

Valuation of Excisable Goods

Question 1

Write a note on the valuation of goods on the basis of retail sale price under section 4A of the Central Excise Act, 1944.

Answer

The provisions of section 4A are as follows:

- (a) Excisable goods are valued on the basis of retail sale price when they are packaged and it is required under Legal Metrology Act, 2009 or Rules or under any other law to declare on such packages the retail sale price thereof. The Government may notify the products for the purpose of this section.
- (b) The assessable value shall be deemed to be the retail sale price declared on the package less amount of abatement. Abatements can be given by the Central Government through notifications after taking into account the amount of duties and taxes payable on such goods.
- (c) The retail sale price has been defined to mean the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer inclusive of all taxes and expenses and price is the sole consideration for such sale.

However, if the provisions of the Act, rules or other law as referred to in (a) above require the retail sale price to exclude any taxes, local or otherwise, the retail sale price shall be construed accordingly.

- (d) Where there is more than one retail sale price, the maximum of such retail sale price will be deemed to be the retail sale price for the purpose of this section.
- (e) Where different retail sale prices are declared on different packages for different areas, each such retail price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.
- (f) The excisable goods shall be confiscated and the retail sale price will be ascertained in the manner prescribed by the Central Government if the manufacturer:
 - .. tampers, alters or obliterates the retail sale price declared on the package of goods after their removal, or
 - .. removes such goods without declaring the retail sale price on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in (a) above.

- (g) If the retail sale price declared on the package of goods at the time of removal is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price.

Question 2

State the procedure for valuing excisable goods that are to be sold from depot/branch or premises of a consignment agent under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Answer

As per rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as 'such other place') from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time 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.

Question 3

Write short note on "Place of Removal".

Answer

As per section 4(3)(c) of the Central Excise Act, 1944, 'place of removal' means:

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- (iii) a depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from the factory; from where such goods are removed.

Question 4

Briefly explain the following in the context of valuation of excisable goods:

- (i) *Specific Duty*
- (ii) *Compounded levy scheme*
- (iii) *Tariff Value*
- (iv) *Duty based on production in respect of notified goods*

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Answer

(i) **Specific Duty:** It is the duty which is payable on the basis of certain unit like weight, length, volume, thickness etc. For instance specific duty is payable in respect of following goods:

- (A) Cigarettes (length basis)
- (B) Matches (per 100 boxes/packs)
- (C) Sugar(per quintal basis)
- (D) Marble slabs and tiles (square meter basis)
- (E) Colour TV when MRP is not marked on the package or when MRP is not the sole consideration(screen size basis)
- (F) Cement clinkers(per tonne basis)

The greatest advantage of this method of valuation of excisable goods is its simplicity. However, this method requires frequent changes for the purpose of increasing revenue because duty under method would remain constant even if the prices of relevant goods increase. Hence this method is used only in case of certain selected goods.

(ii) **Compounded levy scheme:** Rule 15 of Central Excise Rules, 2002 empowers Central Government to specify [by notification in the Official Gazette] the goods in respect of which an assessee shall have the option to pay duty of excise on the basis of specified factors [such as size of equipment employed, number and types of machines used for manufacture etc] relevant to production of such goods at specified rates. The prescribed is required to be paid by the concerned manufacturers for the specified period. The advantage of this scheme is that it frees the manufacturer from observing day to day Central Excise Formalities and maintenance of detailed accounts after making the lump sum periodic payment. Hence, this scheme is quite useful for small manufacturers. The scheme is presently notified in respect of stainless steel patta/patties and aluminium circles. It is worth mentioning here that aforesaid goods are eligible for SSI Exemption. In addition, from the government's perspective also it is a simplified scheme.

(iii) **Tariff Value:** It is Notional Value for the purpose of calculating the duty payable. In pursuance of provisions of Section 3(2) of Central Excise Act, 1944 Central Government can fix different tariff values for different classes of goods or goods manufactured by different classes or sold to different classes of buyers. The consequence of fixing Tariff Value in respect of concerned goods is that the duty is to be paid as a percentage of 'Tariff Value' and not on the basis of Assessable Value fixed under section 4 of Central Excise Act, 1944.

- (iv) **Duty based on production in respect of notified goods:** According to Section 3A of Central Excise Act, 1944 in order to safeguard the revenue the Central Government may notify goods on which excise duty shall be levied and collected on the basis of production capacity of the factory. The annual capacity fixed will be deemed to be annual production of such goods from the factory. If the factory does not operate for a part of the year, annual production will be calculated on proportionate basis. Further, if factor on the basis on which annual capacity is determined undergo change during the year, the annual capacity will be re-determined. This scheme has so far been notified in respect of Pan Masala containing tobacco [popularly known as Gukta] unmanufactured tobacco bearing a brand name, chewing tobacco and Jarda scented tobacco. In addition, this scheme does not apply to EOU.

Question 5

Briefly explain the situations where transaction value does not apply ?

Answer

According to Section 4 of Central Excise Act, 1944 following four conditions are required to be satisfied individually and cumulatively for valuing excisable goods on the basis of transaction value:

- (a) There should be sale of goods.
- (b) The goods sold should be for delivery at the time and place of removal.
- (c) The assessee and the buyer of the goods should not be related persons.
- (d) The price should be sole consideration for the sale.

In those cases where any of the above requirements are not fulfilled, the assessable value should not be Transaction Value. In such cases the assessable value is required to be determined on the basis of Central Excise (Determination of Price of Excisable Goods) Rules, 2000.

Question 6

The assessee was a manufacturer of I.C. engine parts like piston and gudgeon pins. He used to procure from the market piston rings and circlips and supply them along with the items that he had manufactured, to the buyers. He was also selling these procured items separately. The department contended that those bought-out items, supplied along with the manufactured items, were part of piston assembly and therefore, their value should be included in the value of the piston assemblies cleared by the manufacturer. But the assessee contended that the piston rings and circlips were all different parts of I.C. engine and therefore they were not to be considered as parts of another item. Decide whether the contention of the department is correct or not.

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Answer

This problem is based on the case of **Goetze (India) Ltd. v. CCE, Chandigarh 2004 (169) ELT 274 (Tri.-Del.)**. The case was decided in favour of the assessee. The Tribunal observed that the trading practice made it clear that each of the item was bought and sold separately and not as parts of one item. The fact that they were assembled together in an I.C. engine or that each part had an integral function in an assembly was not sufficient to hold that one item formed part of another item.

The Tribunal reiterated the well settled law that excise duty was a levy on manufacture and a manufacturer would be liable to pay duty on the goods manufactured by him and not on all the goods supplied by him. Therefore, it was decided by the Tribunal that value of such items would not be included in the assessable value of the manufactured goods.

In view of the abovementioned decision, the contention of the department is not correct.

Question 7

When a person shall be deemed to be a related person for the purpose of valuation under the Central Excise Act?

Answer

Section 4(3)(b) of Central Excise Act, 1944 states that persons shall be deemed to be related if:

- (i) they are inter-connected undertakings;
- (ii) they are relatives;
- (iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
- (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

“Inter-connected undertakings” shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 and “relative” shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956.

Question 8

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.

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]

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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 9

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

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 10

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.

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 11:

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%

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

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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 12

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

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:-

1. 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].
2. 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 13

Comment on the following

- (i) *Excise department cannot challenge the reasonability of MRP printed on the package.*
- (ii) *If any excisable goods are exempted from duty of excise absolutely, the manufacturer of such goods will be bound to avail of the exemption.*

Answer

- (i) True. The central excise department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form [ITC Ltd. v. CCEx., New Delhi 2004 (171) ELT 433 (SC)].
- (ii) True. As per section 5A(1A) of the Central Excise Act, 1944, if any excisable goods is exempt from duty of excise absolutely, the manufacturer of such goods will be bound to avail the exemption.

Question 14

An assessee sold certain goods to PQR Company Limited for ₹ 20,000 on 09.09.2009. The buyer is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. The buyer did not sell the goods but used it as intermediary product. The cost of production of the goods was ₹ 16,000. What should be the assessable value? What should be the assessable value, if the goods were sold to unrelated person for ₹ 20,000, who also used it as

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intermediary product? You may assume that the price charged from the buyer is excluding excise duty and other taxes.

Answer

The proviso to Rule 9 of the Central Excise Valuation (Determination of Excisable Goods) Rules, 2000 lays down that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value thereof shall be determined in the manner specified in Rule 8.

Rule 8 provides that where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

Therefore, when the goods are sold to a related person, the assessable value shall be 110% of ₹ 16,000 (₹ 16,000 + ₹ 1,600) i.e., ₹ 17,600. However, when the goods are sold to unrelated buyer, the assessable value will be ₹ 20,000.

Question 15

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.

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 16

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.

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

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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.

Question 17

Define retail sale price in the light of provisions of Section 4A of Central Excise Act, 1944.

Answer

Retail Sale Price:-Explanation 1 to section 4A of the Central Excise Act, 1944 defines the retail sale price as the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

However, in case the provisions of the Central Excise Act, rules or Legal Metrology Act 2009 or the Rules made thereunder or under any other law for the time being in force require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Question 18

What are the conditions under which MRP based valuation shall apply under Central Excise?

Answer

The provisions relating to valuation of excisable goods based on MRP are dealt with in section 4A of the Central Excise Act, 1944. The conditions under which the MRP based valuation shall apply are as follows:

- (a) the excisable goods to be valued are covered under Legal Metrology Act 2009 or related rules or under any other law and such law requires to declare on the package the retail sale price thereof; and
- (b) the Central Government has notified the said goods as goods in relation to which the payment of excise duty shall be on the basis of the MRP less such deductions/abatements as it may allow in the notification. However, it must be noted that if the goods have been so notified, Legal Metrology Act 2009 or the rules made

thereunder must require a declaration of the retail sale price on the package of such goods.

Question 19

What legal/penal actions can be taken in case the retail sale price is not mentioned or is unduly tampered after the removal?

Answer

If the retail sale price is not mentioned on the excisable goods or is unduly tampered after the removal, then

- (i) such goods shall be liable to confiscation and
- (ii) the retail sale price of such goods shall be ascertained in the manner prescribed by the Central Government and such price shall be deemed to be the retail sale price.

Question 20

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 ₹ 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	30,000
Job worker's charges including profit	10,000
Transportation charges for sending the raw material to the job worker	3,000
Transportation charges for returning the finished packets to Asha Ltd.	3,000

Answer

As the product is under MRP scheme, the duty shall be payable only as per the provisions of section 4A of the Central Excise Act i.e. on the basis of MRP less abatement and not on the basis of material cost plus job charges etc. Section 4A overrides section 4 of the Central Excise Act.

Hence, assessable value in this case shall be determined as under:-

	₹
Retail sale price of 5000 packets = 5000 x 20 =	1,00,000
Less: Abatement @ 40%	<u>40,000</u>
Assessable Value	<u>60,000</u>

Selected Self-Examination Questions

Question 1

How are the goods valued when they are sold partly to a related person and partly to an unrelated person?

Question 2

What are the conditions under which MRP based valuation shall apply under Central Excise Act, 1944?

Question 3

State and briefly discuss the important deductions that are statutorily available under section 4 of Central Excise Act, 1944?

Question 4

How would you deal with 'Protective packing for safe transportation of goods' in the course of arriving at the assessable value of excisable goods?

Question 5

Differentiate between "Tariff value", "Transaction value" and "Normal value".

Question 6

On 25.02.2010 goods were removed from the factory at Chandigarh for sale from the depot at Mumbai. On that date the normal transaction value of the goods at Chandigarh factory was ₹ 10,000 and tariff rate was 8%. These goods were sold ex Mumbai depot on 3.3.2010. On that date the normal transaction value at Mumbai depot was ₹ 11,000 and tariff rate was 10%. The normal transaction value at Mumbai depot on 25.02.2010 was ₹ 9,000 and tariff rate was 8%. The manufacturer has paid duty @ 8% on ₹ 10,000, but the department claims duty @ 10% on ₹ 11,000. Discuss the correct approach to be adopted in the case.

Answer/Hint

According to Rule 7 of the Central Excise Valuation Rules, 2000, in cases where the goods are not sold at the factory gate or at the warehouse but they are transferred by the assessee to his depots or consignment agents or any other place for sale, the assessable value for the goods cleared from factory/warehouse shall be the normal transaction value of such goods at the depot, etc. at or about the same time on which the goods as being valued are removed from the factory or warehouse.

In the given case, ₹ 10,000 represents value on 25.02.2010 (time of removal) but it is not the value prevalent on the depot. Similarly, ₹ 11,000 represents depot price, but then it is not the price prevalent on 25.02.2010 (time of removal).

The correct value to be adopted in this case is the depot price of such goods (normal transaction value) on 25.02.2010 i.e., ₹ 9,000 and the correct rate will be 8%.

Question 7

ABC Ltd. of Kanpur agreed to sell an electric motor to DEF Ltd. of New Delhi for ₹ 15000.00 on ex-factory basis. Other particulars are:

- (i) Transportation and transit insurance were arranged by ABC Ltd. at the request of DEF Ltd. for ₹ 1250.00 and ₹ 1500.00 respectively which were charged separately. Actual transportation charges amounted to ₹ 1000.00 only.
- (ii) A discount of ₹ 1000 was given to DEF Ltd. on the agreed price on payment of an advance of ₹ 3500.00 with the order. (Ignore notional interest on advance)
- (iii) Interest of ₹ 800.00 was charged from DEF Ltd. as it failed to make the payment within 30 days.
- (iv) Packing charges of the motor amounted to ₹ 1300.00.
- (v) The expenditure incurred by ABC Ltd. towards 'free after sale service' during warranty period comes out to be ₹ 500 per motor.
- (vi) Dharmada charges of ₹ 200 were recovered from DEF Ltd.
- (vii) ABC Ltd. sold a lubricant worth ₹ 250.00 along with the motor to the interested customers. Lubricant which was purchased from the market by ABC Ltd. at ₹ 200 ensured durability and high efficiency of the motor. DEF Ltd. opted for the said lubricant.

Compute the assessable value.

Answer/Hint

- (i) Transportation charges will not be included in the assessable value as the sale is at the factory gate and the seller has merely arranged for the delivery. The payment made by the buyer in this case is not in connection with the sale but in connection with the transportation as the sale is over at the factory gate itself. Transit insurance will also not be included in the assessable value as delivery of goods to transporter is prima facie delivery of goods to buyer hence sale gets over at the factory gate itself. [*Escorts JCB Ltd. v. CCE 2002 146 ELT 31 (SC)*]. Profit of ₹ 250 earned on transportation charges will not be included in the assessable value [*Baroda Electric Meters Ltd. v. CCE 1997 (94) ELT 13 (SC)*].
- (ii) Discount of ₹ 1000 is given on ₹ 15000 (agreed price) i.e., the discounted price is ₹ 14000 however, as in this case price is not the sole consideration, the extra discount of ₹ 1000.00 will be included in the assessable value.
- (iii) Interest of ₹ 800 will not be included in the assessable value as the payment of such interest is not in connection with the sale but in connection with the payment of the consideration for sale. *CBEC Circular No. 643/34/2002-CX dated 1.7.2002* has confirmed that delayed payment charges will not be includible in the assessable value, if shown or indicated separately in invoice and charged over and above the sale price.

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- (iv) Packing charges will form part of the assessable value.
- (v) Charges for 'free after sale service' during warranty period are includible in the assessable value.
- (vi) Dharmada charges are includible in the assessable value [CBEC Circular No. 763/79/2003 C.X. dated 21.11.2003].
- (vii) Value of such lubricant will not be included in the assessable value as it is a purely trading activity and the sale of main article (motor) is independent of sale of optional bought out item (lubricant). Even the profit earned on such bought out item is not included in the assessable value of manufactured product [Triveni Engineering v. CCE 2000 (122) ELT 386 CEGAT].

Therefore, the assessable value will be:

$$₹ 14000 + ₹ 1000 + ₹ 1300 + ₹ 500 + ₹ 200 = ₹ 17000.00.$$

Question 8

Pristine Industries has got a contract from Cantburry Automobiles for supply of a machine used for welding the steel sheets. The various details are:

Particulars	₹
Price of machine (net of taxes and duties)	5,45,000.00
Machinery erection expenses	35,000.00
Packing (normally done by him for all machines)	20,000.00
Design and drawing charges relating to manufacture of machinery (Net of taxes and duties)	60,000.00
Central Sales Tax	2%
Central Excise Duty	10%
Cash discount (offered if full payment is received before dispatch of goods)	15,000
Bought out accessories supplied along with the machine (accessories were optional)	10,000
Cost of loading the machinery in the truck in the factory (not charged separately to Cantburry Automobiles)	3,500.00

Cantburry Automobiles made all the payment before delivery. You are required to compute the assessable value and the duty payable on the machine for Pristine Industries.

Answer/Hint

Computation of assessable value and duty payable

Particulars	₹
Price of machine (net of taxes and duties)	5,45,000.00

Machine installation expenses (See Note 1)	-
Packing	20,000.00
Design and drawing charges relating to manufacture of machinery (Net of taxes and duties)	60,000.00
Bought out accessories supplied along with the machine (See Note 2)	-
Cost of loading the machine in truck in the factory (See Note 3)	-
Total	6,25,000.00
Less : Cash discount (See Note 4)	15,000.00
Assessable Value	6,10,000.00
Excise duty @ 10%	61,000.00
Education cess @ 2%	1,220.00
Secondary and higher education cess @ 1%	610.00
Total duty payable	62,830.00

Note:

- 1: Installation expenses are not includible in assessable value [*Thermax Ltd. v. CCE 1998 (99) E.L.T. 481*].
- 2: Duty is not payable on optional bought out accessories supplied along with the machinery as it is a purely trading activity.
- 3: The cost of ₹ 3500.00 is already included in the selling price of machine (as it is not charged separately) and hence is not to be added again.
- 4: Cash discount is allowable as deduction if actually passed on to buyer [CBEC Circular No. 643/34/2002 – CX dated 01.07.2002].

Question 9

M/s. Well Welders manufactures welding electrodes that are put first in polythene bags and then packed together in cardboard cartons. They sell electrodes at the factory gate packed in cardboard cartons where such electrodes are also packed in wooden boxes when sold to outstation customers. Is the Department justified to include the cost of wooden boxes in the assessable value of the welding electrodes? Discuss with the help of case laws, if any.

Answer/Hint

Yes, department is justified to include the cost of wooden boxes in assessable value of welding electrodes because from the given facts it is clear that the cost of wooden boxes has been incurred by the reason of or in connection with the sale made to outstation customers.

As per Section 4(3)(d) of Central Excise Act, transaction value is the price actually paid, or payable, for the goods when sold and includes any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale.

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Further, Board has clarified by its *Circular No.354/81/2000 CE dated 30.06.2000* any charges recovered for packing are charges recovered in relation to the sale of the goods under assessment and will form part of transaction value of the goods.

Hence, charges for the wooden packing that are being recovered by M/s. Well Welders are the charges in relation to sale and will form part of assessable value irrespective of the fact whether packing is special or secondary.

Question 10

M/s. Cool Air manufactures complete ceiling fans excluding regulators that are purchased from other manufacturers. The contention of M/s. Cool Air is that since the regulators are not manufactured by them but, instead are purchased from outside, the value of the same should not form part of the assessable value of fans.

Do you agree to the stand taken by M/s. Cool Air? Give reasons in support of your answer.

Answer/Hint

Value of essential bought out items, supplied with the main article at the time of removal should be included in the assessable value as goods should be assessed in the stage in which they are removed. Further, the payment for such items is in 'connection with the sale' and the main article cannot work without the bought out part.

This view was followed by the Supreme Court in the case of *Khaitan Electricals Ltd. vs. CCE, New Delhi 2004 (92) ECC 633 (SC)*. The Court held that value of regulators of fans is includible in the assessable value of fans because these are parts of fans.

Question 11

Alpha Industries Ltd. manufactures shoes on the basis of bulk orders received from various Government Departments. Footwear is covered under the Third Schedule to the Central Excise Act, 1944. Alpha Industries Ltd. does not make any retail sale to individual buyers, nor does it affix any MRP on shoe packages sold by it. Even the necessary declarations required under statutes are not filed by it. How should the goods be valued?

Answer/Hint

A similar issue came up for consideration before the Tribunal in the case of *Commissioner of C. EX. & Cus., BBSR –II v. Mehar Shoes Industries 2004 (172) E.L.T. 409 (Tri. – Kolkata)*. The question, which arose before the Tribunal, was that whether the goods had to be valued as per the provisions of section 4 or as per the provisions of section 4A. The Tribunal followed the *Circular No. 625/16/2002 – C.X.*, dated 28.02.2002 that read:

“Section 4A of the Central Excise Act, 1944 is applicable in respect of those cases only where the manufacturer is legally obliged to print the MRP on the packages of the goods, under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law for the time being in force.

The basic issue, therefore, is to determine the circumstances in which section 4A of the Central Excise Act can be applied. The wording of section 4A (1) makes it very clear that it will apply only to such goods "..... in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976, or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods....". In other words, if there is no statutory requirement under the provisions of Weights and Measures Act to declare the retail sale price on the packages, section 4A will not apply. Chapter V of the Weights & Measures (Packaged Commodity) Rules, 1977 mentions the instances where MRP is not required to be printed on the packages. Thus, in these cases valuation will have to be done under section 4 of the Central Excise Act, 1944.

It is, therefore, clarified that, in respect of all goods (whether notified u/s.4A or not) in which there is no statutory requirement to print/declare the retail sale price on the packages under the provisions of the Standards of Weight & Measures Act, 1976, or the rules made there under or any other law for the time being in force, valuation will be done u/s.4 of the Central Excise Act, 1944 (or under section 3(2) of the Central Excise Act, 1944, if tariff values have been fixed for the commodity). Thus, there could be instances where the same notified commodity would be partly assessed on the basis of MRP u/s.4A and partly on the basis of normal price (prior to 1.7.2000) or transaction value (from 1.7.2000), u/s.4 of the C.E. Act, 1944.

It may be kept in mind that if an assessee does not declare or print the retail sale price in respect of a notified commodity, which it is statutorily required to do under the provisions of the Weights & Measures Act, or any other law for the time being in force, the goods, on removal, will be liable to confiscation u/s. 4A(4) of the Central Excise Act, 1944."

In the situation referred to in the question there is no legal obligation on the manufacturer to print the MRP on the shoe packages as the shoes are not sold in retail. Therefore, the basic condition for the shoes to be valued as per provisions of section 4A is absent i.e, the MRP is not affixed on the goods. Thus, abovementioned Circular should be followed in this case also and the valuation of the goods sold in bulk should be done as per section 4 and not as per section 4A.

Question 12

The value of the operational software should not be included in the value of the computer. Discuss the correctness of the statement with reference to the provisions of the Central Excise Act, 1944.

Answer/Hint

The issue was discussed in detail by the Supreme Court in the case of CCE, Pondicherry v. Acer India Ltd. 2004 (172) E.L.T. 289 (S.C.) wherein it was held by the Apex Court that the value of the operational software loaded on the computer is not includible in the assessable

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value of the computers.

Computer and operative softwares are different marketable commodities. They are available in the market separately and are classified differently. The rate of excise duty for computer is 16% whereas that of software is *nil*.

The computer and software are distinct and separate, both as a matter of commercial parlance and also under the statute. A computer may not be capable of functioning effectively without being loaded with software. However, it will not tantamount to bringing them within the purview of the part of the computer so as to include their value in the assessable value of the computers. Both computer and software must be classified under their respective headings viz., 84.71 and 85.24 and must be subjected to corresponding rates of duties separately.

Although the information contained in software is loaded in the hard disc, but the operational software does not lose its value and is still marketable as a separate commodity. It does not lose its character as a tangible goods being of the nature of CD-ROM. The fact that the manufacturers put different prices for the computers loaded with different types of operational software does not make any difference as regards nature and character of the 'computer'. Even if the manufacturers in terms of the provisions of a licence are obliged to preload software on the computer before clearing the same from the factory, the characteristic of the software cannot be said to have transformed into hardware so that it can be charged to excise duty along with the computer.

As regards valuation it was pointed out by the Apex court that the valuation of goods would be subjected to the charging provisions contained in section 3 of the Act and also subsection (1) of section 4. The definition of 'transaction value' must be read in the text and context of section 3, the charging section i.e., the expressions 'by reason of sale' or 'in connection with the sale' contained in the definition of 'transaction value' cannot be used to justify the chargeability of software to excise duty. These expressions refer to such goods, which are excisable to excise duty and not the one, which are not excisable. The legal text contained in Chapter 84, as explained in Chapter Note 6, clearly states that software, even if contained in hardware, does not lose its character as such. When an exemption has been granted from levy of any excise duty on software whether it is operating software or application software in terms of heading 85.24, no excise duty can be levied thereupon indirectly as it is impermissible to levy a tax indirectly.

The excise duty is chargeable on the excisable goods and not on the goods, which are not excisable. Thus, if non-excisable goods are transplanted into excisable goods, the assessee is not liable to pay excise duty on the combined value of both. Excise duty, in other words, is leviable only on the goods, which answer the definition of 'excisable goods' and satisfy the requirement of section 3. A machinery provision contained in section 4 and that too the explanation contained therein by way of definition of 'transaction value' can neither override the charging provision nor by reason thereof 'goods' which is not excisable will become

excisable only because one is fitted into the other. While computing costs of manufacturing, expenses that add to the value of the excisable goods are to be considered and not the value of non-excisable goods.

Question 13

M/s. Della Traders is in the practice of charging each of its customers compulsorily, a certain amount as labour charges for repair of the finished products during warranty period. This repair is done by the dealers. The Central Excise Officer added the value of such charges in the assessable value of the finished products for the purpose of computation of duty, on the ground that such repair charges are in the nature of 'after sale service' done by M/s. Della Traders to promote marketability. However, the contention of M/s. Della Traders is that such charges are recovered as service charges for repairs, a service being provided by the dealers. Do you agree to the stand taken by the Central Excise Officer? Give reasons.

Answer/Hint

The facts of the case are similar to the case of Collector of Central Excise, Chandigarh v. Eicher Tractors Ltd. 2004 (164) E.L.T. 129 (S.C.). On this issue, the Supreme Court observed that service is distinct and separate from repairs. Dealers providing 'service' have nothing to do with 'repairs' during warranty period. If there is a provision for free repair during warranty period then that is something which is being provided by manufacturers. Such service may be provided through dealers for benefit of the customer to whom an additional value is provided. Hence, it was held by the Apex Court that cost of labour charges recovered from the buyers for free repair provided by dealers during warranty period should be included in the assessable value.

Applying the ratio of the abovementioned decision in the given case, it can be said that the contention of M/s. Della Traders of service being provided by dealer is erroneous. Therefore, the stand taken by the Central Excise Officer is correct in law.

Question 14

Infotech systems manufactured mini computer processing systems with floppy drive, keyboard, and CPU. In around 30% of cases, Infotech Systems bought duty paid monitors and printers from the market and supplied to customers on their request. A classification list which did not include monitors and printers was filed by Infotech systems and was approved.

Chapter Note 5 to Chapter 84 specifies that a monitor or printer has to be classified along with the computer. Therefore, by virtue of this Chapter Note the Central Excise Officer took a view that the value of monitors and printers should be included in the value of the computers.

Give your opinion on the issue with the help of decided case laws, if any.

Answer/Hint

This issue was taken up by the **Supreme Court in the case of CCEx., Mumbai v. C.M.S. Computers P. Ltd. 2005 (182) E.L.T. 20 (S.C.)**. The facts of the given situation are similar to that of the above-mentioned case.

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In this case, the Apex Court opined that a monitor or a printer is not an essential part of the computer. It is a peripheral item which may be required along with a computer. Merely because a Tariff Entry may also include a monitor or printer, it would not lead to the conclusion that a monitor or printer is an essential part of a computer. All that the Chapter Note indicates is that not only the computer but a monitor and a printer are also excisable products. However, the monitor and/or printer would be excisable only in the hands of their manufacturer. The assessee did not manufacture the monitor or the printer. The Supreme Court observed that in approximately 70% of the cases monitors and printers were not supplied along with the computer sold by the assessee. Thus, it could be concluded that the assessee did not sell their computer as a unit including a monitor and a printer. Therefore, Apex Court held that as monitor and printer were not essential parts of the computer their value could not be included in the value of computer. However, it was clarified by the Supreme Court that the situation may be different where a manufacturer sells a computer with a monitor and a printer as a unit.

Therefore, in view of the above-mentioned case law the stand taken by the Central Excise Officer is not correct.

Question 15

Beta Ltd. has sold refractories to Omega Steel Plant under a contract at a particular price. For the supply of refractories, Beta Ltd. has availed the duty exemption scheme contained in the Export and Import Policy. In order to enable Beta Ltd. to avail the duty exemption scheme, Omega Steel Plant has surrendered the advance licences held by them for import of refractories.

Against such surrender, advance intermediate licences for import of inputs have been issued to Beta Ltd. Consequently, Beta Ltd. has imported the inputs without payment of customs duty as well as got them at a lower price than what they would have paid had they purchased the same in India. The excise department has claimed that the benefit derived by Beta Ltd. under the advance intermediate licence, issued to them as a result of surrender of licence by Omega Steel Plant, is additional consideration towards the value of the refractories and that this additional consideration forms part of the price of the refractories for purposes of excise duty.

Do you think that the stand taken by the excise department is correct in law? Discuss.

Answer/Hint

The facts of the problem are similar to that of the case of CCEx. Bhubaneshwar-II v IFGL Refractories Ltd. 2005 (186) ELT 529 (SC). In this case, the Supreme Court has held that surrendering of licences by buyer and as a result thereof, assessee getting licences has nothing to do with any Import and Export policy. This is directly a matter of contract between two parties which has resulted in additional consideration by way of "advance intermediate

licence" flowing from buyer to the assessee. The Apex Court stated that had the seller procured the advance intermediate licence on its own i.e. without buyer having to surrender its licence for the purposes of the contract, then there would have been no additional consideration. However, since the licence is obtained in pursuance of the contract of sale, there is directly a flow of additional consideration from the buyer to seller. Thus, the Supreme Court held that the value thereof has to be added to the price of the refractories.

The Apex Court further clarified that where parties take advantage of policies of Government and benefits flow therefrom, then such benefit can be said to be an additional consideration.

In view of the abovementioned decision, the stand taken by the excise department holds good.

Question 16

Hema Exports gets its product manufactured on job work basis from Meltex Ltd., an independent processor. The details of the transaction are as follows:

Particulars	Amount (₹)
Cost of material sent to job worker for processing	5,000
Processing charges (₹ 1000 processing charges & ₹ 500 profit)	1,500
Transportation charges for receiving the goods at the premises of the processor	200
After processing, goods are sold by Hema Exports at ₹ 8,000 from the premises of Meltex Ltd. Ascertain the assessable value of the goods as per section 4 of the Central Excise Act, 1944.	

Answer/Hint

The assessable value of goods would be ₹ 8000 in terms of Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 as the goods are cleared by Hema Exports directly from the premises of Meltex Ltd.