considerable quantities for making raincoats, holdalls, hand bags etc.

The Collector therefore, came to the conclusion that this double textured fabrics are marketable products fulfilling the requirement of the definition of excisable goods as per Section2(d) of the Central Excise 1944 (in short the Act) attracting the levy of central excise duty under the Act.

Issue- whether unvulcanised sandwiched fabric assembly produced in the Assessee's factory and captively consumed can be termed as "goods" (movable + **marketable**) and can be classified as "rubberized cotton fabrics"

Decision -Held that –

- No evidence has been produced by the Revenue to show the product unvulcanised sandwiched fabric as such is capable of being marketed, without further processing.
- The question is not whether there is an hypothetical possibility of a purchase and sale of the commodity but whether there is sufficient proof that the product is commercially known.
- The mere fact that the product in question was entrusted outside for some job work such as stitching is not an indication to show that the product is commercially distinct or marketable product.
- Without proof of marketability the intermediate product would not be goods much less excisable goods. Such a product is excisable only if it is a complete product having commercial identity capable of being sold to a consumer which has to be established by the Revenue. –
- The mere theoretical possibility of the product being sold is not sufficient but there should be commercial capability of being sold – decided in favor of assessee

Solid & Correct Engineering Works & Ors. - 2010- S.C.

Issue- Whether setting up of an Asphalt Drum Mix Plant by using duty paid components tantamounts to manufacture of excisable goods within the meaning of Section 2(d) of the Central Excise Act, 1944?

Decision-held that –

- In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine.
- An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.
- In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty. – the activity is amount to manufacture.

VIRGO INDUSTRIES (ENGINEERS) PVT. LTD. 2009 – CESTAT-

Facts of the case-

- Virgo had been manufacturing and supplying signages (illuminated signs) under a contract with M/s. Indian Oil Corporation Ltd. (IOC) and had erected them at the retail outlets of IOC located at various places.
- Virgo fabricated only the sign poles of iron and steel required for the signages. Other items such as fibre glass reinforced plastic sheets, the vinyl sheets cut into signs, the electrical panels concealed within the signboard etc. had been got manufactured by third parties and that the signages proper had been erected at the various IOC bunks.
- At the premises of Virgo only the sign poles were fabricated and the signages were erected using the components received at the various sites from their manufacturers.

Issue-

whether signages erected at various petrol bunks of IOC are liable to duty.

Decision –

We find that-

- In the instant case the complete signage is movable and is installed by fixing it on a concrete foundation. These can be detached and shifted to another location without damaging them –
- Undisputedly signages are capable of being assembled at the premises of the appellants and then transferred to the site of its erection after dismantling the same.
- The signages do not emerge as an immovable property on assembly or erection. They have base plates of steel with provision to fit them on bolts of the concrete foundation. The signage is fixed to earth. Signage is complete before fixing on the concrete plateform.

We hold that -

- the signages are dutiable goods. - As regards the claim of limitation we find that the appellants have undertaken manufacture, supply and erection of signages involving huge value under a contract with IOC without intimating the activity to the Department.
- No acceptable reason has been advanced by the appellants to support the claim that they had not wilfully suppressed the fact of the impugned activity from the Department. We, therefore, hold that the demand of duty on the signages has been validly made invoking larger period.

M/s Larsen & Toubro Limited – 2009-H.C.

Issue & Facts- - fabrication/manufacture of 'waste water treatment plant' -the petitioner entered into a turn key contract with Bharat Petroleum Corporation Ltd. (for short "BPCL") for fabrication, assembly and erection of waste water treatment plant. The activities involved in the contract were procurement, supply, fabrication, transportation of various components, making of civil construction and erection of waste water treatment plant and commissioning it.

Decision– Held that –

- When factually there is no dispute that the waste water treatment plant when totally assembled becomes an immovable property.
- The very show cause notice also says that plant in an unassembled form was installed and affixed to

the civil works.

- This shows that the plant on erection and installation becomes an immovable property which is not excisable to tax. – SCN quashed.

TEXTILE CORPN. MARATHWADA LTD. – S.C- 2008

Issue:- Whether the facilities in the factory of the assessee for carrying out bleaching, dying, printed and mercerizing of textile fabrics would invite levy of excise duty at each stage of manufacture –

Held that:-

- the assessee would be entitled to Cenvat credit if duty is paid at each stage of the manufacturing and,
- therefore, the entire exercise would be **revenue neutral** ,
- Admittedly, assessee has paid duty at the final stage.

M/S RAJPUROHIT GMP INDIA LTD. & ORS. – S.C- 2008

ISSUE:-Whether cutting and slitting of steel sheets or polyester films used for lamination purposes amounts to manufacture –

HELD:-NO.

Sunco Rubbers Ltd. 2008 (228) ELT 27 (Mad.) –M.imp

ISSUE- When does the manufacturing activity get completed - either at the time of clearance of goods from the premises of the job-worker or at the time of their clearance from the premises of the manufacturer?

FACTS-

- **The assessee, a job worker, received raw materials required for the manufacture of strips tyres from the primary manufacturers (viz. raw material suppliers) for further processing and after undertaking the processing returned them to the suppliers.**
- **Thereafter, the suppliers carried on the processes of deflashing, testing and inspection on those goods.**
- **The Department opined that since the goods processed at the premises of the job worker were fully manufactured goods, the job worker should pay excise duty on such goods before clearing them from its premises.**

HELD- that having regard to the activities like deflashing, testing, inspection etc. being undertaken by the primary manufacturers, it was evident that the goods were made ready for marketing only after the same were subjected to the above mentioned processes at the hands of the raw material suppliers.

Hence, the manufacturing process was complete only after these processes were carried out at the premises of the suppliers.

Prism Cement ltd. 2008-TRI

Waste / scrap arising in course of repair activity can not be held to be manufactured product and thus, not liable to excise duty.

Blow Plast Ltd. 2009 (236) (Del.).- M.imp

ISSUE-

- Parsavnath Furnishers Limited (PFL) is engaged in procuring the duty paid Office Furniture System/Work Stations (OFS/WS) from the suppliers an erecting and installing them at site of customers, from whom it has procured the orders.
- After receiving the orders from its clients, a team of engineers prepares a lay out on computer aided design system where ready-made furniture systems and work stations manufactured by independent manufactures/suppliers are superimposed.
- Thereafter, based on the clients' specifications, orders are placed upon the manufacturer of the furniture for each works station. After procuring the various elements of furniture system from the manufacturer, they join the same together according to the site drawing and the project code.
- The assessee contends that that they are only marketing OFS/WS. However, the Revenue alleges that PFL is liable to pay duty as the said activity amounts to manufacture.

Examine, with reference to a decided case law, if any, whether the Revenue's allegation is tenable in law?

DECISION

- The facts of the given case are similar to the case of **CCE v. Blow Plast Ltd. 2009** (236) (Del.).
- The Tribunal arrived at the conclusion that since the supplier had cleared the complete set of elements required for the work station in a knocked down condition, it could not be said that the supplier had manufactured the parts and not the complete system.
- The High Court while affirming the Tribunal's order held that the same product as known to the trade could not be manufactured twice over.
- Consequently, nothing new had come into existence so as to bring the activities of the assessee within the parameters specified in section 2(f) of the Central Excise Act, 1944.
- What the assessee received was complete OFS/WS and what it left on its clients' sites was also complete OFS/WS. Nothing new had come into existence. Hence, no duty was payable by the assessee.

Therefore, **it can be inferred that the Revenue's allegation is not tenable in law**

Indian Cine Agencies vs. CIT (2009) 233 ELT 8 (SC):

Conversion of jumbo rolls of photographic films into small flats and rolls in the desired sizes amounts to manufacture.

Karam Chand 2009 (236) E.L.T. 647 (H.P.): - Imp

ISSUE-: Does the addition of stabilizing agent, masking agent etc. amount to manufacture within the meaning of section 2(f) of Central Excise Act, 1944?

Facts: The respondent was engaged in the manufacture of liquid mosquito's destroyer. It used to obtain concentrated alletherin and convert it into diluted alletherin by adding solvent deodorized kerosene oil, perfume (as a masking agent) and DHT (as a stabilizing agent).

Decision:

- The High Court held that mere processing of goods was not manufacture and to fall within the definition of manufacture a new substance would be formed.
- In the present case, no new substance was formed and only a diluted form of original substance was packaged under a deferent 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.

Banswara Syntex Ltd. 2008 (221) ELT 360 (Raj.):

ISSUE: Can waste material of building construction be taken as non-dutiable, when no-credit has been availed on either inputs or capital goods?

DECISION: The High Court held that MS Scrap arising as waste material of building construction, wherein credit of duty neither as inputs nor capital goods had been availed would be non-dutiable as **it did not arise from manufacturing process.**

Valuation

SOUTHERN STRUCTURALS LTD. – S.C- 2008

- Inspection charges recovered by the assessee for any "**third party inspection"** carried out at the instance of the buyer in addition to the normal inspection of the assessee
- **is includible** in the assessable value.

PEPSICO INDIA HOLDINGS (P) LTD. – S.C- 2009- MM.imp(Fully Expected)

FACTS:-The assessee manufactured SYRUP containing soft drinks concentrate and sugar and sold the same to their MARKETING SUBSIDAITY COMPANY. A part of the syrup sold by the assessee to others also. The marketing company would sell the same to retailers.

The marketing company used to leased out DISPENSING/ VENDING MACHINE (the machine was used for dilution and carbonation of the syrup for sale of soft drinks to consumers)

ISSUE:-

- Since the assessee and the MARKETING SUBSIDAITY COMPANY were related person, therefore the A.V. shall be sale price of the marketing company, without deducting discount allowed by MARKETING SUBSIDAITY COMPANY to its buyers.
- Further, the lease rental paid by the retailers to the MARKETING SUBSIDAITY COMPANY towards DISPENSING/ VENDING MACHINE was also included in A.V.

Held that:-

- when trade discount indicated in the invoice at the time of sale and there is no flow back return of trade discount to **assessee seller** or its related person, the A.V. shall be computed after deducting such trade discount , even if ,the valuation was sought to be made based on the sale price of the related person, **the deduction of discount can not be denied.**
- Vending machine stood installed by the holding company. Nonetheless, ownership of the vending machine vested in the marketing company. The machine charges were payable to the marketing company and not to the holding company. **Hence "machine usage charges" or LEASE CHARGES were not includable in the A.V. of product**

M/S. ACCURATE METERS LTD. – S.C- 2009

Facts:-

- The assessee, a manufacture of electric meters, used to sale the meters to State Electricity Board (SEB).
- The SEBs used to call for tenders in which the value of the electric meters was to be fixed as at the factory gate. Freight and the insurance charges were to be charged on an average basis not on actual.
- There were two separate contracts; one for sale of electric meters and other governing transportation of goods. The SEBs used to make inspection of the meters. After inspection, the assessee was bound to transport the goods from the factory gate to the place of the SEBs at the rates specified in the tender.

DECISION:-The department contended that since the meters were delivered to the SEBs at their premises and not at the factory gate (factory gate being the 'place of removal'), therefore the valuation had to done at the transaction value (inclusive of average freight charges) under rule 5 of the Central Excise Valuation Rules, 2000 and only the amount of actual freight was allowable as deduction therefrom.

CRUX"- The transportation and insurance charges are not includible in the value of the excisable goods when the sale is complete at the factory gate and goods are delivered to the buyer at the place of removal (viz. factory gate) itself.

Saf Yeast company (P) Ltd. 2009-TRI

ISSUE:-Section 4A covers goods on which MRP is required to be declared under SWMA. SWMA is a self contained code in itself in the sense it contains its own provisions as to when MRP is required to be declared on the package of a commodity or not. Whether CEO is permitted to takes its own stand as to when MRP is required to be declared on the package or not?

Held that- applicability of section 4A is dependent upon the applicability of the SWMA, 1976. The authorities under the excise act have no jurisdiction to question the correct ness or otherwise of the same.

Triveni Engg. & Inds-(SC):

Facts and Issue: The assessee cleared sugar manufactured by it at prices fixed by the Government and paid excise duty on such price. Subsequently, on appeal by the trade, the Supreme Court directed increase in the price with retrospective effect. The Government paid the difference between original price and increased price.

The Department issued an Show Cause Notice seeking to levy duty on such deference contending that such deferent amounted to a consideration/additional consideration for sale.

Decision:-

- The price for assessment would be the price at which the goods were cleared, and not the price subsequently determined. Any alteration/revision in price subsequently to clearance of the goods cannot effect computation of duty especially when there is no escalation clause in the purchase order. Duty cannot be sought to be levied if and when any sum is received from the buyer.
- The amount so received could also not be regarded as additional consideration for sale. When the goods were sold, the price was the sole consideration for sale and no additional consideration was ever thought.

Lucas TVS Ltd-2009-TRI (Larger Branch)- MM.imp(Fully Expected)

Facts-

Assessee is engaged in the manufacture of excisable goods. They had removed the goods and paid duty of excise on self assessment basis in terms of rule 8 of CER, 2002. Such payments at the time of removals of goods were made on the AV based on the price originally agreed between the assessee and buyers. Subsequently, there was upward revision of price of the goods due to increase in the cost of raw material and/ or other factors and consequently , the assessee issues supplementary invoice for realizing the differential price from the buyers and paying differential duty, SUCH PAYMENT OF DUTY WAS MADE WITHOUT PAYMENT OF INTEREST.

ISSUE	HELD THAT-
Whether in the facts of these cases, the additional amount paid by the buyer towards price of the goods in terms of the supplementary invoice issued by the assessee after removal of the goods can be considered to be part of the transaction value under section 4 of the CEA,1944.	YES- since definition of TV provides that- Section 4(3)(d): Transaction Value; Transaction Value means the price actually paid or payable for goods, when it is sold, *And includes,* • Any amount, which the buyer is liable to pay to the assessee or on behalf of the assessee, • By reason of or in connection with the sale, • **WHETHER PAYBLE AT THE TIME OF SALE OR ANY TIME THEREAFTER.**

Whether on the amount of duty under the supplementary invoice, interest is leviable under section 11 AB from the first date of the month succeeding the month in which duty was paid in the first instance in terms of the original invoice.	YES- Though there was no delay in this payment with reference to the time at which the price was increased, but definitely there was delay ion payment of such duty with reference to the time of removal of the goods.
Whether the payment of duty under the supplementary invoice by the assessee is covered by section 11 (2B) of CEA, 1944.	YES- - this is a case of duty SHORT PAID.
Whether the CEA, 1944 or CER, 2002 containing any provision for recovery of interest payable U/S 11 AB on any amount of duty paid under supplementary invoice.	YES , section 11 of CEA, 1944- Recovery of SUMS DUE TO GOVT.

1=M/s SKF India Ltd.-2009- SC

Facts and Issue-

- The respondent-assessee is engaged in the manufacture and sale of ball- bearings and textile machine parts. It sold goods manufactured by it on certain prices on payment of excise duty leviable on the price on which the goods were sold.
- Later on, there was a revision of prices with retrospective effect. Following the revision the assessee demanded from its customers the balance of the higher prices and issued to them supplementary invoices.
- At the same time it also paid the differential duty on the goods sold earlier.
- The Revenue took the view that the assessee was liable to pay interest on differential duty.

Held that-

- The assessee gave its reply stating that the payment of differential duty was made by it at the time of issuing supplementary invoices to the customers and, therefore, there was no question of charging interest much less any penalty
- It is to be noted that **THE ASSESSEE WAS ABLE TO DEMAND FROM ITS CUSTOMERS** the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale the goods carried a higher value and those were cleared on short payment of duty.
- The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts.
- Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc.

The payment of differential duty thus clearly came under sub-section (2B) of section 11A and attracted levy of interest under section 11AB of the Act.

2=SUPREME PETROCHEM LTD.- 2009 (Tri.-LB)

Issue-whether the expenses of loading of goods within the factory for clearance to a buyer are includable in the assessable value of the goods where such expenses are incurred by, or on behalf of, the buyer.

Held that-

- "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale,
- If the outward handling charges like loading chares within the factory are paid by the buyer to the assessee or on behalf of, the assessee, by reason of, or in connection with the sale, then such expenses shall form part of transaction value
- In other words, the expenses of loading of excisable goods within the factory for clearance to a buyer are liable to be included in the assessable value of the goods unless it is proved by the assessee that the burden of such expenses was not borne by them.
- If the transporter appointed by the buyer ie such expenses are not borne by the assessee, therefore they can not be included in A.V.

Note that- loading charges can not be regarded as 'cost of transportation'

Central Excise Rules, 2002

Gupta Metal Sheets -2008 - (Tri.-LB).

ISSUE

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?

Decision

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.

Balarampur Chini Mills Ltd. [2008] 223 ELT 34 (All.):

- Loss of sugar due to spontaneous combustion is loss due to natural causes.
- Therefore, remission of duty is available in respect thereof.
- Such remission cannot be denied on the ground that the assessee should have taken preventive measure to avoid the loss, because question of preventive measure is applicable only in case of loss due to accident; not in case of loss due to natural causes.

BDH Industries Ltd. [2008] Tri. (LB):

ISSUE:-

The assessee, by mistake, debited an amount in excess of the duty payable by him in his PLA/CENVAT Account.

- The assessee, thereafter, requested the Department to allow him to take the credit of such excess payment in his PLA/CENVAT A/C.
- The Department denied assessee's request and asked it to file claim for refund u/s. 11B.

Held that,

- There is no provision under the Central Excise Act and rules allowing suo motu taking of credit or refund without proper sanction by the Central Excise Officer. Any correction in PLA/CENVAT A/c. requires Department sanction.
- Therefore, any excess payment by mistake or on account of clerical/arithmetical error has to be claimed by way of refund application filed u/s. 11B.

3=KATARIA WIRES LTD.- 2009-(H.C)

Issue-The assessee claimed that both the original and duplicate copies were lost by the transporter in transit of the goods with the result the same could not be produced. Whether assessee will be entitled for cenvat credit

held that –

- the Excise provisions lays down requirement of production of original copy of invoice and in absence thereof, a duplicate copy,
- one cannot oblivious of the fact that in some cases if original and the duplicate, both are lost, the claim cannot be defeated especially when department did not dispute receipt of the goods, their use in the manufacture of final product and duty paid character of inputs.

Since the duty was paid for the inputs and inputs were used in captive consumption for manufacture of final product, merely because original and duplicate copy as required were lost, the claim could not have been defeated especially when certified copy duly issued by the jurisdictional Superintendent was produced – credit will be allowed.

In other words-copy of invoice certified by SCE will be eligible document for availing cenvat credit

Cenvat Credit Rules,2004

COCA COLA INDIA PVT. LTD- Tri

Facts

- The appellant is engaged in manufacture of concentrates of non alcoholic beverages base. The same are being cleared by them on payment of duty to various bottlers for manufacture of aerated waters/beverages.
- The appellant is undertaking advertisement for aerated water for manufacture ex-bottlers, which according to them enhance the sale of the aerated water and in turn enhance the sale of concentrates while paying duty on the concentrates.
- It is their say, that the price at which the duty is paid includes expenses incurred by them in advertisement for aerated water. They took credit of service tax paid on advertisement charges as input service used in or in relation to manufacture of concentrates.
- However, the same was denied by the Commissioner on ground that the advertisement is on account of final product i.e. aerated waters and not in respect of their concentrates and since the

appellant is manufacturing and removing concentrates, for which no advertisement is undertaken, they are not entitled to take credit of the service tax paid on the advertisement.

Scope of input service:

- The definition of input service is 'means and includes' definition. The inclusive part tends to include all those categories within the ambit of input service, which may or may not have fallen within the means clause. Both 'means' and 'includes' parts are independent of each other.
- The expression "activities relating to business" is very wide in scope, where : the word 'business will not only cover manufacturing but also those aspects that relate to functioning of business: the word 'relating' would comprise of both direct and indirect relation:
- and the word 'activities' covers all activities whether main / essential or not. The expression "such as" appearing thereafter is illustrative and activities other than those mentioned are also covered.

conclusion

- Service tax paid on advertisement service is eligible as CENVAT credit even if the advertisement was of the cold drinks manufactured out of concentrated manufactured and supplied by the assessee.

Suntech glasses pvt ltd-H.C.-2010

Facts and issue :

- The assessee purchased inputs from the manufacturer thereof.
- The assessee did not pay fill duty stated in the invoice and a part of the excise duty was borne by the supplier.
- The assessee availed the credit of full excise duty stated in the invoice.
- The department denied the credit of excise duty borne by the supplier contending that only the excise duty borne by the assessee is eligible as CENVAT Credit.

Decision - Assessee eligible for full credit, so long as full duty paid :

- Rule 3(1) of CENVAT Credit Rules, 2004 allows credit of various duties paid on inputs/capital goods received in the factory of manufacture.
- As per Rule 3(1) the only requirement for availment of CENVAT credit is that the duty must have been paid on inputs/capital goods; **there is no requirement that the duty must have been borne by the assessee.**
- Hence, even if a part of duty was borne by the supplier, the assessee was eligible to avail of whole of the credit of excise duty as stated in the invoice.

BHUWALKA STEEL INDUSTRIES LTD.- (Tri. - LB) -2010

Cenvat Credit-Shortage of input-

- Cenvat credit denied - the ground of difference between weight of inputs recorded in receipt in premises and weight recorded in relevant invoice.

In the light of the various decisions held that-

- We note that some of the cited decisions extracted above have held that negligible percentage of difference on account of transit loss as a result of evaporation etc. should be ignored and full duty credit should be allowed.

- Some other decisions cited above have taken note of the difference that may arise on account of weighing on different scales at the despatch and receiving ends and it has been held therein that such differences can be ignored as per tolerance limits prescribed under the Standards of Weights and Measures Act, 1976 and credit allowed accordingly.
- Thus there is no hard and fast rule for dealing with different kinds of shortage.
- We answer the reference made to the larger Bench in the above terms and return the appeals to the concerned Division Bench for decision on merit.

Bansal Alloys & Metals Ltd. [2010] (Tri. – Del.)

Facts and issue:

- The assessee procured inputs and availed credit of service tax paid on inward transportation of such inputs, which is eligible as "input service".
- Subsequently, the assessee removed those inputs 'as such' and paid an amount equal to CENVAT credit availed on inputs removed as such as per Rule 3(5).
- The Department contended that since transportation service pertained to whole of the inputs (including inputs removed as such), hence, the credit of service tax pertaining to such transportation service was reversible to the extent it related to 'inputs removed as such'
-

Decision:

- Rule 3(1) allows credit of the duty paid on any input or capital goods and any input service. Rule 3(5) provides that the manufacturer shall pay an amount equal to the credit availed in respect of inputs or capital goods removed as such.
- Hence, rule 3(5) does not require payment of equal amount in respect of credit of input service.
- There is no provision for payment of credit on input service. So, reversal of Credit on input service in respect of Goods Transportation Agency service was not required Accordingly, the view of the Department was not tenable in law.

GULJAG INDUSTRIES LTD. – H.C- 2008

- Asbestos sheets used for connecting equipments for passing of gas / steam are accessories to the plant, as their use is essential and adjunct to the main plant.
- Such accessories necessary for smooth running of the plant qualify as capital goods, even if such sheets are not covered under tariff chapters listed in **definition of capital goods [Rule -2 (a) (i)].**

GUJARAT STATE FERTILIZERS & CHEM. LTD. – S.C- 2008

ISSUE:- Whether the Credit on low Sulphur heavy stock (LSHS) used in the manufacture of steam which in turn was used for the manufacture of the final product, namely, fertilizer which was fully exempt from payment of excise duty , be allowed ?

Held that:-inputs used to produce steam / electricity, which is used in manufacture of exempted fertilizers, are entitled to cenvat credit because the inputs used for generation of steam / electricity used for ANY OTHER PURPOSE are also inputs**.(As per the Definition of INPUT**)

MALWA INDUSTRIES LTD.- Imp

Facts

- There was a Central-excise exemption notification in force exempting finishing agents, dye carries, etc. from excise duty if "used in the same factory" for the manufacture of textiles and textiles articles.
- The assessee imported certain finishing agents, dye carries, etc. for manufacture of textiles and textile articles and claimed exemption in respect of CVD imposed u/s 3(1) of CTA, 1975 on the ground that the similar goods manufactured in India were exempted form excise duty.
- The Department denied exemption contending that since the imported finishing agents, dye carries, etc. were not manufactured by the assessee in its own factory; therefore, the condition that the same goods should be used in the "same" factory is not satisfied.

Issue: Whether the assessee was entitled to exemption?

Decision:

- The use of the word 'same' in the exemption notification doesn't mean that for claiming exemption, the furnishing agents, dye carries, etc. must have themselves been manufactured by assessee.
- It simply means that goods must be used in the same factory in which textiles articles are manufactured.
- The object of section 3 (1) is to ensure that the importer is not placed at some more advantageous position vis-à-vis purchaser/manufactures of similar goods India on which excise duty is imposed.
- Conversely, if no excise duty is leviable on finishing agents, dye carries, etc. for manufactured in India, there can be no question of levy of additional duty of customs u/s 3(1) of import of like goods.

Accordingly, since the imported finishing agents, dye carries, etc. were used in factory belonging to the importer-assessee where the manufacture of textiles and textile articles took place, therefore, the assessee was entitled to exemption.

Hindustan Zinc Ltd. 2008 (225) ELT 183 (Raj.)

ISSUE-1- Whether Cement, used as construction/building material in the mines is eligible as input for the purpose of availment of CENVAT credit?

HELD that- NO

ISSUE-2-whether welding roads used in maintenance, eligible for cenvat credit?

HELD that- YES

"Welding electrodes used in maintenance/ repair of capital gods are eligible as input".

ACS Hydraulics Pvt. Ltd. v. CCE 2008 (Tri.),

ISSUE:-

- Triveni Texturisers purchased inputs from Khaitani Industries and availed the CENVAT credit of the entire excise duty paid by Khaitani Industries as reflected in the invoice.
- Subsequently, Khaitani Industries gave certain amount of discount for the reason of the bulk

purchases made by Triveni Texturisers during the period.

- This trade discount was given by issuing credit notes for the basic price. Department contends that Triveni Texturisers is not entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and should reverse the credit proportionately.

Discuss whether the contention of the Revenue is justifiable. Removal of goods from 100% EOU to Domestic Tariff Area

Held that:--No, the contention of the Revenue is not justifiable in law.

- **In ACS Hydraulics Pvt. Ltd. v. CCE 2008 (Tri.),** the Tribunal held that there was no loss to the Revenue as far as the payment of duty was concerned by the supplier of the goods on the proper correct assessable value.
- Therefore, the Department could not direct the appellant to reverse the credit or to disallow the credit as the supplier had paid the duty and taken credit which was equivalent to duty shown in the invoice issued by the supplier.
- In view of the above discussion, it can be concluded that Triveni Texturisers is entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and need not reverse the credit proportionately.

Banco Products (India) Ltd. Vadodara-I 2009 (235) (Tri-LB).- **MM.imp(Fully Expected)**

ISSUE:-

- 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.

Held that:- -IN the case of **Banco Products (India) Ltd. Vadodara-I 2009 (235)** (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 **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.

Repro India Ltd. (2009)- (Bom.):

Facts: The assessee was engaged in the manufacture of packaged software (excise duty 8%), stationery books (excise duty 16%) and printed books (excise duty Nil). The printed books were entirely exported by it under bond without payment of duty.

The assessee claimed refund of CENVAT credit attributable to inputs used in the manufactured of printed books exported by it.

The Department contended that since the printed goods were already exempt from excise duty, they could not be exported under the bond. Further, since the assessee didn't maintain separate accounts for inputs used in dutiable and exempted goods, the department demanded **5%** of the value of the printed books under the rule 6(3) of the CENVAT credit Rules, 2004.

Held that:, Rule 19 of the Central Excise Rules, 2002, uses the term 'excisable goods', therefore, both dutiable and exempted goods can be exported under the Bond.
Rule 6(6) of the CENVAT credit Rules, 2004 provides that the provisions of sub-rules (1) to (4) thereof shall not apply to "excisable goods" removed without payment of duty, which are cleared for export under bond. Since Rule 6(6) uses the term 'excisable goods', which includes exempted goods as well, therefore in case of exempted goods exported under Bond, no payment @ 5% of the value of exempted goods can be required. Therefore, the demand by the department was unsustainable.

Ambuja Cements Ltd. v. UOI 2009 (P & H). M-imp

FACTS AND ISSUE:-

- 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 (free on rail) destination sale" 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 denied cenvat credit contending that outward transportation is admissible as cenvat credit only UPTO the PLACE OF REMOVAL. Hence, transportation from place of removal to place of delivery (ie customers doorsteps) is not eligible as input service

Explain, with the help of a decided case law, if any, whether the stand taken by Department is tenable in law.

ADDITIONAL FACTS-
In terms of contract –

- *The ownership of goods and the property in the goods remains with the seller of goods till the delivery of the goods in ACCEPTABLE CONDITION to the purchaser at his door step.*
- *The seller bears the risk of loss goods during transit to the destination and*
- *The freight charges are integral part of the price of the goods.*

Held that - 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** (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.**
- **In this case, the sales were 'FOR destination' and was complete at customers door step, hence the credit of service tax paid on freight upto customers doorstep was admissible**

Marmagoa Steel Ltd. [2008] 229 ELT 481 (SC):

In case of imported goods directly transferred by an importer from the port of the import to the factory of the assessee, the relevant document evidencing payment of duty for the purposes of Rule 9 of CENVAT Credit Rules, in such case, would be bill of entry.

Since the assessee had produced bill of entry relating to imported scrap and had taken CENVAT credit of additional duty of customs paid thereon on the strength of such bill of entry, therefore, the CENVAT credit so taken could not be denied

Innovative Tech Pack Ltd. [2008] -(SC)

Facts-

- ***An exemption from excise duty was available on the condition that the manufacturer shall not avail CENVAT credit in respect of the exempted products or any other products manufactured in the same factory.***
- The assessee opted for such exemption in respect of his first factory; while he did not avail of such exemption in respect of his another factory and availed CENVAT credit in respect of same products manufactured in the another factory.
- The Department contended that since the assessee had opted for exemption, therefore, the exemption was to apply to all factories of the assessee and it could not avail of any CENVAT Credit.

Decision-Held that,

The said condition specifically provided that the manufacturer could not avail of Cenvat Credit in respect of all products manufactured in the same factory; such condition was not intended to apply to all factories of manufacturer. Therefore, the manufacturer had the option to not avail exemption in respect of another factory and avail CENAVT Credit in respect of products manufactured therein.

4=M/s. Maruti Suzuki Ltd. - (SC), 2009

FACTS

- Assessee has installed three gas turbines in their factory for generation of electricity. All the three turbines have capacity to generate electricity of 20 MW each.
- From January 2003 onwards, assessee are using naphtha as fuel to run the gas turbines and they are availing CENVAT Credit on naphtha used for generation of electricity in gas turbines. Assessee also uses diesel generating set (DG set) for generation of electricity with the use of diesel for which they had not availed any credit.
- In their factory, assessee has a common distribution point for electricity generated in turbines as well as DG set and the entire electricity which is generated in the turbines and DG set(s), placed in the factory, is distributed through common distribution point.
- During the disputed period assessee cleared a part of electricity generated in the factory to its joint ventures, vendors etc. In addition, assessee met its electricity requirements by electricity captively generated by the assessee in their turbines.

Held that –

- It may be noted from the CENVAT Credit Rules of 2004 vis-a vis CENVAT Credit Rules of 2002 that the word "for" in the inclusive part after the words "steam used" is substituted by the words "used in or in relation to the manufacture of final products"[ie as per old law(ccr ,2002-"steam used FOR" AS PER NEW LAW (CCR 2004) " goods used IN OR IN RELATION TO",)] - to the extent the excess electricity is cleared to the grid for distribution or to the joint ventures, vendors, and that too for a price (sale) the "process and the use test" fails.
- In such a case, the nexus between the process and the use gets disconnected. - assessee is entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they are using the produced electricity within their factory (for captive consumption) –

- They are not entitled to CENVAT credit to the extent of the excess electricity cleared at the contractual rates in favour of joint ventures, vendors etc., which is sold at a price.

5=TATA ADVANCE MATERIALS- 2009 (Tri.-Bang.)

Facts-

- The appellants purchased Capital Machinery in 1998 and availed Cenvat credit on the said Capital Goods. They were put to use in manufacturing the final products. However, in 2003, a fire accident occurred and the goods were destroyed.
- They were cleared as scrap without payment of duty. Insurance was also claimed. - Revenue proceeded against the appellants for the reversal of the Cenvat credit taken on the Capital Goods. –

Held that –

- The goods were destroyed in 2003 due to a fire accident. There is no legal provision for demanding the Cenvat credit taken on the said goods during the relevant period.
- The fact that the appellants claimed insurance, which is inclusive of Excise Duty, is not at all relevant. – demand set aside.

6=Ind –swift Laboratories Ltd. 2009-(P&H)

- **Cenvat credit taken but not utilised, no interest chargeable, as no loss to Revenue.**
- Whereas interest can be charged only the amount of cenvat credit wrongly availed AND wrongly utilised and that to only, from the date when such credit was **utilised**. [*See the provisions of Rule 14 of CCR, 2004.]*

7=Jaya mills ltd-

- If the assessee had wrongly claimed depreciation on duty element of capital goods in its income tax return and
- subsequently rectified the same by adding back the depreciation claim on duty element of **capital goods cost,**
- then the cenvat credit allowed of the same. ***[see provision of Rule 4 (4) of CCR, 2004]***

Common Topics

MANJUNATH FOOD & PACKAGING P. LTD.- Tri

Decision :

- Even though the assessee had to pay the duty under protest, the buyer had made it clear that they would not absorb any additional duties and levies.
- The price was kept at the same level as earlier. Hence, the burden of duty was not, and could not have been, passed onto the buyer.
- The burden of duties paid under protest was borne by the assessee itself.

- Therefore, there is no bar of unjust enrichment at all. Hence the Department could not deny refund.

In other words-when the prices before and after demand of duty remain the same on account of the buyer denying to bear the burden of any additional duty, the principle of unjust enrichment can not apply to deny the refund

SICOM LTD. – S.C- 2008- Imp

Recovery of sums due to Government – Section 11 of the Central Excise Act, 1944 –

- Whether realization of the duty under the Central Excise Act will have priority over the secured debts –
- **Held that** secured debts have priority over the excise dues - there is no merit in the appeals by revenue.

MITTAL PIPES MANUFACTURING CO. – S.C- 2008

Mis-declaration of "Complete pre-fabricated buildings" as "Steel structures" – undervaluation –

- Tribunal's finding that the appellant received orders from the defence authorities for complete pre-fabricated buildings classifiable under Sub-heading 94.06, not under SH 7308.90, is a finding of fact which does not call for any interference
- **larger period is invocable**, as there was **suppression of fact –**
- demand is justified

International Auto Ltd. [2010] (SC):

Facts:

- The assessee supplied auto parts to its customers. The price of the auto parts was determined by such customers having regard to the cost of material, manufacturing cost, profit margin, etc.
- Some price difference arose between the price on the date of removal and the enhanced price at which the goods were ultimate sold to the customers.
- The assessee paid differential duty pertaining to the price-rise. The Department demanded interest u/s 11AB of the Act on the amount of such differential duty.
- The assessee contended that in view of Judgment in MRF's case the assessable value of the goods is to be determined at the time of removal of goods. Since there was no price-variation clause in the purchase orders, therefore, there was no scope for change in prices at the time of removal of goods.
- Accordingly, this was not a case of short-levy/non levy or short-payment/non payment of duty and, hence, no demand could be made for differential duty and interest u/s 11A and 11AB.

Issue:-Whether the differential duty pertaining to price-rise was liable to interest u/s 11AB?

Decision :

Price –rise after date of removal – Liable to duty, differential duty payable:	The assessee was able to demand from its customers the balance of the higher prices by virtue of revision of the prices. Therefore, it followed that, at the time of sale/removal, the goods carried a higher value; the value adopted at the time of removal was incorrect/under-stated and the goods were cleared on short payment of duty or short-levy of duty. Hence, such price-rise was liable to duty. The differential duty arises on account of corrected value of the goods on the date of removal.

All short-payment of duty – Liable to interest:	All cases of non-levy or short-levy, etc. are classified under two categories u/s 11A : one involving fraud, etc. ; and others not involving any fraud. In both the cases, the assessees are given opportunity to make amends : ➢ Cases, which do not involve any fraud, collusion, etc. i.e. where short-payment is unintentional or due to oversight : Section 11A (2B) provides for non-issuance of SCN if differential duty, as ascertained by assessee, is paid in full along with interest u/s 11AB. ➢ Cases, which involve fraud, collusion, etc., where short-payment is intentional : Section 11A (1A) provides for conclusion of proceedings if payment of differential duty, as stated in the SCN, is made along with interest and penalty equal to 25% of such differential duty. While penalty u/s 11AC is attracted only in case of fraud, collusion, etc., interest u/s 11AB is attracted on delayed / deferred payment of duty for whatever reasons (intentional or unintentional.)
Interest payable in the present case :	➢ The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts. ➢ Thus, it was clearly a case of short payment of duty, though completely unintended and without any element of fraud etc. Accordingly, the same fell u/s 11A (2B) and was liable to interest u/s 11AB.
MRF ltd.'s case distinguished :	➢ , MRF Ltd.'s case was held inapplicable to the case.
Judgment in CCEx. v. SKF India Ltd. [2009] (SC) followed :	➢ The Supreme Court followed its own recent judgment in SKF India's case, which upheld levy of interest on differential duty arising on retrospective revision of prices.

G.T.C. INDUSTRIES LTD. – S.C- 2008

Allegation that respondents had been evading duty on cigarettes consciously & deliberately manufacturing deceptively similar version of certain regular brand showing lower sale price as compared with that of the regular brand

- allegation that appellant is receiving difference between the two S.P. by means of "flow back"
- Tribunal has not recorded any finding regarding the flow back –
- finding recorded by the Tribunal on the question of limitation is also not satisfactory – matter remanded

~~**M/s Hongo India (P) Ltd. & Anr. – S.C- 2009- Imp**~~

~~**FACTS AND ISSUE**- Whether HC has power to condone the delay in presentation of the reference application under unamended Section 35 H(1) of the CEA, 1944 beyond the prescribed period (of 180 days) by applying Section 5 of the Limitation Act, 1963 –~~

~~**HELD THAT**~~

- ~~time limit prescribed u/s 35H(1) is absolute and NOT extendable u/s 5 of the Limitation Act, 1963 –~~
- ~~Since court has to respect the legislative intent, limitation cannot be extended u/s 5 of Limitation Act by the H.C. –~~

~~**Punjab Fibers Ltd. 2008 SC**~~

~~**ISSUE**- whether the HC has power to condone the delay in filing the appeal u/s 35G of CEA, 1944, beyond the specified period of 180 days.~~

~~**HELD- NO**, because in the case of an appeal to HC u/s 35G of CEA, 1944, the Parliament has provided only 180 days and no further period for filing an appeal is mentioned in the Act.~~

SECTION 35G APPEAL TO HIGH COURT

The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal shall be-

*(a) filed **within 180 days** from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;*

*(b) **The High Court may admit an appeal after the expiry of the period of 180 days, if it is satisfied that there was sufficient cause for not filing the same within that period**.*

Dharmendra textile Processors – Imp

- **Proviso to section 11 A, RELATING TO EXTENDED PERIOD OF LIMITATION** and sec. **11AC RELATING TO IMPOSITION OF PENALTY** are identically worded.
- It is for the revenue to establish that the extended period of limitation is invocable.
- Once it is established that the extended period of limitation is invocable , the LEVY PENALTY U/S 11AC IS AUTOMATIC (Mandatory penalty)
- Ie **Mens Rea is not required** for this purpose.

J.P.Tobacco Product pvt.Ltd.

- The appellate Tribunal set aside the demand and penalty raised against the assessee, which order become final on the revenue not filing the appeal against the same
- Since the demand and penalty had been finally set aside, therefore, there remained no basis for continuation of prosecution on the charge of evasion of duty by the assessee. Accordingly, the prosecution was to be dropped.

Deepak Agro Foods - 2008 - (S.C.)- M. IMP

ISSUE-Can all irregular, erroneous or illegal assessment orders be held to be null and void?

Held that –

- All irregular or erroneous or even illegal assessment orders could not be held to be null and void because there was a fine distinction between the orders which were null and void and the orders which were irregular, wrong or illegal.
- Where an authority **lacked inherent jurisdiction** in making an order, such order would be null, non est and void ab initio because the defect of jurisdiction of an authority went to the root of the matter and struck at its very authority to pass any order.
- Such defect could not be cured subsequently even with the consent of the parties.
- However, where an authority exercised jurisdiction in a wrongful manner, order would not be null. It would be an illegal order capable of being cured in a duly constituted legal proceeding.

Continental Foundation Joint Venture - 2007 (SC)

ISSUE-Can omission to give correct information be construed as 'suppression of facts' for the purpose of the proviso to section 11A of the Central Excise Act, 1944?

Held that-

- Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty.
- The Apex Court explained that an incorrect statement cannot be equated with a wilful mis-statement.
- There cannot be a non-wilful suppression or mis-statement of a fact. Mis-statement of fact must be wilful.

Shiv Kripa Ispat Pvt. Ltd. 2009- TRI

- It was held that where the goods are not available for confiscation,
- then no question of confiscation of goods. Therefore assessee can not be made to pay redemption fine.

Dabur India Ltd. -2009- SC- Imp

Facts and Issue-

- Assessee paid excise Duty as per classification approved by Department.
- Later on, classification upheld to be wrong and thus duty sought to be recovered from assessee. Department raised demand applying extended period of limitation.
- Whether extended period of limitation is applicable?

Held that- where the classification was approved by the department, the classification was with in the knowledge of the department. Therefore, **department can not**, subsequently alleged fraud / suppression by the assessee.

Sree Ayyangar SPG & WVG Mills Ltd.- 2008 (SC),- Imp

ISSUE-.

The CESTAT passed its order on 01.01.2008. The assessee filed the application for rectification of a mistake apparent from the record in the said order on 23.05.2008. However, the Tribunal could not dispose of the application till 30.06.2008. Thereafter, the Tribunal rejected the application on the ground that the six months period had lapsed.

Do you think that the stand taken by the Tribunal is valid in law?

Decision

- In case of **Sree Ayyangar SPG & WVG Mills Ltd. - 2008 (SC),** the Supreme Court while interpreting section 254(2) of the Income Tax Act, 1961 held that once the assessee had moved the application within four years from the date of order, the Tribunal could not reject that application on the ground that four years had lapsed, which included the period of pendancy of the application before the Tribunal.
- Therefore, it concluded that if the assessee had moved the application within four years from the date of the order, the Tribunal was bound to decide the application on the merits and not on the ground of limitation.
- Applying the ratio of the aforementioned case in the given situation, it can be inferred that limitation period for filing rectification of mistake is not the time limit for deciding the rectification of mistake under section 35C(2) of the Central Excise Act, 1944.
- **Hence, in the instant case, the Tribunal is not justified in rejecting the application on the ground that the six months period has lapsed as the application had been filed before the expiry of six months.**

Shree Ganesh Dyeing & Printing. Works 2008 (232) (Guj.) - Imp

ISSUE -

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

DECISION

- The High Court 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 authorizing another officer to file appeal on behalf of the Commissioner.
- The language of the **latter part of section 35B (2) 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.

Rama Wood Craft P. Ltd. [2008] - (Tri. –LB)

Penalty under Rule 25 of the Central Excise Rules, 2002 cannot exceed higher of –

(1) the duty of excisable goods in respect of which any of the contravention has been committed, or

(2) Rs. 2000.

- Therefore, the penalty, as aforesaid, is the maximum penalty imposable. Accordingly, if the duty exceeds Rs. 2000, the maximum penalty shall be the amount of duty; and if the duty is less than Rs. 2000, the maximum penalty shall be Rs. 2000.
- The Central Excise Officer has the option to impose a penalty lower than the maximum.
- Further, Rule 25 is subject to the provisions of section 11AC of the Act; that is, in cases
- pertaining to fraud, collusion, wilful misstatement, etc., with an intent to evade payment of duty, penalty shall be imposable u/s. 11AC, and not under Rule 25.

India Thermit Corp. Ltd. [2008] (SC):

Re-agitation of same issue, not allowed: The first show-case notice relating to 1995 was dropped on adjudication. Later, second show-cause notice on the same issue for 1993 to 1996 was issued.

Held that- since the Department has accepted the earlier adjudications on the same issue for part of the period, it cannot be permitted to re-agitate the same point for a part of the remaining period. There cannot be second proceedings raising the demand for the same period.

National oxygen Ltd. (2008) (Mad.):

- While remanding a case back to the adjudicating authority for the fresh consideration, the Appellate Tribunal cannot impose a condition as to pre-deposit.
- Therefore, where the Appellate Tribunal remanded the case back to the adjudicating authority only if the assessee pre-deposits 50% of the duty demanded, such order was not valid in law.

SunitaDevi Singhania Hospital Trust (2009) (SC):

Facts and Issue-

→ On appeal filed by the assessee, the Appellate Tribunal passed an order dated 19-1-2006 against the assessee denying the exemption in respect hospital equipments imported by it.

→ The Tribunal didn't fully consider the facts put forth by the assessee. As per the facts, the assessee had fully complied with the conditions of the exemption and was entitled to it.

→ The assessee filed an appeal before the Supreme Court, which was, later on, withdrawn seeking a leave to file an appropriate application before the Appellate Tribunal.

→ The assessee filed an application for rectification before the Appellate Tribunal seeking proper consideration of the facts put forth by the assessee. The Tribunal rejected the said application on the ground that the same was barred by limitation, as the same was not filed within 6 months from the date of the original order viz. 19-1-2006

Decision- Tribunal has inherent power to correct any mistake committed by it, provided the application therefore is made **within reasonable time.** The time limit of 6 months specified (under section 129B(2) Customs/ 35C(2) of Excise) **is not applicable to such inherent power.**

Monotosh Saha - [2008] - (SC)

Requirements for stay / Dispensation of Pre-deposit:

- Petitions seeking stay of demand should not be disposed of in a routine manner; the same should be disposed of only after taking into consideration the factual scenario involved.
- Mere establishment of a prima facie case wouldn't entitle stay of demand.

The two conditions governing dispensation of pre-deposit are –

(i) It must be shown that the pre-deposit would cause 'undue' hardship to assessee i.e. the requirement of pre-deposit is excessive / disproportionate than what the circumstances warrant (an example thereof may be genuine 'economic crisis'); and

(ii) the stay should be granted subject to imposition of conditions to safeguard the interest of revenue i.e. conditions like furnishing of security, guarantees, etc., may be insisted upon depending on the facts and circumstances of each case.

Sarashtra Kutch Stock Exchange Ltd. [2008] - (SC)

Non-consideration of Supreme / High Court judgment – Mistake apparent from record:

- Non-consideration of the decision of a judicial High Court or that of the Supreme Court results into a 'mistake apparent from record'. Since the judicial decisions act retrospectively i.e. they declare the law what has been at all material times, therefore, even if such decision is rendered subsequent to the passing of original order, the same would constitute 'mistake apparent from record'.
- Therefore, if the Appellate Tribunal fails to consider any judgment of jurisdictional High Court or the Supreme Court while passing an order, then, it may rectify such order in accordance with such judgment even if such judgment was not brought to the notice of the Tribunal.

Chloritech Industries 2009 (Guj.)

ISSUE-

Is the interest under section 11AB of Central Excise Act, 1944 recoverable when deferential duty is paid on account of price escalation?

Held that- interest u/s 11AB of Central Excise Act, 1944 was not recoverable when deferential duty was paid on account of price variation. In this case, at the time of undertaking the transaction, the additional price was not fixed.

- Hence, the liability of buyer to pay additional amount was not known to buyer himself. The Gujarat High Court observed that mere existence of escalation clause in contract between parties could not bring the subsequent escalation within the meaning of definition for purposes of levying interest.

- The High Court further provided that if neither side the transaction was not aware as the amount which was to be charged nor which was to be paid under the escalation clause on the date when the transaction was entered into, no liability to pay interest could arise under the provisions of section11AB.

- Section 11AB of the Act itself says that interest is to be paid on the amount short paid from the first date of the month succeeding the month in which the duty ought to have been paid under the Act.

Carpenter Classic Exim P. Ltd. vs. CC (2009)-(SC):

- Proviso to customs section 114A/ Sec. 11AC of Excise providing for reduction of penalty to 25% of duty (as against 100% of duty) is applicable if only the amount of duty demanded and interest thereon has been fully paid within 30 days.
- Therefore, where the amount of duty has not been fully paid within the 30 days period, the penalty leviable shall be 100% of duty.

8=Kushal Fertilizers pvt Ltd -2009 –S.C

The extended period of limitation can not be invoked from the date when all material facts are brought to notice of department.

Classification

Shree Baidyanath Ayurved Bhawan Ltd. – S.C- 2009

ISSUE-Classification of "Dant Manjan Lal" (DML) –

FACTS-Appellant sought classification u/sh 3003.31 as a **medicament -** Department sought classification u/ch 33.06 **as cosmetic/toiletry preparation/tooth powder –**

HELD THAT- Chapter SH 3003.31 does not contain definition of Ayurvedic Medicine and the product DML in nature, character and uses remains the same as it was prior to amendment – classification cannot be changed without change in the nature & use of the product - Department's appeals are allowed. HENCE IT WILL BE CLASSIFIED **as cosmetic/toiletry preparation/tooth powder**

M/s. Pragati Silicons (P) Ltd. – S.C- 2009 -Imp

- Nameplate, emblems and logo of plastic – whether classifiable under Heading no.87.08 and 87.14 (parts and accessories of motor vehicles) as claimed by assessee or Heading no.39.26 (articles of plastic) as claimed by revenue –
- It will be classified as parts and accessories of motor vehicles.

Calcutta Springs Ltd. 2008 (229) ELT 161 (S.C.)

ISSUE-When goods are classifiable under two headings, whether assessee should be given benefit?

HELD- that if a particular product was capable of being classified under two chapter headings of Tariff simultaneously i.e. in case of a classification dispute, **the benefit should be given to the assessee**

Mewar bartan udyog 2008 SC- Imp

Facts and Issue-

- **Section- 5 A** of CEA, 1944 empower C.G. to issue E/N in public interest. It may happen that exemption is issued in respect of parts of machinery.
- Issue is when such parts are cleared as SKD unit then, whether they shall be eligible to exemption?
- If E/N is applied literally , then exemption benefit shall be available
- On the other hand, if classification rules are applied for determining eligibility for exemption then exemption benefit shall not be available as Rule 2 (a) classification rule provides for classification of SKD unit as "Assembled product" and not as part.

Held that -an exemption notification has to be interpretated in terms of its own language. Where the language is plain and clear effect must be given to it. While interpretated exemption notification one can not go by classification rules given in CETA

Camlin Ltd. v. CCEx., Mumbai 2008 (SC)- M.imp

ISSUE-

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

ANSWER

- The Supreme Court in case of **Camlin Ltd. v. CCEx.,** Mumbai 2008 (SC) has held that-
- when the entries in the Harmonized 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.

Camlin Limited – ACTUAL FACTS

"Writing inks" manufactured & captively consumed in mfg. of marker pens which are exempt from excise duty –

- **assessee plea that inks used in one or other types of pens are to be considered as writing inks & hence classifiable under CSH 3215.10, is acceptable –**
- **Tribunal erred in relying upon the HSN for the purpose of marker inks in classifying them u/h 3215.90 (ROD-16%)–**
- **but Tribunal's order is confirmed in respect of inks other than marker inks**

Hence marker ink would be classified as writing ink u/h 3215.10, ie exempted.

9=M/s. UNI Products (I) Ltd. & Ors.-S.C Dated: 08-09-2009

Floor Covering – classification - non-woven floor coverings where the basic fabric is jute –

Issue and facts- The respondents are manufacturing non-woven floor coverings where the basic fabric is jute, but the case of the appellant is that the exposed surface is made of synthetic textile material like polypropylene felt or polypropylene fiber and as such these goods cannot be classified as non-woven jute floor coverings.

the show-cause notice is as follows:

"..... it appears that the said textile floor coverings are classifiable as `other textile floor coverings' under sub heading 5703.90 of CETA leviable to duty @ 30% Adv. and not as floor coverings of jute under sub heading 5703.20 of CETA....."

The S.C held that

- It is seen from the manufacturing process as explained by the learned advocate that the carpet is manufactured in a continuous process and the said carpet is to be considered as of one identity rather than as having separate identity of having a exposed surface and under surface. The tacking of the fibers of polypropylene and jute to be further needle punched into Hessian cloth brings into existence one commodity that is carpet."
- The tribunal after discussing the Chapter Notes, Sub-headings and also the Section Notes returned a finding that the classification should be done on the basis of the predominance test, that is to say, on the basis of textile materials which predominate by weight over other single textile material.
- The tribunal noted that before the adjudicating authorities it has been claimed that the carpets manufactured by the appellants has jute contents of 75% to 85% and the tribunal noted that "the revenue has not disputed this".
- After opining as above, the tribunal went on to discuss the second question, namely, whether the Hessian cloth has to be separated for the purposes of the predominance test or not?
- After discussing the matter in detail, the tribunal came to a finding that while determining the predominance test, it would not be permissible to exclude base fabric (Hessian cloth).
- The tribunal came to the conclusion that the predominance test of the assessee's products has to be done taking the product manufactured by it as a whole and not by separating the layers and then applying the predominance test.
- The tribunal also noted that the revenue's reliance on a single dealer's statement indicating that the assessee's jute carpets are known in the market as "Synthetic carpet" is of no consequence especially when such statement is not substantiated by any evidence.
- It is well known that the tribunal being the last authority on fact, it is not proper for this Court, in exercise of its power under Section 35 L(b) of the Central Excise Act, 1944, to disturb such findings of the tribunal since such findings are based on evidence.

For the reasons discussed above, The appeal was dismissed.

10=IN RE : ZUARI CEMENT LTD.- Eligibility for advance ruling

The applicant, a wholly owned subsidiary company of M/s. Cement Francais, France, is registered under Central Excise Act, 1944 for manufacture of cement in its factory. It proposes to expand its production capacity by setting up another manufacturing unit within the precincts of the existing factory.

- In order to be eligible for advance ruling, the activity of production/manufacture of goods for which a ruling is sought, has to be a "PROPOSED ACTIVITY" and not an ongoing one.
- creation of additional capacity for manufacture of cement by expanding the plant cannot be considered to be a "proposed" activity qualifying for pronouncement of a ruling.

Production of the same goods, namely cement, in the expanded plant is only a repetition or continuation of the past activity - application is rejected u/s 23D(2) of CEA without going into the merits.

CUSTOM LAWS

Definitions

Aban Loyd Chilies Offshore Ltd. v. UOI [2008] 227 ELT 24(SC): M.imp-

Deemed territory of India:

It was held in this judgment that though section 2(27) defines "India" to include territorial waters of India, however, -

- since the Customs Act, 1962 and Customs Tariff Act, 1975 have been extended to "designated areas" and other areas of the Continental Shelf and the Exclusive Economics Zone of India,
- therefore, by virtue of deeming fiction of the Maritime Zones Act, the said areas form part of the territory of India for the purposes of the Customs Act, 1962 and the Customs Tariff Act, 1975.

Implication of the aforesaid deeming fiction and judgment on scope of levy of customs duty:

The implication of the aforesaid deeming fiction and judgment is that since territorial waters of India or the 'designated areas' of the Continental Shelf or Exclusive Economic Zone are 'India', hence, -

- any goods produced or manufactured within such areas and brought to the mainland of India shall not be regarded as 'imported goods' and will not be liable to customs duty;
- any goods brought from any foreign country into such areas will be treated as 'import' and, hence, liable to customs duty; and
- any goods supplied from the mainland to such areas shall not be treated as 'export' and consequently, no export benefits shall be available in respect of them;

Provisions in respect of mineral oils (including petroleum or natural gas):

- Mineral oils produced in any place in Continental Shelf and Exclusive Economic Zone of India when brought to the mainland will not be liable to customs duty as 'imports'.
- Similarly, goods supplied from the mainland to such place in connection with prospecting or production of mineral oils shall not be treated as 'export'.
- Further, any goods brought other country to such place in connection with prospecting or production of mineral oils shall be treated as 'import' and would be charged to duty accordingly.

CRUX- *IN SIMPLE WORDS "****OUTSIDE THE TERRITORIAL WATER OF INDIA"*** *SHALL BE INTERPRETATED AS* ***"OUTSIDE THE TERRITORY OF INDIA"***

Basic Concepts

Indian Rayon & Industries Ltd. - S. C.-2008- M. imp

- The goods were initially exported by the respondent-assessee, which were rejected by the foreign buyer being defective and the assessee re- imported them back to India –
- Assessee has **executed bonds for re-export After repair** (therefore no payment of import duty at the of re- importation – sec. 20)– later on assessee **could not re-export the goods –**
- **Commissioner confirmed the demand and penalty** – CESTAT set aside the order of Commissioner –
- Now Apex court set aside the order of tribunal and **restored the order of commissioner**

Super Cassettes Industries Ltd. v CC [2008] 225 ELT 401 (SC): M-imp

Issue-

Goods sent abroad for repairs when re-imported into India are liable to customs duty as if they had been imported for first time in India.

Decision:

- As per Section 20 read with the definition of "import" as given u/s. 2(23) of the Customs Act, imported goods would include re-imported goods as well and therefore the goods sent / exported out of India and re-imported would also be liable to payment of duty in the same manner in which it would have been liable if imported for the first time in India.
- For levy of additional customs duty, it is not material as to after what process an article is imported or re-imported into India. The only test is whether the imported article is one which has been manufactured or produced. In the case, the product re-imported is magnetic head which is a manufactured product. Hence, the same is liable to additional duty of customs u/s. 3 of CTA, 1975.

In this connection, the Central Government has granted concessions under section 20 . The importer is liable to pay basic customs duty as well as additional customs duty only on the 'Fair cost repairs + Insurance and freight, both ways'

Essar Steel Ltd. –H.C.

Issue- Whether **export duty can be levied** on goods supplied from Domestic Tariff Area to Special Economic Zone?

Decision-

- Held that, levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified.
- The petitioner, are therefore not to be called upon to pay export duty on movement of goods from Domestic Tariff Area to Special Economic Zone Units or developers.
- Because in case of goods cleared from DTA to SEZ, the said goods are deemed to be exported BUT ONLY FOR THE LIMITED PURPOSE OF ALLOWING EXPORT INCENTIVES TO THE SELLER. THE SAME CAN NOT BE DEEMED TO BE EXPORT FOR THE PURPOSE OF LEVY OF EXPORT DUTY.

Valuation

MAHALAXMI GEMS - S. C.-2008

Allegation of overvaluation –

- imported rough diamonds found to be overvalued in **appraisers valuation report** and **trade panel report –**
- but department not proved by showing any contemporaneous evidence that invoices are fabricated or there was any relation between importer and exporter –
- tribunal's finding that **declared value is acceptable as transaction value** is justified.

In other words-

- The price declared in invoice is to be accepted as transaction value unless the Department shows by any contemporaneous evidence that invoices were either fabricated/fake or that any relationship existed between importer and exporter.
- Therefore, even if rough diamonds imported were found to be overvalued in appraisers valuation report and trade panel report,
- however, in absence of any contemporaneous evidence sustaining the same, the invoice value cannot be rejected.

VARSHA PLASTICS PVT. LTD. – M-imp

- The transaction value can be rejected when the nature of goods has been misdeclared or the assessee has resorted to invoice manipulation, under-invoicing, etc. However, the burden to prove the same lies on the department.
- When the transaction value is rejected, the department should proceed to determine the value on the basis of evidence relating to contemporaneous imports.
- However in absence of any evidence relating to contemporaneous imports, reference may be made to foreign journals indicating international prices, but, whether such journal indicates correct value would depend upon facts and circumstances of each case.

M/s. Atam Manohar Ship Breakers Ltd.- M.imp

Vessel imported for ship breaking - determination of the value –

- The assessee importer and the foreign –exporter entered into a Memorandum of agreement for importing the vessel for ship breaking at a price of USD9.7 lakh
- according to the respondent, an Addendum came to be inserted in the Memorandum of Agreement (MOA) by virtue of the said addendum, the price stood reduced from US$ 9.7 to US$ 8.7 lakh –
- revenue's allegation that addendum is not genuine,
- it appear that said addendum have been executed at the request of the buyer – vessel should be valued at US$ 9.7 –
- Revenue's appeal allowed. **Therefore, the value for the purpose of levy of custom duty was USD 9.7 lakh only.**

J.D. Orgochem Ltd. [2008] (SC)- M-imp

Facts:

- The assessee imported certain goods at US$ 13.2 per Kg. The same were earlier imported by the assessee at US$ 18.7 per Kg.
- The assessee submitted that the due to lessor demand in the international market, the price were declining.

Decision:

- The burden to prove that transaction value is not 'genuine' is on the Department. The Department must produce evidences of contemporaneous imports to reject invoice /transaction value.
- The contemporaneous imports have to be the imports made by other persons. The imports made earlier by the importer cannot be regarded as contemporaneous imports.
- The assessee's submission that international prices have declined was to be considered.
- Since the Department failed to produce contemporaneous evidence to reject transaction value, hence, the transaction value of US& 13.2 per Kg. was acceptable.

Import and Export Procedure

ATMA FIBRES (P) LTD. - S. C.-2008- Imp.

Release of goods –

- It is well settled that filing of the Bill of Entry is required for custom appraisal - Whatever be the reasons and whatever be the difficulties faced by the assessee(s),
- the HC ought not to have released the goods without the assessee filing the Bills of Entries –
- Department is directed to encash the Bank Guarantee, particularly, because the goods have been released –
- revenue's appeal is accordingly allowed

COSMO STEEL (P) LTD. - S. C.-2008

Non release of consignments by Commissioner of Customs (Port) –

- commissioner failed to comply with the directions issued by SC to release the goods –
- contempt of court - if there was a dispute regarding the amount of duty, he should have approached this Court for clarification –

- demurrage charges for this period are not justified as the goods were retained by the department in spite of orders passed by this Court to release the goods –
- **Commissioner of Customs (Port), is directed to pay cost**

Coastal goods and Store

Aban Lloyd Chilies Offshore Ltd. v. UOI [2008] 227 ELT 24 (SC):

Oil rigs located in Continental Shelf /Exclusive Economic Zone of India are not 'foreign going vessels' and hence, imported stores consumed thereon will not be eligible for exemption u/s. 87.

Decision:

- ***Oil rigs continental shelf/EEZ, not foreign going vessels:*** The goods imported by the assessee for consumption on board on 'oil rigs' were 'stores', as they were for use on oil rigs, which are vessels. However, the oil rigs proceeding to or carrying out operations in, continental shelf/ exclusive economic zones of India, which are deemed to be a part OF Indian territory, would not be a foreign going vessels, as the oil rigs proceed from the territory of India to an area which also deemed to be a part of the territory of India.
- ***Imported stores consumed on 'oil rigs' liable to import duty:*** Since the oil rigs were located in within the territory, which is deemed to be a part of India, therefore, the stores consumed on such oil rigs were consumed in "India' to which the Customs Act has been extended. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty.

Consumption of 'oil rigs' not entitled to benefit of section 87: Neither the 'oil rigs' nor the ship employed for transhipment of the goods to the oil rigs were 'foreign going vessel'. Therefore, the stores transhipped to the oil rigs and consumed thereon were not entitled to exemption u/s. 87.

COMMON TOPICS

Gawar Construction Ltd. [2009] (Bom.)

Background :	➢ An importer a machine duty-free under an exemption notification on the condition that importer would use it for its own use for a period of 5 years. ➢ The machine for destroyed in an accident and the importer claimed insurance compensation net loss suffered by it and sold the scrapped machinery to the assessee.
Seizure by Department :	➢ According to the Department, since the condition of exemption notification (as to actual use) was not complied with by the importer, as the machine was sold to the assessee within a period of 5 years, ➢ therefore, the machinery was liable for confiscation under Section 111 of the Customs Act. The Department seized the machine from the premises of the assessee on 14-11-2008.

Assessee's objections :	➢ The assessee contended that while machinery was seized from it, no notice had been issued to it u/s 110 read with section 124 even after expiry of one year (original six month plus extended six month, if any) from the date of seizure, ➢ hence, such seizure was illegal and the machinery was liable to be returned to it.
Department's contention :	➢ The Department contended that though no notice was issued to the assessee, however, a statutory notice was issued to the importer within 6 months time-limit, ➢ hence the seizure was valid in law.
Question :	Whether issuing of a notice to the owner-original importer of the goods is enough or whether notice is also required to be issued to the person from whose custody the goods are seized ?
Decision :	**Notice to be given to owner as well as the person from goods seized – Present seizure beyond six months, illegal**

In short… ……

Head Note

- *Release of Hot Mix Paver Machine seized –*
- *imported free of customs duty on actual user condition – violation of condition –*
- *machines transfereed to insurance companies against claim after accident –*

Held that - ,

- *The notice has not been given to the petitioner within the statutory period of 6 months; the continued seizure of the machine is bad in law and is hereby quashed.*
- *Rule is accordingly made absolute in terms of prayer clause (a). We make it clear that this order would not prevent the respondents from taking any other action against the respondent no.3 to whom a notice has been issued within the statutory period and/or qua the machine, if it is otherwise permissible in law.*

ORGANAN (INDIA) LTD. - S. C.-2008	
Duty paid under protest - refund claim – ➢ in the invoices, it was clearly mentioned that the sale price did not include the customs duty – ➢ there was no change in price post-levying of the duty - auditor's certificate certifying that **assessee had not passed on the customs duty to customers –** ➢ considering all the facts finding of tribunal that principle of unjust enrichment is not applicable, require no interference – ➢ revenue's appeal is dismissed - assessee would be entitled to the refund	

Aafloat Textile(I) Pvt. Ltd.

ISSUE: The assessee-importer acquired a special import license (SIL) from certain brokers and imported gold and silver thereunder. Afterwards the SIL found to be forged and fake. On account of fraud, the department invoked extended period of limitation to demand **custom duty** along with interest, penalty and confiscation.

HELD THAT:-

- The maxim "caveat emptor" (Let the buyer beware) requires the buyer to be cautions. Accordingly, assessee importer had to be cautions at the time of purchasing the SIL.
- It was for the buyer to establish that he had no knowledge about the genuineness of the SIL –

Since the SIL have been established to be forged, **obviously fraud was involved and that was sufficient to extend the period of limitation** - Therefore extended period of limitation was invocable.

H. B. Fiber Ltd. -2009-PUNJ & HAR- M.imp

FACTS-

- Importer, imported the goods and, cleared them and sold them, Confiscation proceedings on valid ground were finalized against him. In those proceedings, option to pay redemption fine was given to him.
- The importer contended that since he had sold the goods, he has no longer the owner. sec. 125 provides for payment of redemption fine by the owner (or the person who is in possession of goods) and hence, as per importer, demand of the fine shall not be made4 from him, rather it shall be made from the purchaser (he being the present owner).
- The department contended that at the time of invalid importation, he was owner and thus liability to pay redemption fine shall vest upon importer only, notwithstanding purchaser is the owner at present.

ISSUE- upon him lie the liability to pay redemption fine – original owner (importer) or subsequent owner (purchaser)?

HELD- Original owner (importer)

Shabir Ahmed Abdul Rehman (Bom.),

ISSUE-

Whether custom authorities are authorized to auction the confiscated goods during the period of pendency of appeal?

DECISION-

- Bombay High Court, in case of **Shabir Ahmed Abdul Rehman (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.

Dinkar Khindria 2008 - (Del.)

ISSUE-

Can there be a difference in the final order issued by Tribunal and the handwritten order in the order sheet?

DECISION-

The High Court in case of **Dinkar Khindria - 2008 (Del.)** held that-

- a difference in the Final Order issued by Tribunal and the Handwritten Order in Order Sheet i.e. a change of order by Members of the Tribunal, amounts to tampering with the judicial records.
- Once an order is passed and it is signed by the members, the same cannot be altered unless law provides for a review of the same and that too only after hearing the parties.
- The High court held that Tribunal should ensure that such unsavory incidents should not occur in the course of their conduct of judicial proceedings.

Arun kumar gupta vs. DRI, Delhi 2009(235) E.L.T 457 (Del.)

Issue- Can Custom Authorities take the petitioner into custody for custodial interrogation?

Decision-The custom Authorities unlike the police authorities couldn't take the petitioner in to the custody for custodial interrogation

Classification

PRECISE LABORATORIES PVT. LTD. - S. C.-2008

- Tooth powder - whether the product 'Dant Mukta' imported by the respondent is classifiable under SH 3306.90 or 3306.10 and whether the exemption under Notification No. 6/03-C.E. and Notification No. 40/2002-Cus., is available –
- 'Dant Mukta' are used as raw materials for manufacture of 'Lal Dant Manjan' - Tribunal decided in favour of assessee that it is classifiable under SH 3306.10 –
- order of tribunal is correct – revenue's appeal is dismissed

Sony India Ltd. - S. C.-2008 – M. imp- Expected

FACTS-

- The assessee engage in manufactures of CTV'S (colour Telivisions) out of imported components, placed purchase order on its foreign holding company for purcaase of various components, which were to be acquired by the foreign holding company from various manufactures across the world.
- The assessee imported 94 consignment of various components of CTV (during 22 months on different dates). the custom Authorities SCN proposing to treat the 94 consignment of components as CTVin completely knocked Down (CKD)form ; seeking to recover duty of Rs. 43 crore along with inrerest and penalty.

ISSUE- Whether import of several parts of Colour Television (CTV) can be treated as import of complete CTV Sets –

held that-

- classification shall be done according to headings & relevant sector or chapter Notes –
- If no clear picture emerges then only can one resort to the subsequent rules –
- Rule -2 (a) of tariff interpretation Rules, applies only if all components required to make final product are presented at the same time for custom clearance. Various components imported on various dates are not covered by Rule -2 (a).
- In the instance case components of CTV (imported during 22 months on different dates) shall not be considered complete CTV.
- HENCE Demand, interest & penalty are not justified

M/s Reliance Petroleum Ltd. - S. C.-2008

Exemption under notification no. 55/97 customs to various imported goods including EOT mobile crane required for setting up crude petroleum refinery subject to fulfilment of certain conditions -

- The terminologies used in the notification would have an important role to play.
- Where the exemption notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict construction thereto.
- Revenue appeal dismissed with cost.

M/s. Deepak Agro Solution Ltd Versus Commissioner of Customs, Maharashtra - S. C.-2008

Applicability of Chapter Note 1 of Chapter 25 for Classification of Imported Goods –

- Appellant imported 200 MT of "Brimstone 90".
- The certificate of analysis available on record shows
  - the Sulphur content of the imported goods was 90.10 % ,
  - inert filler (Bentonite) at 9.60 % and,
  - the moisture content was 0.30 %. –
- "Brimstone 90" was classified by the CESTAT under the Customs Tariff under "Heading 3808.19 (sic) 3808.90" – Order of CESTAT set aside –
- correct classification is "Heading 25.03"

Sky cell Communications Ltd-2008-TRI

Facts-

- Assessee had imported software from M/S Nokia Telecommunications Ltd, Finland for the purpose of operating telecom equipments in India
- They filed bill of entry dated 6/2/1998 for clearance of goods and claimed exemption from payment of duty under E/N 11/97,. The said notifications exempt **computer software.**
- However, this explanation has been added in the said notification excluding software required for operation of any machine performing a specific function from the ambit of computer software.
- This explanation was added to the E/N as on 6/2/1998 (after the date of presentation of B/E) .because of the explanation, telecom software can not be treated as computer software for the purpose of entitlement of exemption.

ISSUE- whether the importer entitled to exemption.

HELD-YES, because the E/N is prospective in operation. Hence, Importer is entitled to exemption**.**

11=Vodafone Essar south Ltd.

If the classification was based on the classification upheld by CCE (A), importer can not be said to be guilty of mis declaration and, therefore such imported goods could not be seized and no differential duty could be demanded thereon

Miscellaneous

Tanfac Industries Ltd. [2009] (SC) :

Facts and issue-

- The importer warehoused Acid Grade Flourspar and cleared it from warehouse after the expiry of warehousing period of 90 days, paying duty by utilizing the export incentive (DEPB credit) allowed to it under export incentive scheme.
- While the Department demanded interest u/s 61(2), the importer contended that since clearance was effected utilizing DEPB scrip i.e. no duty was paid in cash,
- hence, it amounted to exempted goods on which no interest could be charged.

Held that-

- The importers, who use DEPB scrips, pay duty not by cash but only by way of credit. The debit of any amount under the DEPB Scheme is a mode of payment of duty of duty on the imported goods.
- Therefore, the goods cleared under DEPB Scheme cannot be treated an exempted goods, but they can only be treated to be duty – paid goods and therefore, the interest is payable as per section 61(2) of the Act.

[DEPB Scheme:** Under this scheme, the exporters are issued DEPB scrips which allows them the specific amount to be utilized for payment of Customs duty on imported raw material required for manufacture of export product. The amount for which DEPB scrip is issued depends upon the rate for a particular export product.**]

Finesse Creation Inc. [2009] (Bom.)

Facts :

- Assessee imported artificial flowers during 2003 to 2006, which were cleared on payment of customs duty. In 2007, Department found that goods were substantially undervalued by the assessee.
- Hence, it enhanced value for the purpose of assessment, charged interest and penalty thereon, ordered confiscation of goods and imposed fine in lieu of confiscation. The assessee challenged levy of fine in lieu of confiscation.

Decision :

- Section 125 empowers the proper officer to confiscate the offending goods and release them on payment of redemption fine in lieu of confiscation.

- If the goods are not available for confiscation, as in the present case (as they same have been sold / disposed of / cleared off), then, there cannot be any question of confiscation thereof.
- The concept of redemption fine arises in the event the goods have been confiscated and are to be redeemed. If the goods are not available, they cannot be confiscation and, therefore, there is no question of redemption of the goods.
- Therefore, no redemption fine in lieu of confiscation can be imposed where the goods are not available for confiscation.

Gian Chand and others v. State of Punjab

Issue-: What is the difference between detention and seizure?

Supreme Court referred to case of **Gian Chand and others v. State of Punjab** wherein it was stated that the seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right.

- **Seizure** involved not merely the custody of the goods but also a deprivation of possession of goods
- Whereas in case of **detention**, the custody of goods was taken; but it would not involve a deprivation of possession of goods.

M/S HOTEL LEELA VENTURE LTD. - S. C.-2009

- Appellant claims exemption under Notification No. 30/88 saying that items imported were "heat pumps" –
- tribunal recorded categorical finding that the Operational Manual of the manufacturer (for the said Items) describe them as "air-conditioner" and not "heat pumps" –
- concurrent findings recorded by tribunal –
- appellant had failed to discharge burden placed on it while claiming the benefit of Exemption, that the terms and conditions of the Notification are satisfied –
- **exemption not allowed**

Exim Rajathi India Pvt. Ltd. - S. C.-2008

- Imported goods (garlic) was found infected with fungus –
- goods lying in the bonded warehouse, were permitted to clear upon payment of necessary duties –
- before the garlic was loaded for import, it was treated with methyl bromide fumigation –
- such treated garlic is dangerous for human consumption & for Indian Agriculture - articles shall be destroyed by fire in the presence of an authorized officer –
- **cost of the transportation from Warehouse to destruction place shall be borne by importer**

INTERNATIONAL TOBACCO CO. LTD. - S. C.-2008

- Whether the 'Tipper-Gold Tipped' brand manufactured by the assessee is "**other than Filter Cigarettes"** falling under CSH-2403.11 as contended by assessee or whether it falls under CSH-2403.13 (Filter Cigarette) as contended by Department –
- assessee had led the evidence of an expert - 'Tipper-Gold Tipped' brand manufactured by the **respondent (assessee**) would fall in the category of cigarettes "other than filter cigarettes" –
- there is no merit in this civil appeal of revenue, hence it is dismissed
- Hence classified as "**other than Filter Cigarettes"** falling under CSH-2403.11

12=BANSAL ALLOYS & METALS PVT. LTD. -2009- (P&h)

Facts and Issue-

- Appellant importer/assessee imported heavy melting scrap under. Six bills of entry in respect of said import were assessed to duty on the basis of respective invoices and appellant importer/assessee deposited duty on 7-8-2007.
- However, on physical examination and weighment by the Assessing Officer on 28-8-2007, the actual weight of the consignment was found short to the tune of 15.09 MT.
- Accordingly, the appellant-importer/assessee filed 6 refund claims on 3-11-2007 under Section 27 of the Act in respect of six bills of entry as the actual weight of imported material was less than the declared weight and appellant-importer/assessee had paid excess duty.
- The department denied refund on the ground that –since the original assessment order assessing the bill of entry was neither challenged nor reviewed/ modified in appeal or revision, therefore refund claim contrary to such assessment order could not be allowed.

Held that –

- It was the responsibility of the assessing/proper officer to re-assess [in view of provisions of Section 17 (4)] and correctly determine the duty leviable in accordance with law before clearing the goods for home consumption.
- He having failed to do so, had caused great injustice to the appellant / importer and it was open for the importer/assessee to file an application for refund under Section 27 of the Act without taking recourse to filing of an appeal –
- orders passed in appeal by the Commissioner (Appeals) and the learned Tribunal is thus not sustainable.
- Hence the refund claim filed by the assessee was maintainable in law. The AC of customs was the proper officer who made assessment u/s 17 and could allowed amendment u/s 149.

13=SES technology ltd-

- An exemption notification exemptes microprocessor for computers other than mother board from the excise duty.
- Now the question is this- "whether cooling fans and heat sinks imported by the assessee along with microprocessor were exempt from payment of CVD u/s- 3 (1) of CTA, 1975."

Held that-

- Cooling fans and heat sinks are integral part of microprocessor. Further they are fully integrated with the microprocessor and packed as one composite unit and are classified under same heading.

Therefore the cooling fan and heat sinks, when imported in to India along with microprocessor, exempt from payment of CVD-u/s 3 (1) of CTA, 1975.

Service TAX

Cochin International Airport Ltd. [2010] (SC) :

charges recovered from selected category of customers for augmenting revenue, which do not relate to services provided, cannot amount to consideration for services, hence, not liable for service tax.

Facts :

- The assessee –airport used to collect "users fee" @ Rs. 500/- for every outgoing international passenger.
- No users fee was payable by domestic passengers and /or international passengers reaching the Airport from any foreign destination.
- The Department sought to levy service tax thereon under 'Airport services'.

The assessee-airport contended that the users' fee is not for any service rendered, as the same is not charged from all passengers (to whom equivalent services are provided) but is charged only from outgoing international passenger. The assessee submitted that the same is charged in view of Board of Directors' decision to collect users development fee "for enhancing the revenue of the Airport to cope up with the expenditure and debt servicing".

issue: Whether the users fee was liable to service tax?

Decision :

- It was clear from the decision of the Board of Directors that purpose of users fee was to augment revenue for the Airport and was not towards consideration for any service rendered to the outgoing international passenger.
- This was so especially because the airport had rendered its services equally to all passengers (incoming and outgoing – domestic and international) while the users fee was charged only from outgoing international passengers.
- Section 67 defining value of taxable services for charging service tax says that the value of service shall be gross amount charged by the service provider for the service provided to the recipient.
- Since collection of users fee was not for any specific service rendered by them, but was a flat rate of charge to one category of passengers namely, outgoing international passengers, it could not be said that the amount so collected was by way of service charge.
- **Hence, no service tax was payable.**

HALEEMA ZUBAIR Versus STATE OF KERALA -SC-2008

Service tax vis-à-vis sales tax –

- dealer of ceramic tiles providing services to various exporters as regards inspection/certification of quality of the items sought to be exported –
- HC confirming addition to taxable turnover of the commission received for professional services –
- **held that** element of transaction of sale is perquisite for levy of sales tax – impugned professional services not constitutes sales –
- impugned services are liable to service tax, not to sales tax – **HC's order set aside**

New Look cosmetic Laser Centre-2009-TRI

- Held that Laser hair treatment given for removal of facial and body hair has to be held "cosmetic surgery" in view of admitted facts that it has to be given by doctors or under their supervision and guidance.
- Though it may not also improve the appearance of the person, but just on account of that reason it shall not be treated as "Beauty treatment service"

FAQIR CHAND GULATI Versus UPPAL AGENCIES PVT. LTD. SC-2008

Issue-

- Agreement between land owner and builder to construct a house for a consideration –
- agreement of sharing of such area – builder alone responsible for penalties –
- sharing of profit/loss is absent in agreement –

Held that- land owner is a "consumer" and builder is a "service provider" –

- hence their dispute on deficiency in construction service is a consumer dispute –
- if obligation is breached by builder, relief is obtainable by owner as "consumer" under Consumer Protection Act

Kulcip Medicines (P)Ltd. 2009- PUNJ.& HAR HC.

Issue:-Whether the word "AND" in the expression "Clearing AND Forwarding agent" shall be literally interpretated to mean "AND" only or it shall be interpretated "OR"?

HELD"-that, it shall be interpretated "AND"

Era Infra Engineering Ltd. v. U.O.I. 2008 (11) STR 3 (Del.)

ISSUE-Whether value of materials supplied free of charge by service recipient is includible in gross amount?

Held that- any material which is supplied free of charge by NTPC would not be included in gross amount charged.

Wipro GE Medical Systems Pvt. Ltd. v. Commr. Of S.T., Bangalore 2008 (11) STR 142 (Tri. – Bang.)

ISSUE-Whether value of spares and parts is includible to arrive at service tax liability in case of an Annual Maintenance Contract?

Held that- while computing the service tax liability in case of Annual Maintenance Contract, value of spares and parts would not be included in the gross amount charged and service tax was payable only on commission received in terms of AMC.

Krishana coaching institute 2009- TRI – M.imp

Held that tribunal taxable event is **rendering of taxable service not raising of invoice or payment**. Therefore all services rendered after imposition of service tax shall only be liable to service tax.

Administration staff College of India 2009-TRI

Held that, as long as an institute is registered under society Registration Act and also exempt from income tax, it can not be considered as "Commercial Concern" And therefore, service tax not leviable on all such assessee.

M/s Martin Lottery Agencies Ltd. 2009 - (SC)- M.imp

Issue-.

Taxable services

Discuss, with the help of a decided case law, if any, whether the explanation inserted by Finance Act, 2008 to the definition of `business auxiliary service' under section 65(19)(ii)of the Finance Act, 1994 as amended can be construed having retrospective effect and retroactive operation.

Decision-

- In a recent case, the Apex Court in the case of **M/s Martin Lottery Agencies Ltd. 2009 - (SC)** ruled that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect. Subject to the constitutionality of the Finance Act, 2009 as amended in view of the explanation appended to this, the Supreme Court opined that the service tax, if any, would be payable only with a prospective effect and not with retrospective effect.
- It further opined that in a case of this nature, the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law.
- As stated hereinbefore, for the aforementioned purpose, the expressions like 'for the removal of doubts' are not conclusive.
- The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service.

It held that the explanation is not clarificatory or declaratory in nature. Hence, it could not be construed having retrospective effect and retroactive operation.

14=Chetan traders-2009(Tri)

Facts-

- The assessee was engaged in purchase of various products from BSNL viz. cellular phones, SIM cards, basic phone connections, re-charge coupons and sale thereof to the consumers.
- In respect of service products, the BSNL was discharging service tax liability. In respect of service products constituting goods the assessee was paying sales tax.
- On every sale, the assessee was entitled to an amount at a specified percentage of value of the products, which was termed as **commission.**
- The Department contended that such **commission was liable to service tax** under Business Auxiliary Services, as the assessee was promoting / marketing the products of BSNL.

Held that,

- In this case, the activity of the assessee was merely purchase and sale of various products of BSNL on its own account.
- There was no service carried out by the assessee.
- The assessee received certain amount of profit, which is ultimately a business practice when products are sold in the market.
- The fact that such **profit is termed as commission would not render** the assessee an agent of the BSNL.
- Therefore, the activity of the assessee was not at all a service and was not there fore liable to service tax.

SOME OTHER CASES

S. N.	ISSUE	HELD	CASE LAWS
1	**Whether hospitality services rendered at executive lounge at the airport come within the purview of airport services?**	The Tribunal explained that a service **would not be treated** as airport service just because it is rendered in airport.	Oberoi Flight Services 2007 (Tri. – Del.)
2	**Does port service cover repair of vessels in dry docks?**	The Tribunal held that repairing of vessel in dry docks **was not connected** with the movement of vessel in any manner and thus such service **would not be classified under port service.**	Homa Engineering Works 2007 (Tri.-Mum)
3	**Is the activity of collecting human blood samples and separating serum from it covered within the ambit of business auxiliary service?**	It would **not become part of** the definition of 'business auxiliary service'.	Dr. Lal Path. Lab (P) Ltd. 2007 (P&H)
4	**Whether 'retainer fee' is liable to service tax?**	The Tribunal held that since this basic requirement was not satisfied in this case the demand of service tax **was liable to be vacated.**	S. Maruthappan 2007 (8) (Tri-Chennai)
5	**Whether the activity of powder coating on furniture supplied by the customers is covered under the ambit of business auxiliary service?**	it was held by the Tribunal that the said activity did **not fall within the definition** of business auxiliary service	A.G. Shibu. 2007 (Tri-Bang)

6	**Whether sale of lottery tickets is liable to service tax under the category of business auxiliary service?**	Thus, the High Court held that if the lottery tickets **were not goods**, the petitioner could not be said to be rendering any service in relation to the promotion of their client's goods, or marketing of their client's good, or sale of their client's goods.	Martin Lottery Agencies Ltd. I 2007
7	**Whether supplying of computers and other hardware items on hire and generation of MIS reports would come under the ambit of 'business auxiliary service'?**	The Tribunal held that except billing all other services rendered by the appellant were related to information technology service and **hence were excluded** from the scope of the 'business auxiliary service'. Thus,	Bellary Computers 2007 ((Tri.-Bang.)
8	**Whether sale of ready built flats is taxable under 'construction of complex service'?**	Tribunal held that sale of ready built flats in the **instant case was not taxable** under 'construction of complex service'.	Greenview Land & Buildcon limited 2008 ((Tri – Del.)
9	**Whether making hoardings/signboards without preparing advertisement liable under 'advertising agency service'?**	It was held that there could be no demand of service tax on a person in the category of 'advertising agency service' unless it was established that such person conceptualized and designed the advertisement matter displayed on the hoardings, signboards etc. Mere making hoarding/signboards for display of advertisements **was not covered** within the ambit of 'advertising agency service'.	Hitech Publicities 2008 (Tri. – Chennai)
10	**11. Is the promotion of any service which is not taxable liable to service tax?**	It was held that in respect of 'business auxiliary service', promotion of any service would be covered and it was not necessary that the service which was being promoted should be a taxable service only. The promotion of any service, **whether taxable or non-taxable, would be taxable as a 'business auxiliary service'.**	The Financers 2008 (Tri. Del.)

11	**Whether loading and unloading in a mine is covered under 'cargo handling service'?**	Tribunal held that the activities undertaken by the respondents were primarily in the nature of mining activities comprising of excavation, transportation and feeding of iron ores to the crusher plant and even though these activities might incidentally involve some loading and unloading, the **same could not be covered** under the category of 'cargo handling service' because the iron ore which was being carried could not be commercially called 'cargo' in impugned case.	B.K. Thakkar 2008 (Tri. – Kolkatta)
12	**Whether port services cover stevedoring, tug hire & labor supply**	Tribunal was of firm view that activities undertaken by the **appellant did not fall** under the category of 'port services'.	Velji P. & Sons (Agencies) P. Ltd. 2007 (Tri. - Ahmd.)
13	**Does Management Consultant Service cover marketing know-how?**	The Tribunal held that Revenue's contention was not tenable. Know-how for marketing the products could not be considered to be in relation to the working system of the organization**. It could never be considered as falling within the definition of 'management consultant'**.	Castrol Ltd. 2007 (Tri. Mumbai)
14	**Does the 'tourist operator service' cover tourist vehicle used for non-tourist purpose?**	In its view, what was important was whether the vehicles were capable of being used as 'Tourist Vehicle' and whether same had been permitted by the appropriate authorities for such use as 'Tourist Vehicle'. Considering these factors, **it held that assessee was liable to pay service tax under 'tourist vehicle service'**	Pandit Motor Service 2007 (Tri. - Del.)
15	**Whether vocational training institute requires registration with AICTE for exemption?**	It was held that notification did not envisage registration of the institute with AICTE as a 'Vocational	Wigan & Leigh College (India) Ltd. (Tri. Bang.)

		Institute'. Hence, the assessee **could not be denied** the benefit of exemption merely on the ground that appellant was not registered with AICTE.	
16	**Is service tax leviable on hire purchase finance?**	The respondent - assessee was engaged in providing finance for vehicle purchase. SC pronounced in the present case that **service tax was not leviable** on hire purchase finance.	Bajaj Auto Finance Ltd. 2008 (S.C.)
17	**Whether rubber packaging amounts to manufacture or providing service?**	Tribunal held that, prima facie, the plea of the assessee, that carrying on the process of rubber packing and rubber edging of polypropylene carpets and bringing the goods into existence was an activity of manufacture.	Jayanthi Rubbers (Tri. – Bang.)
18	**Is the photography for elector identity card covered under 'photography service'?**	Held that activity of preparing elector photo identity **cards could not be considered** to fall within the ambit of **photographic services** as per section 65(78) as well as section 65(79) of the Finance Act.	C.S. Software Enterprises Ltd. 2008 (Tri – Bang.)
19	**Can penalty be imposed simultaneously under section 76 and section 78 of the Finance Act, 1994?**	The Tribunal held that these two provisions were **mutually exclusive and therefore there was no scope** for imposing double penalty.	Opus Media and Entertainment 2007 (Tri-Del.)
20	**Whether clearances of two units, where there is no clear demarcation between the activities of two firms, should be clubbed?**	In such a case, clearances **were to be clubbed.**	Rao industries 2008 (Tri. Bang.)
21	**Can outdoor catering services provided to the employees within the factory premises be regarded as input service?**	The Tribunal held that the credit of the service tax paid on the outdoor catering (canteen) service **was admissible as input service** under rule 2 (l) of the CENVAT Credit Rules, 2004.	Victor Gaskets India Ltd. 2008 (Tri – Mumbai)

22	**Whether booking of orders for foreign supplier for supply of goods in India can be treated as "Export of Services" under Export Services Rules, 2005?**	It was held that since condition provided under Export Services Rules, 2005 was not satisfied, the impugned service **could not be treated as export of service** and no rebate in this regard was admissible.	Cani Merchandising Pvt. Ltd. 2008 (Tri. - Del.)
23	**Whether Non commercial is also liable for service tax.**	**YES**	
24	**Whether renting of theater by theater owner to distributor of film is taxable.**	**NO**	

STATE LEVEL-VAT

Larsen & Tourbo Ltd. & Ors. SC-2008 -M.IMP

- AP VAT - Once the work is assigned by the contract to its sub-contractor(s),
- Main contractor ceases to execute the works contract because property passes by accretion and there is no property in goods with the contractor which is capable of a retransfer, whether as goods or in some other form.
- **Therefore, the turnover of sub-contractor is not required to be included into the turnover of the main contractor.**
- **Only sub-contractor will be liable to pay vat.**

OLD CASE LAWS-

EXCISE LAWS

BASIC CONCEPTS

Question:

- XYZ Ltd. Manufactured crayons. During the course of production an intermediate product know 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

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.

In the case of Virdi Brothers **in which the Supreme Court held that,**

Refrigerator, air-conditioner is 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.(ie assembly of such components does not amount to manufacture.)**

Very recently the Apex Court held in the case of Mahavir Aluminium Ltd**.**

That, conversion of Aluminium **Ingots into Aluminium Billets** during the intermediate stage will amount to manufacture.

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.

- **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.

.....

ISSUE:-

- A show cause notice demanding customs duty was issued in case of clearances made by 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area (DTA).
- Is the show-cause notice defective in law?

DECISION: Yes, the show cause notice is defective in law.

SURESH SYNTHETIC

In respect of clearances made by a 100% EOU in DTA, duty to be paid by a 100% Export Oriented Unit is the duty of Excise and not Customs duty. Thus the show cause notice was defective in law and accordingly demand was not maintainable.

White Machines – SC -2008 (Regarding dutiability of intermediate goods)

- Held that even though final product is exempt from duty ,
- the intermediate product will be liable to excise duty only if the same is marketable in the condition in which the department seeks to levy duty thereon.

  In other words

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

Ratan Melting and Wire Industries -SC-2008 (Regarding position of Circular)

- Circulars binding on department authorities; not on assessee, appellate tribunal or Court.
- Circular contrary in provisions of Act- will be void.
- Revenue can file appeal REGARDLESS of the interpretation placed by circular.
- The circulars of the board can not prevail over the law laid down by S.C. , H.C. ,

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**.

SKB DRYFRUITS MARKETING CO. PVT LTD

- The process undertaken by assessee viz. roasting of dry fruits and repacking the same in smaller packs, which bears the brand name of the assessee, is a process to render the product marketable to the consumer and,
- Therefore, in the view of specific chapter note, the same amount to DEEMED MANUFACTURE.

VALUATION

BHARTI TELECOM LTD.

- If goods sold to related person at or about the same price at which they are sold to unrelated person i.e. the relationship does not influence the price,
- the price at which goods are sold to related will be acceptable as assessable value

Question:

- The assessee used to pack hair dye sachet each containing 3 gms hair-dye. 3 such pouches were sold in a single packet.
- The net weight of each sachet, as also the net weight of the packet and the maximum rate were duly printed on sachets as well as on the packet.
- Assessee claimed that since the net weight of each packet does not exceed 10 gms, there is no requirement to declare MRP thereon and hence, same is assessable under section 4 (and not under Sec 4-A of CEA).

Whether the assessee's contention is correct in law?

ANSWER: YES

KRAFTECH PRODUCTS - 2008- SC [

- **Under SWMA, there is no requirement to declare MRP on any package containing a commodity if the net weight or measure of commodity is upto 10 gm, or 10 ml if it is sold by weight or measure.**
- **In the given case, the packet is intended to be sold by weight or measure. The packet in this case is containing hair dye less than 10 gm. Thus, there is no requirement under SWMA to declare MRP on the package and thus, the same shall be valued under Sec 4".**

Question:

- **Assessee cleared package containing 72 pieces of lips smoothers (each such piece containing 4.3 ml) – thus, weight of individual piece was less than 10 ml but weight of packet as a whole was in excess of 10 ml.**

whether the valuation shall fall under section 4 of 4-A?

ANSWER: YES

Under SWMA, there is no requirement to declare MRP on any package containing a commodity if the net weight or measure of commodity is upto 10 gm, or 10 ml if it is sold by weight or measure.

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INSULATION ELECTRICAL (P) LTD. - 2008 - SC.

- **In this case, the items manufactured by the assessee were only adjuncts affixed on the floor of motor vehicles to improve efficiency and convenience as the seats were complete in themselves without rail assembly or other impugned goods.**
- **Thus, these goods were not essential parts of the seats but accessories to motor vehicles provided for better convenience of passengers/drivers traveling in a car.**
- **Therefore, these goods would not be classified under sub-heading 9401.00 as it only covered parts of seats and not accessories thereof. These would rightly be classified under sub-heading 8408.00 as it covered accessories i.e. they are classifiable as parts and accessories.**

……

- **The Supreme Court in the case of** Mazagaon Dock Ltd**. Held that,**
  Where the subsidy received from **the buyer** (And not from the Govt. or otherwise) directly/indirectly was included in the assessable value.
- In the case of Bisleri International Pvt. Ltd**.** Supreme Court held that,
  The levy of rent did not form part of the price of the aerated water and therefore, **rent of containers was not includible in the assessable value.**
- In the case of **Tyota Kirloskar** where it was held that,
  When the assessee has charged lower charges for transportation of goods from place of removal (i.e. either factory or depot) to the place of delivery ie godown of purchaser, as compared to the actual amount incurred for such transportation, the **difference cannot be added to the transaction value.**

Question:

- 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.

ANSWER:

ELGI Equipments Ltd.- S.C,-

- 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.

……

WHIRLPOOL OF INDIA – SC -2008

- 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**.

……

ISSUE:-

- 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?

DECISION: No, the contention of the assessee is not correct.

ISHAAN RESEARCH LABORATORIES P. LTD.

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

[CER & CCR]

Question:

- Assessee closed down his factory. He was having unutilized cenvat credit in his books of accounts. There is no express prohibition in Cenvat Credit Rules, 2004 regarding refund of cenvat credit.
- But at the same time, there is no express provision allowing refund of cenvat credit. [Under CCR, 2004, only Rule 5 and Rule 5-A deals with situations where refund is permissible and none of these cover this situation]. **Whether cenvat**

credit shall be refundable to the assessee or shall it lapse?

ANSWER: YES
SLOVAK INDIA TRADING CO. LTD – 2008 - SC

If the assessee opts out of the Cenvat Scheme or its unit is closed, then, the assessee is eligible for refund of unutilized Cenvat credit, which is to be made in cash. There is no express prohibition in Rule 5 and 5-A of CCR in that regard."

- 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.

  Ie until the old RC is not surrendered iro of a particular premises, no fresh registration shall be granted iro that premises to another person.

SSI NOTIFICATION

Question:

- Assessee used to sell the goods manufactured by it under its own brand names/trade names, which were affixed/printed on corrugated boxes.
- A hexagonal artist design was also printed on corrugated boxes. The same hexagonal shape/design was also printed on VISITING CARDS of executives of marketing company through which the goods of the assessee were promoted.
- The department denied SSI exemption to the assessee on the ground that the said hexagonal design/shape was a brand/trade name of another person i.e. the marketing company.

Whether the assessee was entitled to SSI exemption?

ANSWER: YES
NIRLEX SPARES PVT LTD. – 2008 - SC

- **The fact that the marketing company had used the same hexagonal design/shape on the visiting cards of its executives would not mean that it owned such design/shapes.**
- **Further, the company had itself denied the ownership of such design/shape as its brand/trade name. In view thereof, the said hexagonal design/shape could not be regarded as a brand/trade name of the marketing company.**
- **Accordingly, the assessee had not used the brand/trade name of another person i.e. marketing company.**
- **The assessee had not violated any of the conditions of the SSI exemption. Therefore, the assessee was entitled to SSI exemption.**

Question

- 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.

Answer:

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.ie here depatt. is correct.

……..

- 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.**

  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 manufactures 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 goods under the SSI notification.**

- 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 (brand name 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.

……

Question:

- 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..

ELECTRO MECHANICAL ENGG. CORPN.

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.

- 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 AND RECOVERY

DAGUR TETENAL INDIA –SC-2008

- WHERE, IN ORDER TO AVAIL EXEMPTION, the assessee had wrongly declared that brand name used on goods cleared by it, it was evident that the assessee had willfully misstated / suppressed the facts with intent to evade payment of duty.
- Hence, extended period of limitation was invocable in this case.

RUCHA ENGINEERING PVT. LTD. -2008- BOM..

- In the instant case, the High Court observed that section 11AB comes into play if the duty paid/levied is short.
- In this case, the assessee paid the duty on its own accord immediately when the revised rates became known to them. The differential duty became due only at the time i.e., when the revised rates applicable with retrospective effect, which was much after the clearance of the goods.
- The question of payment of interest would not arise as the duty was paid as soon as it was learnt that it was payable.

It was not a case where duty of excise has not been paid or short-paid.

Therefore, the provisions of section 11A(2) and 11A(2B) were not applicable. Section 11AB(1) was not at all applicable, and therefore, the assessee was not required to pay interest.

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- 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.
- Recently in the case of **Continental Foundation It. Venture,** the Apex Court held that,
  There cannot be suppression or mis-statement of fact, which is not willful and yet constitute a permissible ground for purpose of proviso to Section 11A ibid. **Mis-statement of fact must be willful.**

Question

- 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?

Answer:

MARIS SPINNERS LTD.

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.

- 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.**

Question

- Assessee manufactured PSC girders at site to be used in the construction of railway bridges. The articles were cleared without payment of central excise duty under the Central Excise Act, 1944.
- A SCN was issued invoking normal period of limitation (i.e., 1 year) but withdrawn/drop. Subsequently, second SCN was issued invoking extended period of limitation (i.e., 5 years). Assessee challenged SCN on the ground of limitation.

: Can the extended period of limitation be invoked in a second notice, where the first notice did not resort to same?

ANSWER: NO

GEO TECHNOLOGY FOUNDATIONS AND CONSTRUCTION – 2008 - SC

"When in the first SCN, allegation of suppression had not been made; the same could not have been made subsequently as the facts alleged to be suppressed by the assessee were known to them. Extended period of limitation has no application in the instant case.

CLASSIFICATION

- The Supreme Court gave a decision in the case **of Pragati Silicons Pvt. Ltd.** held that, The plastic nameplates are **parts and accessories** of motor vehicles.
- The Apex Court in the case of **Hewlett Packard India Sales (P) Ltd.** held that, When a laptop is imported with in-loaded operating system recorded on HDD, the said item forms a part of laptop.
- **ACER INDIA LTD.-2007-SC::** (Define WIKIPEDIA) WIKIPEDIA is an online encyclopedia and information can be entered therein by any person--- and as such, it may not be authentic.

GODREJ INDUSTRIES LTD –SC-2008

- "Hair dye' which is used to colour hair, can not be regarded as Hair lotion, which is used to soothing, cleaning, or antiseptic action while washing out once hair.

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Question:

- 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?

Answer:

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.

Question:

- M/s ATMC, a manufacturer, wrongly classified its products under Chapter Heading 73.09. Later on, it realized that the products ought to be classified under Chapter Heading 84.19. So, he claimed the correct classification under Chapter Heading 84.19.
- Department disallowed the assessee's claim of CENVAT credit, in respect of the input/capital goods used in the manufacture of final product, by taking the classification of the product under Chapter 73. Revenue contended that classification once opted by the manufacturer could not be altered subsequently.
- Is the department correct?

Answer:

No, the department is not justified in rejecting the claim of the assessee.

Earlier claim to a particular classification by the manufacturer did not stop him from claiming correct classification under different head by pointing out that the classification earlier claimed was erroneous. Hence, the credit in respect of the input/capital goods used in the manufacture of final product shall be allowed.

Recently the Gujarat high Court also gave a similar judgment in the case of

Guljag Industries Ltd.

Where it was held that **erroneous claim made by the assessee earlier did not preclude him from subsequently making a claim for correct classification**.

WEP PERIPHERALS- SC.- 2008

- In case price of imported goods is lowered on account of bulk orders, this fact should be taken into consideration and the value of imported goods should be computed accordingly.
- Further royalty payment for technical assistance, which is not relatable to imported goods, in any

Question

- Ferdoo India (P) Ltd (FIL,) entered into a Technical Assistance and Trade Mark Agreement (TAA) with its foreign collaborator for the manufacture of goods in India.
- It paid royalty and license fees under the TAA to the foreign company. It imported goods from its foreign collaborator and paid customs duty on its value.
- The Department sought to include the value of royalties and license fees paid by FIL for the purposes of calculating the customs duty liability. FIL challenged the addition.

Whether the royalty and license fee is includible in the AV?

ANSWER: NO

FERDOO INDIA (P) LTD – 2008 –

- Rule 10(1)(c) stipulates that payment made towards technical know-how must be a condition pre-requisite for the supply of imported goods by the foreign supplier and if such condition exists then such royalties and license fees have to be included in the price of the imported goods.
- Such inclusion shall be made even if payment is made directly or indirectly.
- At this stage, we would like to emphasize the word indirectly in Rule 10(1)(c). As stated above, the buyer/importer makes payment of the price of the imported goods. He also incurs the cost of technical know-how.
- Therefore, the department in every case is not only required to look at TAA, but also required to look at the pricing arrangement/agreement between the buyer and his foreign collaborator.

Question

- The assessee-importer imported certain goods at US $ 15 p.u. from a foreign supplier, who has holding 30% equity in assessee-company. On account of increase in orders placed by the assessee, the import price was reduced to US $ 14.10 p.u. Thereafter, the assessee entered into an agreement with the foreign supplier to import 100% of its annual requirements from such foreign supplier only and accordingly, the price was reduced to US $ 10 p.u.

On imports being made at US $ 10 p.u., the Department rejected the transaction value contending that the price was influenced by relationship and valued the imports at transaction value of earlier imports i.e. US $ 14.10 p.u. under Rule 4.

Whether rejection of transaction value is proper in the instant case?

ANSWER: NO.

INITIATING EXPLOSIVES SYSTEMS– 2008- SC

- **Merely because the foreign supplier held 30% equity in the assessee-company the same would not mean that assessee and foreign supplier was related.**
- **Rule 4 provides for assessment on the basis of identical goods imported by some another importer. The imports earlier made by the importer can not be termed as "identical goods" or "contemporaneous imports" and therefore, no assessment can be made on the basis of the same.**
- **The fact that the assessee had made bulk imports could be a reason for reduction of import price.**
- **In the absence of any evidence from the Department to prove under-valuation, the price declared by the assessee was acceptable."**

……

- 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.
- The Supreme Court also gave a judgment in the case of **Matasuhita Television & Audio,** where it was held that,
  The **royalty** payments were included in the assessable value.

- In the case **Galaxy Entertainment (I) P. Ltd.** 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 hence not includible.

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.

NUMERICAL QUESTIONS

NOTE –

1. *In the Numerical questions Education cess @ 3% shall mean -Education Cess @2% and Secondary and Higher Education Cess @1%*
2. *If nothing specified regarding the status of assessee then always assume NON SSI.*

Problems in- Excise Valuation

Q.1:- An assessee has factory in Kolkata. As a sales policy, he has fixed uniform price of Rs. 2,000 per piece (excluding taxes) for anywhere in India. Freight is not shown separately in his invoice. During the FY 2003-04, he made following sales: -- (i) Sale at factory gate in Kolkata-- 1,200 pieces – no transport charges; (ii) Sale to buyers in Gujarat-- 600 pieces—actual transport charges incurred – Rs. 28,000; (iii) Sale to buyers in Bihar—400 pieces—actual transport Charges incurred Rs.18, 000; (iv) Sale to buyers in Kerala—1,000 pieces—actual transport charges—Rs. 54,000. Find the assessable value per piece.

ANS.1

Assessable value shall be determined as per sec. 4(1)(b) read with Rule 5 which provides that,
Where any excisable goods are sold

- ✓ At a place other than factory,
- ✓ Then the value of such excisable goods shall be deemed to be
- ✓ The transaction value, excluding the cost of transportation from the factory up to the place of delivery of such excisable goods.

As per explanation 1- "Cost of transportation" includes-

i. The actual cost of transportation; and

ii. In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

And because assessee is having uniform price all over India, it appears that assessee is following average freight, therefore deduction shall be allowed on equalized basis and actual cost shall be ignored.

Calculation of Equalized Freight

Place of delivery	No. of pieces sold	Actual Transportation charges
Kolkata	1,200	NIL
Gujarat	600	28,000
Bihar	400	18,000
Kerala	1,000	54,000
Total	**3,200**	**1,00,000**

Equalized Freight = Total transportation cost / Total no. of units sold

= 1,00,000 / 3,200 = 31.25

Assessable Value = Sales price – equalized freight

= 2,000-31.25 = Rs. 1,968.75

Q.2:- Sigma Ltd. Asked for a quotation from Omega Ltd. For the supply of 100 complete computer systems. Omega Ltd. Furnished the following quotation:-

Particulars	**Amount (Rs)**
Components CPU	20,000

Monitor	10,000
Keyboard	5,000
	35,000
Labour and overheads	10,000
	45,000
Profit	5,000
Total price per unit	50,000
Advance to be paid per unit	20,000

Terms: Delivery one month from the date of receipt of the firm order and advance. Sigma Ltd. accepts the quotation subject to the following alterations which are agreed to by Omega Ltd.

(i) Keyboard would be supplied free of cost by Sigma Ltd. to omega Ltd. Since Sigma Ltd. Is able to purchase the keyboard for Rs. 3,000 per unit.

(ii) Profit charged by Omega Ltd. is to reduced to Rs. 4,000 since Sigma Ltd. Would make an advance of Rs. 20,000. However, no interest is payable on the advance.

Determine the assessable value u/s 4 and the Excise Duty liability @ 15% ad valorem.

ANS.2-

Computation of Assessable Value

Particular		**Amount (Rs)**
CPU		20,000
Monitor		10,000
Keyboard (i)		3,000
	TOTAL	33,000
Labour and overheads		10,000
	TOTAL	43,000
Profit (Actual charged)		4,000
		47,000
Add- Additional consideration (ii)		1,000
Assessable Value		48,000
Excise Duty @ 15.45% advalorem (48,000 * 15.45/100)		7,416
(Inclusive of 2% education cess, &1% SHE CESS)		

Notes:-

i. Explanation 1 to rule 6 provides where any material component part etc. are supplied by buyer free of charges, its apportioned cost shall be added to the price paid or payable if not already included in it. Thus, Rs. 3,000 shall be added.

ii. In the given case because of advance deposit profit has been reduced by Rs. 1,000. Thus, it will be included in AV. Interest on advance deposit is includible in the assessable value where it has influenced the price. [Explanation 2 to Rule 6].

Q. 3 - How would you arrive at the assessable value for the purposes of levy of excise duty from the following particulars-cum-duty selling price exclusive of sales-tax Rs. 10,000 - Rate of excise duty applicable to the product: 15% - Trade discount allowed - Rs. 1,200 - Freight Rs. 750.

Ans:3-

Cum Duty Price		10000
Less: Permissible deductions		
Trade discount	1200	
Freight	750	1950
		8050
Assessable Value		
8050 x100/115.45		6973
Excise duty including Education Cess		
8050 x15.45/115.45		1077
Excise duty 15% on AV		1046
Education Cess- 2%		21
Higher Education Cess- 1%		10

Note - It is assumed that cum duty price is given before trade discount and freight.

Q.4-1,500 pieces of a product 'A' were manufactured during 2008-09. Its list price (i.e. retail price) is Rs. 250 per piece, exclusive of taxes. The manufacturer offers 20% discount to wholesalers on the list price. During the year, 840 pieces were sold in wholesale, 510 pieces were sold in retail, and 35 pieces were distributed as free samples. Balance quantity of 115 pieces was in stock at the end of the year. The rate of duty is 15%. What is the total duty payable during the year 08-09 Assume that the manufacture is not eligible for SSI concession

Ans:4-

Calculation of Sales Value			
Particulars	Qty. In units	Rate Rs.	Value Rs.
Whole Sale	840	200	168000
Retail	510	250	127500
Samples	35	200	7000
Total Assessable Value			302500
Excise duty @ 15%			45375
Education Cess2%			908
Secondary Higher Education Cess 1%			454
Total Excise duty payable			46736

Note:-Samples are to be valued -As per Rule 4 Read with Rule 2, of valuation rules, 2000,

- The value of the excisable goods(samples) shall be based on **the value of "such goods"** (Identical goods) sold by the assessee,
- For delivery at any other time nearest to the time of the removal of goods under assessment,

Normal transaction Value" means the transaction value at which the **greatest aggregate quantities of goods are** sold.

Q.5-A manufacturer has appointed brokers for obtaining orders from wholesalers. The brokers procure orders for which they get brokerage of 5% on selling price. Manufacturer sells goods to buyers at Rs. 250 per piece. The price is inclusive of sales tax and Central excise duty. Sales tax rate is 6% and excise duty rate is 20%. What is the AV, and what is duty payable per piece?

Ans: 5-

particulars	**Amount (In Rs.)**
Sale Price	**250.00**
(-) sales tax [250*6/106]	**14.15**
Cum –duty price	**235.84**
Excise duty [235.84*20.6/120.6]	**40.29**

Excise duty 20%	39.11
Education Cess 2%	0.78
Higher Secondary Education Cess 1%	0.39
Total Duty payable	**40.29**

Note: Sales man Commission is includible in A.V.

Q.6-A manufacturer has to supply a machinery on following terms and conditions: (a) Price of machinery: 3,40,000 (net of taxes and duties) (b) Machinery erection expenses: 26,000 (c) Packing (normally done by him for all machinery) : 4,000 (d) Design and drawing charges relating to manufacture of machinery : 30,000 (Net of taxes and duties) (e) Central Sales Tax @ 2% (f) Central Excise Duty @ 20% (g) Cash discount of Rs. 5,000 will be offered if full payment is received before dispatch of goods. (h) The machine will be supplied along with bought out accessories @ Rs. 8,500. The accessories were optional. You are informed that (a) the buyer made all payment before delivery. (b) The manufacturer incurred cost of Rs. 1,200 in loading the machinery in the truck in his factory. These are not charged separately to buyer. - Find the 'Assessable Value' and the duty payable

Ans:6- **Calculation of Assessable Value**

Price of Machinery		340000
Add: Inclusions		
Packing Charges	4000	
Design and drawing Accessories	30000 8500	42500
		382500
Less: Cash Discount		5000
Assessable Value		**377500**
Excise Duty @20%		75500
Education Cess 2%		1510
Higher Secondary Education Cess 1%		760
Total Duty Payable		**77770**

Note:

1. Erection expenses, and CST not includible in Valuation.
2. Loading charges of machinery Rs. 1200 is includible in A. V. However it is specified that they are not charged separately, hence it is assumed that it is included in the price of machinery.

Q.7-Find Assessable Value - and duty payable - if the product covered under MRP Provisions?
Maximum Retail Trade Price: Rs. 1,100/- per unit. - Sales Tax, Surcharge, Octroi and other Local Taxes: 10% - Cash Discount: 2% - Trade Discount: 8% - Primary and Secondary packing cost included in the above MRP: Rs. 100 - Excise duty rate: 8% advalorem. Abatement 40%.

Ans:7-

Maximum Retail Price		1,100
Less: Abatement 40%		440
Assessable Value		660
Excise Duty @8%		52.80
Education Cess 2%		1.06
Higher Secondary Education Cess 1%		0.53
Total Duty Payable		54

Note-When the product covered under MRP except notified abatement no other deduction will be available.

Q. 8 -M/s. Karan & Co., Ghaziabad sold 3000 emergency lamps at a uniform *duty* price of Rs. 1000 per piece for delivery at any place .
The details of sales are as follows:
-1000 lamps were sold at the Ghaziabad factory gate and hence no transport charges were incurred on them.
-1000 lamps were delivered to a buyer at kanpur by incurring freight charges of Rs.14,000 and
-1000 to a buyer at chandigarh at a freight cost of Rs.10,000. What is the assessable value per emergency lamp?

Ans: 8

Calculation of Equalized freight per lamp		
Equalized freight = Total freight/total no of units sold		
(0+14000+10000/1000+1000+1000)=	24000/3000	Rs. 8 per lamp
A V per lamp = Rs. 1000- Rs. 8	992	
Note: Value as per Valuation Rule 5 (FOR Contract)		

Q. 9-Having regard to the provision of section 4, compute/derive the assessable value of excisable goods for levy of duty of excise, given the following information:

Particulars	**Rs.**
Cum-duty wholesale price including sales tax of Rs. 2,000	15,000
Normal Secondary Packing cost	1,000
Cost of Special secondary packing	1,500
Cost of durable and returnable packing	1,500
Freight	750
Insurance on freight	200
Trade discount (normal practice)	1,000
Rate of C.E. duty as per C.E. Tariff	15% Ad-valorem

State in your answer, reasons for the admissibility or otherwise of the deductions.

ANS. 9

STATEMENT SHOWING COMPUTATION OF ASSESSABLE VALUE

Particulars		Rs.
Cum-duty wholesale price		15,000
Less:		
⇒ Sales Tax (WN-2)	2,000	
⇒ Normal Secondary Packing Cost (WN-3)	Not deductable	
⇒ Cost of special secondary packing (WN-3)	Not deductable	
⇒ Cost of durable and returnable packing (WN-4)	1,500	5,450
⇒ Trade discount (normal practice) (WN-5)	1,000	
⇒ Freight (including transit insurance) (WN-6)	950	
Cum-duty assessable value		9,550
Less: Excise duty (9,550 * 15.45/115.45)		(1,278)
	ASSESSABLE VALUE	**8,272**

Working Notes:

1. Freight and transit insurance are appearing in the question indicating thereby that transaction is one for delivery of goods at customer's premises and not of ex-factory delivery. Further assessing that said transaction satisfies all the other requirements of Sec 4(1)(a), valuation has been done in accordance with Rule 5 of Central Excise Valuation Rules, 2000.

2. Sales tax is deductable from the price to arrive at TV as definition of TV specifically provides for exclusion of sales tax.

3. CBEC has clarified that charges for packing are also includible in the transaction value as these charges are also by reason of, or in connection with sale of goods. It is immaterial whether the packing is normal, secondary or special secondary (Circular No. 354/81/2000).

4. Cost of durable and returnable packing shall not be included in the transaction value as charges thereof can't be said to be reason of, or in connection with the sale.

5. CBEC has clarified that discount of any type or description is deductible if it is established that it has actually been passed on to the buyer (Circular No. 354/81/2000). Assuming that given trade discount has actually been passed on, it is also deductible.

6. As per Rule 5 of Central Excise Valuation Rules, 2000 cost of transport from the place of removal to the place of delivery shall be deducted while arriving at assessable value. Thus, cost of freight is deductible. Also, SC in case of BOMBAY TYRES INTERNATIONAL has held that cost of transportation will include

the cost of transit insurance. For that reason, cost of transit insurance is also deductible as cost of transportation. (It has been assumed that freight and insurance have been charged on actual basis).

7. The given rate is 15% -- the rate of basic excise duty. Education Cess (on excisable goods) @ 2% and Secondary & Higher Education Cess (on excisable goods) @ 1% is leviable additionally. Thus, total effective rate is 15.45% (15%+2% of 15% + 1% of 15%).

Q.10-Product 'P' is sold by the Company at uniform price of Rs. 15,000 per Ton at various depots of Company in different States. The price is inclusive of excise duty. Local sales tax is charged extra. During the year, 3,000 Tons of 'P' was sold in Haryana, Delhi and Rajasthan as per following details:

State	Qty. sold	Freight Charge paid (Rs.)
Haryana	1,100	9,50,000
Delhi	1,400	11,30,000
Rajasthan	500	7,40,000

The 'freight charge' is from factory to the depot. Excise duty rate is 16.00%. What is the 'Value' under section 4 of Central Excise and total excise duty payable?

Ans:10-

Price per ton is given depot price. No deductions for freight Since the price is inclusive of excise duty 16% the Assessable Value will be calculated using backwards = 15000 x 100/116.48 12877.75

Calculation of Total Assessable Value			
Depot	**Qty in tons**	**AV per ton**	**Assessable**
		Rs.	**Value Rs.**
Haryana	1100	12877.75	1,41,65,525
Delhi	1400	12877.75	1,80,28,850
Rajasthan	500	12877.75	64,38,875
	3000		3,86,33,250
Excise Duty @ 16%			61,81,320
Education Cess 2%			1,23,626
Higher Secondary Education Cess 1%			61,813
Total Duty Payable			63,66,760

Q. 11- A trader is owner of a brand name 'J-17'. He supplies materials to a job-worker. The job worker manufactures goods with brand name 'J-17' and supplies the goods to the trader. Cost of inputs is Rs. 360 per piece, inclusive of transport cost up to the factory of job worker. Job worker charges Rs. 130 per piece to manufacture the product. The trader sells the goods in market at Rs. 630 per piece. The rate of duty is 16%. Find the Assessable Value. What is the duty payable per piece?

Ans: 11

Assessable value will be Rs. 630 Per Piece, As per New Valuation rule 10 A, the price at which the Principal manufacturer sells the goods. The value of Cost of raw material and Job worker charges are not relevant

Q. 12- M/s. Ashok Leyland, sent their chassis (value Rs. 5,00,000) to M/s. Raj Nandini & Sons, for bus body building. M/s. Raj Nandini & Sons built the body and sent the bus to the former with their bill for Rs.5,00,000. Who will pay E.D. on the bus? . Ashok Leyland will sell the bus for Rs.15,00000/- What is the assessable value? Work out the total E.D. payable assuming Cenvat @ 16 % and taking the values given above.

Ans: 12

M/s T V Raj Nandini & Sons has to pay excise duty, because the body building of vehicle is deemed manufacture as per section/chapter Notes of CETA.
Valuation can be done using Job work valuation rule 10A. Assessable value will be the price at which Ashok Leyland sells bus i.e. Rs. 15 lakhs.

Total Duty payable

Assessable value	15,00,000
Excise Duty @ 16%	2,40,000
Education Cess 2%	4,800
Higher Secondary Education Cess 1%	2,400
Total Duty Payable	2,47,200

Q.13:- (i) Discuss **briefly how 'Value' is to be determined in this situation?**
X Ltd. Does not effect any sales of its goods ex-factory. Goods are sold only from Depots/branches situated away from the factory and costs are incurred for transport of goods from factory to depots. X Ltd, the assessee and its customers are not related persons and price is the sole consideration for the sale. What is the basis for determining the value of clearances ex-Depot/branches?
(ii) M/s OTV Ltd. Manufacture TV sets. They had sent the TV sets from their plant to their depot at Jammu. The depot sold them at Rs. 12,000 on 1.8.2002 and at depot at Rs. 12,500 per set on 10.8.2002 Please mention what would be the value of the TV sets removed from the factory on 3.8.2002 and 10.8.2002.

ANS. 13

(i) Rule 7 of Valuation (DPEG) Rules, 2000 is applicable in case of stock transfer.

Valuation of Depot Sales

It provides that

- If the excisable goods are transferred to a depot, or agent etc.
- From where they are to be sold,
- The value shall be the normal transaction value of such goods sold from such other place at or about the time of removal from factory/warehouse and,

⇒ Where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

"Normal transaction value" means the value at which the greatest aggregate quantity of goods from the depots etc. are sold at or about the time of removal of the goods from the factory/warehouse.

Rule 7 does not allow any deduction from such NTV. Also, Rule 5 of the said rules can not be applied for valuation of stock transfer as rule 7 is a specific provision for valuation of stock transfer. Hence, transportation charges from factory to depot can not be excluded.

Therefore when goods are transferred from factory to depot, value of the goods shall be the price at which goods are normally being sold at the branch, at the time of removal from factory.

(ii) Date of removal (a) 03.08.2002 (b) 10.08.2002

from factory

Price at Branch As on 01.08.02- Rs. 12,000 As on 10.08.02- Rs. 12,500

Applying the provisions of section 4(1)(a) read with Rule 7 of Valuation (Determination of Price of Excisable Goods) Rules, 2000, as discussed above.

a) In 1st case, the NTV shall be Rs. 12,000. As the nearest to 3.8.2002 shall be taken as the nearest past which shall be 1.8.2002.

b) In 2nd case, the NTV shall be Rs. 12,500. As on the date of removal itself NTV is available at the branch. And it has been clarified by the board that first NTV should be taken of the day on which goods are removed from the factory. And if not available on that day only then NTV of the nearest past can considered.

Q.14-How would you arrive at the assessable value for the purpose of levy of excise duty from the following particulars: * Cum-duty selling price exclusive of sales tax Rs 20,000 * Rate of excise duty applicable to the product 16% * Trade discount allowed Rs. 2,400 * Freight Rs. 1,500

Ans: 14-

Cum duty selling price		20,000
Less: Permissible deductions		
Trade Discount	2400	
Freight	1500	
		16,100
Assessable Value = 16100 x 100/116.48		13,822.12
Excise duty@ 16%		2,211.54
Education Cess 2%		44.23
Higher and Secondary education cess 1%		22.12
Total Duty Payable		**2278**

Q. 15- Determine the transaction value and the Excise duty payable from the following information:

i) Total Invoice Price Rs. 18,000

ii) The Invoice Price includes the following:

a) Sales-tax Rs. 1000

b) Surcharge on ST Rs. 100

c) Octroi Rs. 100

d) Insurance from Factory to depot Rs. 100

e) Freight from factory to depot Rs. 700

f) Rate of Basic Excise duty 16% ad valorem

g) Rate of Special Excise duty 24% ad valorem

Ans: 15

Total Invoice price		18,000
Less: Exclusions		
Sales tax	1000	
Surcharge on sales tax	100	
Octroi	100	1200
		16800
Assessable Value – 16800 x 100/141.2		11898.02
Excise duty		
Basic – 16%	1903.68	
Special – 24%	2855.52	
Total	4759.21	
Ec 2%	95.18	
HS Ec 1%	47.59	
Total Duty Payable		4901.98

- It is assumed-The given price is Ex-depot price
- No deduction for freight and insurance from factory to Depot shall be allowed.

Q.16-Thunder TV Ltd. is engaged in the manufacture of colour television sets having its factories at Bangalore and Pune. At Bangalore the company manufactures picture tubes which are stock transferred to Pune factory where it is consumed to produce television sets. Determine the Excise duty liability of captively consumed picture tubes from the following information: - * Direct material cost (per unit) Rs. 600 * Indirect Materials Rs. 50 * Direct Labour Rs. 100 * Indirect Labour Rs. 50 * Direct Expenses Rs. 100 * Indirect Expenses Rs. 50 * Administrative Overheads Rs. 50 * Selling and Distribution Overheads Rs. 100. Additional Info rmation: - (1) Profit Margin as per the Annual Report of the company for 1999-2000 was 15% before Income Tax. (2) Material Cost includes Excise Duty paid Rs. 100 (3) Excise Duty Rate applicable is 16%.

Ans: 16

Calculation of Cost of Production- as per Rule 8 of Valuation Rules, 2000.

Particulars	Amount
Direct Material (600-100)	500
Direct material	100
Direct labour	100
Administrative overhead	50
Total	750
Add 10% on Cost	75
Assemble Value	825
Excise duty @ 16.48%	135.96

Q.17:- Determine the valuation in the following instances. Quote section/rules of Central Excise Law.

Place of Removal	**Price at Depot as on**		**Actual Sale Price**
	01/01/2001	31/01/2001	at Depot on 01/02/2001
Amritsar Depot	Rs. 110/unit	Rs. 105/unit	Rs.115/unit
Bhopal Depot	Rs. 120/unit	Rs. 115/unit	Rs.125/unit
Cuttack Depot	Rs. 130/unit	Rs. 125/unit	Rs.135/unit

Additional information:-

(i) (i) Quantity cleared to Amritsar Depot 100 units
(ii) (ii) Quantity cleared to Bhopal Depot 200 units
(iii) (iii) Quantity cleared to Cuttack Depot 200 units
(iv) The goods were cleared to respective Depots on 01/01/2001 and actually sold at the depots on 01/02/2001.

ANS. 17

Under Rule 7 and as per section 4(3)(c)(iii) and section 4(3)(cc) of Central Excise Act, 1944

- The price prevailing at the Depot
- On the date of clearance from the factory
- Will be the relevant value to pay Excise duty.

And accordingly:-

(i) Clearance to Amritsar depot will attract duty based on the price as on 01/01/2001

Transaction value Rs. 110 * 100 units = Rs. 11,000

(ii) Clearance to Bhopal depot. Depot price at the price on 01/01/2001.

Transaction value Rs. 120 * 200 units = 24,000

(iii) Clearance to Cuttack Depot price on 01/01/2001.

Transaction value Rs. 130 * 200 units = Rs. 26,000.

Note: The relevant date is 01/01/2001, since the goods were cleared to the depots on that date. No additional duty is payable even if goods are later sold from depot at higher price.

Q.18:- Determine the cost of Production of the under mentioned product for purpose of captive consumption under **Rule 8** of the central Excise Valuation (DPE) Rules, 2000.

	Rs.
Direct Material	11,600
Direct Wager & Salaries	8,400
Works Overheads	6,200
Quality Control costs	3,500
Research and Development Costs	2,400
Administrative Overheads	4,100
Selling and Distribution Costs	1,600
Realisable Value of Scrap	1,200

Administrative overheads are in relation to production activities. Material cost includes excise duty Rs. 1,600

ANS. 18

Cost of Production/Manufacturing for purposes of Captive Consumption shall be determined as per 'Cost Accounting Standard (CAS) – 4: Cost of Production for Captive Consumption' issued by ICWAI [CBEC Circular]. Different elements of cost have been treated as per CAS-4.

Computation of cost of production/manufacturing for the purpose of Rule 8

PARTICULARS		Amount In (RS.)
Direct Material Consumed		
Purchase Price	11,600	
Less: Excise duty available as credit (WN-i)	1,600	10,000
Direct Wages and salaries		8,400
Direct Expenses		Nil
Works overheads		6,200
Quality control costs		3,500
Research & Development Costs		2,400
Administrative Overheads		4,100
Total		34,600
Less: Realised value of Scrap		1,200
COST OF PRODUCTION (in accordance with the CAS-4 issued by ICWAI)		33,400

Notes:

(i) AS per CAS-4 excise duty of which credit is available, shall be deducted from the cost of material consumed.

(ii) Selling and distribution Overheads doesn't form part of Cost of Production/Manufacturing and accordingly, ignored in the question.

Q.19-A manufacturer has agreed to supply a machine on following terms: -

(i) Price of the machine at Rs. 4,50,000 (Exclusive of taxes and duties) (ii) Packing for transportation of the machine Rs. 15,000 (iii) Transport charges of machinery Rs. 25,000 (iv) Development and tooling charges Rs. 40,000 (exclusive of taxes and duties), (v) C.S.T. @ 3% (vi) Octroi paid on machine supplied Rs. 2,000 (not recovered from party separately) (vii) Excise duty @ 16%, (viii) Interest will be charged @ 16% on delayed payment beyond 30 days, (ix) Special discount of Rs. 5,000. if advance of Rs. 2,00,000 is paid with order. Work out the excise duty liability based on following additional information - (i) Actual transportation cost is Rs. 26,000 (ii) Interest of Rs. 5,000 was charged as party has failed to make payment within 30 days, (iii) The buyer paid advance with the order.

Ans: 19-

Price of Machinery		4,50,000
Add: Inclusions		
Packing for transport	15,000	
Development and tooling	40,000	55,000
		5,05,000
Less: Octroi		2,000
Assessable Value		5,03,000
Excise duty @ 16%		80,480
Education Cess 2%		1,610
Higher and Secondary education cess 1%		805
Total Duty Payable		82,894

Note:

- Transport charges not includible in AV, Actual transport not relevant.
- CST, Interest for delayed payment not includible in Valuation.
- It is assumed- that Octroi of Rs. 2000 already included in the value of Machine. And as per the provisions of valuatuin such charges are not includible in A.V
- Special discount Rs. 5000 was not deductible, as it is a condition for advance Payment, as the price is not sole consideration.(Rule 6 of valuation rules, 2000.)

Q.20-Cost of production of a product 'X' calculated as per CAS-4 standard is Rs 350 per piece. 500 pieces of a product were manufactured. 120 pieces were sold at Rs. 700 per piece to Industrial Consumers, 70 pieces were sold to a Central Government department @ Rs. 690 per piece; 210 pieces were sold to wholesalers at Rs. 720 per piece; 70 pieces were sold in retail @ Rs. 800 per piece and 20 pieces were given as free samples. Out of the 70 pieces sold to Government department, 25 pieces were rejected, which were subsequently sold to other customers @ Rs. 300 per piece, without bringing them in the factory. Balance pieces were in stock, out of which 25 pieces were so damaged that they became unsalable. [Note that all the prices are exclusive of excise and sales tax. The rate of duty on the product is 16%. What is total duty payable? Advise Management about steps to be taken in respect of 25 pieces, which have been damaged in storage.

Ans: 20

Particulars	Qty	Rate	Value
Sale to Industrial Consumers	120	700	84000
Sale to Central Government	70	690	48300
Sale to Wholesalers	210	720	151200
Sale in Retail	70	800	56000
Removed as Samples	20	720	14400
			353900
Excise duty @16%			56624.00
Education Cess 2%			1132.48
Higher and Secondary education cess 1%			566.24
Total Duty Payable			**58323**

Note:-Samples are to be valued -As per Rule 4Read with Rule 2, of valuation rules, 2000,

- The value of the excisable goods(samples) shall be based on **the value of "such goods"** (Identical goods) sold by the assessee,
- For delivery at any other time nearest to the time of the removal of goods under assessment,

Normal transaction Value" means the transaction value at which the **greatest aggregate quantities of goods are** sold.

Q.21-A trader supplies fabrics to independent processor. Cost of fabrics is Rs. 1,150. The processor charges Rs. 450, which includes Rs. 350 as processing charges and Rs. 100 as his profit. After processing goods are sent back to the trader, who sells them at Rs. 1,800. Transport charges for receiving goods at the premises of the processor is Rs. 50 and the transport charges for sending goods after processing is Rs. 60. Please determine the assessable value of the goods under Section 4 of the Central Excise Act.

Ans: 21

As per new Valuation Rule 10 A for Job work value will Rs. 1800. Cost of material, Job worker chargers and transport not relevant.

Q. 22-An assessee manufactures certain goods on job-work basis. The trader supplies the raw material to job-worker and sells the manufactured product under his brand name. Find the assessable value for the purpose of levy of excise duty from the following particulars - (i) Cost of raw material supplied by trader – Rs. 10,000. (ii) Cost of bringing raw material to factory – Rs. 500. (iii) Value of job work done – Rs. 2,500. (iv) Job worker's profit – Rs. 400. (v) Transportation charges incurred for returning the manufactured product to the trader – Rs. 600. (vi) Trader's sales price of finished product – Rs. 15,000

Ans: 22

As per new valuation Rule 10 A for Job work value will Rs. 15000. Cost of material, Job worker charges and transport not relevant.

Q. 23- Calculate the cost of production for the purpose of captive consumption based upon the following

details: Materials purchased (includes excise duty Rs. 2,000) - Rs. 22,000 Realizable value of scrap – Rs. 2,000. Wages – Rs. 12,000. Manufacturing expenses – 8,000. Administrative expenses – 8,500. Selling and Distribution expenses – Rs. 3,400. Expenses of quality inspection department – Rs 4,000. Expenses of research and development department – Rs 6,000.

Ans: 23

Calculation of Cost of Production	
Particulars	Amount
Material	20,000
Wages	12,000
Manufacturing expenses Administrative Expenses	8,000 8,500
Quality inspection department exp	4,000
Expenses of Research and development	6,000
	58,500
Less: Realization of Scrap	2,000
Cost of Production	56,500

Q. 24- A manufacturer having a factory at Jaipur has uniform price of Rs. 1,000 per unit (excluding taxes) for sale anywhere in India. During the financial year 2008-09, he made the following sales: (i) Sale at factory gate in Jaipur: 1,000 units – no transport charges. (ii) Sale to buyers in Delhi: 500 pieces – actual transport charges incurred Rs. 12,000. (iii) Sale to buyers in Chennai: 600 pieces – actual transport charges incurred Rs. 48,000. (iv) Sale to buyers in Mumbai: 900 pieces – actual transport charges incurred Rs. 30,000. Find assessable value per unit under the central excise.

Ans: 24

Calculation of Equalized freight per unit

0+12000+48000+30000/1000+500+600+900= 90000/3000 = 30

Assessable value = FOR Price – freight = 1000 – 30 = 970

Q.25:- Determine the valuation in following instances. Quote section/rules of Central Excise Law.

(i) A Ltd. Sold goods to B Ltd. at a value of Rs. 100 per unit. In turn, B Ltd sold the same to C Ltd. at value of Rs. 110 per unit. A Ltd. and B Ltd. are related, whereas B Ltd. and C Ltd. are unrelated

(ii) A Ltd. and B Ltd. are interconnected undertakings under section 2(g) of MRTP Act. A Ltd. sells goods to B Ltd at value of Rs. 100 per unit and to C Ltd. at Rs. 110 per unit, who is an independent buyer.

(iii) A Ltd. sells goods to B Ltd. at a value of Rs. 100 per unit. The said goods are captively consumed by B Ltd. in its factory. A Ltd. and B Ltd. are unrelated. The cost of production of the goods to A Ltd. is Rs. 120 per unit.

(iv) A Ltd. sells motor spirit to B Ltd. at a value of Rs. 31 per litre. But motor spirit has administered price of Rs.30 per litre, fixed by the Central Government.

ANS. 25

(i) Transaction value shall be Rs. 110 per unit,

As per Rule 9 of valuation rules,

⇒ **When the excisable goods are sold by assessee to related person** -the value of the goods shall be ,**Normal transaction value** at which these are sold by the related person to non-related person at the time of removal,

(ii) Transaction value shall be Rs. 100 for sale to B **AND** Rs. 110 for sale to C – (Rule 10)

For sales to unrelated buyers valuation will be done as per Section 4(1)(a).

Inter connected undertakings will be treated as 'related person' for under any other clause of the definition of 'related person'. And in the given case as they are not covered under any other clause, value shall be determined as if they are not related person.

(iii) Transaction value will be Rs. 100,- section 4(1)(a) In case of sale to unrelated person question of cost of production does not arise.

(iv) Transaction value Rs. 31. – section 4(1)(a) – Since the goods are actually sold at this price, administered price is not considered.

Q.26:- Calculate the assessable value for levy of excise duty from the following particulars:

Cum duty selling price inclusive of sales tax @ 4%	Rs.	60,320
Rate of excise duty applicable to the product		16%
Trade discount allowed	Rs.	2,400
Freight (to be charged extra from cum duty selling price)	Rs.	2,000

ANS. 26

Computation of Assessable Value

Particulars	**Rs.**
Cum duty Selling Price (inclusive of sales tax)	60,320.00
Less: Freight (to be charged extra) (iii)	NIL
Less: Trade discount (ii)	2,400.00
	57,920.00
Less: Sales Tax 57,920 * 4/104	2,228.00
	55,692.00
Excise duty @ 16.48% (i)	
[55,692*16.48/116.48]	7,880.00
Assessable value	47,812.00

Notes:-

i. As per section 4(3)(d), Transaction value of goods does not include any Sales tax, Excise duty or any other taxes paid or payable on such goods.

ii. It has been assumed that Rs. 60,320 cum duty selling price is before allowing discount. Hence discount has been deducted from such price.

iii. Freight charges do not form part of assessable value and in the question it is provided that freight is to be charged extra i.e. not included in cum-duty price of Rs. 60,320 therefore no question of deduction.

Q.27:- B Ltd. manufactures two products namely, Eye Ointment and Skin Ointment. Skin ointment is a specified product u/s 4A of Central Excise Act. 1944. The sales prices of the products are at Rs. 43/unit and Rs. 33/unit respectively. The sale price of both products included 16% excise duty as BED and 8% excise duty as SED. It also includes CST @ 4%

Additional information:-

Units cleared: Eye Ointment: 1, 00,000 units

Skin ointment: 1, 50,000 units

Deduction permissible u/s 4A: 40% . Calculate the excise duty liability of B Ltd. on both the products.

ANS. 27

Duty on eye ointment and skin ointment is required to be calculated separately.

Duty on Eye ointment as per section 4(1)(a):

Particular	**(Rs.)**
Cum duty price	43.00
Less- sales tax@ 4% (43*4/104)	1.65

41.35

Less-excise duty @ 24.72% (16%+8%+3%of 24%) (41.35*24.72/124.72) 8.20

Assessable Value 33.15

Total excise duty on eye ointment = Rs. 8.20*1,00,000 units = 8,20,000

Duty on Skin ointment is to be calculated as per section 4A

Assessable value is equal to sale price less abatement as specified.

Hence, Assessable value =Sale price – 40% of SP

=33 – 13.20 = 19.80

Excise duty per unit @ 24.72% =4.89456 (19.80 x 24.72%)

No. of units cleared =4.89456*1,50,000

Total Duty =Rs. 7,34,184

Q. 28 M/s Jani Manufacturing Co. Ltd., Delhi are despatching 100 'Mixing Machines' to their dealer in U.P. The dealer in U.P is not registered under Central Sales Tax Act. Sales Tax on 'mixing machine' in State of Delhi is 6%. The retail price of the machine is Rs. 800 (exclusive of sales tax and excise). Dealers get discount of 15% on this price. Excise duty is 16% plus education cess @ 2%. Packing cost is Rs 50 per piece. Manufacturer normally sales the goods with the packing. Transport charges are Rs. 1,500 extra. What will be total value of Invoice? Prepare an Invoice showing copy, which will be useful for transport purposes

Ans: 28

Particulars	Rs.	Rs.
100 Mixing machines @ Rs. 800	80000	
Less: Discount 15%	12000	
		68,000.00
Packing Cost @ Rs. 50 per piece		5,000.00
		73,000.00
Add: excise duty 16%	11680	
Education cess 2%	233.60	
H S ec. 1%	116.80	
		85,030.40
Add: CST – 6%		5,101.82
		90,132.22
Add: Transport Charges		1500.00
Total Invoice Value		**91,632.22**

Note- Other elements as per rule 11 of CER, 2002 should be mentioned in the invoice.

Q. 29-Shiva and Co., an assessee, transferred a consignment of 10 tons paper to the depot from Delhi to Chandigarh on 10 March, 2009 for value of Rs. 12,500 per ton. The transport cost was Rs. 500 per ton. The same variety and quality of paper normally being sold at Chandigarh depot on 10th March, 2009 was at a transaction value of Rs. 15,000 per ton to unrelated buyers. (i) Which transaction value should be considered for assessment to excise duty? (ii) In case there were no sales of that variety and quality of paper on 10th March, 2009, but sales were effected on 1st March, 2009 previously for Rs. 14,000 per ton, what would be your answer?

Ans: 29

i. A V Rs. 15000/- (ii) A V Rs. 14,000/- adjustment for price if any for increase/ decrease between 10th march and 1th march.

Q. 30-

A large manufacturing unit undertook following job work:

(a) Machining of raw materials supplied by the buyer. The material was sent under Cenvat challan. Job work charges were Rs. 30,000. Cost of raw material was Rs. 3,50,000. These were returned after job work. The principle manufacture sell the product at Rs.4,00,000

(b) Processing of inputs sent by a buyer under his own (buyer's) challan. Processing charges were Rs. 10,000 and cost on inputs was Rs. 2,00,000.

(c) Repairs of a component. Original cost of component was Rs. 25,000 and repairs charges were Rs. 3,000. The component was sent by customer under cover of his letter. In all these cases, raw material was sent by customer.

Excise duty payable is 16% plus education cess of 3%. You are required to (a) Find total duty payable, (b) Procedure to be followed by manufacturer for dispatch in each case after carrying out job work **)**

Ans: 30 Duty payable in each case is as follows:

A. Job work is exempt from duty if input is received under Cenvat. Hence, duty is not payable in this case. The Raw material supplier has to file a declaration before Assistant Commissioner having jurisdiction over factory of manufacturer (job worker) that excise duty liability on final product will be borne by him. (E/N -214/86)

And A. V. will be Rs. 4 lakhs.

B. Excise duty is payable by the principal manufacturer on the price at which he is removing from the factory, since the price is not given therefore duty can not be calculated. The material cost and Job worker charges are not relevant. Goods should be cleared under serially numbered and pre-authentication Invoice. This invoice should indicate the Assessable value on which duty has been paid.

C. Repair does not amount to 'manufacture' as no new product emerges. Hence, there is no liability of Central Excise Duty. The goods should be cleared under manufacture's own Delivery Note with full details of operations carried out. If repair process is manufacture duty payable on Rs. 28,000.

Q. 31 -A product which is covered under Section 4A provisions has MRP of Rs. 25 printed on the carton. It is cancelled by drawing two lines across the price, but the price is easily readable. Below that price, MRP price of Rs. 21 is shown to indicate the saving which will be made by buyer. The abatement available is 40% on MRP Excise duty rate is 16%. Calculate the excise duty payable.

Ans: 31

As per Sec 4A Av will be Rs. 21, even scoring of Rs. 25 is visible

MRP	21.00
Less Abatement – 40%	8.40
Assessable Value	12.60

Excise Duty – 16%	2.02
Education Cess 2%	0.04
Higher and Secondary education cess 1%	0.02
Total Duty payable	2.08

Q. 32- Asha Ltd. supplies raw material to a job worker Kareena Ltd. After completing the job-work, the finished product of 5,000 packets are returned to Asha Ltd. putting the retail sale price as Rs. 20 on each packet. The product in the packet is covered under MRP provisions and 40% abatement is available on it. Determine the assessable value under Central excise law from the following details: * Cost of Raw material supplied Rs. 30,000/- * Job worker's charges including profit Rs. 10,000/- * Transportation charges for sending the raw material to the job worker Rs. 3,000/- * Transportation charges for returning the finished packets to Asha Ltd. Rs. 3,000/

Ans: 32

Where goods covered under M R P Provisions value will be done as per MRP Provisions only

M R P per packet	20.00
Less Abatement 40%	8.00
Assessable Value per pocket	12.00
Total Assessable for 5000 packets @ Rs. 12	60,000

Note: The details given regarding Job Work not relevant

Q. 33- A manufacturer manufactured some furniture within the factory for his own use. He purchased material of Rs. 27,500 for this purpose. Cost of the operations carried out by him, as certified by a Cost Accountant, as per CAS-4, is Rs. 12,200. The furniture is liable for duty @ 16%. The manufacturer generally earns profit of 18% on his total cost. Sales tax on furniture is 10%. Find the excise duty and sales tax payable.

Ans: 33

Note: If Furniture is captively consumed- duty shall be payable as per Valuation Rule 8 -At Cost plus 10%

Calculation of cost of Production

Cost of Raw material	27500
Cost of Operations	12200
	39700
Add 10%	3970
Assessable Value	43760
Excise Duty @ 16%	6987
Education Cess 2%	140
Higher Secondary Education Cess 1%	70
Total Duty Payable	7197

Q. 34- Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation (DPE) Rules, 2000 - Direct material – Rs 11,600, Direct Wages & Salaries – Rs 8,400, Works Overheads – Rs 6,200, Quality Control Costs – Rs 3,500, Research and Development Costs – Rs 2,400, Administrative Overheads – Rs 4,100, Selling and Distribution Costs – Rs 1,600, Realisable Value of Scrap – Rs 1,200. Administrative overheads are in relation to production activities. Material cost includes Excise duty Rs. 1,600.

Ans: 34

Calculation of cost of Production

Direct material	10000
Direct wages	8400
Works overheads	6200
Quality control costs	3500
Research and development cost	2400
Administrative overheads	4100
	34600
Less: Realizable value of scrap	1200
Cost of Production	33400
Add 10%	3340
Assessable Value	**36740**

Note: selling and distribution costs are not includible in cost of production. It is assumed that Research and development costs are relating to production

Q.35-B, a trader, buys art silk yarn and gives it to C, a job work contractor for further processing. The cost of the art silk yarn supplied to C is Rs. 12,000. C bills B at Rs. 3,000 which comprises of process charges Rs. 2,500 and profit Rs. 500. Cost of carriage for moving goods to C's place is Rs. 100 and for moving these back to B, after processing, is Rs. 90. B sells the final product for Rs. 16,200. What is the assessable value of the goods under section 4 of the CE Act

Ans: 35

As per new Valuation Rule 10 A for Job work value will Rs. 16,200

Cost material, Job worker charges and transport not relevant.

Problems in CCR, 2004

Q. 1- M/s RJ imported some inputs and paid Basic Customs duty Rs. 5 lakhs, surcharge on customs duty Rs. 50,000 and CVD Rs. 1 lakh. Calculate the amount that he can claim as Cenvat credit. Would it make any difference, if the assessee is not a manufacturer, but a service provider

Ans: 1

Cenvat Credit available on CVD Rs. 1 lakh. No Cenvat Credit Basic customs duty Rs. 5 lakhs. If assessee is a service provider Credit can be taken on CVD Rs. 1 lakh if the Imported material used in providing Output service.

Q.2:- Based on the following information; determine the Cenvat credit available for the use in the current year under the Cenvat credit rules, 2004.

	Goods	Central Excise duty paid at the time of purchase of goods (Rs.)
(a)	Pollution control equipment	25,000
(b)	Spares for pollution control equipment	5,000
(c)	Equipment used in office	12,000
(d)	Storage tank	10,000
(e)	Paints used for packing material	6,000
(f)	Packing material	4,000
(g)	Lubricating oil	8,000
(h)	High speed Diesel oil	7,000

ANS. 2

Goods	**Cenvat Credit available (Rs.)**
a) Pollution control equipment [Ref Note 1]	12,500
b) Spares for pollution control equipment [Ref Note 1}	2,500
c) Equipments used in office [Ref Note 2]	Not allowed
d) Storage tank	5,000
e) Paints used for packing material	6,000
f) Packing material [Ref Note 3]	4,000
g) Lubricating oil [Ref Note 3]	8,000
h) High speed Diesel oil [Ref Note 4]	not allowed
Total available credit during the year	38,000

Notes:

1. Pollution control equipment and spares thereof and storage tank are covered by the definition of capital goods. Thereof credit shall be allowed. But As per rule 4 of Cenvat Credit Rules, 2004 credit of duty

paid on capital goods can not exceed 50% of duty paid on such capital goods in the year of receipt. Therefore credit can be taken only 50% of duty paid on such capital goods.

2. Definition of Capital goods specifically excludes from its ambit equipments used in office. Therefore credit of duty paid on such equipment is not allowed.

3. Lubricating oil and packing material used in or in relation to manufacture of final product are covered by the definition of inputs. And board has clarified that raw material used for making packing material shall also be eligible as inputs. Therefore credit can be taken of paint used for packing material. Also 100% credit of duty paid on input can be taken in the year of receipt.

4. High speed diesel oil had been specifically excluded From the definition of input. Therefore credit is not allowed.

Q. 3 -Discuss about the eligibility of Cenvat Credit in each of the following situations - (i) 1000 kgs of raw materials were purchased on which duty paid was Rs. 16,000. Whilst in the production yard, they were destroyed by accidental fire (ii) 1000 kgs of raw materials on which duty paid was Rs. 10,000 was used in manufacture of a final product for which the duty payable is Rs. 8000 (iii) The original invoice for 1,000 units of inputs purchased were missing; however 'Duplicate for transport' copy of invoice is available, which shows that duty of Rs. 10,000 had been paid on inputs

Ans: 3

1. Credit is available when inputs are destroyed during the course of process. If they are destroyed before issue for production, therefore no credit will be available.
2. Credit can be utilized to the extent of Rs. 8000 and balances Rs. 2000 can be carry forward
3. Credit is available only based on original copy of invoice with all prescribed particulars under Rule 9 of CCR, 2004. However credit cannot denied for minor irregularies. In this credit can be available with the permission of AC/ DC of excise.

Q.4-A manufacturer under CENVAT purchased inputs of value at Rs. 60,000 on which duty of Rs. 9,000 was paid @ 15% on 25th January 2008. After two months, due to change in production schedule, he found that he does not need the material. He sold the inputs lying in stock @ Rs. 70,000 on 17th July 2008. However, due to budget change announced earlier, duty on those inputs was increased to 20%. (a) Does the manufacturer have to pay excise duty? If so, how much? (b) If, instead of increase of duty to 20%, the inputs were exempted from duty in the budget, what would have been your answer?

Ans: 4

As per Rule 3 (5) of CCR, 2004-

When inputs cleared as such (without using) an amount equal to cenvat credit availed is payable Rs. 9000.

Note: Increase in rate of duty, exemption from duty and sale at higher value is not relevant.

Q.5-A manufacturer manufactures 3,500 Nos. of a product 'P'. Its Assessable Value is Rs. 650 per piece. Duty payable is 10%. He bought inputs for the same, on which duty paid was Rs. 90,000. The manufacturer sells 2,000 pieces in India and 1,500 pieces are exported. How much CENVAT Credit will be available and what is the duty payable through PLA?

Ans: 5

Duty payable on units cleared for Home consumption.

AV = 2000 @ Rs. 650 per Piece	1300000	
	Duty	EC 3%
Duty Payable 10 %	130000	3900
Less Cenvat credit on Inputs	90000	2700
Duty payable through P L A	40000	1200

Note- As per Rule 6 (6) of CCR, 2004- ccr will be available In respect of inputs contained in the final product which is exported. (Called zero rated goods)

Q.6-An assessee cleared his manufactured final Product during the month of March 2009. The duty payable on the final product for the month is Basic excise duty Rs. 200000, Special excise duty Rs. 1,00,000 and applicable education cess. During the month he has received various inputs total duty paid on the inputs was as follows. Basic Excise duty Rs. 50000, Additional excise duty (GSI) Rs. 5000 . Excise duty paid on capital goods received during the month was Rs. 12000 Service tax paid on input services Rs. 1000. For all duties and service tax applicable education cess was paid. How much duty is payable through account current

Ans: 6

Duty payable on Final Product

	Duty (Liability)	EC 3% (Liability)	Duty (CCR)	E C 3% (CCR)
Basic Excise duty			200000	6000
Special excise duty			100000	3000
Total			300000	9000
Cenvat credit available				
Basic Excise duty	50000	1500		
Excise duty on C G 50%	6000	180		
Service tax Add. GSI	1000 5000	30 150		
Total Cenvat credit available	62000	1860		
Less Cenvat Credit Duty to be paid through PLA			62000 238000	1860 7140

Q.7-Prepare a Cenvat account in the books of A Ltd., and determine the balance as on 30-09-2008 from the following data: -

1. Opening balance as on 01-04-2008 Rs. 47,000.
2. Inputs received on 04-04-2008 involving excise duty paid Rs. 14,747
3. Purchased a lathe for Rs. 1,16,000 -cum duty price @ excise duty rate of 16% on 05-04-2008 and received the lathe into the factory on 05-12-2008.
4. On 06-04-2008 paid excise duty on final products @ 16% through Cenvat A/c (cum duty price of the goods Rs. 2,32,000).
5. Inputs cleared as such to a job worker on 01-04-2008 not returned in 180 days,

quantity 1,000 Kgs; Assessable value Rs. 2 lacs; ED @ 16% of the above, 50 % of the inputs were received on 01-10-2007.

6. Common inputs were used in a product, which was exempted from payment of duty cleared at a price of Rs. 100/unit, which included taxes of Rs. 20/unit; quantity cleared 1,000 units.

7. On 07-04-2008 duty paid on inputs amounting to Rs. 17,867 was taken credit for in the Cenvat A/c as Rs. 17,687

Ans: 7

Cenvat Account on 30/09/2008							
Particulars		**Cenvat Available (Dr)**		**CenvatUtilized (Cr)**		**Balance**	
Date		Duty	EC 3%	Duty	EC 3%	Duty	EC 3%
01/04/2008	Opening balance	47000	1410			47000	1410
04/04/2008	Inputs purchase	14747	442			61747	1852
04/042008	Removals			32000	960	29747	892
07/04/2008	Original entry	17687	531			47464	1423
	Rectification	180	5			47614	1428
	(17867 – 17687)						
	Payment of amount On common inputs (1000 x 80 x 5%)			4000		43614	1428
28/09/2008	Inputs sent for Job work			32000	960	11614	468

Q,8-. Briefly discuss with the reasons whether in the following case Cenvat Credit is available to an assessee and, if yes to what extent?
An assessee purchased inputs weighing 1,000 Kgs. The duty paid on inputs was Rs. 10,000. During transit, 500Kgs inputs were destroyed.

ANS. 8

Assessee can take credit only of Rs. 5000 i.e. duty paid on 500 kg. As 500 kg. were destroyed during transit and were not received in the factory.

As per rule 4(1) of Cenvat Credit Rules, 2004-

The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or provider of output service.

Rule 2 of CCR, 2004 provides that any goods used in or in relation to manufacture are eligible as inputs and inputs are neither received nor they can be used in or in relation to manufacture of final product or for providing output service.

Therefore credit cannot be taken of the duty paid on those inputs.

Q. 9-500 pieces of inputs were received. Duty paid on these goods was Rs. 2,500. These were issued to production. While on production line, a fire broke out and 200 pieces of inputs lying on the shop floor were

destroyed. 1000 litres were received on which duty paid was Rs. 18,000. These were issued to production. Out of these, 940 litres of final products were manufactured. 60 litres of inputs were lost in process Discuss eligibility of Cenvat credit in the above cases

Ans: 9

Credit can be availed on duty paid on inputs destroyed during the process. Credit can be availed on duty paid on inputs lost during the process credit is available on 1000 ltrs duty paid amount Rs. 18000).
Hence in the both cases credit can be availed.

Q.10-X availed Cenvat credit of Rs. 42,000 for manufacture of an item chargeable to duty. These goods were lying in his factory till 28-02-2009, from 1.3.2009; the final product was made exempt from duty. Now, when the final goods are cleared, should the Cenvat credit of Rs. 42,000 availed earlier be reversed (Ans Yes)

Ans: 10

As per Cenvat Credit Rule 11 (3) when dutiable goods becomes exempt, Cenvat credit availed on inputs, work-in process and finished goods should be reversed. Hence X has to reverse an amount of Rs. 42000/- of credit availed.

Q. 11- A manufacturer purchased machinery falling under chapter heading 84 from supplier 'X Co'. The invoice was for Rs 23,200, comprising of price of goods as Rs 20,000 and Rs 3,200 as excise duty and education cess. Pass journal entry in accounts book to record the purchase transaction. Explain how the balance will appear in Balance Sheet

Ans: 11

Capital Goods A/c Dr	20000	
Cenvat Credit Receivable (Capital goods)- Dr	1600	
Cenvat credit Receivable (Capital goods) deferred A/c - Dr	1600	
To Sundry Creditors – X & Co		23200

In the Balance sheet deferred account will be shown under loans and advances.

Q.12- M/s.RC imported some inputs and paid Basic Customs Duty Rs 5lakhs, surcharge on customs duty Rs. 50,000 and CVD Rs 1 lakh. Calculate the amount that he can claim as Cenvat credit. Would it make any difference, if the assessee is not a manufacture, but a service provider?

ANS. 12

M/s RC can take credit of Rs. 1,00,000 i.e. of additional duty of customs (CVD). Rule 3(1) of CCR allows credit of additional duty of customs imposed under section 3 of CTA. The credit of other two duties i.e. BCD and surcharge on custom duty is not allowed.
It will not make any difference if the assessee is a service provider as credit of additional duty of customs (CVD) can be availed both by manufacturers and the service providers alike but credit of CVD u/s 3(5) will not available to a service provider.

Q.13-Closing balance of Cenvat Credit in of a manufacturer on 3rd July 2008 was Rs. 11,500. On 4th July 2008, following transactions took place: (i) The manufacturer received inputs under Invoice No. 253 dated 5th June 2008, evidencing payment of duty of Rs. 74,000; (ii) 90 pieces of Final products were despatched under Invoice No. 768. Assessable value was Rs. 1,200 per piece and excise duty rate was 16%; (iii) Some inputs on which cenvat was taken earlier were sold for Rs. 1,20,000 as they were found in excess. When the inputs were received duty rate on inputs was 15%, and Cenvat credit taken was Rs. 21,000. However on 4th July 2008the excise rate applicable on inputs was 20%; (iv) Some inputs (10,000 pieces) were sent outside on 1st July 2008 for job work). Duty of Rs. 5,000 was paid while purchasing these inputs on 4th July 2008, 6000 pieces (out of 10,000 pieces) were returned to the factory after job work. - . - Prepare Cenvat credit account

Ans: 13

Particulars		**Cenvat Available (Dr)**		**Cenvat Utilized (Cr)**		**Balance**	
Date		Duty	EC 3%	Duty	EC 3%	Duty	EC 3%
Opening Balance		11500	345			11500	345
05.06.2007 inv 253	Inputs	74000	2220			85500	2565
Inv 768	Removals			17280	518	68220	2047
04.07.2007	Inputs removed as such			21000	630	47220	1417

Q.14-A manufacturer received certain inputs. The cost of inputs was Rs. 2,00,000 and duty paid @ 16% was Rs. 32,000. After receipt of the inputs, the cenvat credit was availed of by the manufacturer. He further carried out some processes on the inputs. The cost of processing was Rs. 50,000. Thesemi-processed material was sent to a small-scale unit for a job work. –Is there any duty payable at the time of removal of inputs for the job work ? The material sent was not returned by the small-scale unit after the job work within 180 days. What will be the duty payable on such goods not returned after being sent out for the job work?

Ans: 14

As per Rule 4 (5) of CCR, 2004-

No duty payable when goods send for job work and there is no need to reverse the credit availed when material sends for job work. If the material sent for job work not returned with in 180 day, an amount equal to cenval credit availed is to be paid i.e. Rs. 32000.

As per Rule 4 (6) of CCR, 2004-

If finished goods are directly cleared form job worker place, duty is payable based on AV and prescribed procedure is to be followed.

Q. 15:- H. Ltd. Purchased a Boring-Drilling machine at a cum duty price of Rs. 32,14,476. The Excise duty rate charged on the said machine was @ 16%. The machine was purchased on depreciation @ 25% following Straight Line Method. Using the said information answer the following question:

(i) What is the Excise duty paid on the machine?

(ii) What is the Cenvat credit allowable under Cenvat Rules?

(iii) What is the amount of cenvat credit reversible or duty payable at the time of clearance of the said machinery, If removed as such?

ANS.1 5

i. **Computation of excise duty**

	(In Rs.)
Cum duty price	= 32,14,476
Less- excise duty @ 16.48% (32,14,476 x 16.48/116.48)	= 4,54,795
Assessable Value	= 27,59,681

Excise duty paid is Rs. 4,54,795.

ii. Cenvat allowable in year 2009-10 = 2,27,397

In year 2010-11 = 2,27,398

As per Rule 4(2) of CCR:-

50% Cenvat Credit can be availed in Current financial year and balance 50% of Cenvat is allowable only in following financial year, if the capital goods are in possession.

Since the capital goods were in use during the year 2010-11, cenvat of balance 50% is allowable.

iii. Amount of cenvat credit reversible at the time of clearance of such machinery is Rs. 4,54,795 i.e. the amount equal to Cenvat credit availed on goods.

As per rule 3(5) of Cenvat Credit Rules, 2004:-

When capital goods or inputs on which credit has been taken are removed as such, then the assessee is required to pay an amount equal to cenvat credit availed and such removal shall be made under the cover of an invoice referred to in rule 11.

Q.16-Machinotech Ltd. purchased a lathe machine at a price of Rs. 1,00,000 on which 16% Excise Duty was paid and the company availed of the Cenvat credit on the said capital goods. The lathe machine was purchased on 27-01-2008 and it was disposed of on 29-04-2008. Can the assessee enjoy the Cenvat credit ? Is it necessary to reverse the cenvat credit on disposal of the machine? If your answer is yes, quantify the amount.

Ans: 16

Cenvat Credit reversible at the time of clearance		
Cenvat Credit availed in year 07-08	8240	
Less : 2.5% per quarter for TWO quarter – (2.5%* 2 quarter)	412	7828
Cenvat Credit availed in year 08-09	8240	
Less : 2.5% per quarter for 1 quarters – 2.5%	206	8034
Total amount payable at the time of clearance incl. ec 3 %		15862

Q.17-Surya Ltd. purchased certain inputs for Rs. 50,00,000 and also paid Excise Duty @ 16% ad valorem. The company also purchased a drilling machine for Rs. 5,00,000 and paid Excise Duty @ 16% ad valorem. The company availed of the Cenvat credit on the inputs and on the capital good in April, 2008, on the same day. On 10-05-2008, the company cleared the finished goods to Tara Ltd., the cum-duty price of which worked out to Rs. 70,80,000. The final product (finished goods) sold attracted Excise Duty @ 16% ad valorem. The company also deposited Rs. 6,00,000 through TR-6 Challan on 10-05-2008, itself. It may be noted that the inputs were purchased from Usha Ltd. and the drilling machine from Probha Ltd., on credit in both cases. Pass the necessary journal entries in the books of Surya ltd

Ans 17

Purchase of Raw materials	Dr.	5000000	
Cenvat Credit Receivable account	Dr.	800000	
Cenvat Credit Receivable (Education Cess) account	Dr.	24000	
To Sundry Creditors	Cr.		5824000
(Being purchase inputs)			
Capital goods	Dr.	500000	
Cenvat Credit Receivable account	Dr	40000	
Cenvat Credit Receivable (Education Cess) account	Dr	1200	
Cenvat Credit Receivable deffered account	Dr	40000	
Cenvat Credit Receivable deferred (Education Cess) account	Dr	1200	
To sundry Creditors	Cr		582400
(Being machinery purchased)			
Excise duty on final product 7080000 x 16/116.48	Dr.	972527	
Education cess on excise duty 7080000 x 0.48/116.48	Dr.	29176	
To Bank (582524 + ec Rs. 17476)			600000
To Cenvat Credit Receivable account (utilized)	Cr.		390003
Cenvat Credit Receivable (Education Cess) account (utilization) 29176-17476	Cr.		11700

It is assumed Rs.6 lakhs paid though GAR 7 is inclusive of EC 3% Rs. 17476

Cenvat credit Balance

	Available		Utilized		Balance	
Particulars	Duty	EC	Duty	EC	Duty	EC
Inputs	800000	24000	390003	11700	409997	12300
Capital goods	40000	1200	Nil	Nil	40000	12000

Capital deferred account credit available Next year Rs. 40000 and Ec Rs. 1200

& Entry will be made as follows----

Cenvat Credit Receivable account	Dr. 40,000	
Cenvat Credit Receivable (Education Cess) account	Dr. 1,200	
Cenvat Credit Receivable deferred account		Cr 40,000
Cenvat Credit Receivable deferred (Education Cess) account		Cr 1,200

Q.18:- U&V Ltd. manufactures 10,000 units of Product-W, assessable value of which is Rs. 400 per unit. Duty payable is 16%. Duty paid on raw material is Rs. 3, 00,000. U&V Ltd. sells 2,000 units in India and 8,000 units are exported through a merchant exporter. What is CENVAT credit available and what is the duty payable through personal ledger account (PLA)? Can U&V Ltd. get any refund of CENVAT credit? (Ignore Education cess).

ANS. 18

Cenvat credit availed on inputs Rs. 3,00,000

Less: Cenvat credit utilized for sale

In India (2,000 x 400 x 16%)	1,28,000
Balance available	1,72,000

Not need to pay any duty in cash through PLA. As no further adjustment is possible thus refund of Rs. 1,72,000 is available. (As per Rule 5 of Cenvat Credit Rules, 2004)

Q.19-M/s Tips and Toes Ld., manufactures four types of "Nail Polishes", namely Sweety, Pretty, Beauty, Tweety. The company has availed CENVAT credit of Rs. 4,00,000 on the common inputs used in the manufacture of 'Nail Polishes'. During the financial year 2008-09 the company manufactured 1000 litres of each type of 'Nail Polishes". The CENVAT availed input was used in equal proportion in all the four types of the products. Examine the availability of Cenvat Credit and duty payable Product Nature of Sale Sale Price excluding Sales Tax & other local taxes Sweety Sale to Home Consumption Rs. 30 per 20 ml bottle Pretty Sold to a 100% EOU Rs. 40 per 20 ml bottle Beauty Fully exported Rs. 50 per 20 ml bottle Tweety Supplied to Defence Canteen under exemption Rs. 60 per 20 ml bottle

Ans: 19

As per Cenvat credit Rule 5 of CCR, 2004 Credit of duty paid on inputs used in pretty and beauty can be availed. Duty payable on Sweety cleared for home consumption.

With regard to credit of duty on inputs used in Tweety cleared to defence under exemption Assesse has three options as per Rule 6 of CCR, 2004.

Option 1

If separate books of account are maintained for inputs used in tweety and pretty, beauty and sweety. No credit on duty paid on inputs used in tweety will be available. And credit can be availed on Sweety, Pretty and Beauty.

Option 2

If no separate books of account are maintained for inputs used in tweety and preety, beauty and sweety credit can be availed and amount at 5% on the A V of tweety is payable.

Option 3

When no separate records with intimation to AC, assesses can avail prorate credit on the common inputs based on the mathematic formula.

Q.20-An assessee cleared his manufactured final Product during the month of January 2009. The duty payable on the final product for the month is Basic excise duty Rs. 48,000, NCCD Rs.2000 and applicable education cess. During the month he has received various inputs total duty paid on the inputs was as follows. Basic Excise duty Rs. 40000, Special excise duty 4000, Service tax paid on inputs Rs. 8000, for all duties applicable education cess was paid. How much duty is payable through account current

Ans: 20

Duty payable on Final Product

	Duty	**EC 3%**	**Duty**	**EC 3%**
Basic Excise duty			48000	1440
NCCD			2000	60
Total payable (A)			50000	1500
Cenvat Credit available				
Basic Excise duty	40000	1200		
Special excise duty	4000	120		
Service tax (to the extent of Rs. 6000 required and balance will be C/F)	6000	180		
Total Cenvat credit available	50000	1500		
Less : Cenvat Credit			50000	1500
Duty payable through P L A			0	0

Q. 21- A manufacturer brings some inputs valued at Rs 25,000 on which duty of Rs. 5,000 has been paid @ 20%. And ec 3% Subsequently the manufacturer sold the input as such, which goods he sold for Rs. 30,000. What is the duty payable by the manufacturer if - i) rate of duty on the date of clearance on inputs was 25% ii) rate of duty on the date of clearance on input was 10% ? CWA Inter Dec 1998

Ans: 21

As per Rule 3 (5) of CCR, 2004-

When inputs cleared as such (without using) an amount equal to cenvat credit availed is payable Rs. 5000 Note : Increase in rate of duty, decrease in rate of duty and sale at higher value is not relevant

Q.22:- A Small Scale Industrial unit (SSI) is required to pay the following Central Excise duties by January 15, 2006 for clearances effected from its factory in respect of final products manufactured during the month of December, 2005 –

Basic Excise Duty (B.E.D.): Rs. 36,000; Special Excise Duty (S.E.D.): Rs. 18,000; National Calamity Contingent Duty (N.C.C.D.): Rs. 1,000; Education Cess (E.C.): 2% of B.E.D. + S.E.D. + N.C.C.D. SAH Education Cess (E.C.) : 1% of B.E.D. + S.E.D. + N.C.C.D. – Balances available as credit at the beginning of the month i.e. December, 2005 were as follows :-

B.E.D. : Rs. 24,000, N.C.C.D. Rs. 2,000, E.C. Rs. 600,**SHE CESS Rs.300**. No inputs were received during the month. However, certain inputs were received on January 1, 2006 on which total duty paid by the suppliers of input was as follows: B.E.D. : Rs. 16,000, E.C. :Rs.320, **SHE CESS Rs.160.** Excise duty paid on Capital goods received during the month was as follows : B.E.D. : Rs. 40,000, E.C. : Rs. 800, **SHE CESS Rs.400.** For the month of December, 2005 you are required to determine : (i) the credit available for utilization; (ii) the permissible extent to which such credit available may be utilized against payment of B.E.D., S.E.D., N.C.C.D, E.C and SAH EC; and (iii) the B.E.D., S.E.D, E.C. and SAH EC payable through account current (P.L.A.)

ANS. 22 **Statement Showing Computation of Credit Available For Utilization**

	Opening Bal	Credit available for the month of Dec, 2005		Total Credit available for the month of Dec, 2005
		Inputs	Capital Goods	
Basic Excise Duty (BED)	24,000	Nil (WN-1)	20,000 (WN-2)	44,000
NCCD	2,000	Nil (WN-1)		2,000
Education Cess (EC)	600	Nil (WN-1)	400 (WN-2)	1,000
SHEC (EC)	**300**	Nil (WN-1)	**200** (WN-2)	500
			Total Credit Available	**47,500/-**

Working Notes:

1. So far as availment of credit is concerned, credit in respect of inputs and capital goods is available immediately on the receipt thereof in the factory. Thus, credit of input can be availed as on 1st Jan, 2006 only as inputs have been received on 1st Jan, 2006. Further, proviso to rule 3(4) of Cenvat Credit Rules, 2004 provides for utilization of available credit. It provides that for payment of duty of any particular month, the credit as available upto the last day of that month can only be utilized. Thus, for payment of duty for the month of Dec, 2005 credit available as on 31st Dec, 2005 can only be utilized. Thus, credit in respect of inputs received as on 1st Jan, 2006 can't be said to be available for utilization for payment of duty for the month of Dec, 2005, (in contrast, credit of capital goods received in the month of Dec shall be available for utilization for payment of duty of Dec month).

2. Credit on capital goods is available on the receipt thereof in the factory. The credit is available to the extent of 50% of duty paid thereon (Rule 4(2) Cenvat Credit Rules, 2004). Thus, for the FY 2005-06, credit available shall be of Rs. 20,000 (BED), Rs 400 (EC) and Rs. 200 (SHEC), Balance credit shall be available as on 1st April, 2006 only and thus, can be utilized only thereafter.

Statement Showing Utilization of Credit

Duties	Credit available for utilization	Utilized Credit	Credit carry forward
Basic Excise Duty (BED)	44,000 (WN-3)	44,000	Nil
Special Excise Duty (SED)	Nil	Nil	Nil
NCCD	2,000 (WN-2)	1,000	1,000
Education Cess (EC)	1,000(WN-1)	1,000	Nil
SHEC	500 (WN-2)	500	Nil

Working Notes:

1. Credit of Ed cess can be utilized for payment of Ed Cess only. Ed Cess payable on final product is 2% of (36,000 + 18,000 + 1,000) i.e. Rs. 1,100/- Thus, Credit of EC to the extent of Rs. 1,000 can be utilized fully. And balance to be paid through PLA.

2. Credit of SHEC can be utilized for payment of SHEC only. Ed cess payable on final product is 1% of (36,000 + 18,000 + 1,000), i.e. Rs. 550/-, Thus, credit of SHEC to the extent of Rs 500 can be utilized fully. And balance to be paid through PLA.

3. Credit of NCCD can be utilized for payment of NCCD payable on final product is Rs 2,000/- Thus, credit of NCCD to the extent of Rs. 1,000 can only be utilized. Surplus credit of Rs 1,000 shall be carried forward for use in future period.

4. Credit of BED can be utilized for payment of any duty of excise (except for Health Cess). Outstanding duties on final product is Rs 54,100/- [BED- 36,000 + SED 18,000 + NCCD Nil + ED Cess: 100]. NCCD Thus, credit of BED can be utilized fully.

Duties	Amount payable	Amount Paid through Credit	Amount payable through PLA
Basic Excise Duty (BED)	36,000	36,000 (BED)	Nil
Special Excise Duty (SED)	18,000	8,000 (BED)	10,000
NCCD	1,000	1,000 (NCCD)	Nil
Education Cess (EC)	1,100	1,000 (Ed Cess)	100
SHEC	550	550 (SHEC)	50
		Total Amount Payable through PLA	**10,150**

Q.23-

An assessee was availing SSI exemption from 1-4-2008. He crossed turnover Rs. 150 lakhs on 15-11-2008 and started payment of excise duty. He had received machinery on 10-11-2008 one which excise duty paid was Rs. 3,20,000. He intends to avail Cenvat credit of this duty. Can he do so?

Ans: 23

Assesses can avail cenvat credit on Capital goods 50% in the Current year and balance 50% in subsequent year. But the credit can be utilised when duty payable on turnover after Crossing the limit of Rs. 150 lakhs on 15.11.2008.

Problems in SSI Units

Q. 1-ALtd. is a small-scale industrial unit manufacturing a product X. The Annual report for the year 2008-09 of the unit shows a gross sale turnover of Rs. 2,41,40,000. The product attracted an excise duty rate of 16% as BED and Sales Tax 10%. Determine the duty liability under Notification Nos. 8/2003 meant for SSI units what will be your answer if Turnover includes Central Excise and Sales tax

Ans: 1

Gross Turnover	2,41,40000
On First 150 lakhs	no duty
E.D. on balance 91.40 lakhs @ 16%	14,62,400
Education Cess 2%	29,248
Higher and Secondary education cess 1%	14,624
Total Duty payable	**15,06,272**

Q.2-M/s. RPL has three units situated in Bangalore, Delhi and Pune. The total clearances from all these Small Scale units of excisable goods were Rs.450 lakhs during the financial year, 2008-2009. However, the value of individual clearances of excisable goods from each of the said units was : Bangalore Unit Rs.250 lakhs; Delhi Unit Rs.100 lakhs; and Pune Unit Rs.100 lakhs. Discuss briefly with reference to the Notifications governing small scale industrial undertakings under the Central Excise Act, 1944 whether the benefit of exemption would be available to M/s. RPL for the financial year, 2009-2010.

Ans: 2

Value of the units of R P L Limited is to be clubbed i.e. 250 + 100 + 100 + = 450 lakhs. The Turnover is exceeding 400 lakhs hence SSI benefit not available to RPL Limited.

Q.3- Turnover of SSI for the financial year 2008-09 was as follows.

(a) Clearance made under the own brand name Rs. 110 lakhs

(b) Clearance made under the other brand name on payment of full duty Rs. 180 lakhs

(c) Waste and Scrap Rs. 10 lakhs

(d) Goods exempt from duty Rs. 225 lakhs

(e) Job work under notification No 214/86 Job Worker Charges Rs. 30 lakhs, Cost of material Rs. 120 lakhs

(f) Exports Rs. 90 lakhs

Can unit avail SSI Benefit for the F.Y. 09-10

Ans: 3

Calculation of turnover limit for SSI Benefit		
Clearance under own brand name	110	Lacs
Waste and scrap	10	Lacs
Turnover for SSI Limit	120	Lacs

Note-

- It is assumed that export made to countries other than Nepal & Bhutan

Q.4-The value of excisable goods viz. i.r.o. n. and Steel articles manufactured by M/s. Alpha Ltd., was Rs. 170 lakhs during the financial year 2008-09. The goods attract 16% ad valorem duty. Determine the excise duty liability when the assessee opts for 'CENVAT Credit' and 'opts for not to avail CENVAT Credit' under SSI exemption notifications respectively.

Ans: 4

When Opts for Cenvat Credit/ not opt for the benefit of E/n 8/2003- (ie normally book the CCR on input , input Services, Capital goods)		
Full duty payable on whole turnover		
Excise duty @ 16% on 170 lakhs		27,20,000
Education Cess 2%		54,400
Higher and Secondary education cess 1%		27,200
Total Duty payable		**28,01,600**
When not Opts for Cenvat credit		
No duty on first 150 lakhs and balance 20 lakhs normal duty		
Excise duty on 20 lakhs @ 16%		3,20,000
Education Cess 2% SHE cess 1%		6,400 3,200
Total Duty payable		**3,29,600**

Q.5-Briefly explain whether the following units are eligible for the benefits under Notification No. 8/2003-CE dated 1.3.2003 during the financial year 2006-07 as Small Scale Industry:
(i) ABC Ltd. had registered a turnover for the purposes of the above Notification of Rs. 3.2 crores in the financial year 2007-2008. Due to recession in the industry, they anticipate a fall in turnover of 20% in 2008-09, when compared to the year 2007-08 (ii) XYZ Ltd. has started its manufacturing operations in the year 2006-07 with an investment of Rs. 3.5 crores in plant and machinery and hope to achieve a sales turnover of Rs. 2 crores in 2007-08.

Ans: 5

In both the cases previous turnover is less than 400 lakhs hence SSI benefit is available in the current year.

Q.6-A small scale manufacturer having a SSI Unit has achieved turnover of Rs. 2.02 crores during the year ended 31.03.2008. Normal duty payable on the product is 16%. Find the total excise duty payable by the manufacturer during the year: (i) if the unit has availed CENVAT Credit (ii) if the unit has not availed CENVAT Credit (The turnover mentioned above is without taxes and duties)

Ans: 6

When opts for Cenvat Credit		
Full duty payable on whole turnover		
Excise duty @ 16% on 202 lakhs		32,32,000
Education Cess 2%		64,640
Higher and Secondary education cess 1%		32,320
Total Duty payable		**33,28,960**

When not Opts for Cenvat credit		
No duty on first 150 lakhs and balance 52 lakhs normal duty		
Excise duty on 20 lakhs @ 16%		8,32,000
Education Cess 2%		16,640
Higher and Secondary education cess 1%		8,320
Total duty payable		8,56,960

Q.7-Mr. Karan Chaudhary your old class mate is manufacturing a product in two units', turnover of unit I and Unit II is Rs. 245 lakhs and 280 lakhs during 2008-09. Advice whether SSI benefit available

Ans: 7

Value of the unit I and II is to be clubbed i.e. 245 + 280 = 525 lakhs. The turnover is exceeding 400 lakhs hence SSI benefit is not available to Mr. Karan chuadhary.

Q.8-The clearances of Raj Nandini Electric Co. Ltd. were Rs.450 lakh during the financial year 2008-09. The following are included in the said clearances:

	Rs.
(i) Export to Nepal and Bhutan	20,00,000
(ii) Exports to countries other than Nepal and Bhutan	1,00,00,000
(iii) Job work exempted from duty under Notification No.214/86	90,00,000
(iv) Sales to 100% EOU against Form CT-3	50,00,000

The company is of the view that it is not liable to pay any duty on its clearances in the financial year 2008-09 as per Notification No.8/2003 dated 1 March, 2003. Do you agree with the company? State reasons for your answer. Note that the Co. is eligible for SSI exemption for the year 08-09 (CS final June 2006)

Ans: 8

Total Value of Clearance		450 Lacs
Less :Exclusions		
Export to other Countries	100 Lacs	
Clearance to 100% E O U	50 Lacs	
Job Work 214/86	90 Lacs	**240 Lacs**
Clearances for SSI benefit		**210 Lacs**

According to above statement out of the 210 Lacs, 150 Lacs will be exempted by notification no. 8/2003 and balance 60 Lacs will be dutiable

Q.9-

A Small Scale unit (SSI) has affected clearances of goods of value Rs. 460. lakhs during the financial year 2006-07. The said clearances include the following:

Clearances of excisable goods without payment of duty to a 100% EOU unit: Rs. 40 lakhs

Export to Nepal and Bhutan: Rs. 50 lakhs.

Job work in terms of notification No.214/86 CE, which is exempt from duty: Rs. 60 lakhs

Goods manufactured in rural area with the brand name of others: Rs. 70 lakhs

Write a brief note with reference to the Notification governing SSI under the Central Excise Act, 1944 whether the benefit of exemption would be available to the unit for the financial year 2007-08.

ANS. 9

The SSI exemption is available only if the total value of clearances of excisable goods does not exceed Rs. 400 lakhs. For this purpose, the total value of clearances shall be calculated as follows (Rs. Lakhs):-

Gross value of clearances	460
Less: Clearance to 100% EOU without payment of duty	40
Less: job work in terms of notification No.214/86-CE, which is exempt from duty	60
Value of clearances	360

Note:- Export to Nepal and Bhutan and goods manufactured in rural area with the brand name of others are the items not to be deducted.

Assessee eligible for exemption: Since the value of clearances is less than Rs. 400 lakhs, the assessee will be eligible for SSI exemption for the financial year 2007-08.

Q.10-A SSI unit has effected clearances of goods of the value of Rs. 475 lacs during the Financial Year 2007-08. The said clearances include the following: (i) Clearance of excisable goods without payment of excise duty to a 100% EOU unit. Rs. 120 lacs (ii) Job work in terms of notification no : 214/86 CE, which is exempt from duty – Rs. 75 lacs (iii) Export to Nepal and Bhutan – Rs. 50 lacs (iv) Goods manufactured in rural area with the brand name of the others – Rs. 90 lacs. Examine with reference to the notification governing SSI, under the Central Excise Act whether the benefit of exemption would be available to the unit.

Ans: 10

Total Value of Clearance		475 Lacs
Less : Exclusions		
Clearances to 100% E O U	120	
Job Work 214/86	75	195 lacs

Total clearances =280 Lacs, therefore the benefit of exemption would be available to the unit.

Problems in Customs Valuation

Q.1-Determine the assessable value and customs duty amount from the following data: # Name of the raw material—X # FOB value – Euro 1 million # Ocean freight – Actual data not available # Ocean Insurance – Actual data not available # Freight from sea port to godown paid in India Rs. 10,000 # Transit insurance in India – Rs. 2,000 # Selling commission paid to agent in India – 5% # Royalty on manufacture and sale of final product payable to foreign collaborator – 5% # Interest payable on raw material imported at 180 days credit (on FOB value) 12% p.a. # Dividend paid to the foreign supplier of raw material on their equity participation for the year 2001-02 - Rs. 2 per share on 1 million shares of face value Rs. 10/ share. # Importer supplied design and drawings worth Euro 10,000 to the foreign raw material supplier. # Landing charges as per Customs provisions # Customs duty rates: BCD - 20%, CVD - 16%, # Exchange rate: 1 Euro = Rs. 42. How much Cenvat can be availed by importer, if he is manufacturer?

Ans: 1

Computation of Customs value and Duty payable

Particulars	**Euro**
FOB Value of Goods	10,00,000.00
Add :	
Freight 20% of F O B	2,00,000.00
Insurance 1.125% of FOB	11,250.00
Selling agent commission in India 5%	50,000.00
Design and drawing	10,000.00
Total	12,71,250.00
Conversion into Rs.	Rs.
Convert into INR 1 euro = 42 (CIF)	5,33,92,500.00
Add: 1% towards landing	5,33,925.00
Total CIF (Assessable Value)	5,39,26,425.00
Basic Customs Duty 20%	1,07,85,285.00
Total	6,47,11,710.00
Countervailing duty – **CVD -3 (1)@ 16.48% on 6,47,11,710**	1,06,64,489.81
Education Cess 3% on Rs 21449774 (10785285 + 10664489) BCD + CVD 3(1)	6,43,493.24
Landed Cost India	7,60,19,693.05
Countervailing duty u/s 3(5) @ 4%	30,40,787.72
Total customs duty payable Rs. 10785285 + 10664489.81 + 643493.21 + 3040787.72	2,44,90,562.53
The manufacturer can avail cenvat credit on CVD U/s 3(1) & 3 (5) (Rs. 1,06,64,489.81 + 3040787.72) =	1,37,05,277.53

Q.2-Green Gel Ltd. imports chemicals from Russia. Compute the education cess payable by the company on the basis of following data:

(i) Landed value (CIF) Rs. 5,00,000
(ii) Customs duty @ 16%
(iii) Countervailing duty (CVD) @ 16%
(iv) Education cess @3%

Ans: 2

Computation of Customs value and Duty payable

Total C I F (Assessable Value)	5,00,000.00
Customs Duty payable	
Basic custom Duty 16%	80,000.00
Total	5,80,000.00
Counter vailing duty @ 16.48%	95,584.00
Education Cess 3% on Rs. 175584-(80000 + 95584)	5,267.52
Total Customs duty payable – (80000+95584+5267.52)	180851.52

Q.3-Some spares were imported by air from Germany at CIF value of 1,200 DM, which included airfreight of 380 DM and insurance charges of 20 DM. If exchange rate is 23.40 Rs. = 1 DM, find the Customs Value. Rate of customs duty is 20%, Excise duty chargeable on similar goods in India is 16% as per tariff rate. However, as per an exemption notification, the effective rate of excise duty is 8%. Find the customs duty payable. How much Cenvat can be availed by importer, if he is manufacturer?

Ans: 3

Computation of Customs value and Duty payable

C I F value	1,200
Less Freight	380
Less Insurance	20
F O B	800
Particulars	
F O B Value of Goods	800.00
Add :	
Freight 20% of F O B or actual which ever is less Insurance	160.00
Insurance	20.00
Total	980.00
Conversion into Rs.	**Rs.**
Convert into INR 1 DM = 23.40 (CIF Value)	22,932.00
Add : 1% towards landing	229.32
Total CIF (Assessable Value)	23,161.32

Customs Duty payable	
Basic Customs Duty 20%	4,632.26
Sub Total	27,793.58
Countervailing duty u/s 3(1) @ 8.24% on 27793.58	2,290.19
Education Cess 3% on Rs. 6922.46 (4632.26 + 2290.19)	207.67
Total Landed Cost in India	30,291.45
Countervailing duty u/s 3(5) @ 4%	1,211.66
Total customs duty payable Rs. 4632.32 + 2290.19 + 207.67 + 1211.66)	8,341.79
The manufacturer can avail cenvat credit on CVD I/s 3 (1) and 3(5) including EC on CVD u/s 3 (1) Rs. 2290.19 + 1211.66	3,501.85

Q.4-Compute the Customs duty from the following data: Machinery imported from USA by Air (FOB) Accessories

Compulsorily supplied with Machine	8,000 US Dollars
(Electric Motor & others) (FOB)	2,000 US Dollars
Air Freight	3,000 US Dollars
Insurance	100 US Dollars

Local agents' commission to be paid in Indian Rupees is **Rs. 4,500** (say equivalent to US Dollars 100), The exchange rate is 1 US Dollars = Indian Rupees 45., Customs duty on Machinery - 25% ad valorem, Customs duty on Accessory (normal rate 30 % ad valorem), Surcharge on Customs duty - 10%, CVD - 16% (Effective Rate is 8% by a notification), SAD - 4%.

Ans:4

Computation of Customs value and Duty payable

FOB Value of Machine	8,000.00
Add : Compulsory supplied accessories along with machine	2,000.00
Total FOB Value	10,000.00
Add : Freight – Actual 3000 or 20% of FOB 2000 (Whichever is less)	2,000.00
Add : Insurance	100.00
CIF	12,100.00
Converting In to INR @ Rs. 45	5,44,500.00
ADD : Local Agent Commission in India	4,500.00
	5,49,000.00
Add : 1 % towards landing charges	5,490.00
Total	5,54,490.00
Customs Duty payable	
Basic customs duty 25%	1,38,622.50
Total	6,93,112.50
Counter veiling duty @ 8.24%ie CVD 3(1) –on 6,93,112.50	57,112.50
Education Cess 3% on Rs. 195735 (138622.50 + 57112.50)	5,872.00

Landed Cost in India	7,56,097.00
Counter veiling duty u/s 3 (5) @ 4%- on 7,56,097	30,247.88
Total customs duty payable	
Rs. 138622.50 + 57112.50 + 30243.88 + 5872	2,31,850.88
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3(5)	87,356.38

Q.5-An importer has imported a machine from Japan at FOB cost of 9,00,000 Yens. Other details are as follows:

(a) Freight from Japan to Indian port was 18,000 Yens.

(b) Transit insurance charges were 1% of FOB value.

(c) Design and development charges of 90,000 Yens were paid to a consultancy firm in Japan for design of machinery.

(d) Packing charges of 22,000 Yen were charged extra.

(e) Rs. 20,000 was spent in design cost on machine in India.

(f) An amount of 98,500 Yen was payable to Japanese manufacturer towards charges for installation and commissioning the machine in India.

(g) Rate of exchange as announced by RBI was: 1 yen = Rs. 0.309

(h) Rate of exchange as announced by Central Government (Board) by notification under section 14 (3)

(a) (i): 1 Yen = 0.302 Rs

(i) Customs duty was 20% Excise duty on similar machinery in India would be 16%.

Find the customs duty payable. How much Cenvat can be availed by importer, if he is manufacturer?

Ans: 5

Computation of Customs value and Duty payable

Particulars	**Yen**
FOB Value of Goods	9,00,000.00
Add :	
Freight	18,000.00
Insurance	9,000.00
Design and development	90,000.00
Packing	22,000.00
Total	10,39,000.00
Conversion into Rs.	Rs.
Convert into INR 1 yen = 0.302 (CIF Value)	3,13,778.00
Add: 1% towards landing charges	3,137.78
Total C I F (assessable Value)	3,16,915.78
Customs Duty payable- Basic Customs Duty 20%	63,383.16
Total	3,80,298.94

Countervailing duty- CVD – 3(1) @ 16.48 on 380298.94	62,673.29
Education Cess 3% on Rs. 126056.42 (63383.16 + 62673.26)	3,781.69
Landed Cost inIndia	4,46,753.89
Countervailing duty u/s 3(5) @ 4%	17,870.16
Total customs duty payable Rs. 63383.16 + 62673.26 + 3781.69 + 17870.16)	1,43,926.58
The manufacturer can avail cenvat credit on CVD U/s 3(1) & 3(5) including EC on CVD u/s 3 (1) Rs. 62373.16 + 17870.16)	80,543.42

Q.6-Compute the Customs duty liability as per the provisions of the Customs Act, 1962, from the following information. Make suitable assumptions and indicate the same in your answer: Product Imported - 'X' Total FOB Value of the goods - US $ 74000 Quantity Imported - 100 MTs. Ocean freight - US $ 10000 Insurance - US $ 740 Landing charges - 1% of CIF value Exchange rate - 1 US $ = Rs. 37. Date of presentation of Bill of Entry - 28.02.2009 Date of Entry Inwards of the Vessel -
03.03.2009 - Customs duty Rates on 28-2-2009 - (i) Basic Customs Duty 30% (ii) Countervailing Duty (Additional Duty) 12%. - Customs duty rates on 3.3.2009 - (i) Basic Customs Duty 25%(ii) Countervailing Duty (Additional Duty) 8%. How much Cenvat can be availed by importer, if he is manufacturer?

Ans: 6

Computation of Customs value and Duty payable

Particulars	**US$**
FOB Value of Goods	74,000.00
Add:	
Freight	10,000.00
Insurance	740.00
Total	84,740.00
Conversion into Rs.	**Rs.**
Convert in to INR 1 $ = 37 (CIF Value)	31,35,380.00
Add : 1% towards landing charges	31,353.80
Total CIF (assessable Value)	31,66,733.80
Customs Duty payable	
Basic Customs Duty 25%	7,91,683.45
Sub Total	3,958,417.25
Counter vailling duty u/s 3(1) @ 8.24% on Rs 3958417.25	3,26,173.58
Education Cess 3% on Rs. 1117857.03 (791683.45 + 326173.58) = BCD + CVD 3(1)	33, 535.71
Landed Cost in India	43,18,126.54
Countervailing duty u/s 3(5) @ 4%	1,72,725.06
Total customs duty payable (791683.45 + 326173.58 + 33535.71 + 172725.06)	13,24,117.80
The manufacture can avail cenvat credit on CVD u/s 3 (1) and 3 (5) including EC (326173.58 + 172725.06)	4,98,898.64

Q.7-Determine the total Customs Duty payable from the following data - Quantity imported: 100 MTs, FOB value: Swiss Franc: 10000, AIR Freight: Swiss Franc: 2500, Insurance: Data not available, Exchange rate: 1 Swiss Franc = Rs. 34, Rate of BCD 30%, Rate of Cenvat under First Schedule to CETA: 16%, Rate of SED under Second Schedule to CETA: 16%, Rate of AED (GSI) under Additional Duties of Excise (GSI) Act : Rs. 10/kg, Rate of NCCD 1%, How much Cenvat can be availed by importer, if he is manufacturer?

Ans: 7

Computation of Customs value and Duty payable

Particulars	**Swiss Franc**
F O B Value of Goods	10,000.00
Add :	
Freight 20% of F O B or actual (whichever is less)	2,000.00
Insurance 1.125 of F O B	112.50
Total	12,112.50
Conversion into Rs.	**Rs**
Convert in to INR 1 Swiss France = 34	4,11,825.00
Add : 1% towards landing charges	4,118.25
Total C I F (Assessable Value)	4,15,943.25
Customs Duty payable	
Basic Customs Duty 30%	1,24782.98
Total	5,40,726.223
Countervailing duty equal to --	
First Schedule of CETA 16.48%	89,111.68
Second Schedule of CETA 16.48%	89,111.68
National calamity contingent duty 1.03%	5,569.48
Addl. ED on GST Rs. 10.30per kg	10,30,000.00
Education Cess 3% on Rs. 13385775.82 (Rs. 124782.98 + 89111.68 + 89111.68 + 5569.48+ 1030000)	40,157.27
Landed Cost in India	17,94,676.34
Countervailing duty u/s 3 (5) @ 4%	71,787.05
Total Customs duty payable (Rs. 124782.98 + 89111.68 + 89111.68 + 5569.48 + 1030000 + 40157.27 + 71787.05)	14,50,520.15

Q.8-From the following particulars, calculate assessable value and total custom duty payable: (i) Date of presentation of bill of entry: 20.6.2009 [Rate of BCD 25%; Exchange Rate: Rs. 43.60 and rate notified by CBEC Rs. 44.80].

(ii) Date of arrival of goods by aircraft in India: 30.6.2009 [Rate of BCD 20%; Exchange Rate: Rs. 43.90 and rate notified by CBEC Rs. 44.00].

(iii) Rate of Additional Customs Duty: 16%.

(iv) CIF value 2,000 US Dollars; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Land charges not ascertainable].

(v) Education cess applicable 3%.

(vi) Assume there is 4% special CVD.

Ans: 8

Computation of customs value and duty payable

CIF value give	2,000.00
Less Freight	500.00
Less Insurance	100.00
FOB	1,400.00
Particulars	DM
FOB value of goods	1,400.00
Add:	
Freight 20% of FOB or actual (Whichever is less) 280 or Rs. 500	280.00
Insurance	100.00
Total	1,780.00
Convert into INR @ 44.80 (CIF Value)	79,744.00
Add: 1% towards landing chrges	797.44
Total CIF (Assessable Value)	80,541.44
Customs Duty payable	
Basic Customs Duty 20%	16,108.29
Total	96,649.73
Counter vailing duty @ 16.48%- on 96,649.73	15,927.88
Education Cess 3% on Rs. 32.03.16	961.08
(16108.29 + 15927.88)	
Landed Cost in India	113,538.69
Counter vailing duty u/s 3 (5) @ 4%	4,541.55
Total Customs duty payable	
Rs. 16108.29 + 152927.88 + 961.08 + 4541.55)	36,577.71
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3 (5) including EC on CVD u/s 3 (1) (Rs 15927.88 + 4541.55)	20,469.42

Q.9- Zing Yong of China exports Lithium Cell to India, the FOB price of which is one Dollar for 30 cells; however the details of Fright & Insurance were not made available. Investigation reveals that the goods are imported into India at an increased quantity. Similar cells are manufactured in India, the cost of sales per cell of which indicates the following break-up: Direct Material Rs. 2.00, Direct Labour Re. 0.25,

Direct Expenses Re. 0.25,
Indirect Material Re. 0.50,
Indirect Labour Re. 0.25,
Indirect Expenses Re. 0.25,
Administrative Overheads Re. 0.50,
Selling and distribution overheads Re. 0.50,
Profit Margin Re. 0.50.
The exchange rate 1 $ = Rs. 50. Is there any case to impose Safeguard Duty? If yes, what is the
duty leviable? Applicable BCD 25%, CVD 16%, and CVD under section 3(5)

Ans: 9

Computation of Customs value and Duty payable

F O B Value of Goods ($ 1= Rs. 50)	50.00
Add:	
Freight – 20% of F O B	10.00
Insurance 1.125% of F O B	0.56
	60.56
Add : 1% towards handling	0.61
Total C I F (Assessable Value)	61.16
Customs Duty payable	
Basic Customs Duty 25%	15.29
Total	76.45
Counter vailing duty @ 16.48%- CVD 3 (1)	12.60
Education Cess 3%	0.84
Total customs duty payable	28.73
Landed cost = AV + Customs duty	89.89
CVD u/3(5) – 4% on above	3.60
Total Landed cost	93.48
Landed cost per cell – 93.48/30	3.12
Safe guard duty can be levied up to Rs. 1.88 (5.00-3.12)	

Working Note Calculation of selling price in India	
Direct Material	2.00
Direct Labour	0.25
Direct Expenses	0.25
Prime Cost	2.50
Indirect Material	0.50
Indirect Labour	0.25
Indirect expenses	0.25
Admin overheads	0.50
Cost of Production	4.00
Selling over head	0.50
Cost of Sales	4.50
Profit	0.50
Selling Price	5.00

Q.10-An importer provided the producer with a mould to be used in production of imported goods. The cost of mould is Rs.5, 00,000 which is expected to produce 25,000 pieces. The importer has imported 5,000 pieces in the first lot. Is it necessary to add the cost of mould in transaction value ? If yes, what will be the amount to be added? The importer is expecting an increase in the rate of customs duty next month, so he has requested to the proper officer that if cost of mould is required to be added in transaction value, the full cost of mould, i.e., Rs.5,00,000 may be added in the transaction value of first lot of 5,000 pieces itself. Is his demand valid in law ?

Ans: 10

Value of mould to be includible in valuation will be---

Total cost of the mould	500000
No units mould should produce	25000
Cost per unit = 500000/25000	20
No units imported	5000
Value includible in valuation = 5000 x 20	100000

Hence the demand is not valid in Law

Q.11-An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds, Other details are as follows:

(i) Freight from UK to Indian port was 700 pounds.
(ii) Insurance was paid to insurer in India: Rs. 6,000.
(iii) Design and development charge of 10,000 UK pounds were paid to a consultancy firm in UK.
(iv) The importer also spent an amount of Rs. 50,000 in India for development work connected with the machinery.
(v) Rs. 10,000 was spent in transporting the machinery from India port to the factory of importer.
(vi) Rate of exchange as announced by RBI was: Rs. 68.82 = one UK pound.
(vii) Rate of exchange as announced by CBEC (Board) by notification Rs. 68.70 = one UK pound.
(viii) Rate at which bank recovered the amount from importer: Rs. 68.35 = one UK pound.
(ix) Foreign exporters have an agent in India. Commission is payable to the agent in India Rupees @ 5% of FOB price. Customs duty payable was 10%. If similar goods were produced in India, excise duty payable as per tariff is 24 %. There is an excise exemption notification which exempts the duty as is in excess of 16%.

Find customs duty payable if (a) Improper is manufacturer using the goods himself.

Ans: 11

Computation of Customs value and Duty payable

Particulars	UK Pounds
FOB Value of Goods	10,000.00
Add:	
Freight	700.00
Insurance = 6000/68.70	87.34
Design and development	10,000.00
Total	20,787.34
Convert into INR @ Rs. 68.70	14,28,090.26

Local Agent commission 10000*68.70*5%	34,350.00
Total	14,62,440.26
Add: 1% towards landing chrges	14,624.40
Total CIF (Assessable Value)	14,77,064.66
Customs Duty payable	
Basic Customs Duty 10%	1,47,706.47
Total	16,24,771.13
Countervailing duty @ 16.48%	2,67,762.28
Education Cess 3% on Rs. 415468.75	12,464.06
147706.47+267762.28	
Landed Cost in India	19,04,997.47
Countervailing duty u/s 3(5) @ 4%	76,199.90
Total customs duty payable	
(rs. 147706.47+267762.28+12464.06+76199.90	4,91,668.65
The manufacturer can avail cenvat credit on CVD U/s 3(1) & 3(5) including EC on CVD u/s 3(1).	
(Rs. 267762.28 + 76199.90)	3,43,962.18

Q.12-An actual user imports following goods from England per S. S. Vishal: (1) Second hand numerically controlled horizontal lathe machine - Tariff heading – 84.5811, Value FOB - 1,000/- Pound Sterling (2). A. C. motors - Tariff heading – 85.0110, Value FOB - 500/- Pound Sterling. - - Other relevant data are: - Exchange rate 1 UK Pound = Rs. 65, Freight – 150 UK Pounds, Insurance – 25 UK Pounds. - - **Rate of duty** : Basic customs duty - 25%, CVD - 16%, SAD - 4%, Ignore landing charges. - - It is found that the lathe machine is undervalued. It is proposed to load the FOB value of the lathe machine by 25%. Party does not want show cause notice and personal hearing. Compute – (i) Assessable value; (ii) Total duty payable.

Ans: 12

Computation of Customs value and Duty payable

Particulars	**U.K. Pounds**
FOB of the Machinery	1,000.00
Add: Loading 25% since under valued	250.00
Total	1,250.00
AC Motor	500.00
Total FOB Value including motor	1,750.00
Add : Freight	150.00
Add : Insurance	25.00
CIF	1,925.00
Conversion into Rs.	Rs
Convert 1925 pounds @ Rs. 65	125,125.00
Basic Customs Duty 25%	31,281.25
Total	1,56,406.25
Counter veiling duty @ 16.48%	25,775.75

Education Cess 3% on Rs. 57057 (31281.25+25775.75)	1,711.71
Landed Cost in India	1,83,893.71
Counter vailing duty u/s 3(5) @ 4%	7,355.74
Total customs duty payable	
R. 31281.25 + 25775.75 + 1711.71 + 7355.74	66,124.45
The manufacturer can avail cenvat on CVD U/s 3 (1) & 3 (5) (Rs 25775.75 + 7355.74)	33,131.49

Q.13-Compute (keeping in mind the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975), the total customs duty payable by an importer on goods 'X' imported by sea into India, from the following details. You may, wherever appropriate, make suitable assumptions, indicating the same in your answer. - * Value of Goods (FOB) $ 1,000 (Dollars) * Weight of Goods 1,000 Kg * Freight Charges $ 100 (Dollars) * Insurance Charges $ 20 (Dollars) * Handling Charges Rs. 200 * Exchange Rate 4 Dollars = Rs. 100 * Date of Presentation of Bill of Entry - 4.5.2008 * Date of Entry Inwards of Vessel - 1.5.2008 Rates of Customs Duty on 1.5.2008 - * Basic 20% Adv. * Education Cess -3% * Additional (CVD) 15%. * Rates of Customs Duty on 4.5.2008 - * Basic 15% Adv. * Education cess -3%* Additional (CVD) 16%. - . - Note: Special CVD under section 3(5) of Customs Tariff Act is applicable. No other particulars are relevant. How much Cenvat can be availed by importer, if he is manufacturer

Ans. 13

Computation of Customs value and Duty payable

Particulars	US$
FOB Value of Goods	1,000.00
Add:	
Freight	100.00
Insurance	20.00
Total	1,120.00
Convert into INR 1 $ (CIF Value)	28,000.00
Add: 1% towards landing	280.00
Total CIF (assessable Value)	28,280.00
Customs Duty payable	
Basic Customs Duty 15%	4,242.00
Total	32522.00
Countervailing duty @ 16.48%	5,359.63
Education Cess 3% on Rs. 9601.63 (4242+5359.63)	288.05
Landed Cost in India	38169.68
Countervailing duty u/s 3 (5) @ 4%	1,526.79
Total customs duty payable	
(rs 4242 + 5359.63 + 288.05 + 1526.79	11,416.47
The manufacturer can avail cenvat credit on CVD U/s 3 (1) & 3 (5) including EC on CVD u/s 3(1) 5359.63 + 1526.79	6,886.42

Q.14-An Indian company imported certain consumer goods from abroad with MRP printed in packing cartons. In respect of similar goods manufactured in India, excise duty is payable on basis of MRP. The importer will be using the goods for further processing. Customs authorities contend that CVD will be calculated based on the MRP printed in the goods. Is this proper? Will your answer be different, if the goods are imported for retail sales?

Ans: 14

If goods imported for further process CVD is payable on the basis of transaction value not on MRP basis. On the other hand: If goods imported for retail sale, CVD payable based on MRP).

Problems in Duty Draw back

Q.1:- ' "A" has exported under-mentioned goods under drawback claim:

SI No. of DBK	Description of goods and quantity exported	Value FOB (Rs.)	Rate of DBK
64.01	Leather footwear. Boots 200 nos @ Rs 1000 per pair	2,00,000	11% of FOB subject to a maximum of Rs 85.00 per pair
64.11	Leather chappals 2000 nos @ 50 per pair	1,00,000	3% of FOB subject to a maximum of Rs. 5.00 per pair
71.01	Brass Jewellery 200 kgs @ Rs 200 per kg	40,000/-	Rs 22.50 per kg of brass content
71.05	Plastic bangles with embellishment 200 kgs @ Rs 100 per kg	20,000/-	Rs. 5.00 per kg of plastic content

On examination it is found that brass jewellery is 50% of weight and in plastic bangles the plastic contents is 50% but the total weight comes to 190 kgs only. Compute DBK on each item and total drawback.

ANS:-1

STATEMENT OF COMPUTATION OF ADMISSIBLE DBK

Items	Actual Qty Exported	FOB value	DBK value	DBK amount
Leather footwear Boots	200 pairs	2,00,000	11% of FOB (restricted to Rs. 85.00 per paid)	17,000
Leather chappals	2000 pairs	1,00,000	3% of FOB (restricted to Rs. 5.00 per pair)	3,000

Brass Jewellery	200 kgs (in which Brass content is 50%)		Rs. 22.50 per kg of brass content	2250
Plastic bangles with embellishment	190 kgs(in which Plastic content is 50%)ie 95 kg		Rs. 5.00 per kg of plastic content	475
			Total Amount of DBK	**22,725.00**

Q 2:- 'A' exported a consignment under drawback claim consisting of the following items: - (1) 200 pieces of pressure stoves mainly made of brass @ Rs. 80/piece (Chapter Heading 74.04) – FOB Value Rs. 16,000 – Drawback rate is 4% of FOB (2) 200 kg Brass utensils @ Rs. 200 per kg (Chapter Heading 74.13) – FOB Value Rs. 40,000- Drawback Rate is Rs. 24/kg (3) 200 kg Art ware of brass @ Rs. 300/kg (Chapter Heading 74.22) – FOB Value Rs 60,000 – Drawback Rate 17.50% of FOB subject to a maximum of Rs. 38/per kg. – ON examination in docks, weight of brass artware was found to be 190 Kgs and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.

Ans: 2

S.No. of DBK	**Description of goods**	**Rate of Drawaback**	**Calculation**	**Drawback eligible**
74.04	Pressure stoves	4% of FOB Rs. 16000	16000 x 4%	640
74.13	Brass Utensils	Rs. 24 per kg	200 x 24	4800
74.22	Art ware of Brass	17.5% of FOB Rs. 60000 or Rs. 38 per kg on 190 KG which ever is less	10500 or Rs. 7220 which ever is less	7220
	Total DBK Eligible			12660

Q. 3 -

An exporter has exported under-mentioned goods under drawback claim:

S .No of Dbk.	**Description FOB Value**	**Rs.**	**Rate of Draw-back**
74.24	1000 Kg handicrafts of brass @ Rs. 200 per kg	2,00,000	16.5% of FOB Value maximum- Rs. 33 per kg of brass content
74.27	1000 kg of Art ware of copper @ Rs. 300 per kg	3,00,000	Rs. 33 per kg.
85.81	20,000 pc GLS Lamps @ Rs. 5 per piece	1,00,000	1% of FOB

Note: 1: On examination it is found that brass content in brass handicrafts is 80%. 2: Art ware has copper content of weight 950 kg. Compute the amount of drawback admissible taking into account the above facts

Ans: 3

S.No. of DBK	Description of goods	Rae of Drawback	Calculation	Drawback eligible
74.24	Handicraft of brass	16.5% of FOB of Rs. 2lacs or Rs. 33 per kg whichever is less	33000 or Rs. 26400 which ever is less	26400
74.27	Art ware of copper	Rs. 33 per kg	950 x 33	31350
85.81	GLS Lamps	1% of FOB Rs. 1 lac	100000 x 1%	1000
	Total DBK Eligible			
				58750

BAGGAGE

SELF STUDY QUESTION

Q.1:- An Indian resident visiting Germany brought following goods while retuning to India (a) His personal effects like cloth etc. valued at Rs. 25,000 (b) Two Liter of liquor of Rs. 1,600 (c) New Camera of Rs. 39, 800. What is the customs duty payable?

***Q.2:-** An Indian resident goes to Nepal on tour. He purchases colour TV of Rs. 18,000, a laptop computer of Rs. 79,000 and hair dryer of Rs. 2,000 in a duty free shop in Nepal and brings the same to India. What is the duty payable (a) If he returns on 3rd day by air (b) If he returns on 3rd day by land route (c) If he returns on 11th day by air (d) If he returns on 11th day by land route.*

***Q.3:-** Mr. and Mrs. Khanna visited USA and bought a personal computer for Rs. 38,000 and a laptop computer of Rs 98,500 while returning to India, besides their personal effects valued at Rs. 86,000. What is the customs duty payable?*

***Q.4:-** Mrs. & Mr. Kapoor visited Germany and brought following goods while returning to India on 8th February, 2008. (i) Their personal effects like clothes, etc., valued at Rs. 35,000. (ii) A personal computer bought for Rs. 36,000. (iii) A laptop computer bought for Rs.95,000. (iv) Two litres of liquor bought for Rs. 1,600. (v) A new camera bought for Rs. 37,400. What is amount of customs duty payable?*

***Q.5:-** Mr. and Mrs. Bapat visited Germany as tourist and bought a personal computer for Rs. 52,000 and a laptop computer of Rs. 78,000 while returning to India, besides their personal effects valued at Rs. 1,33,000. What is the customs duty payable, if duty on baggage is 35% plus education cesses as applicable?*

State level- VAT

Q. 1- Calculate the total tax liability under the state vat law and under the CST Act, for the month of October, 2008 from the following particulars;

PARTICULARS	Rs.
➢ Inputs purchased within the state	170,000
➢ Capital goods used in the manufacture of taxable goods	50,000
➢ Inputs purchased from a registered dealer who opt for composition scheme under the provision of the act	10,000
➢ High Seas purchases of inputs	1,00,000
➢ Finished goods sold-	
(a) Within the state	2, 00,000
(b) In the course of inter state trade	2, 50,000

Applicable tax rates are as follows:-

(a) Vat rate on capital goods 12.5%
Input tax rate within the state 12.5%
Output tax rates within the state 4%
CST rate 2%

(b) Vat rate on capital goods 4%
Input tax rate within the state 4%
Output tax rates within the state 12.5%
CST rate 2%

Ans:-(a) **Statement showing computation of Vat liability**

Particulars		Amount (Rs.)
Total Output Tax-during the relevant period		
VAT payable on Local sales	**(2,00,000 * 4%) = 8000**	
+ CST payable on Inter State Sales	**(2,50,000*2%)= 5,000**	
	TOTAL (A)	**13,000**
Net Input Tax Credit- during the month		
Opening Balance	**Nil**	
ITC accruing during the Jan month		
→ ITC on local purchases of inputs	**(1, 70,000*12.5%)= 21,250**	
→ ITC on capital goods	**(50,000* 12.5%)= 6,250**	
(-) ITC reversed during the relevant period	**Nil**	
(-) Refunds during the relevant period	**Nil**	
	TOTAL (B)	**27500**
Excess credit carried forward for utilisation subsequently		**14500**

Note :(1) - Inputs purchased from registered dealer who opt for composition scheme –shall not be eligible for ITC
Note :(2) - High seas purchases of inputs -shall not be eligible for ITC because no input tax is payable on high seas sales.
Note :(3) -it has been assumed that *under provision of relevant state vat law,* ITC on capital goods is admissible in full.
Ans:-(b)

Statement showing computation of Vat liability

Particulars		Amount (Rs.)
Total Output Tax-during the relevant period		
VAT payable on Local sales	(2,00,000 * 12.5%) = 25,000	
+ CST payable on Inter State Sales	(2,50,000*2%)= 5,000	
	TOTAL (A)	30,000
Net Input Tax Credit- during the month		
Opening Balance	Nil	
ITC accruing during the Jan month		
→ ITC on local purchases of inputs	(1, 70,000*4%)= 6,800	
→ ITC on capital goods	(50,000* 4%)= 2,000	
(-) ITC reversed during the relevant period	Nil	
(-) Refunds during the relevant period	Nil	
	TOTAL (B)	8,800
Vat paid by challan (25,000-10,800) =16,200 CST paid by challan = 5,000		21,200

Note :(1) - Inputs purchased from registered dealer who opt for composition scheme –shall not be eligible for ITC
Note :(2) - High seas purchases of inputs -shall not be eligible for ITC because no input tax is payable on high seas sales.
Note :(3) -it has been assumed that *under provision of relevant state vat law,* ITC on capital goods is admissible in full.

AMENDMENTS –From 1ST NOV. 2009 to 30th APRIL, 2010

EXCISE LAWS

BASIC CONCEPT

Circular No. 910/30/2009- 16-12-2009

Transfer chemicals from tankers into small drums not manufacture:

- *In case dealers receive liquid chemicals in bulk in containers /tankers and offload the same at their premises of godown into drums of 200 liters for subsequent marketing to customers,*
- *whether such process would be covered by 'repacking from bulk packs to retail packs' to render the product marketable to consumer shall amount to 'deemed manufacture'*

In this case,

- *the dealers get chemicals not in 'bulk packs' but in 'tankers/containers'. Chemicals brought in tankers can never be termed as brought in bulk packs. So the dealers are not repacking the goods from bulk packs to retail packs.*
- *Accordingly, the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by deemed manufacture.*

→ **General rate of excise duty- 10%**

CENTRAL EXCISE RULES, 2002

RULE 8 MANNER OF PAYMENT

Monthly payment facility

Every assessee shall pay duty **[NON SSI UNIT]**	On the goods removed from the factory or the warehouse during the month.	➢ By the **6th** day of the following month, ***(if the duty is paid electronically through internet banking)*** ➢ By the **5th** day of the following month. ***(in any other cases)*** ***Except in the case of goods removed during the month of March, the duty shall be paid by the 31st march.***
~~***Provided that an assessee availing value based exemption shall pay duty,***~~ **Provided further that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year , shall pay duty[SSI UNIT]**	On the goods removed from the factory or the warehouse during the **QUARTER**	➢ **By the 6th day of the month following that quarter,,** ***(if the duty is paid electronically through internet banking)*** ➢ **By the 5th day of the month following that quarter,(*in any other cases)*** Except in case of goods removed during the last quarter, starting from the 1st day of January and ending on the 31st day of March, for which the duty shall be paid by the **31st day of March.**

Mandatory Electronic Payment

- Provided further that an assessee, who has paid **"total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit (PLA+ CCR) in the preceding financial year"**
- shall thereafter, deposit the duty electronically through internet banking.

Note- Non compliance thereof would invite penal provisions, stipulated under Rule 27 of the Central Excise Rules, 2002

Rule 11-Goods to be Removed on Invoice.

(1) No excisable goods shall be removed from a factory or a warehouse ***except*** under an invoice signed by the owner of the factory or his authorized agent ***and***

In the case of cigarettes, each such invoice shall also be countersigned by the Inspector /SCE before the cigarettes are removed from the factory.

(2) The invoice shall be serially numbered *and* shall contain:

- The registration number, Name of the consignee,
- Description, classification,
- Mode of transport,
- Time and date of removal, rate of duty, quantity and value, of goods and the duty payable thereon.
- Vehicle registration number, and Address of concerned Central Excise Division.

Provided that: -In case of a proprietary concern or a business owned by Hindu Undivided Family,

- **the name** of the proprietor or Hindu Undivided Family, as the case may be, shall also be **mentioned in the invoice."**

(3) The invoice shall be prepared in triplicate in the following manner, namely:-

- The original copy marked as Original for **Buyer.**
- The duplicate copy being marked as Duplicate for **Transporter.**
- The Triplicate copy being marked as Triplicate for **Assessee.**

(4) Only one copy of invoice book shall be in use at a time, unless otherwise allowed by the AC/DC in the special facts and circumstances of each case.

5) ~~The owner or working partner or the Managing Director or the Company Secretary or any person duly authorised for this purpose shall authenticate each foil of the invoice book, before being brought into use."~~

(6) Before making use of the invoice book, the serial numbers of the same shall be intimated to the Jurisdictional SCE.

(7) The provisions of this shall apply ***mutatis mutandis*** to goods supplied by: First Stage Dealer; and Second Stage Dealer.

Provided that in case of FSD receiving imported goods under an invoice bearing an indication that the credit of CVD u/s 3(5)shall not be admissible, the said dealer shall on the resale of the said imported goods, indicate on the invoice issued by him that no credit of CVD u/s 3(5) shall be admissible.

Rule 12 Filing Of Return.

(1) EXCISE RETURN TO SCE:

Every assessee shall file **[NON SSI UNIT]**	**A monthly Return [E.R -1]** of – Production and removal of goods and other relevant particular	***Within 10 days*** after the close of the month to which the return relates.
~~***Provided that an assessee availing value based exemption shall file,***~~ **Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, he shall file** [SSI UNIT]	**A quarterly return of [E.R.-3] of-** Production and removal of goods and other relevant particular	***Within 10 days*** after the **close of the** quarter to which the return relates.
Provided also that **an assessee availing area-based exemption, shall submit to the CCE**	a **Quarterly Return** **[Form: A],** of ➔ production and removal of goods and other relevant particulars	**within 20 days**

"Provided also that-

- **where an assessee (whether NON SSI or SSI) has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit (PLA +CCR) in the preceding financial year,**
- **he shall file the monthly or quarterly return, as the case may be, electronically:"**

Note- Non compliance thereof would invite penal provisions, stipulated under Rule 27 of the Central Excise Rules, 2002.

(2)Annual Financial Statement

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

Exemption from filing Annual Financial Statement:-

- Any assessee who paid duty less than one crore **[from account current (PLA) +CCR]** has been exempted from such statement
- **I**ndian Ordnance Factories [Department of Defence Production, Ministry of Defence] have also been exempted from filing annual information financial statement.

(2A) Annual Installed Capacity statement

- Every assessee shall submit to the SCE, an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates in the form specified by notification by the Board by **30th day of April** of the **succeeding financial year.**

- The Central Government may, by notification, and subject to such conditions or limitations as may be specified in such notification, **specify assessee or class of assessee** who may not require to submit such an Annual Installed Capacity Statement."

The Central Government hereby exempts the assessees, from the submission of the Annual Installed Capacity Statement, who manufacture the following goods, namely,-

(i) Biris, manufactured without the aid of machines falling under tariff item 2403 10 31

(ii) Matches manufactured without the aid of power falling under heading 3605

(iii) Reinforced cement concrete pipes falling under heading 6810

(3) SCRUTINY OF EXCISE RETURN.

- The proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), 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.**

(**4) Every assessee shall make available** to the proper officer all the documents and records for verification as and when required by such officer.

CENVAT CREDIT RULES, 2004

Rule 3(5)- Removal of inputs/capital goods

Removal of capital goods AS SUCH	**Removal of capital goods AFTER USE**
When inputs or capitals goods, on which CENVAT credit has been taken, ➢ are removed as such from the factory or premises of the provider of output service, ➢ An amount equal to the credit availed in respect of such inputs or capitals goods shall be paid and ➢ Such removal shall be made under the cover of an invoice. **Provided that :- (in case of Removal by service provider)** ➢ such payments shall not be required to be made ➢ where any **inputs or capital goods** are removed outside the premises of provider of output service ➢ **for providing output service.**	Provided further that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output services shall ➢ pay an amount equal to the CENVAT Credit ➢ taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:- (a) For computers and computer peripherals: for each quarter in the first year @ 10% for each quarter in the second year @ 8% for each quarter in the third year @ 5% for each quarter in the fourth and fifth year @1% (b) For capital goods, other than computers and computer peripherals @ 2.5% for each quarter.]

Rule 3 (5A) Clearances of Capital Goods as Waste and Scrap

- Provides that if the **capital goods** are **cleared as waste and scrap**,
- Then the manufacturer shall **pay an amount equal to the duty** leviable on transaction value.

Issue:- *Leviability of duty on capital goods cleared after being put into use for over 10 years-*

Clarification- *It is clarified that in view of specific provisions under Rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods, on which cenvat credit has been taken, are cleared as waste and scrap, even after a period of 10 years, an amount equal to the duty leviable on the transaction value for such capital goods cleared as waste and scrap, would be payable.*

Rule 3(5B)- Writing off the value of Inputs or capital Goods - before being put to use

If the value of any,

(i) Input, or

(ii) Capital goods before being put to use,

- **on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account,**
- **then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:**

Provided that

- **If the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services,**
- **the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.**

Circular No. 907/27/2009

ISSUE- As per Rule 3(5B) of CENVAT Credit Rules, 2004, if the value of inputs is fully written off, then the manufacture is required to pay an amount equal to cenvat credit taken. However, there is no provision to demand reversal of credit taken on inputs which have gone into manufacture of work in progress

(WIP),semi finished goods and finished goods which have also been written off fully in the books of accounts.

CLARIFICATION- The matter has been examined. Rule 3(5B) of the CENVAT Credit Rules, 2004, provides that if the value of any input on which cenvat credit has been taken is written off fully in the books of accounts, then the manufacturer is required to reverse the credit taken on the said input. As far as finished goods in concerned, it is stated that excise duty is chargeable on the activity of manufacture or production. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability to pay the excise duty has been fastened on the goods, when it has been manufactured or produced. Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for remission of duty. Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21. Therefore, if the goods have been manufactured, in that case, a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21. Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be required to reverse the credit on the inputs used, if duty has been remitted on finished goods.

As regard writing off work in progress (WIP), it is stated that if the WIP has reached the stage, when it can be considered as manufactured goods, in that case, the same treatment as applicable to finished goods, discussed above would apply. However, if the activity carried out on the WIP goods cannot be considered as amounting to manufacture, in that case, the said goods should be considered as input and the treatment for reversal of credit applicable to input would be applicable.

Rule 4(2) Credit on capital goods:

(a) The Cenvat credit in respect of capital goods received

- In a factory or in the premises of the provider of output service at any point of time in a given financial year
- Shall be taken only for **an amount not exceeding 50%** of the duty paid on such capital goods in the same financial year

EXCEPTIONS

(1) Credit in respect of capital goods shall be allowed

- For the whole amount of the duty paid on such capital goods in the same financial year
- If the said capital goods are cleared as such in the same financial year.

(2) 100 % credit of additional duty of customs u/s 3(5) of Customs Tariff Act shall be allowed immediately on receipt of the capital goods in the factory **of manufacturer**.

(3) Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year.

(b) The balance of Cenvat credit may be taken in any financial year,

- subsequent to the financial year in which the capital goods other than components, spares and accessories, refractories and refractory materials,
- moulds and dies and goods falling under heading 6804 and 6805 were received

Provided that the capital goods are **still in the possession** in such subsequent years.

Rule-4(5)- Cenvat credit for goods sent for job work [By Manufacturer]

(a) Removal for job work;-

- The CENVAT credit shall be allowed even if any inputs as such or after being partially processed or capital goods as such are sent to a job worker

- for further processing testing, repair or for manufacture of intermediate goods necessary for the manufacture of final product or for any other purpose
- and it is established from the records or any document that the goods are received back in the factory within 180 days of their being sent to a job worker.
- …….
- …….

(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to,-

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

(ii) A job worker for the production of goods on his behalf, according to his specifications.

Rule 6: Obligation of Manufacturer of Dutiable and Exempted Goods

……
……..

(6) INAPPLICABILITY OF ABOVE SUB-RULES ON CERTAIN EXEMPTED GOODS

The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either –

(i) Cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or"

(ii) Cleared to a **100% EOU**; or

(iii) Cleared to a Unit **EHTP or STP**; or

(iv) Supplied to the **United Nations** or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under N/N 108/95 or

(v) Cleared for **export under bond** in terms of the provisions of the CER, 2002; or

(vi) All goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied,—

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding.

Note: As per notification No. 22/2003 goods supplied from DTA to EHTP, STP, 100% EOU ARE EXEMPT from excise duty.

RULE 9

(7) (8) (9) (10):- CENVAT RETURN OF VARIOUS PERSON TO SCE REGARDING PARTICULERS OF CENVAT CREDIT

Person required to file Return	**Frequency**	**Due date of Return**	Rule [CCR, 2004]
Manufacturer of Final product ➢ In case of Non SSI ➢ In case of SSI	Monthly Quarterly	With in 10 days from the close of each month With in **10** days from the close of each quarter.	Rule: 9(7)
FSD / SSD	Quarterly	With in 15 days from the close of each quarter.	Rule: 9(8)
Provider of Output Service	Half-Yearly	By the end of the month following the half year	Rule: 9(9)
Input Service Distributor	Half-Yearly	By the end of the month following the half year	Rule: 9(10)

Rule 15: Confiscation and penalty

(*Read with the chapter of Penalties)*

[Fully amended]

(1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or Rs. 2000, whichever is greater.

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or

any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in 78 of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.]

Circular No. 911/01/2010-

Subject: Irregular availment of Cenvat credit on certain activities not amounting to manufacture-reg.

Reference has been received from field formations stating that though certain activities including connectorising, testing, repacking and relabeling of feeder cables, cutting of HR/CR coils into sheets or slitting into strips do not amount to manufacture, such processors are taking Cenvat credit and justifying their Cenvat availment on ground that they are paying duty on final products.

2. The matter has been examined. As per the provisions of Rule 3 of the CENVAT Credit Rules, 2004, read with Rule 6, credit of duty paid on the inputs is allowed only if these inputs are used in the manufacture of a final product. The Board clarified that if the process does not amount to manufacture, duty is not required to be paid and hence no Cenvat credit of duty paid on inputs is admissible.

Attention is also invited to the provisions of Section 5B of the Central Excise Act, 1944, where an assessee, who has paid excise duty on a product under the belief that the same is excisable, but subsequently the process of making the said product, is held by the Court as not amounting to manufacture, in such cases, the Central Government may issue an order for non-reversal of such credit in past cases.

3. In view of above, following instructions are issued:-

(i) In cases where the process undertaken by an assessee indisputably does not amount to manufacture, the department should inform the assessee about the correct legal position and advise him not to pay duty and not to avail credit on inputs.

(ii) If the assessee has already paid duty, and in a situation where there is no manufacture as held by the Courts subsequently, and facts of the case are covered by the provisions of Section 5B of the Central Excise Act, 1944, the assessee is at liberty to approach the Central Govt. for issue of appropriate notification for regularization of the Cenvat credit availed.

SMALL SCALE INDUSTRIES

SPECIFIED CLEARANCES" bearing BRAND NAME / TRADE NAME
(Which is ***ELIGIBLE CLEARANCES*** for computing the limit of **Rs. 150/ 400** lakhs).

a) ……
b) ……..
c) ……
d) ……

e) Where the specified goods are in nature of PACKING MATERIALS, namely, Printed cartons of Paper/Paper Board, Metal Containers, HDPE **Woven sacks**, Adhesive Tapes, Stickers, PP caps, crown corks, Metal label, **PLASTIC BAGS,** printed laminated rolls, **plastic containers and plastic bottles"**

"*Provided that in respect of plastic containers and plastic bottles, the exemption under this notification shall apply only where such plastic containers or plastic bottles are meant for use as packing materials by the person whose brand name such goods bear.*"

CUSTOMS LAWS

BASIC CONCEPTS

Section 20: Re-importation of goods

If goods are imported into India after exportation there from,

- such goods shall be liable to duty and be subject to all the conditions and restrictions, to which goods of the like kind and value are liable on the importation thereof.

In other words: This implies that goods manufactured or produced in India, which are exported and thereafter re-imported are treated as "other goods which are imported".

However, in case of re-import following exemption is available under different Exemption notifications-

Re-import for Repairs

- The re-importation is for repairs within 3 years.**(In case of Nepal, such re- importation takes place within 10 years)**
- The goods must be re-exported after repairs within 6 months from the date of import,
- then no duty shall be payable.

……

TYPES OF CUSTOMS DUTIES

Section 3: Additional Duty of Customs (Countervailing Duty).

BASIS	**CVD [ED(FP)], Sec.3(1)**	**CVD[ED(R/M)] ,Sec.3(3)**	**ADD[(ST/LocalCharges,VAT) Sec.3(5)**
Leviable on	Any imported Article [which is **capable of being produced/manufactured in India]**	Notified imported Article [At present leviable on;- (i) Stainless steel products for household purpose. (ii) Transformer oil]	Notified Imported Article [At present, it is leviable on ~~ALL IMPORTED GOODS~~.]
Objective	To Counter-balance the excise duty **leviable on the** like article produced/manufactured in India.	To Counter-balance the excise duty **leviable on Raw Material used** in the production or manufacture of like article in India.	To Counter-balance **the** Sales tax/VAT/Local Tax **or any other** charges for the time being leviable on a like article on its sale, purchase or transportation in India.

A.V. for Determining the value of CVD	**(1) -When "Imported Goods"** is covered under SWMA and the product is notified u/s 4A of the CEA, 1944.: Declared MRP xxx Less: Notified% xxx **A.V. (xxx)** * If Multiple MRPs printed on a single package, then **Maximum of such MRP** shall be considered. **…….** (2) **In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3 (2) of the Central Excise Act, 1944,-- The value of the imported article shall be deemed to be such tariff value.** (3) In Other Cases: Value U/S 14(1)/(2) + BCD [sec 12 of CA, 1962]	AV will be same as in case of imposition of CVD u/s 3(1).	Value u/s 14(1)/(2) xxx + BCD (sec 12 of CA,) xxx +CVD u/s 3(1) xxx +CVD u/s 3(3) xxx +EDU.cess xxx +SHE cess xxx **A.V. (xxx)**
Rate	**(1) Alcoholic Liquor for human Consumption:-** *Rate as notified by CG, having regard to the E.D for the time being leviable *on like alcoholic liquor, produced manufacture in different states (India).* **(2)Other Goods:-** *ED as leviable on"**like article**" if produced/manufactured in India, ***where like article is not produced/manufactured in India** **(a)** then ED as leviable on **similar goods** &	**As notified by CG**	As notified by CG. [CG can notify 4% as maximum rate] At present, the notified rate is **4% (the maximum rate)** in relation all goods.

	(b) if duty is leviable at Diff Rates then HIGHEST RATE. **HYDERABAD INDUSTRIES LTD. – 1999-SC** If the article cannot be subjected to excise levy because it is not produced or manufactured, then on the import of like articles, no additional duty can be levied. ***Note:-*** Excise Exemption (whether conditional or unconditional) – shall also be considered. **THERMAX (P) LTD:SC**: - If the condition of exemption Notification is satisfied, then even benefit of conditional exemption shall be available to the importer.		

DUTY DRAWBACK

Section 75A: Interest on drawback (For the purpose of sec. 74 and 75)

Interest payable by govt: -

- If the drawback payable is not paid within one month from the date of filing a claim,
- interest at the specified rate **alongwith the drawback, shall be paid**
- from the expiry of the said one month till the date of actual payment.

Interest payable by exporter:-

- If any drawback has been paid **erroneously** or it becomes otherwise recoverable under this Act or the rules made thereunder,
- the claimant shall pay, within 2 months from the date of demand
- **Otherwise** he shall **pay interest** at the rate fix U/s 28AB for the period beginning from the date of payment of such drawback to the claimant **till** the **date of recovery** of such drawback.

Circular -7/2010

'Drawback' would not be payable in cases where export proceeds have not been realised in accordance with the provisions of the Foreign Exchange Management Act, 1999 even if the claim has been settled by ECGC or realisation waived by RBI. Action should be taken for recovery of drawback amount in such cases

SERVICE TAX

Section 64: Extent, commencement and application

- The Chapter extends to the whole of India except the State of Jammu and Kashmir.
- It shall apply to taxable service provided.

The provisions of Chapter V of Finance Act, 1994 have been extended to **the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, FOR THE PURPOSES OF PROSPECTING OR EXTRACTION OR PRODUCTION OF MINERAL OIL AND NATURAL GAS AND SUPPLY THEREOF.**

Other Provisions Relating to Payment of Service Tax

(A) Service tax to be paid electronically (Mandatory):-

- In case of an assessee, who has paid service tax of **Rs. 10 lakhs or above** in preceding financial year or has already paid service tax of Rs. 10 lakhs in current financial year,
- he shall deposit the service tax liable to be paid by him electronically, through internet banking.

Provisions relating to filing of return under the service tax law

Section 70 of the finance Act, 1994 and **Rules 7, 7B, and 7C** of the Service Tax Rules, 1994 are as follows:-

- Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and
- shall furnish a return in such form and at such frequency as may be prescribed.

(1) Filing of returns to Superintendent on half- yearly basis: [Rule: 7]

Assessee	Form	No. of copies	Time of filing Return
All Assessees	ST-3 or ST-3A (For pro. Ass.)	Triplicate	By 25th of the month following the end of the said **half-year**.
Input service distributor	ST-3	Single	By the last day of the month following the **half-year period**.

Provided that where an assessee has paid a total service tax of Rs. 10 lakh or more including the amount paid by utilization of cenvat credit, in the preceding financial year, he shall file the return electronically.

General Exemptions From the levy of Service Tax

Section 93: *empowers the Central Government to grant exemptions from service tax in public interest by means of notifications in the Official Gazette.*

(1) **Exemption to exports:- ...**……

(2) **Exemption to RBI:-** ……

(3) **Exemption to UN and International Organization:-** ……

(4) **Exemption to units located in Special Economic Zone (SEZ):- N/N:- 09/2009-ST:-……..**

(5) **Exemption i.r.t. Diplomatic Mission: - ……..**

(6) Exemption to services provided for transmission of electricity- the taxable services provided to any person, by any other person for transmission of electricity, is exempt from service tax.

(7) Taxable service provided by any Indian news agency (eligible for income tax exemption) is exempt, subject to fulfillment of specified conditions.

(8) Taxable service provided by a person to any other person in relation to one or more of the specified process during the course of manufacture of parts of cycles or sewing machines is exempt from service tax, subject to specified conditions.

Rule 6: Cases in which the commission, costs, etc., will be included or excluded

(A)The value of the taxable services shall include:-

……

……

(B) The value of any taxable service does not include:-

1) The airfare collected by air travel agent in respect of service provided by him;
2) The rail fare collected by rail travel agent in respect of service provided by him; and
3) Interest on loans
4) Initial deposit made by the subscriber at the time of application for telephone connection or pager etc.
5) **The taxes levied by any government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.**

EXPORT OF SERVICE RULES, 2005

Rule :2 Definition: ……

Rule 3: Export of taxable service

(1) The meaning of Export of taxable service is as follows:-

(i) Such taxable services as are provided in relation to …….

(ii) Such services as are performed outside India. However, if such a taxable service …….

(iii) This clause covers those services which are not covered under above (i)or (ii) …….

(2) Any taxable services provided shall be treated as export of service only if-

~~**(i) Such service is provided from India and used outside India ;and**~~

(ii) Payment of such service is received by the service provider in convertible foreign exchange.

Explanation:- "India" includes **the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, FOR THE PURPOSES OF PROSPECTING OR EXTRACTION OR PRODUCTION OF MINERAL OIL AND NATURAL GAS AND SUPPLY THEREOF.**

Taxation of Services (Provided from outside India and received in India) Rules, 2006

Rule: 2 Definitions:

"India" includes **the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, FOR THE PURPOSES OF PROSPECTING OR EXTRACTION OR PRODUCTION OF MINERAL OIL AND NATURAL GAS AND SUPPLY THEREOF.**

(5) Technical testing and analysis

Statutory coverage ➢ Service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software (information Technology Service) or any immovable property. ➢ Clinical testing of drugs and formulations.
Exclusions ➢ Testing or analysis service provided in relation to human beings or animals is excluded. ➢ Testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease,

prevention of any disease or disorder in human beings or animals is not taxable.

- Medical testing and diagnosis has been excluded from service tax.
- Taxable service provided or to be provided to any person, by a Government owned state/district level laboratory in relation to testing and analysis of water quality.
- Taxable service provided in relation to technical testing and analysis of newly developed drugs or human participants by Clinical Research Organization.
- Testing of newly developed drugs or vaccines by approved clinical research organization.
- **Seed Testing lab or seed certification agency-The taxable services provided by a central or state seed testing lab and central or state seed certification agency notified under the seeds act, 1966**
  - **to any person, in relation to technical testing and analysis**
  - **is exempt from whole of the service tax leviable thereon.**

Case Laws/Board Circulars

- Sample collection centers not taxable – **Dr. Lal Path Lab (P) Ltd**. v. CCE (2006) (CESTAT

(30) Transport of goods by road service Goods Transport Agency)

Statutory coverage

- Any person, which provides service in relation to transport of goods by road and issues consignment note, by whatever name called.
  - **Total truck load benefit:-**Goods Carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods or for any motor vehicle not so constructed or adapted when used for carriage of goods.
  - **Individual consignment benefit:-**Taxable service means any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage.

Exclusions

- The taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk, **food grains or pulses** by road in a goods carriage, is fully exempt.
- The taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, is fully exempt from service tax where:-
  - Gross amount charged on consignments transported in a goods carriage is **upto Rs. 1,500, or**
  - The gross amount charged on an individual consignment transported in a goods carriage does **not exceed Rs. 750/-.**

[An individual consignment" means all goods transported by a goods transport agency by road in a goods carriage for a consignee.]

AMENDMENTS - 1st May 2009 TO 31st Oct, 2009

EXCISE LAWS

BASIC CONCEPTS

EXCISABLE GOODS - SEC. 2(d)

Goods specified in the first and the second schedule to CETA on which duties of excise is levied and **includes salt.**

EXPLANATION: 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.

Eg. the bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.[Circular No. 904/24/09]

MANUFACTURE.

NOTE- The process of adding or mixing cardamom, copra, menthol, spices, sweetening agent or any such ingredients, other than lime, katha or tobacco to betel nut in any form shall amount to manufacture.

VALUATION

RULE-10A: Provision for Job Work

Circular No. 902/22/2009-

Issue:--Some manufacturers of Motor Vehicles are getting complete Motor Vehicles manufactured by sending the Chassis of the Motor Vehicles to independent body builders for building the body as per the design/specification of the manufacturer.

The practice followed is that the Chassis is transferred to the Body builder on payment of appropriate Central Excise duty on stock transfer basis and is not sold to them. The body builder avails the Cenvat Credit of the duty paid on the chassis and clears the same on payment of duty to the Depot/Sales

Office/Distributer of the Motor Vehicle manufacturer.

The duty is discharged by the body builder on the assessable value comprising the value of Chassis and the job charges. The Depot/Sales office of the MV manufacturer sells the vehicles at a higher price than the price on which duty has been paid. Similar practice may be prevailing in respect of other commodities also.

Clarification- A.V. shall be determined as per rule 10A

CENVAT CREDIT RULES, 2004

Rule 2 (k) Input

For manufacturer	*For Service Provider*
means, ➢ 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,*** ***And includes*** ✓ Lubricating oils, greases, cutting oils, coolants, ✓ Accessories of the final products cleared along with the final product, ✓ Goods used as paint, or as packing material, or as fuel, ✓ Goods used for generation of electricity or steam, used in or in relation to manufacture of final products or for any other purpose, ***Within the factory of production.*** ***Except***: Light diesel oil, High speed diesel oil and Motor spirit, commonly known as petrol.	***Means:*** *All goods used for providing output service.* ***Except*** Light diesel oil, high speed diesel oil and Motor spirit, commonly known as petrol.

Explanation (1):

The light diesel oil or high-speed diesel oil or motor spirit, commonly known as petrol, **shall not be treated as input for any purpose whatsoever.**

Explanation (2):

Inputs include goods used in the manufacture of capital goods, which are further used in the factory of the manufacturer, **but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods**

Rule 3(5B)- Writing off the value of Inputs or capital Goods - before being put to use--(fully amended)

If the value of any,

(i) Input, or

(ii) Capital goods before being put to use,

- **on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account,**
- **then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:**

Provided that

- **If the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services,**
- **the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.**

Rule 3(7)(a) -Credit in respect of goods purchased from 100% EOU

CENVAT credit in respect of inputs or capital goods,

- Produced or manufactured in, EHTP, STP or 100% EOU and
- Used in the manufacture of the final products *In any other place in India*

Provided further that

The CENVAT credit in respect of inputs and capital goods cleared from an EOU or by a unit in EHTP or in a STP, as the case may be, on which such undertaking or unit has paid -

(A) Excise duty leviable under section 3 of the Excise Act read with notification no. 23/2003- and

(B) The Education Cess leviable under section 91 read with section 93 of the Finance Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A),

shall be the aggregate of -

(I) That portion of excise duty referred to in (A), as is equivalent to -

- **the additional duty leviable under section 3(1) of the Customs Tariff Act, which is equal to the duty of excise under section 3 (1) (a) of the Excise Act;**
- **the additional duty leviable under section 3(5) of the Customs Tariff Act; and**

(II) The Education Cess and the Secondary and Higher Education Cess referred to in (B)]

Rule 6: Obligation of Manufacturer of Dutiable and Exempted Goods

Rule- 6 (3) OPTION 2: NOT TO MAINTAIN SEPARATE ACCOUNTS

- ✓ Notwithstanding anything contained in sub-rules (1) and (2),
- ✓ the manufacturer of goods or the provider of output service, opting not to maintain separate accounts,
- ✓ shall follow either of the following options, as applicable to him, namely:-

(i) The **manufacturer** of goods shall pay an amount equal to **5 % of value of the exempted goods,** and the **provider of output service** shall pay an amount equal to **6 % of value of the exempted services;**

OR

(ii) The manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit **attributable to inputs and input services** used in, or in relation to, the manufacture of **exempted** goods or for provision of exempted services **subject to the conditions and procedure specified in sub-rule (3A)**

……

Special Audit under section 14A/ 14AA

	Special Audit under section 14A	**Special Audit under section 14AA.**
1	It is conduced with regard to the value of the excisable goods.	It is conduced with regard to Central credit availed or utilized by the manufacturer.
2	It can be ordered by any CEO not below the rank of Assistant/Deputy Commissioner.	It can be ordered only by the CCE.
3	It may be ordered in stage of enquiry, investigation or proceeding before CEO ➢ **Having regard to the nature and complexity of the case and** ➢ **interest of revenue**, If he is of the view that value has not been correctly declared or determined.	It may be ordered if the Commissioner is of the view ➢ **That CENVAT credit availed or utilized is not within the normal limits or** ➢ has been availed or **utilized by reason of fraud**, collusion or any willful misstatement or suppression of facts.
4	Prior approval of the Chief Commissioner has to be taken before ordering the special audit.	The Commissioner may himself direct such audit without any prior approval.
5	The Cost Accountant **or Chartered Accountant** is nominated by the Chief Commissioner.	The Cost Accountant **or Chartered Accountant** is nominated by the Commissioner himself.
6	The audit report is to be submitted to the Central Excise Officer within the period specified by him. The period can be extended on an application by manufacturer, so however that the total period along, with extensions can not exceed 180 days.	The audit report is to be submitted within the time specified by the CCE. There can be no extension of period and also, there is no maximum time-limit.

- ❖ Assessee shall be given an opportunity of being heard.

Note: - It is open to the Dept. to direct even audits under both the sections **14A and 14AA simultaneously or successively, in addition to regular audits.**

SMALL SCALE INDUSTRIES

"SPECIFIED CLEARANCES" bearing BRAND NAME / TRADE NAME

(Which is ***ELIGIBLE CLEARANCES*** for computing the limit of **Rs. 150/ 400** lakhs).

a) Clearances bearing B/N or T/N **of the manufacturing unit itself.**

b) Clearances bearing B/N or T/N-

- **Where the Goods being in the nature of components/parts of any Machinery/Equipment or Appliances; are cleared for use as OE (Original Equipment) in the manufacture of the said Machinery/Equipment or Appliances;** by following End – use based exemption procedures laid down in C.E.R. 2001.

- **Where the Goods bear the Brand Name Or Trade Name of -**
  - Khadi and Village Industries Commission (KVIC),
  - State Khadi and Village Industry Board (SKVIB),
  - National Small Industries Corporation (NSIC),
  - State Small Industries Development Corp (SSIDC),
  - State Small Industries Corporation (SSIC).

c) If SSI is manufacturing ***accounts books, registers, writing pad file folders***, even if they bear brand name of others.

d) Factory in rural area:-

Where the branded goods are manufactured in a factory located in rural area.

e) Where the specified goods are in nature of PACKING MATERIALS, namely, Printed cartons of Paper/Paper Board, Metal Containers, HDPE **Woven sacks**, Adhesive Tapes, Stickers, PP caps, crown corks, Metal label, **PLASTIC BAGS,** **PRINTED LAMINATED ROLLS.**

Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001

"Procedure for availing "End Used Based" exemption notification"

Rule 6: Recovery of Duty in Certain Cases

The said Assistant Commissioner or Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used by the manufacturer applicant for the intended purpose,

- he shall be liable to pay the amount equal to, the **difference** between the **duty leviable without exemption** ***and*** that **already paid**, if any

  AND

- Interest on the amount as calculated above.

The **provisions of Section 11A and 11AB** of Central Excise Act, 1944, shall apply mutatis mutandis for affecting such recoveries.

No recovery from the manufacturer (FP), where Goods return to supplier

Provided that if the subject goods on receipt are found to be, **Defective or Damaged or Surplus** to the needs of the manufacturer,

- He may return the subject goods to the original manufacturer of subjected goods.
- Every such returned goods shall be **added to the non-duty paid stock of the manufacturer of the subject goods and dealt with accordingly.**

Recovery from the manufacturer (FP), where Goods are destroyed

Explanation: It is clarified that the goods **shall be deemed, not to have been used for the intended purpose** even if any of the quantity of subject goods is lost / destroyed by natural causes or unavoidable accident during…

- transport **from the place of procurement** to the manufacturer's premises, or
- **handling or storage** in the manufacturer's premises, or
- transport **from the manufacturer's premises** to the palace of procurement.

NOTE: ***No recovery of difference amount shall be made from the supplier of subject goods, if goods are not used for intended purpose by the manufacturer of final product.***

PENALTIES

SECTION 9A -Certain offences to be non cognizable

(1) Offences u/s 9 shall be deemed to be non-cognizable i.e. arrest of a person can be made with an arrest warrant only.

(2) Any offence, either before or after the institution of prosecution, be compounded by the chief commissioner on payment of such compounding amount **and in such manner of compounding** as may be prescribed.

For the purpose of compounding of offences, Rules titled Central excise (compounding of offence) Rules, 2005 have been introduced.

Rule: 24A. -Return of records.

- **The books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of SCN,**
- **shall be returned within thirty days of the issue of said notice or within thirty days from the date of expiry of the period for issue of said notice:**

Provided that the Commissioner of Central Excise may order for the retention of such books of accounts or documents, for reasons to be recorded in writing and the Central Excise Officer shall intimate to the assessee or such person about such retention.]

APPEALS

Note: - All provisions of customs relating to appeal are similar to Excise

SECTION 35G APPEAL TO HIGH COURT
(Note: - Appealable order should not involve determination of Rate of duty or value of goods.)

The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal shall be-

(a) filed ***within 180 days*** from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) **The High Court may admit an appeal and memorandum of cross objection after the expiry of the period of 180 days, if it is satisfied that there was sufficient cause for not filing the same within that period**.

(c) accompanied by a **fee of Rs. 200/-** where such appeal is filed by the other party;

(d) in the form of a memorandum of appeal precisely **stating therein the substantial question of law involved.**

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

- When an appeal has been filed before the High Court, it shall be heard by a bench **of not less than two Judges of the High Court,** and shall be decided in accordance with the opinion of such Judges or of the majority.
- Where there is no such majority, the point **shall be stated to other Judges** and then it shall be **decided by majority of all them.**

Provisions Relating to Service Tax Appeals

Rectification of mistake: Section: 74

Revision of orders by the Commissioner of Central Excise .-: Section 84-(fully amended)

(1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter

- **for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central**

Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals)

- **for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.**

(2) Every order under sub-section (1) shall be made within a period of 3 months from the date of communication of the decision or order of the adjudicating authority.

(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of 1 month from the date of communication of the order under sub-section (1) to the adjudicating authority,

- **such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority**
- **and the provisions of this Chapter regarding appeals shall apply to such application.**

Section 86: Appeals to Appellate Tribunal

1. Appealable order

Any assessee aggrieved by an order passed by a CCE **(except u/s-84)**, or an order passed by a CCE(A) may appeal to the Appellate Tribunal against such order.

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. Departmental Appeal

- The Committee of Chief CCE may, if it objects to any order passed by the CCE **(except u/s-84)**, direct the CCE to appeal to the Appellate Tribunal against the order.
- The Committee of Commissioners may, if he objection 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 …….

DEMAND AND RECOVERY

SECTION: 11 AC: Mandatory penalty-

Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

- the person who is liable to pay duty as determined under section 11A (2) shall also be liable to pay a penalty equal to the duty so determined:

Provided that where such duty as determined under section 11A(2) and the interest payable thereon under section 11AB, is paid **within 30 days** from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section **shall be 25**% of the duty so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of 30 days referred to in that proviso:

Provided that also

- Where the duty determined to be payable is **reduced or increased by the Commissioner (Appeals),** the Appellate Tribunal or, as the case may be, the court,
- then, for the purposes of this section, the duty, as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case

- where the duty determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court,
- then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and 25 % of the consequential increase of the penalty have also been paid within 30 days of the communication of the order by which such increase in the duty takes effect.

Dharmendra textile Processors

- **Proviso to section 11 A,** RELATING TO EXTENDED PERIOD OF LIMITATION and sec. 11AC RELATING TO IMPOSITION OF PENALTY are identically worded.
- It is for the revenue to establish that the extended period of limitation is invocable.
- Once it is established that the extended period of limitation is invocable , the LEVY PENALTY U/S 11AC IS AUTOMATIC (Mandatory penalty)
- Ie **Mens Rea is not required** for this purpose.

Circular No. 889/09/2009-CX

Wherein it has been clarified that when the conditions spelled out under Section 11AC of the Central Excise Act, 1944 are fulfilled, there is no discretion to reduce the mandatory penalty equal to duty even though the duty is paid before the issue of Show Cause Notice.

Circular No. 898/18/09

Sub.:- Benefit of reduced penalty under provisos to Section 11AC whether also available at appeal stage.

A case has been brought to the notice of the Board wherein a Commissioner (Appeals) had allowed the benefit of proviso to Section 11AC of the Central Excise Act, 1944 to pay penalty at the reduced rate of 25% within 30 days of the communication of the Order in Appeal. Commissioner (Appeals) has read Section 11AC and Section 35 F together to arrive at the aforesaid decision.

Clarification

- **It is clear that in order to avail the benefit of 25% penalty, the duty, interest and penalty are required to be paid within 30 days of communication of the order passed by the adjudicating authority.**
- **Further, the reading of proviso (4) would also support this interpretation because the said proviso stipulate that wherever duty amount is increased at any appellate stage, in that case in order to avail the benefit of 25 % penalty, the assessee is required to pay differential amount within 30 days of the passing of the order by the appellate authority.**
- **A combined reading of all the 4 proviso would, therefore, make it clear that the benefit of 25% penalty is applicable only when the assessee has paid duty, interest and the reduced penalty within 30 days of communication of the order passed by the adjudicating authority.**
- **However, if the penalty amount is increased at the appellate stage, in that case the 25% of differential amount of penalty can be paid within 30 days of communication of said appellate order. Therefore, the view taken by the Commissioner (Appeal) is not as per the provision of law.**

ADVANCE RULING

Section 23A to 23H of CEA 1944, Section 28E to 28M of Customs Act: Section 96A to 96 I Chapter-VA of F.A. 1994

AUTHORITY FOR ADVANCE RULING (CENTRAL EXCISE, CUSTOMS AND SERVICE TAX

"Authority" means

The Authority for Advance Rulings, constituted under section 28F (1), or authorised by the Central Government under section 28F (2A) of the Customs Act, 1962 .

The authority shall consist of following members who are appointed by the central government.

- A chairperson who shall be retired judge of Supreme Court and
- The officer of Indian customs and excise service, qualified to be a Member of the Board and
- The officer of Indian Legal Service; qualified to be Additional Secretary to Government of India.

Note-Public sector companies ***(as assigned in Income Tax Act, 1961)*** **and project import – eligible to file an application for advance ruling: -**

The C.G. has, by notification, specified that the following resident persons shall be eligible to file an application for advance ruling-

Ie. Eligible applicant --

- *Any public sector company (applicable for excise , customs, and service tax ie all the three)*
- *Project import by residents (applicable for customs law)*

CLASSIFICATION OF GOODS

Circular No. 891/11/09-CX.

Subject: Eligibility of exemption Notification No 6/2006- to pipe fittings (joints, sleeves, elbow, couplings, etc.)

- **It has been brought to the notice of the Board that the manufacturers of pipe fittings (joints, sleeves, elbow, couplings, etc.) are claiming the benefit of the Notification No. 6/2006-.**
- **It is also reported that some units are manufacturing pipes and pipe fittings and claiming benefit of notification for pipe fittings which are cleared along with pipes.**
- **The issue is whether the 'pipe fittings' in the water supply network are also exempted.**

Board is of the view that exemption Notification No. 6/2006- is not available to 'pipe fittings' used in the pipe network for supply of drinking water. The intention behind the notification is to provide exemption only to pipes as understood in the common parlance and not to fittings which is a separate commodity and known differently in the market.

BASIC CONCEPTS

Section-26A:- Refund of import duty in certain cases.-NEWLY INSERTED

(1) Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if—

S.N	CONDITIONS	SUBJECT TO-
(a)	the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:	Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
(b)	the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;	
(c)	the importer does not claim drawback under any other provisions of this Act; and	
(d)	(i) the goods are exported; or (ii) the importer relinquishes his title to the goods and abandons them to customs; or (iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47:	Provided that the period of 30days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding 3 months. Provided further that nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(2) An application for refund of duty shall be made before the expiry of six months from the relevant date in such form and in such manner as may be prescribed.

Explanation.— For the purposes of this sub-section, "relevant date" means,—

Cases	Relevant Date
In cases where the goods are exported out of India,	The date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;
In cases where the title to the goods is relinquished,	The date of such relinquishment;
In cases where the goods are destroyed or rendered commercially valueless,	The date of such destruction or rendering of goods commercially valueless.

(3) No refund under sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

(4) The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund under sub-section (1) may be allowed.

TYPES OF CUSTOMS DUTIES

Section 3: Additional Duty of Customs (Countervailing Duty).

BASIS	CVD [ED(FP)], Sec.3(1)	CVD[ED(R/M)] ,Sec.3(3)	ADD[(ST/LocalCharges,VAT) Sec.3(5)
Leviable on	Any imported Article [which is **capable of being produced/manufactured in India]**	Notified imported Article [At present leviable on;- (i) Stainless steel products for household purpose. (ii) Transformer oil]	Notified Imported Article [At present, it is leviable on ALL IMPORTED GOODS.]
Objective	To Counter-balance the **excise duty leviable on the like article** produced/manufactured in India.	To Counter-balance the **excise duty leviable on Raw Material used** in the production or manufacture of like article in India.	To Counter-balance **the Sales tax/VAT/Local Tax or any other** charges for the time being leviable on a like article on its sale, purchase or transportation in India.

A.V. for Determining the value of CVD	**(1) When "Imported Goods"** is covered under SWMA and the product is notified u/s 4A of the CEA, 1944.: Declared MRP xxx Less: Notified% xxx **A.V. (xxx)** * If Multiple MRPs printed on a single package, then **Maximum of such MRP** shall be considered. (2) **NEWLY INSERTED- In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3 (2) of the Central Excise Act, 1944,--** **The value of the imported article shall be deemed to be such tariff value.** **(3) In Other Cases:** Value U/S 14(1)/(2) + BCD [sec 12 of CA, 1962]	AV will be **same** as in case of imposition of CVD u/s 3(1).	Value u/s 14(1)/(2) xxx + BCD (sec 12 of CA,) xxx +CVD u/s 3(1) xxx +CVD u/s 3(3) xxx +EDU.cess xxx +SHE cess xxx **A.V. (xxx)**
Rate	**(1) Alcoholic Liquor for human Consumption:-** *Rate as notified by CG, having regard to the E.D for the time being leviable *on like alcoholic liquor, produced manufacture in different states (India).* **(2)Other Goods:-** *ED as leviable on"**like article**" if produced/manufactured in India, ***where like article is not produced/manufactured in India** **(a)** then ED as leviable on **similar goods** & **(b)** if duty is leviable at Diff Rates then **HIGHEST RATE.** **HYDERABAD INDUSTRIES LTD. – 1999- SC** If the article cannot be subjected to excise levy because it is not produced or manufactured, then on the import of like articles, no additional duty can be levied.	**As notified by CG**	As notified by CG. [CG can notify 4% as maximum rate] At present, the notified rate is **4% (the maximum rate)** in relation all goods.

	Note:- Excise Exemption (whether conditional or unconditional) – shall also be considered. **THERMAX (P) LTD:SC**: - If the condition of exemption Notification is satisfied, then even benefit of conditional exemption shall be available to the importer.		
Others	----------	CVD 3(3) can be levied – ✓ Whether CVD 3(1) is leviable or not.	ADD 3(5) can be levied – ✓ Whether CVD 3(1) and/or CVD 3(3) is leviable or not.

Section 8B: Safeguard Duty

Note- The provisions of the Customs Act, 1962 and the rules and regulations made thereunder,

- **including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall,**
- **as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act. (WEF-14-05-1997)**

Sec 8C: Safeguard Duty on Articles Imported from China

Note- The provisions of the Customs Act, 1962 and the rules and regulations made thereunder,

- **including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall,**

- **as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act. (WEF-11-05-2002)**

Section 9: Countervailing Duty on Subsidized Articles

Note- The provisions of the Customs Act, 1962 and the rules and regulations made thereunder,

- **including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall,**
- **as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act. (WEF-01-01-1995)**

Sec 9A: Anti-Dumping Duty on Dumped Articles

Reason for imposition:-

- ✓ where any article is exported **by an exporter or producer** from any country/territory to India
- ✓ at less than its NORMAL VALUE,
- ✓ then, upon the importation of such article into India, the CG may, impose
- ✓ an Anti-Dumping duty, not exceeding, the MARGIN OF DUMPING in relation to such article.

"***Margin of Damping***"
Means: the difference between its ***Export Price and its Normal Value.***

Note- The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry, shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer:
Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.]

Note- The provisions of the Customs Act, 1962 and the rules and regulations made thereunder,

- **including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall,**
- **as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act. (WEF-01-01-1995)**

SERVICE TAX

Service tax on "transfer of right to use" canned software, NOT EXCISE DUTY OR CVD- {N/N-22/2009 –CE, 80/2009 CUS.}-

Excise duty of 12% is payable on branded (canned or packaged) software. Hence CVD was payable if canned or packaged software is imported.

The issue was whether both service tax and CVD / excise duty are payable on 'transfer of right to use' canned or packaged software. It is now provided that service tax is payable and not CVD or excise duty.

It may be noted that in case of branded (tailor made) software, there is no sale of software as such. Only RIGHT TO USE is transferred (sometimes for a limited period, which has to be renewed by paying further amount). [There will be sale of software if source code and entire property in software is transferred to buyer]

Thus, now, in case of software, only service tax will be payable and not excise duty or CVD.

General Exemptions From the levy of Service Tax

Exemption to units located in Special Economic Zone (SEZ):- N/N:- 09/2009-ST:-

- Any taxable services, which are provided in relation to the **Authorized Operations** in a Special Economic Zone,
- and received by a developer or units of a Special Economic Zone,
    - *whether or not the said taxable services are provided inside the Special Economic Zone,*
- shall be exempt from the whole of the service tax.

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, **except for services consumed wholly within the Special Economic Zone.**

d) The developer or units of Special Economic Zone claiming the exemption, by way of refund in accordance with clause (c), has actually paid the service tax on the specified services.

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.

g) The developer or unit of a Special Economic Zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed.

HOWEVER NO SUCH EXEMPTION IS AVAILABLE WHEN THE SERVICES ARE PROVIDED TO A 100% EOU. THEREFORE SERVICE TAX SHALL BE CHARGED ON THE SAME

EXPORT OF SERVICE RULES, 2005

Circular No. 117/11/2009

It is clarified that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Haj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the other conditions of export as provided in Export of Service Rules

TAXABLE SERVICES

(2) Management or Business Consultant

Statutory coverage

- Service in connection with the management of any organization or business in any manner.
- Advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management.
- Exemption in respect of services of ERP software system has been withdrawn, HENCE TAXABLE.

Exclusions

- Executory services would not fall under 'consultancy services'.
- **it is clarified that remunerations paid to Managing Director / Directors of companies whether whole-time or independent when being compensated for their performance as Managing Director/Directors would not be liable to service tax.[CIR. NO. 115/09/2009]**

(7) Banking and Financial services

Illustration

Buying rate $US 1 = Rs.38, selling rate $US 1 = Rs.40

(i) Person exchanged $100 for equivalent rupees:-
Transaction value = Rs.3800 (Rs.38 x 100)
Service tax payable = Rs.9.5 (0.25% x 3800)
(ii) Person exchanged equivalent rupees for $100
Transaction value = Rs.4000 (40 x 100)
Service tax payable = Rs.10 (0.25% x 4000)."

Notification No. 19/2009-ST dated -07-07-2009

Exempts the taxable service in relation to inter-bank transactions of purchase and sale of foreign currency, provided to a Scheduled bank, by any other Scheduled bank

(11) Commercial or Industrial Construction

Exclusions

- Such services provided in respect of roads, ports, airports, railways, transport terminals, bridges, tunnels and dams.
- **CIR. NO. 111/04/2009-- Road construction & Road maintenance**

Road Construction Service	**Not liable to Service Tax-** ➢ Laying of new Road

	➢ Widening of narrow road to broader road ➢ Changing road surface(such as graveled road to metal led road)
Service of Management, maintenance or repair of Roads	➢ **Exempted from service tax.**

Cir. No.- 116/10/ 2009-construction of canals liable to service tax only when commercial.

(15) Business auxiliary services

Statutory coverage

- Promotion or marketing or sale of **goods** produced or provided by or belonging to the client.
- Promotion or marketing of **service** provided by the client.

Explanation:-

- **service i.r.t. to promotion or marketing of service provided by the client**
- **includes any service provided i.r.t. promotion or marketing of games of chance, organized, conducted, or prompted by the client, in whatever form or by whatever name called,**
- **whether or not conducted online, including lottery , bingo.**

- Any customer care service provided on behalf of the client.
- Procurement of goods or services, which are inputs for the client.
- Production or processing of goods for, or on behalf of, the client.
- Provision of service on behalf of the client.
- A service incidental or auxiliary to any activity specified above, such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision.
- Includes call centers or medical transcription centers.

- Services **as a commission agent** **but does not include any activity that amounts to manufacture of EXCISABLE GOODS.**
  (the impact of this change would be that even if a process of manufacture is undertaken for the client , but the resultant product does not fall under the category of excisable goods ,such as alcoholic beverages , the service tax would be attracted)

[Commission agent means: any person who acts on behalf of another person and causes sale or purchase of goods or provision of service and includes person who,
Deals with goods or services or documents of title, or collection payment of sale price, or guarantees for collection or payment.

Exclusions

- Service of production of goods on behalf of the client shall be exempt if
  - such goods are produced using raw materials or semi-finished goods supplied by the client
  - and goods so produced are returned back to the said client for use in or in relation to manufacture of any other dutiable goods.
- Processing of Diamonds, gems, jewellery and other precious metal.
- Services of a Commission Agent in relation to sale or purchase of **agricultural produce.**

Case Laws/Board Circulars

- Job work liable to service tax, but job work done under Cenvat provisions exempt. Job work not taxable if it amounts to 'manufacture'.
- Mutual funds units are "Goods" and thus, mutual fund distributors are definitely rendering service in relation to promotion; marketing, or sale of goods of client and thus liable to service tax.(**Cir: 2007**)
- **Service provided in relation to the manufacture of pharmaceutical products, medicines, perfumery, cosmetics or toilet preparations containing alcohol, which are charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 from the whole of the service tax .[N/N- 32/2009]**

(28) Transport of goods by rail

Statutory coverage

- Any service provided or to be provided to any person, by any other person, in relation to transport of goods by rail, in any manner

Inclusions

- **W.e.f. 1-9-2009 - service tax on goods transported by railways including Government railways, whether in containers or otherwise made taxable.**
- **Service tax is applicable by the Government Railway is not taxable, however services provided by any other person on Government Railway is taxable.*(Government Railways is exempt by Notification No. 33/2009 –34/2009 ST)***
- **Services in relation to transport of goods in containers by rail may in any manner.**

Case Laws/Board Circulars-

N/ N-28/2009

Exemptions- if this taxable service provided to any person in relation to transport of goods, the description of which is specified below, by rail,

Sl.No.	Description of Goods
1.	Defence/ military equipments
2.	Railway equipments/ materials
3.	Postal mail bags
4.	Etc.

(31) Stock broking

Statutory coverage

- Service by a stock broker in connection with the sale or purchase of securities listed on recognized stock exchange.
- As per Rule 6(1) (i) of Service Tax Valuation Rules. The value of taxable services shall include the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock – broker to any sub-broker.

Case Laws/Board Circulars

- No tax on turnover charges payable to stock exchange – prima facie view in JSEL Securities Ltd. v. CCE (2007) 8 STT 428 (CESTAT).
- **Sub-broker have been excluded from the preview of service tax-by making suitable amendments in the definition of stock broker.**
- **Exemptions- if this taxable service provided by a sub-broker to a stock broker, in relation to sale or purchase of securities listed on a registered stock exchange from the whole of the service tax.**

Examination Tips

SOME SUGGESTIONS TO STUDENTS

Before the examination:

- Understand the subject thoroughly.
- Do not memories answers without understanding.
- Improve English, as poor English creates bad impression on the examiner. Avoid long and unwieldy sentences.
- Practice to solve example. Mere reading example does not help.
- Slow and steady wins the race- regular study is much better than the last month's rush.
- Solve as many old question papers as you can.
- makes your base of mathematics strong-if it is weak
- Quoting section numbers and important case law certainly makes better impression on examiner.

At the examination:

General

- First solve question which you know best.
- Allocate time for answering each question and stop writing after time allotted by you to that question is over. Keep margin for checking.
- Keep cool and do not panic.

Specific

Haw to **read question properly** AND How to make answer

WORDS USED IN THE QUESTION	HOW TO MAKE ANSWER
List	Make a list of…
State	Express, fully or clearly, the detail/facts of ...
Define	Give the exact meaning of…
Describe	Communicate the key feature of…
Distinguish	Highlight the differences between …
Explain	Make clear of intelligible; state the meaning of…
Identify	Recognize, establish or select after consideration
Illustrate	Use an example to describe or explain something
Calculate / compute	Ascertain or reckon mathematically
Prepare	Make or get ready for use
Reconcile	Make or prove consistent / compatible
Solve	Find an answer to
Analyse	Examine in detail the structure of…
Compare and contrast	Show the similarities and / or differences
Discuss	between.
Interpret	Examine in detail by arguments...
	Translate into intelligible or familiar terms
Advise	Counsel, inform or notify
Evaluate	Appraise or assess the value of
Recommend	Advise on a course of action

Solving practical problems –

- Sometimes, some data is not given or question is vague. In such case, student should clearly **state the assumptions** made by him, so that examiner knows that you are aware of the legal provision.
- If there are two alternate assumptions, student may solve the example in two different ways (if time permits), stating clearly assumptions made for each answer

Answering question on case study:

- Usually, two questions are asked on recent case law, usually of Supreme Court.
- The answer should be presented in following sequence-

(a) Facts of the case – As stated in question, but in your own words

(b) Issue for consideration – What issue is to be decided

[Starting lines may be as follows: The issue for consideration in the given question is……]

(c) Legal position _Quote SECTIONS, RULES, CASE LAWS CIRCULARS, NOTIFICATION etc., regarding the ISSUE.

(d) Conclusion _ **Give** your conclusion in the light of Legal position.

[**Ending lines may be as follows:**

(1) In the light of what is stated above.....

(2) IN nutshell…….

(3) In the backdrop of the undisputed factual potion, the plea of department/ assessee is contrary to the facts……

(4) Summing up we hold that…..

(5) From the perusal of facts given in the question…….

(6) For all the aforesaid reasons……

(7) On careful consideration of stated facts and circumstances, our opinion on the various issues is as under…….

NOTE: *If you remember the case law, state that facts of the case are similar to so and so case. If you do not remember citation, but at least remember that it is a Supreme Court case, you can state that way.*

Note: *Use your own reasoning. Whatever you write, write in a* ***clear manner****. Answer should be* ***specific & throughout the answer only one view*** *should be stated.*

Attractive Paper Presentation: Answer paper should be made attractive and impressive by

- Writing, point –wise and precise answers.
- Drawing **graphs and charts**
- Making **tabular statements** wherever required
- Writing question number and sub- number and head line of the question asked which will facilitate the examiner in quickly assessing your paper.

After the examination

- Do not discuss your answers with immediately after the examination as it will upset your mood for next paper.
- However, after the whole examination is over, review your answers.

.....

- *FOR SUCCESSFUL PEOPLE THERE IS ONLY ONE SECOND OF TENTION AND ALL, ALL THE REMAINING SECONDS OF WORK.*

- *REMEMBER PLAYER IS THAT WHO PLAY IN CRITICAL SITUATION.*
- SPECIFIC NOTE: Take proper sleep.

With Best wishes

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