

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 2012-13. The effective rate of Central Excise Duty on goods manufactured by it is 12% 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 2012-13.

Answer

If the relevant SSI Unit is desirous of availing CENVAT Credit on input, duty will be payable at normal rates i.e. 12.36% on ₹ 60 lakh which works out to be ₹ 7,41,600. 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 2011-12. Turnover achieved during 2012-13 was ₹ 1.52 crores. Normal duty payable on the product is 12% plus applicable education cesses. Find the total excise duty paid by the manufacturer during 2012-13 in each of the following cases:-

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

13.3 Indirect Tax Laws

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. 12.36% [consisting of Excise Duty @ 12%, 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 ₹ 18,78,720/-

(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 @ 12.36% i.e. 12.36% on ₹ 2,00,000 which works out to be ₹ 24,720/-

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 2012-13 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 2011-12 (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 2011-12

Particulars	₹ (in lakhs)
Total value of clearances during the financial year 2011-12	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 2011-12	<u>400</u>

Notes:- While computing value of clearances during financial year 2011-12 (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 2011-12 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 2012-13.

Question 6

CTL Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2011-12, 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 2012-13.

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:-

- (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.

13.5 Indirect Tax Laws

- (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 2012-13.

***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 - 12%	
	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.

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>

13.7 Indirect Tax Laws

Value on which duty is chargeable ($\text{₹ } 1,65,00,000 - 1,50,00,000$) =	
$\text{₹ } 15,00,000$	
Excise duty payable @ 12% ($\text{₹ } 15,00,000 \times 12\%$)	1,80,000
Education cess payable @ 2% ($\text{₹ } 1,80,000 \times 2\%$)	3,600
Secondary and higher education cess @ 1% of Excise duty. ($\text{₹ } 1,80,000 \times 1\%$)	1,800
Total excise duty liability	<u>1,85,400</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, 2012. It availed SSI exemption during the financial year 2012-13. 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 @ 12.36%)	1,48,83,000
(ii)	Capital goods purchased on 31.5.2012 (inclusive of excise duty @ 12.36%)	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 2012-13. Rate of duty on finished goods sold may be taken as 12.36% 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 2012-13:-

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 @ 12.36% (₹1,50,00,000 × 12.36%)	<u>18,54,000</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 = $(148,83,000 \times 12.36) / 112.36 \times 50\%$ (Since output input ratio is fixed)	8,18,591

CENVAT credit available on capital goods:-

(CENVAT credit will be available @ 100% of total excise duty in current financial year 2012-13)

Particulars	Amount (₹)
(100% of ₹ 80.094 lakh) × 12.36/112.36	8,81,063
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	18,54,000
Less: CENVAT credit available on inputs	8,18,591
Less: CENVAT credit available on capital goods	<u>8,81,063</u>
Excise duty payable	<u>1,54,346</u>

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.

13.9 Indirect Tax Laws

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 2012-13. 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 2013-14.

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 2012-13:

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>

Exemption Based on Value of Clearances (SSI) 13.10

As the value of clearances for home consumption in financial year 2012-13 does not exceed ₹ 400 lakhs, the benefit of exemption shall be available to the SSI unit during financial year 2013-14.

Question 13

Choti Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2012. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 1-3-2003 as amended for the financial year 2012-13. The following details are provided:

	₹
15,000 kg of inputs purchased @ ₹992.70 per kg (inclusive of Central excise duty @ 12.36%)	1,48,90,500
Capital goods purchased on 28-6-2012 (inclusive of excise duty at 12.36%)	44,12,000
Finished goods sold (at uniform transaction value throughout the year)	2,50,00,000

Calculate the amount of excise duty payable by M/s. Choti Ltd. in cash, if any, during the year 2012-13. Rate of duty on finished goods sold may be taken at 12.36% for the year and you may assume that the selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required.

Answer

Computation of the excise duty payable

Particulars	₹	₹
Finished goods sold during the year		2,50,00,000
Less : Exemption of ₹150 lakh under Notification No. 8/2003 CE dated 01-03-2003		<u>1,50,00,000</u>
Dutiable clearances [Note 1]		<u>1,00,00,000</u>
Excise duty payable @ 12.36% (₹1,00,00,000 × 12.36%)		12,36,000
Less: CENVAT credit available on inputs [Note 2] Proportion of inputs consumed in dutiable clearances $= ₹ \frac{1,00,00,000}{2,50,00,000} = 0.4$ Excise duty paid on such inputs $= [1,48,90,500 \times \frac{12.36}{112.36}] \times 0.4$	6,55,203	

13.11 Indirect Tax Laws

Less: CENVAT credit available on capital goods [Note 3]	<u>4,85,336</u>	<u>11,40,539</u>
= ₹ $[44,12,000 \times \frac{12.36}{112.36}]$		
Excise duty payable in cash		95,461

Notes:

1. Since there is neither any processing loss nor inventory of input and output, it implies that all goods manufactured have been sold and entire quantity of inputs has been used in manufacturing these goods.
2. In respect of units availing SSI exemption, no CENVAT credit is available on inputs consumed in exempt clearances of ₹150 lakh.
3. In respect of units availing SSI exemption, CENVAT credit on capital goods can be availed but utilized only after clearances of ₹150 lakh.

Further, entire credit on capital goods can be taken in the same financial year by such units.

Question 14

MNO Ltd. is in the manufacture of both excisable and non-excisable goods in their factory building rented by them from October 1, 2012 and have been occupying the same as a tenant. From the following particulars for the period October 1, 2012 to March 31, 2013, state briefly with suitable explanations, whether MNO Ltd. could claim the benefit of exemption in terms of Notification No. 8/2003-CE dated 1-3-2003 for the financial year 2013-14.

		₹ (in lakhs)
(i)	Clearances of branded goods	60
(ii)	Export Sales to Nepal	80
(iii)	Export Sales to USA and Canada	120
(iv)	Clearances of goods (duty paid based on Annual capacity of production under section 3A of the Central Excise Act, 1944)	70
(v)	Clearances of goods subject to valuation based on retail sale price under section 4A of the Central Excise Act, 1944(said goods are eligible for 30% abatement)	200
(vi)	Job work under Notification No. 214/86-CE dated 25-3-86	60

During the period April 1, 2012 to Sept 30, 2012 the previous tenant of the building presently occupied by MNO Ltd. had cleared excisable goods of the aggregate value of ₹120 lakhs.

Answer**Computation of value of clearances for home consumption in the financial year 2012-13**

S.No.	Particulars	₹ (in lakh)
(i)	Clearances of branded goods (Note-1)	Nil
(ii)	Export sales to Nepal (Note-1)	80
(iii)	Export sales to USA and Canada (Note-1)	Nil
(iv)	Clearances of goods on which duty has been paid under section 3A of the Central Excise Act	70
(v)	Clearances of goods subject to valuation under section 4A of the Central Excise Act (Note-2)	140
(vi)	Job work under Notification No. 214/86-CE (Note-1)	Nil
(vii)	Clearances of previous tenant of the building occupied by MNO Ltd. (Note- 3)	<u>120</u>
	Total	<u>410</u>

Notes:

- In order to claim the benefit of exemption under *Notification No. 8/2003 C.E. dated 01.03.2003* in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding financial year. *Notification No. 8/2003 C.E. dated 01.03.2003* provides that for the purpose of computing the turnover of ₹ 400 lakh,:-
 - clearances bearing the brand name or trade name of another person are excluded. It has been assumed that the branded goods are excisable goods and they bear the brand name of another person and not the brand name of MNO Ltd.
 - export turnover is excluded. However, exports to Nepal and Bhutan are not excluded as these are treated as "clearance for home consumption". It has been assumed that goods exported by MNO Ltd. to Nepal are excisable goods.
 - clearances under specified job work notifications are excluded and *Notification No. 214/86 CE dated 25.03.86* is one of the specified notification.
- In case of the goods subject to valuation under section 4A of the Central Excise Act, 1944, value for the purpose of the SSI exemption would mean value fixed under section 4A i.e., retail sale price less abatement. Hence, value of such clearances would be ₹ 200 lakh × 70% = ₹ 140 lakh.
- For the purpose of computing the turnover of ₹ 400 lakh, all the clearances made by different manufacturers from the same factory are to be clubbed together. Hence, clearances, worth ₹ 120 lakh of previous tenant of the building occupied by MNO Ltd. have been added.

13.13 Indirect Tax Laws

Conclusion: Since the value of clearances for home consumption exceeds ₹ 400 lakh in the financial year 2012-13, MNO Ltd. is not eligible to claim the benefit of exemption under Notification No. 8/2003 – C.E. dated 01.03.2003 in the financial year 2013-14.

Question 15

SSI & Co. is eligible for exemption in terms of Notification No. 8/2003-CE dated 1-3-2003 for the year 2012-13. It provides the following particulars with regard to the clearances of goods effected during the said year. Determine the duty payable in respect of the year 2012-13:

Aggregate	₹ (in lakhs)
Value of domestic clearance of goods with own brand name	120
Value of clearance of goods with the brand name of others (including ₹ 30 lakhs in respect of goods manufactured in a rural area)	100
Value of clearances for exports	50
Value of clearances for captive consumption	40
Value of clearances of exempted goods	20
(Assume rate of excise duty at 12%)	

Show your workings with explanations where required.

Answer

Computation of excise duty payable by M/s. SSI & Co. during the year 2012-13:-

Particulars	₹ in lakh
<i>Turnover to be excluded:</i>	
Value of clearances for export [Note – 1]	50
Value of clearances for captive consumption [Note – 1]	40
Value of clearances of exempted goods [Note – 1]	20
Value of domestic clearance of goods with brand name of others (excluding goods manufactured in rural area) [Note – 2]	70
<i>Turnover to be included:</i>	
Value of domestic clearances with own brand name	120
Value of clearances of goods with brand name of others manufactured in rural area	<u>30</u>
Total	<u>150</u>

Tax liability

On 1 st clearance of ₹ 150 lakh duty is	Nil
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Exemption Based on Value of Clearances (SSI) 13.14

On clearances with brand name of others worth ₹ 70 lakh (excluding rural area clearances) duty @ 12% [Note 3]	8,40,000
Add: Education cess and secondary and higher education cess @ 3%	<u>25,200</u>
Total duty liability	<u>8,65,200</u>

Notes:

1. As per *Notification No. 8/2003 CE dated 01.03.2003*, export clearance, captive consumption and exempted clearances are not included in determining the limit of first ₹ 150 lakh for SSI exemption.
2. As per *Notification No. 8/2003 CE dated 01.03.2003*, the clearances with the brand name of others which are ineligible for SSI exemption has to be excluded while determining the limit of ₹ 150 lakh. However, clearances with the brand name of others manufactured in rural area are eligible for SSI exemption and hence, such clearances are included while determining the limit of ₹ 150 lakh.
3. Export clearance, captive consumption and exempted clearances are exempted from excise duty. Thus, duty will be payable only in respect of the goods manufactured with brand name of others.

Question 16

X Ltd. is having a manufacturing unit at Faridabad. In the financial year 2012-13, the value of total clearances from the unit was ₹850 lakhs as per the following details:

- (i) *Exports to USA : ₹100 lakhs; to Nepal : ₹50 Lakhs*
- (ii) *Clearances to a 100% export oriented unit : ₹75 lakhs*
- (iii) *Clearances as loan licensee of goods carrying the brand name of another upon full payment of duty: ₹200 lakhs*
- (iv) *Clearance exempted vide Notification No. 214/86-C.E. dated 25.3.86: ₹125 lakhs.*
- (v) *Balance clearances of goods in the normal course : ₹300 lakhs.*

You are required to state with reasons whether the unit is entitled to the benefit of exemption under Notification No. 8/2003-C.E. dated 1.3.2003 as amended for the financial year 2013-14.

Answer

As per Notification No. 8/2003 dated 01.03.2003, in order to claim exemption as small scale industry in the financial year 2013-14, the total eligible clearances of the manufacturing unit should not exceed ₹ 400 lakh in the previous financial year 2012-13.

For the purpose of computing the eligible clearances:-

- (i) Export turnover of ₹ 100 lakh to USA would be excluded, while the export to Nepal of ₹ 50 lakh would be included.

13.15 Indirect Tax Laws

- (ii) Clearances of ₹ 75 lakh without payment of duty to a 100% EOU would be excluded.
- (iii) Clearances of ₹ 200 lakh as a loan licensee of goods carrying the brand name of another on payment of duty would not be included.
- (iv) Clearances of ₹ 125 lakh exempt under *Notification No. 214/86* would be excluded.
- (v) Normal clearances of excisable goods of ₹ 300 lakh would be considered.

Thus, the eligible turnover for exemption is as follows:-

= ₹ 850 lakh – ₹ 500 lakh (100 + 75 + 200 + 125)

= ₹ 350 lakh

Since the eligible clearances do not exceed ₹ 400 lakh in the financial year 2012-13, the manufacturing unit will be entitled for SSI exemption in financial year 2013-14.

Question 17

XYZ & Co., a SSI unit, manufactures different products and the value of clearances for the financial year 2012-13 is given below:

(₹ in lakhs)

S. No.	Product	AA	AB	AC
(i)	Clearance for home consumption	55	40	60
(ii)	Captive consumption in the manufacture of excisable goods	100	80	60
(iii)	Export to U.S.A.	90	80	Nil
(iv)	Export to Nepal	50	40	39
(v)	Job work done under Notification No. 214/86-C.E.	55	30	60
(vi)	Goods manufactured in rural area with brand name of others	45	35	35

The unit seeks your advice as to whether they are eligible for SSI exemption for the year 2013-14.

Explain the basis for your conclusions.

Answer

XYZ & Co. unit will be entitled to exemption in the year 2013-14, if its turnover in the year 2012-13 was less than ₹400 lakhs. As per *Notification No. 8/2003 CE dated 01.03.2003*, which governs the provisions relating to small scale exemption, following items will not be included for calculating the turnover limit of ₹400 lakh of previous year:

- (i) Captive consumption in the manufacture of excisable goods

- (ii) Export to USA
(iii) Job work done under *Notification No.214/86 CE*

Only the goods bearing the brand name of others, *which are ineligible for the grant of SSI exemption*, are excluded for the purpose of said limit. Since, goods manufactured in rural area with brand name of others are eligible for SSI exemption; the same will not be excluded for calculating the said limit.

Therefore, the turnover to be considered for the limit of ₹400 lakh will be computed as under:

Product	Clearance for home consumption	Export to Nepal	Goods manufactured in rural area with brand name of others	Total Turnover
		(₹in lakhs)		
AA	55	50	45	150
AB	40	40	35	115
AC	60	39	35	<u>134</u>
				<u>399</u>

Since turnover of the unit during the year 2012-13 is less than ₹400 lakh, the unit is entitled to SSI exemption from excise duty in the year 2013-14.

Question 18

Arigo Ltd. is a small scale industrial unit which is producing 'Fast', a tonic for growing children. Under the Annual Report for the year 2012-13, the SSI unit shows gross sales turnover of ₹ 1,95,10,000, inclusive of excise duty and VAT. The product 'Fast' attracts excise duty @ 12% and VAT @ 1%. Calculate the duty liability under Notification No. 8/2003 dated 01.03.2003.*

**Gross Sales Turnover of ₹ 1,95,10,000 is eligible for exemption under Notification No. 8/2003. Further, for the year 2011-12, the taxable clearances of SSI unit was ₹1,60,00,000.*

Answer

Calculation of duty liability under *Notification No. 8/2003*.

Gross sales turnover is ₹ 1,95,10,000 which includes excise duty and VAT.

For first 150 lakh clearances, excise duty is Nil and VAT is 1%.

Therefore, VAT on first ₹ 150 lakh clearances = ₹ 1,50,000.

For Balance sales (including excise duty and VAT)

= ₹ 1,95,10,000 – (1,50,00,000 + 1,50,000) = ₹ 43,60,000

13.17 Indirect Tax Laws

VAT = $43,60,000 \times 1/101 = ₹ 43,168$ (rounded off)

Therefore, balance sales excluding VAT but including excise duty

= ₹ 43,60,000 – 43,168

= ₹ 43,16,832

Hence, excise duty (including 2% education cess and 1% secondary and higher education cess) = ₹ 43,16,832 $\times 12.36/112.36 = ₹ 4,74,866.89$

Total duty payable = ₹ 4,74,866.89 or ₹ 4,74,867 (rounded off)

Question 19

Aggarwal & Company is a manufacturing company. In the financial year 2012-13, the details of its clearances of excisable goods are as follows:-

	Particulars	₹. (Lakhs)
(i)	Total exports (including for export to Bhutan ₹50 lakhs)	600
(ii)	Clearances of excisable goods without payment of duty to a 100% EOU	10
(iii)	Job work under Notification No. 84/94-CE dated 11.4.94	50
(iv)	Job work under Notification No. 214/86-CE dated 25.3.86	50
(v)	Clearances of goods bearing brand name of National Small Industries Corporation	100
(vi)	Clearances of corrugated boxes bearing the brand name of Sugar & Spice Confectioners. Sugar & Spice Confectioners use these corrugated boxes for packing the bakery products produced by them.	200

On the basis of above information, you are required to ascertain the eligibility of Aggarwal and Company for exemption based on value of clearances in terms of Notification No. 8/2003-CE dated 1.3.2003 as amended for the financial year 2013-14.

Answer

Calculation of value of clearances of Aggarwal and Company during financial year 2012-13

Particulars	₹ (in lakhs)
Export to Bhutan (Note-1)	50
Clearances of excisable goods bearing brand name of National Small Industries Corporation (Note-4)	100
Clearances of corrugated boxes bearing the brand name of Sugar and Spice Confectioners used for packing the bakery products by them (Note-4)	<u>200</u>
Value of clearances during the financial year 2012-13	<u>350</u>

Notes:-As per the Notification No. 08/2003 dated 01.03.2003, while computing the turnover of Aggarwal & Company during financial year 2012-13 (as shown above):-

1. export turnover has been excluded. However, export to Bhutan cannot be excluded as these are treated as "clearances for home consumption".
2. clearances under specified job work notifications are excluded and Notification No. 214/86 CE and 84/94-CE are the specified notifications.
3. clearances of excisable goods without payment of duty to a 100% EOU are excluded.
4. clearances bearing the brand name or trade name of another person are excluded. However, following clearances of excisable goods bearing brand name are included:-
 - (a) Goods bearing brand name/trade name of National Small Industries Corporation.
 - (b) Goods in the nature of packing materials and meant for use as packing material by or on behalf of the person whose brand name they bear.

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 2012-13 does not exceed ₹ 400 lakh, the Aggarwal & Company is eligible to claim the benefit of Notification No. 8/2003 dated 1st March, 2003 in the financial year 2013-14.

Exercise

1. What are the reasons for clubbing of clearances of SSI Units?
2. What are the provisions regarding general exemption to SSI units?
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
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.

5. *What is the treatment in respect of 'clearances of excisable goods without payment of duty' as 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.
6. *ABC Ltd. is a manufacturing unit situated in Kanpur. In the financial year 2012-13, 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 2013-14.

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.

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

13.21 Indirect Tax Laws

application. Is the stand taken by the Central Excise Officer correct?

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

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.

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