

VALUATION OF EXCISABLE GOODS

Question 1

Explain briefly the significance of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 relating to goods produced or manufactured by a job worker.
(3 Marks) (May 2011)

Answer

Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 provides that where goods are manufactured by a job-worker on behalf of a person (commonly known as principal manufacturer), the value for payment of excise duty would be based on the sale value at which the principal manufacturer sells the goods, as against the past practice where the value was taken as cost of raw material plus the job charges.

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

Question 2

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

- (i) *An assessee sells his excisable goods for ₹120 per piece and does not charge any duty of excise in his invoice. Subsequently, it was found that the goods were not exempted from excise duty, but were liable at 10% advalorem.* (1 Mark) (Nov 2010)
- (ii) *Certain excisable goods were sold for ₹120 per piece and 10% advalorem is the rate of excise duty. Subsequently, it was found that the price cum duty was in fact ₹140 per piece as the assessee had collected ₹20 per piece separately.* (2 Marks) (Nov 2010)

- (iii) The cum duty price per piece was ₹ 120 and the assessee had paid duty at 8% advalorem. Subsequently, it was found that the rate of duty was 10% advalorem and the assessee had not collected anything over and above ₹ 120 per piece.

(2 Marks) (Nov 2010)

Answer

$$(i) \quad \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120}{1.10} = ₹ 109.09$$

$$(ii) \quad \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120 + 20}{1.10} = ₹ 127.27$$

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

$$(iii) \quad \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120}{1.10} = ₹ 109.09$$

Question 3

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

Cost of raw material supplied	₹ 45,000
Job charges including profit	₹ 15,000
Transport charges for dispatch to job worker	₹ 4,000
Transport charges for return of finished product	₹ 4,000

(Provide brief explanation and make assumptions where required.) (5 Marks) (Nov 2010)

Answer

Section 4A of the Central Excise Act, 1944 provides for valuation of excisable goods with

reference to retail sale price.

Sub section (2) of this section provides that where the goods specified under sub-section (1) are excisable goods and are chargeable to duty with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

Thus, the provisions of section 4A of the Central Excise Act, 1944 are overriding provisions, i.e., if a product is covered under provisions of section 4A, valuation will be done on the basis of section 4A and not on the basis of Rule 10A.

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

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

The information pertaining to raw material cost, job charges, profit, transport charges etc. are not relevant for determining assessable value in this case.

Question 4

Hand blender manufactured by the assessee was cleared as gift along with each unit of juicer, mixer and grinder (JMG). The MRP of ₹ 750 though printed on the 'hand blender box' contains clear indication that it is supplied free of cost. The package of JMG also shows this. The hand blender is not sold separately. The Department has issued a show cause notice that duty should be paid on the hand blender. Write a brief note with reference to section 4A of the Central Excise Act, 1944 whether the notice is sustainable in law. (4 Marks) (Nov 2010)

Answer

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

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

It is also clear that hand blender would be given free with every purchase of JMG and there is no sale of the same. Hence, it can be concluded that the duty under section 4A will have to be paid on the JMG and the 'hand blender' provided as a gift will not be again subject to duty on the MRP because there is no sale of the hand blender.

Question 5

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

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

(5 Marks) (May 2010)

Answer

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

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

Calculation of central excise duty:-

Basic excise duty @ 10% (₹ 2,20,000 × 10%)	22,000
Education cess @ 2%	440
Secondary and higher education cess @ 1%	<u>220</u>
Total duty payable	<u>22,660</u>

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

Question 6

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

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

Other information:

- (a) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.
- (b) Bought out accessories supplied along with machinery valued at ₹ 6,000.
- (c) Central excise duty rate 10% and educational cess as applicable @ 3%.

Make suitable assumptions as are required and provide brief reasons. (5 Marks) (Nov 2009)

Answer

Determination of excise duty payable:

Particulars	₹
Price of machinery	5,50,000
Add: Packing charges (Note 6)	11,500
Design and engineering charges (Note 7)	2,000
Cost of material supplied by buyer (Note-3)	8,500
Pre-delivery inspection charges (Note-4)	<u>500</u>
Total	5,72,500
Less : 2% cash discount on price of machinery = 550,000 x 2 % (Note-5)	<u>11,000</u>
Assessable value	<u>5,61,500</u>
Excise duty @ 10.30%	57,834.50
Excise duty [rounded off] payable	57,835

Notes :-

While computing the assessable value:-

1. installation and erection expenses will not be included [Circular No. 643/34/2002 dated 01.07.2002].
2. The value of bought out accessories supplied along with the machinery will not be included.

3. cost of material supplied by buyer free of charge will form part of assessable value as it is the additional consideration flowing from buyer to seller.[Explanation 1 to Rule 6 of Valuation Rules]
4. pre-delivery inspection charges are includible [Circular No. 643/34/2002 dated 01.07.2002].
5. cash discount will be allowed as deduction if actually passed on to the buyer and if transaction is on principal to principal basis [Circular No. 643/34/2002 dated 01.07.2002].
6. amount charged from the buyer in relation to packing, whether primary or secondary, will be included [Circular No. 354/81/2000 dated 30.06.2000].
7. design and engineering charges will be included as such payment is 'in connection with sale'.

Question 7

Explain briefly, how the value of goods will be ascertained for purpose of excise duty where the assessee sells the goods partly to a related person and the balance to unrelated third parties.
(2 Marks) (Nov 2009)

Answer

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

Question 8

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

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

Rate of excise duty	10%	
Education cess	3%	

Calculations should be supported by notes, wherever required (5 Marks) (June 09)

Answer

Computation of total amount of excise duty payable:-

Particulars	₹
Sale price of the machine excluding taxes and duties	2,00,000
Add : Design and development charges (Note-3)	20,000
Add: Warranty charges (Note-4)	5,000
Less : Cost of durable and returnable packing (Note-2)	<u>5,000</u>
Assessable value	<u>2,20,000</u>
Excise duty @ 10%	22,000
Education cess @ 3% on Excise Duty	<u>660</u>
Total excise duty payable on the machine	<u>22,660</u>

Notes:

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

Question 9

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

Maximum Retail Price and hence the transaction was a wholesale transaction and assessment under section 4 of the Central Excise Act, 1944 was correct.

Further contention of the assessee was that they are entitled to exemption under rule 3(b) of Legal Metrology (Packed Commodities) Rules, which exempts packs meant for industrial use. Examine whether the stand taken by the Department is correct in the light of decided case law.
(5 Marks) (June 09)

Answer

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

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

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

Lastly, the Apex Court agreed with the contention of the assessee that they were entitled to exemption under rule 34 which exempts the product from requirement of affixing maximum retail price on the pack. Rule 34 of the erstwhile Standard of Weights and Measures (Packaging Commodity) Rules, 1977 [now Rule 3(b) of Legal Metrology (Packaged Commodity) Rules, 2011] exempts the package specially packed for the purpose of servicing any industry. Supreme Court concluded that the sale of pack of ice-cream to the retail industry was squarely covered in the term “servicing any industry”.

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

Note: The above case would hold good in the Legal Metrology Act, 2009. Standards of Weights and Measures Act, 1976 has been substituted with Legal Metrology Act, 2009 in section 4A with effect from August 1, 2011. Further as per Rule 3(b) of Legal Metrology (Packed Commodities) Rules, 2011, provisions of MRP do not apply to packaged commodities meant for industrial or institutional consumers.

Question 10

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

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

The contracted sale price includes the following elements of cost:

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

(4 Marks) (Nov 2008)

Answer**Computation of assessable value of the excisable goods:-**

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

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

- the duty of excise, sales tax and other taxes, if any, actually paid or payable on the excisable goods has to be excluded [Section 4(3)(d) of the Central Excise Act, 1944].
- the cost of transportation from the place of removal up to the place of delivery of the excisable goods has to be deducted [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].

3. the cost of transportation, worth ₹ 20,000, from the factory to the place of removal would not be excluded [Explanation 2 to rule 5 of Central Excise Valuation (Determination of Price of Excisable Rules, 2000)].
4. cost of packing, ₹ 3,000 and ₹ 7,000 would not be deducted. In this regard, it has been clarified that as per section 4 of the Central Excise Act, 1944, packing charges would form part of the assessable value whether packing is ordinary or special, or primary or secondary. Any charges recovered for packing are the charges recovered in relation to the sale of the goods under assessment and, hence, will form part of the transaction value of the goods [Circular no. 354/81/2000 dated 30/6/2000].
5. The cost of drawings and designs, worth ₹ 4,000 would not be deducted.[Rule 6 of Central Excise Valuation (Determination of Price of Excisable Rules, 2000)].

Question 11

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

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

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

Examine briefly, whether the stand taken by the Department is correct in law. (5 Marks) (Nov 2008)

Answer

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

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