

Exemption Based on Value of Clearances (SSI)

Question 1

Explain five instances when small scale exemption will be available to the excisable goods bearing the brand name of another person.

Answer

SSI Notification No. 8/2003 dated 1.3.2003 denies the benefit of the exemption for clearances done on products which bear a brand name of another person. This means that such clearances would attract normal rate of duty. However, in the following exceptional situations small scale exemption will be available to the excisable goods bearing the brand name of another person:

(A) Manufacturers of components/parts of any machinery/equipment/appliances for use as original equipment in the factory

Where the manufacturer manufactures components/parts of any machinery, equipment or appliance for use as original equipment in the factory even if such components have a trade name or brand name, the exemption would be available subject to provisions of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 in respect of clearances exceeding rupees hundred lakh.

(B) Goods bearing the brand name of KVIV/NSIC/SSIDC etc.

When the goods bear a brand name of Khadi and Village Industries Commission (KVIC) or a State Khadi and Village Industry Board or National Small Industries Corporation (NSIC) or a State Small Industries Development Corporation (SSIDC) or a State Small Industrial Corporation, such goods are entitled to SSI exemption.

(C) House mark in respect of medicinal preparations

The Supreme Court has held in *Astra Pharmaceutical P Ltd. V CCE 1995 (75) E.L.T. 214* that in respect of medical preparations, the mark made by the manufacturers would be called a "house mark" and would not be the brand name. Thus, the monograph which identifies a manufacturer's name would not be a brand name.

(D) Raw materials bearing the brand name

Raw materials received by the manufacturers which may bear a brand name are entitled to benefit of Notification.

(E) Goods manufactured in Rural Area

When the goods bearing the brand name of another person are manufactured in a rural area, those goods shall be eligible for SSI Exemption.

Question 2

An SSI manufacturer may like to pay full duty even when he is eligible for SSI exemption

- (a) *Can he do so?*
- (b) *Why he would like to pay full duty?*
- (c) *What is the duty payable?*

Answer

- (a) Yes, the concerned manufacturer can do so. In such a situation he can avail CENVAT on inputs.
- (b) He would like to pay full duty if his customer wants to avail CENVAT and if duty paid on his inputs is quite substantial. As a result, the effective cost of the buyer will be reduced.
- (c) Duty payable will be normal duty less concession, if any available under any other exemption notification.

Question 3

An SSI unit (manufacturing goods eligible for benefit of SSI exemption notification) has cleared goods of the value of ₹ 60 lakhs during the financial year 2011-12. The effective rate of Central Excise Duty on goods manufactured by it is 10% Ad valorem. Education Cesses are payable at applicable rates. What is the correct amount of duty which the unit should have paid on above clearance for 2011-12.

Answer

If the relevant SSI Unit is desirous of availing CENVAT Credit on input, duty will be payable at normal rates i.e. 10.3% on ₹ 60 lakh which works out to be ₹ 6.18 lakh. Contrarily, if the said unit does not intend to avail CENVAT Credit on input, the duty payable will be NIL.

Question 4

A small scale unit manufacturer had achieved a sales of ₹ 89 lakh during the year 2010-11. Turnover achieved during 2011-12 was ₹ 1.52 crores. Normal duty payable on the product is 10% plus applicable education cesses. Find the total excise duty paid by the manufacturer during 2011-12 in each of the following cases:-

- (A) *If the unit has availed CENVAT Credit.*
- (B) *If the unit has not availed CENVAT Credit*

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Answer

- (A) **If the unit has availed CENVAT Credit:** In this case the unit is required to pay duty at normal rates on the entire turnover i.e. 10.30% [consisting of Excise Duty @ 10%, Primary Education Cess @ 2% on Excise Duty and Secondary and Higher Education Cess @ 1% on Excise Duty] on 1.52 crores which works out to be ₹ ₹ 15,65,600/-
- (B) **If the unit has not availed CENVAT Credit:** In this case duty payable will be computed as under:
- (i) On ₹ 150 lakhs = NIL
 - (ii) On subsequent sales= Normal duty @ 10.30% i.e. 10.30% on ₹ 2,00,000 which works out to be ₹ 20,600/-

Question 5

Small & Company, a small scale industry, provides the following details. Determine the eligibility for exemption based on value of clearances for the financial year 2011-12 in terms of Notification No. 8/2003-CE dated 1.3.2003 as amended:

	Particulars	₹. (Lakhs)
(i)	Total value of clearances during the financial year 2010-11 (including VAT ₹ 50 lakhs)	870
(ii)	Total exports (including for Nepal and Bhutan ₹.200 lakhs)	500
(iii)	Clearances of excisable goods without payment of duty to a unit in Software Technology Park	20
(iv)	Job work under Notification No. 84/94-CE dated 11.4.94	50
	Job work under Notification No. 214/86-CE dated 25.3.86	50
(v)	Clearances of excisable goods bearing brand name of Khadi and Village Industries Commission	200

Make suitable assumptions and provide brief reasons for your answers where necessary.

Answer

Calculation of value of clearances during financial year 2010-11

Particulars	₹ (in lakhs)
Total value of clearances during the financial year 2010-11	870
Less : VAT included in above	<u>50</u>
	820
Less : 1. Exports excluding exports to Nepal and Bhutan ₹ (500-200) lakh	300
Clearances of excisable goods without payment of duty to a unit in Software Technology Park	20

Job work done under Notification No. 84/94-CE dated 11.04.94 and under Notification No. 214/86-CE dated 25.3.86 i.e. ₹ (50 + 50) lakh	<u>100</u>
Value of clearances during the financial year 2010-11	<u>400</u>

Notes:- While computing value of clearances during financial year 2010-11 (as shown above),

1. export turnover has been excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as "clearances for home consumption".
2. job work under Notification No. 214/86 - CE and Notification No. 84/94-CE is not taken into consideration.
3. clearances of excisable goods without payment of duty to a unit in Software Technology Park are deducted.
4. clearances of excisable goods bearing brand name of Khadi and Village Industries Commission are included.

In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. in a financial year, the total turnover of a unit **should not exceed ₹400 lakh in the preceding year**. Since the value of clearances in the previous financial year 2010-11 does not exceed ₹400 lakh, the Small & Company is eligible to claim the benefit of Notification No. 8/2003 dated 1st March, 2003 in the financial year 2011-12.

Question 6

CTL Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2010-11, the total value of clearances from the unit was ₹450 lakh. The break up of clearances is as under:

- (i) Clearances worth ₹50 lakh of certain non-excisable goods manufactured by it.
- (ii) Clearances worth ₹ 50 lakh exempted under specified job work notification.
- (iii) Exports worth. ₹ 100 lakh (₹.75 lakh to USA and ₹.25 lakh to Nepal).
- (iv) Clearances worth. ₹ 50 lakh which were used captively to manufacture finished products that are exempt under notifications other than Notification No. 8/2003-CE dated 1.3.2003 as amended.
- (v) Clearances worth ₹200 lakh of excisable goods in the normal course.

Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1.3.03 as amended for the year 2011-12.

Answer

In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding year. For the purpose of computing the turnover of ₹ 400 lakh:-

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- (i) Turnover of non-excisable goods has to be excluded. Therefore, clearances of non-excisable goods of worth ₹ 50 lakh shall be excluded.
- (ii) Clearances exempted under job work notifications should not be considered. Therefore, exempted clearances of ₹ 50 lakh under job work notification will be excluded.
- (iii) Export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as "clearance for home consumption". Therefore, clearances worth ₹ 75 lakh exported to USA will be excluded while clearances worth ₹ 25 lakh exported to Nepal will be included.
- (iv) Value of intermediate products manufactured has to be included if the final product is exempt under any notification other than Notification No. 8/2003-CE dated 1-3-2003*. Therefore, clearances worth ₹ 50 lakh which were used captively to manufacture finished products exempt under notifications other than Notification No. 8/2003 will be included.
- (v) Clearances of excisable goods of ₹ 200 lakh in the normal course will be considered.

Therefore, the turnover of CTL Ltd. for claiming the SSI exemption will be:-

$$= ₹ 450 \text{ lakh} - (₹ 50 \text{ lakh} + ₹ 50 \text{ lakh} + 75 \text{ lakh}) = ₹ 275 \text{ lakh}$$

Since the turnover is less than ₹ 400 lakh, CTL Ltd. will be eligible for exemption under Notification No. 8/2003 – CE in the financial year 2011-12.

***Note** - It is assumed that the value of clearances of final products manufactured from such intermediate products is not included in the total turnover of ₹ 450 lakh of the unit.

Question 7

M/s. RKR manufactures footwear bearing the brand name "Lotus" which is owned by M/s. Lotus Industries Ltd. for manufacture of detergent powder. When the department disallowed the benefit of small scale exemption under Notification No. 8/2003-C.E. on the ground that their goods are bearing brand name of another person, M/s. R.K.R. contended that M/s. Lotus Industries Ltd. owns brand name .Lotus only for detergent power and not for footwear. Decide the case with reasons and mention case law, if any.

Answer

Notification No. 8/2003-CE dated 01.03.2003 , inter alia, provides that the benefit of Small Scale Industry (SSI) exemption shall not apply to the goods bearing a brand name or trade name, whether registered or not, of another person. Brand name or trade name means:

- .. a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing
- .. which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade
- .. between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

Supreme Court has held in the case of **CCEx, v. Bhalla Enterprises 2004 (173) E.L.T. 225 (S.C)** that:

- (i) **Notification No. 8/2003 dated 01.03.2003** debars those persons from the benefit of the SSI exemption who use someone else name in connection with their goods, either with the intention of indicating, or in a manner so as to indicate a connection between their goods and such other person; or
- (ii) **there is no requirement for the owner of the trade mark using the name or mark with reference to any particular goods;**
- (iii) The object of the Notification is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name.

In other words, **if brand name of another person is used even in respect of goods of other class or kind (different from the nature of the goods of the owner of brand name), benefit of SSI exemption shall not be available.**

In view of the aforementioned provisions, M/s RKR will not be entitled to the SSI exemption as their goods bear the brand name "LOTUS" owned by M/s. Lotus Industries Ltd. The fact that M/s. RKR uses the brand name on footwear while the same is being used by M/s. Lotus Industries Ltd. on detergent powder is of no relevance.

Question 8

Y & Co. is a small scale unit located in a rural area and is availing the benefit of small scale exemption under Notification No. 8/2003-C.E. during the year 2011-12. Determine the value of the first clearances of the unit and duty liability on the basis of data given below:-

		₹
(1)	Total value of clearances of goods with own brand name	75,00,000
(2)	Total value of clearances of goods with brand name of other parties	90,00,000
(3)	Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances)	35,00,000
	Normal rate of Excise duty - 10%	
	Education cess @ 2% of Excise duty.	
	Secondary and higher education cess@ 1% of Excise duty.	

Calculations should be supported with appropriate notes.

It may be assumed that the unit is eligible for exemption under Notification No. 8/2003.

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Answer

Computation of the value of first clearances and the duty liability:-

	Particulars	₹.
1.	Value of clearances of goods with own brand name	75,00,000
2.	Value of clearance of goods with brand name of other parties (Note-1)	<u>90,00,000</u>
	Total value of first clearances	<u>1,65,00,000</u>
	Value on which duty is chargeable (₹ 1,65,00,000 – 1,50,00,000) = ₹ 15,00,000	
	Excise duty payable @ 10% (₹ 15,00,000 × 10%)	1,50,000
	Education cess payable @ 3% (₹ 1,50,000 × 2%)	3,000
	Secondary and higher education cess @ 1% of Excise duty. (₹ 1,50,000 × 1 %)	1,500
	Total excise duty liability	<u>1,54,500</u>

Notes:

1. SSI units in **rural areas** are eligible to clear goods **with others' brand name** availing the exemption as per **Notification No. 8/2003**.
2. **Notification No. 8/2003** also provides that value of clearances of goods totally exempt under other notifications need not be taken into account for calculation of aggregate value of first clearances.

Question 9

Mahesh Ltd., which is engaged in manufacturing of excisable goods, started its business on 1st June, 2011. It availed SSI exemption during the financial year 2011-12. The following are the details available to you:

		₹
(i)	12,500 kg of inputs purchased @ ₹1,190.64 per kg (inclusive of Central excise duty @ 10.30%)	1,48,83,000
(ii)	Capital goods purchased on 31.5.2011 (inclusive of excise duty @ 10.30%)	80,09,400
(iii)	Finished goods sold (at uniform transaction value throughout the year)	3,00,00,000

You are required to calculate the amount of excise duty payable by M/s Mahesh Ltd. in cash, if any, during the year 2011-12. Rate of duty on finished goods sold may be taken as 10.30% for the year and you may assume the selling price exclusive of central excise duty.

There is neither any processing loss nor any inventory of input and output. Output input ratio may be taken as 2:1.

Answer

Computation of the excise duty payable by M/s. Mahesh Ltd. during the financial year 2009-10:-

Excise duty on dutiable clearances:-

Particulars	Amount (₹.)
Clearances of finished goods made during the year	3,00,00,000
Less : Exemption of ₹ 150 lakh under Notification No. 8/2003 dated 01-03-2003	<u>1,50,00,000</u>
Dutiable clearances	<u>1,50,00,000</u>
Excise duty @ 10.30% (₹1,50,00,000 × 10.30%)	<u>15,45,000</u>

CENVAT credit available on inputs:

(Used in the manufacture of dutiable clearance. No CENVAT credit will be available in respect of exempt clearances)

% of dutiable goods in the finished goods sold = $\frac{1,50,00,000}{3,00,00,000} \times 100$	50%
Excise duty paid on the value of inputs consumed in manufacture of dutiable clearances = $(148,83,000 \times 10.30)/110.30 \times 50\%$ (Since output input ratio is fixed)	6,94,900

CENVAT credit available on capital goods:-

(CENVAT credit will be available @ 50% of total excise duty in current financial year 2011-12; balance credit to be availed during the next financial year 2012-13)

Particulars	Amount (₹)
(50% of ₹ 80.094 lakh) x 10.30/110.30	3,73,966
CENVAT credit can be availed on capital goods, but can be utilized only in respect of duty payable on clearances after first clearances of ₹ 150 lakhs	

Excise duty payable

Particulars	Amount (₹)
Excise duty on dutiable goods	15,45,000
Less: CENVAT credit available on inputs	6,94,900
Less: CENVAT credit available on capital goods	<u>3,73,966</u>
Excise duty payable	<u>4,76,134</u>

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Question 10

If a manufacturer manufactures various products, can he avail CENVAT credit on some products and exemption under Notification No. 8/2003-CE dated 1.3.03 on some other products?

Answer

No, if a manufacturer manufactures various products, he has to avail CENVAT for all items or opt for exemption for all products.

This view has been upheld in **CCE v. Ramesh Foods Products (2004) 174 ELT 310 (SC)**, where it has been held that simultaneous availment of CENVAT credit on some products and exemption on some other products is not permissible.

Question 11

Comment on the following:-

SSI units whose turnover exceeds Rupees 140 lakhs per annum have to give a declaration in the prescribed form.

Answer

False. SSI units whose turnover exceeds ₹90 lakhs per annum have to give a declaration in the prescribed form.

Question 12

A SSI unit has effected clearances of goods of the value of ₹ 475 lacs during the financial year 2009-10. The said clearances include the following:

(i) Clearance of excisable goods without payment of excise duty to a 100% EOU	₹120lacs
(ii) Job work in terms of Notification No. 214/86 CE, which is exempt from duty	₹75 lacs
(iii) Export to Nepal and Bhutan	₹50 lacs
(iv) Goods manufactured in rural area with the brand name of the others	₹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 for the financial year 2010-11.

Answer

A SSI unit shall be eligible for benefit of exemption notification only if value of clearances during **preceding financial year does not exceed ₹400 lakhs.**

The item wise treatment shall be as under -

1. Clearance to 100% EOU shall be excluded for calculating the limit of 400 lakhs.
2. Clearance under *Notification No. 214/86* shall be excluded for calculating the limit of 400 lakhs.

3. Export to Nepal & Bhutan is considered as home consumption and thus, it shall be included for computing limit of 400 lakhs.
4. The turnover of goods manufactured in rural area with the brand name of the others shall be included for computing limit of ₹400 lakhs.

Calculation of clearances during financial year 2009-10:

Total value of clearances		475 lakhs
Less: Clearance to 100% EOU	120 lakhs	
Clearance under <i>Notification No. 214/86</i>	<u>75 lakhs</u>	<u>195 lakhs</u>
		<u>280 lakhs</u>

As the value of clearances for home consumption in financial year 2009-10 does not exceed ₹ 400 lakhs, the benefit of exemption shall be available to the SSI unit during financial year 2010-11.

Selected Self-Examination Questions

Question 1

What are the reasons for clubbing of clearances of SSI Units?

Question 2

What are the provisions regarding general exemption to SSI units?

Question 3

Write a note with reference to Notification No. 8/2003 dated 01.03.2003 relating to small scale units:

- (A) Availability of CENVAT Credit on capital goods
- (B) Determination of 'value' for the purposes of the said notification
- (C) Clearances of excisable goods without payment of duty

Question 4

Answer the following questions with reference to Notification No. 8/2003-CE dated 01.03.2003 relating to small scale units:

- (i) What is the eligible turnover for claiming exemption under the said notification?
- (ii) How will the turnover be computed when the manufacturer has more than one factory?
- (iii) What does 'value' mean for the purposes of the said notification?
- (iv) Comment on the availability of CENVAT credit on capital goods under the said notification.

Question 5

What is the treatment in respect of 'clearances of excisable goods without payment of duty' as

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specified in the said notification?

Answer/Hints

(i) The eligible turnover for claiming exemption under the said notification is ₹400 lakh. The units whose value of clearances computed in accordance with *Notification No.8/2003* is less than or equal to 400 lakh (4 crore) in the previous financial year are eligible for the benefit of exemption in the current financial year.

(ii) When a manufacturer clears the goods from one or more factories, the turnover of all the factories have to be aggregated for the purpose of claiming exemption under the said notification.

(iii) The value for the purposes of the said notification would mean the value fixed under section 4 or section 4A or the tariff value fixed under section 3(2).

(iv) The units availing the benefit of said notification cannot avail CENVAT credit on inputs. However, they can avail CENVAT credit on capital goods but the same can be utilized for payment of duty on final products only after the turnover reaches ₹150 lakh.

(v) Paragraph 3A of the said notification lays down that for computing the value of clearances of all excisable goods for home consumption (₹400 lakh), the following 'clearances of excisable goods without payment of duty' shall not be taken into account, namely-

- (a) to a unit in the Free Trade Zone
- (b) to a unit in the Special Economic Zone
- (c) to a 100% Export Oriented Undertaking
- (d) to a unit in the Electronic Hardware or Software Park
- (e) supplies to United Nations or an international organization for their official use or supplied to projects funded by them on which exemption of duty is available in terms of Notification No.108/95-CE dated August, 28, 1995.

Question 6

ABC Ltd. is a manufacturing unit situated in Kanpur. In the financial year 2009-2010 the total value of clearances for the unit was ₹550 lakh. The break-up of clearances is as under:

- (a) Clearances worth ₹50 lakh without payment of duty to a unit in special economic zone.
- (b) Clearances worth ₹50 lakh exempted under job-work Notification No. 214/86 CE, dated 25.03.1986.
- (c) Export clearances worth ₹100 lakh (75 lakh to Sweden and 25 lakh to Nepal).
- (d) Clearances worth ₹50 lakh which are used captively to manufacture finished products that are eligible for exemption under notification 8/2003. Such clearances are also eligible for exemption under notification 8/2003.
- (e) Clearances worth ₹300 lakh of excisable goods in the normal course.

Briefly state whether the unit will be eligible to the benefits of exemption under notification 8/2003 for the year 2010-2011.

Answer/Hint

In order to claim the benefit of SSI exemption the total turnover of a unit must not exceed ₹ 400 lakh. While calculating turnover of ₹400 lakh, some of turnover of SSI is not to be considered, while some has to be considered. This has been discussed below:

- (a) Clearances of excisable goods without payment of duty to a unit in special economic zone has to be excluded. Therefore, ₹50 lakh worth clearances to a unit in special economic zone without payment of duty is not to be considered for computing the turnover of ₹400 lakh.
- (b) Exempted clearance under Job work notifications are not to be considered for computing the turnover of ₹400 lakh. Therefore, exempted clearances worth ₹50 lakh under job work notification will not be considered.
- (c) Export turnover has to be excluded from the turnover of ₹400 lakh. However, export to Nepal and Bhutan cannot be excluded as it is treated as 'clearance for home consumption'. Therefore, clearances worth ₹75 lakh exported to Sweden will not be included in computing ₹400 lakh while clearances worth ₹25 lakh exported to Nepal will be included in the said turnover.
- (d) Value of intermediate products manufactured while producing final products which are eligible for exemption under *Notification No. 8/2003* will not be considered for calculating limit of ₹400 lakh if both intermediate and final products are eligible for exemption under *Notification No. 8/2003*.
- (e) Clearances of excisable goods worth ₹300 lakh in the normal course will be considered for computing the limit of ₹400 lakh. Therefore, the eligible total turnover can be calculated as:

$$₹ 550 \text{ lakh} - (50 \text{ lakh} + 50 \text{ lakh} + 75 \text{ lakh} + 50 \text{ lakh}) = ₹325 \text{ lakh.}$$

Since the eligible turnover comes out to be less than 400 lakh, ABC Ltd. will be eligible to the SSI concession.

Question 7

Tasty Biscuits Ltd. manufactures biscuits under the brand name of "Tasty" on its own account and under the brand name of "Chocopie" on job work basis, on behalf of M/s. Excellent Confectioners. Tasty Biscuits Ltd. has been availing the benefit of SSI exemption for the goods cleared under its own brand name. Tasty Biscuits Ltd. now files an application for availing the Cenvat benefit in respect of "Chocopie" brand biscuits manufactured by it on job work basis. However, the Central Excise Officer rejects the application. Is the stand taken by the Central Excise Officer correct?

Examine the case with the help of decided case laws, if any.

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Answer/Hint

The facts of the given case are similar to those of *CCEx. Ahmedabad v. Ramesh Food Products 2004 (174) ELT 310 (SC)*. In this case, the Supreme Court observed that the *Notification No.175/86-C.E.*, clearly demarcated the two categories of manufacturers. A clear-cut distinction was explicit between a manufacturer availing Modvat credit under Rule 57A (new Rule 3 of Cenvat Credit Rules, 2004) and another not opting for the Modvat scheme. Input duty relief was given under the scheme to the manufacturers who had opted to operate under the scheme by applying for it in the prescribed manner. Ultimately, the manufacturers had the choice of choosing one of the two concessions, i.e. either the Modvat scheme or *Notification 175/86-C.E.* It was held by the Apex Court that since there was no one to one correlation between the inputs and final products under Modvat Scheme, it would not be possible to allow the manufacturer to simultaneously avail Modvat for some products and avail full exemption for others under small-scale exemption scheme.

The same analogy can be applied in the present case too. *Notification No.8/2003* also differentiates between manufacturer availing Cenvat credit under Rule 3 of Cenvat Credit Rules, 2004 and the one not opting for the Cenvat scheme. Thus, here also simultaneous availment of Cenvat for some products and full exemption for others under the scheme of small-scale exemption shall not be permissible. Thus, the stand taken by the Central Excise Officer is correct.

Question 8

Can cenvat credit on capital goods be availed by SSI units that avail the benefit of exemption notification No.8/2003-CE?

Question 9

Can cenvat credit on input services be availed by SSI units that avail the benefit of exemption notification No.8/2003-CE?

Question 10

What are details to be intimated by assessee to Deputy Commissioner/Assistant Commissioner of Central Excise when he wants to opt for Notification No.8/2003-CE?