

Valuation of Excisable Goods

Question 1

Differentiate between compounded levy scheme and duty based on annual production capacity under central excise.

Answer

S.No	Compounded levy scheme	Duty based on annual production capacity
1.	Rule 15 of the Central Excise Rules, 2002 provides for the compounded levy scheme.	Section 3A of the Central Excise Act, 1944 provides for the duty based on production capacity.
2.	Under compounded levy scheme, prescribed duty is paid for a specified period on the basis of certain factors relevant to production, like size of equipment employed, production capacity or some other criteria.	Under this scheme, prescribed duty is paid on the basis of annual production capacity of the factory.
3.	It is presently applicable to stainless steel pattas/patties and aluminum circles.	It is presently applicable to pan masala, unmanufactured tobacco, jarda scented tobacco and chewing tobacco.
4.	It is an optional scheme i.e., in respect of the goods covered under this scheme, the manufacturer can also opt to pay duty as per normal rules.	This scheme is compulsory i.e., in respect of the goods covered under this scheme, the manufacturer cannot pay duty in any other manner.

Question 2

Briefly explain the situations where transaction value does not apply.

Answer

According to section 4(1)(a) of the 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 is required to be determined on the basis of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 [Section 4(1)(b)].

Question 3

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. Examine whether the Department is justified in including the cost of wooden boxes in the assessable value of the welding electrodes?

Answer

Yes, Department is justified to include the cost of wooden boxes in assessable value of welding electrodes. Board has clarified vide *Circular No.354/81/2000 CE dated 30.06.2000* that any charges recovered for packing are charges recovered in relation to sale of the goods 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 will form part of assessable value even though such packing is special or secondary.

Question 4

Beta Ltd. (BL) sold refractories to Omega Steel Plant (OSP) under a contract at a particular price. OSP held the Advance Licence (now authorization) for import of refractories. It surrendered the said authorisation to enable BL to get the Advance Intermediate Licence. Consequently, BL could import the inputs without payment of customs duty as well as could get them at a lower price than what they would have paid had they purchased the same in India.

The Department claimed that the benefit derived by BL under the Advance Intermediate Licence issued to them as a result of surrender of licence by OSP, was "additional consideration" towards the value of the goods and that this "additional consideration" formed part of the price of the refractories for purposes of excise duty.

BL contended that since they have taken the advantage of the policy of the Government and benefits flow therefrom, such benefit cannot be said to be an additional consideration.

Do you think that the contention of the Excise Department is correct in law? Discuss.

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Answer

Yes, the contention of the Excise Department is correct in law. The facts of the given case are similar to that of the case of *CCEx. Bhubaneswar-II v IFGL Refractories Ltd. 2005 (186) ELT 529 (SC)*. In this case, the Supreme Court held that surrendering of licences (now called authorization) by buyer and as a result thereof, assessee getting licences has nothing to do with any Import and Export policy (now called Foreign Trade 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 assessee's submission that where parties take advantage of policies of the Government and the benefits flowing therefrom, such benefit cannot be said to be an "additional consideration", cannot be accepted.

In view of the abovementioned decision, the stand taken by the Excise Department holds good.

Note: *IFGL Refractories Ltd. case referred to in the aforesaid answer pertains to an earlier period of time during which the Foreign Trade Policy was known as Export Import Policy and instead of advance authorization, there were advance licences. Unlike advance licence, advance authorization is not transferrable.*

However, it appears that the ratio of the aforesaid judgment that the transfer of advance licence by the seller in favour of buyer is additional consideration flowing from buyer to seller may hold good in case of transfer of other transferable export benefits. In other words, if any prevalent transferable export benefit is transferred by seller in favor of buyer in pursuance of a contract of sale, it will tantamount to additional consideration flowing from buyer to seller.

Further, although said judgment pertains to old section 4, CBEC vide M.F. (D.R.) Letter F. No. 6/3/2005-CX. 1 dated 14-9-2005 has clarified that principle derived therein is valid for both old and new section 4 of the Central Excise Act, 1944.

Question 5

The Pious India Pvt. Ltd. (Pious) was the manufacturer of motor cars. They were selling Pious XYZ model cars below cost and were making losses in wholesale trade. The purpose was penetration of market and competing with other manufacturers of similar goods. The prices were not based on manufacturing cost and profit. The cost of production of the cars was much more than their wholesale price, but they were being sold at loss for a consideration. This was happening over the period of five years.

The Department disputed that as the extra commercial consideration was involved in this case, an additional consideration should be added to the price for the purpose of duty.

You are required to answer the following questions referring the relevant provisions of law and a decided case law, if any:

- (i) Can the selling price which is below the cost price be accepted?
- (ii) Can the 'penetration price' be considered as an extra commercial consideration?

Answer

As per section 4(1)(a) of the Central Excise Act, 1944, the assessable value of the excisable goods is the transaction value where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale. If any of these ingredients is missing, the price cannot be considered as transaction value.

The facts of the given case are similar to the case of *CCEx., Mumbai v. Fiat India Pvt. Ltd.* 2012 (283) E.L.T. 161 (SC). In the instant case, the Supreme Court observed that full commercial cost of manufacturing and selling the car was not reflected in the price as it was deliberately kept below the cost of production.

Therefore, selling price which is below the cost price cannot be accepted since such a price cannot be considered as the sole consideration for sale.

The value for purpose of excise duty under such circumstances will have to be determined in accordance with section 4(1)(b) read with the Central Excise (Determination of Price of Excisable Goods) Rules, 2000.

The Supreme Court further elucidated that no prudent business person would continuously suffer huge loss only to penetrate market. They are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments.

The Supreme Court held that selling cars at a price lower than the manufacturing cost and profit to penetrate the market will constitute extra commercial consideration.

Question 6

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	12%

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(ii)	Goods actually sold at depot on 18 th February	750	₹ 225	₹ 250	10%
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*Note: Assume it to be the price at which the greatest aggregate quantity of goods are sold.

Answer

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

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

Calculation of central excise duty:-

Basic excise duty @ 12% (₹ 2,20,000 × 12%) [Refer note below]	26,400
Education cess @ 2%	528
Secondary and higher education cess @ 1%	<u>264</u>
Total duty payable	<u>27,192</u>

Note: The applicable rate of duty will be the rate of duty in force on the date on which such goods are removed from the factory.

Question 7

Robust Engineers Ltd. removed goods from their factory at Delhi on 20.02.2014 for sale from their depot at Mumbai. On that date, the normal transaction value of goods at Delhi factory was ₹ 20,000 while the normal transaction value at Mumbai depot was ₹ 19,000. The rate of duty was 12% ad-valorem. The said goods were sold from Mumbai depot on 15.03.2014. On that date, the normal transaction value at Mumbai depot was ₹ 22,000 and rate of duty was 16%. M/s. Robust Engineers Ltd. paid the duty on ₹ 20,000 at the rate of 12%.

The Central Excise Department claimed that central excise duty should be levied @ 16% on the value of ₹ 22,000.

Examine whether Department's claim is correct.

Answer

The Department's claim is not correct in the instant case.

Value of excisable goods

Rule 7 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000, *inter alia*, provides that where excisable goods are not sold at the factory gate but are transferred to a depot, the assessable value for the goods cleared from factory is the normal transaction

value of such goods at the depot at or about the same time at which the goods as being valued are removed from the factory or warehouse.

In the given case, ₹ 20,000 represents value on 20.02.2014 (time of removal), but it is not the value prevalent at the depot. Similarly, ₹ 22,000 represents depot price, but then it is not the price prevalent on 20.02.2014 (time of removal).

The correct value to be adopted in this case is the depot price of such goods (normal transaction value) on 20.02.2014 i.e., ₹ 19,000.

Rate of excise duty

The applicable rate of duty shall be the rate of duty in force on the date when such goods are removed from the factory. Hence, the correct rate of duty will be 12% and not 16%.

Question 8

The following information is provided in respect of manufacture of a product "X" for the purpose of captive consumption in the same factory. You are required to determine the value for purpose of duty of excise in terms of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000:

	₹
Cost of direct materials (includes central excise duty ₹ 1,545)	16,545
Cost of direct employees	12,300
Consumable stores and repairs	8,400
Quality control cost	4,300
Research & development cost	2,700
Administrative cost:	
Production related	3,000
Others	1,500
Selling and distribution cost	3,600
Scrap value realized	1,500

***Note:** CENVAT credit of the excise duty so paid is available.

Answer

As per rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the value of the excisable goods used for captive consumption is 110% of the cost of production of such goods.

The cost of production is to be determined as per 'Cost Accounting Standard (CAS)-4: Cost of Production for Captive Consumption' issued by ICWAI [CBEC Circular No. 692/8/2003 dated 13.02.2003].

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Computation of cost of production as per CAS-4 and value of the excisable goods:-

Particulars	₹
Cost of direct materials	₹ 16,545
Less: Central excise duty	₹ <u>1,545</u> (Note-1)
Cost of direct employees	12,300
Consumable stores and repairs	8,400
Quality control cost	4,300
Research and development cost	2,700
Administrative cost (production related) [Note-2]	<u>3,000</u>
Total	45,700
Less: Scrap value realized	<u>1,500</u>
Cost of production as per CAS-4	<u>44,200</u>
Value of excisable goods [₹ 44,200 × 110%]	48,620

Notes:

1. Since CENVAT credit is available on central excise duty paid on direct materials, it has been deducted from the cost of direct materials in accordance with the Cost Accounting Standard-4.
2. Administrative overheads in relation to activities other than manufacturing activities have not been included in cost of production [CAS-4].
3. Selling and distribution cost have not been considered while computing the cost of production as they are not in relation to production activity [CAS-4].

Question 9

An assessee sold certain goods to PQR Ltd. for ₹ 20,000 (excluding excise duty and other taxes) on 09.09.2013. The buyer, PQR Ltd., is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. It did not sell the goods, but used it as intermediary product. The cost of production of the said goods determined as per CAS-4 was ₹ 16,000. Determine the assessable value in the given case.

What will be the assessable value, if in the aforesaid case, PQR Ltd. is not related to the assessee?

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 of the Valuation Rules which provides that the value will be 110% of the cost of production or manufacture of such goods.

Therefore, when the goods are sold to PQR Ltd., the assessable value shall be 110% of ₹ 16,000 (₹ 16,000 × 110%) i.e., ₹ 17,600.

However, in the instant case, if PQR Ltd. is an unrelated buyer, the assessable value will be the transaction value of the goods i.e. ₹ 20,000.

Question 10

Hema Manufacturers 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 sending the goods to the premises of the Meltex Ltd.	200
After processing, goods are sold by Hema Manufacturers 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 read along with relevant rules.	

Answer

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

Question 11

Machine India Ltd. is engaged in the manufacture of machines. It has supplied one machine to M/s. Z & Co. at a price of ₹ 8,50,000 (excluding taxes and duties) on which a cash discount @ 2% is allowed as per terms of contract as M/s. Z & Co. made full payment in advance. Further, following expenses have been incurred.

	Particulars	₹ (in lakhs)
(i)	Expenses pertaining to installation and erection of the machine at M/s Z & Co.'s premises (Machine was permanently affixed to earth)	30,000
(ii)	Packing charges	12,500
(iii)	Design and engineering charges	4,000
(iv)	Cost of material (used in production of machine) supplied free of charge by M/s Z & Co.	10,000
(v)	Pre-delivery inspection charges (charged by the Machine India Ltd.)	1,000
(vi)	Bought out accessories supplied with machine	8,000

3.9 Central Excise

Determine the total amount of central excise duty payable thereon from the aforesaid information.

Answer

Computation of central excise duty and cess payable thereon

Particulars	₹
Price of machine excluding taxes and duties	8,50,000
Installation and erection expenses [Note 1]	-
Packing charges [Note 2]	12,500
Design and engineering charges [Note 3]	4,000
Cost of material (used in production of machine) supplied free of charge by buyer [Note 4]	10,000
Pre-delivery inspection charges [Note 5]	1,000
Bought out accessories [Note 6]	-
Total	8,77,500
Less : 2% cash discount on price of machinery= ₹ 8,50,000 × 2 % [Note 7]	<u>17,000</u>
Assessable value	<u>8,60,500</u>
Excise duty @ 12.36%	1,06,357.80
Excise duty [rounded off] payable	1,06,358

Notes:

While computing the assessable value:-

1. installation and erection expenses will not be included [Circular No. 643/34/2002 CX dated 01.07.2002].
2. amount charged from the buyer in relation to packing, whether primary or secondary, will be included [Circular No. 354/81/2000 TRU dated 30.06.2000].
3. design and engineering charges will be included as such payment is 'in connection with sale'.
4. cost of material supplied free of charge by buyer will form part of assessable value as it is an additional consideration flowing from buyer to seller [Explanation 1 to Rule 6 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000].
5. since pre-delivery inspection charges are charged by the manufacturer, they are includible [Tata Motors Ltd. v. UOI 2012 (286) E.L.T. 161 (Bom.)].

6. bought out accessories, supplied along with the machinery, will not be included [*Shriram Bearing Ltd. v. CCE 1997 (91) ELT 255*].
7. 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 CX dated 01.07.2002*].

Question 12

A sold to B a machine at the sale price (excluding taxes and duties) of ₹2,00,000. Determine the total amount of excise duty payable on the machine using other details given below:

S.No.	Particulars	₹
(i)	Design and development charges paid by B on A's behalf to a third party (C)	20,000
(ii)	Warranty charges charged separately by A	5,000
(iii)	Sales tax	20,000
(iv)	Cost of durable and returnable packing (such cost has been amortised and included in the cost of the machine)	5,000

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)	<u>5,000</u>
Assessable value	<u>2,25,000</u>
Excise duty @ 12%	27,000
Education cess @ 3% on excise duty	<u>810</u>
Total excise duty payable on the machine	<u>27,810</u>

Notes:

1. Sales tax is not included since the definition of transaction value as per section 4(3)(d) specifically excludes sales tax paid or payable on the goods.
2. Since the cost of durable and returnable packing has been amortised and is included in the cost of the product, it is not required to be added again [*Circular No. 643/34/2002-CX dated 01.07.2002*].

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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 the payment is 'in connection with sale'
4. As per the definition of the transaction value under section 4(3)(d) of the Central Excise Act, 1944, warranty charges are includible in the assessable value.

Question 13

How will the assessable value, under the subject transaction, be determined under section 4 of the Central Excise Act, 1944?

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 moulds and dies used in production of the goods, supplied by buyer	₹ 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 depot	₹ 20,000
(viii) Actual freight and insurance from depot 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 have 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 the Valuation Rules].
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 [Circular no. 354/81/2000 dated 30/6/2000].
5. The cost of moulds and dies used in the production of the goods, supplied by buyer, worth ₹ 4,000 would not be deducted [Explanation 1 to rule 6 of the Valuation Rules].

Question 14

Dharma Manufacturers, engaged in the manufacture of machines, sold a machine to Asha Ltd. The cum-duty sale price of the machine (excluding VAT) is ₹ 5,80,000. Rate of excise duty is 12%, education cess is 2% and secondary and higher education cess is 1 %.

Sale price includes the following charges:

		₹
(i)	Warranty charges	28,000
(ii)	Secondary packing	6,000
(iii)	Trade discount actually allowed from the aforesaid sale price	24,000
(iv)	Design and engineering charges of machine	20,000
(v)	Primary packing	10,000
(vi)	Cost of return fare of vehicles	4,500
(vii)	Advertisement and publicity charges borne by Asha Ltd.	16,000
(viii)	Pre-delivery inspection charges (charged by Dharma Manufacturers)	22,000
(ix)	After sales service charges (charged by Dharma Manufacturers)	18,000

Determine the assessable value of the machine for purpose of central excise duty.

3.13 Central Excise

Answer

Computation of assessable value of the machine

Particulars	₹	₹
Cum-duty sales price of the machine excluding VAT		5,80,000
Less: Trade discount [Note 3]	24,000	
Cost of return fare of vehicles [Note 5]	<u>4,500</u>	<u>28,500</u>
Cum-duty price for excise duty purposes		<u>5,51,500</u>
Assessable value= $\left(\frac{5,51,500}{112.36} \times 100 \right)$		4,90,833

Notes:

1. As per the definition of the transaction value under section 4(3)(d) of the Central Excise Act, 1944, warranty charges are includible in the assessable value.
2. Amount charged from the buyer in relation to packing, irrespective of it being primary or secondary, is includible in the assessable value [Circular No. 354/81/2000 CE dated 30.06.2000].
3. As the transaction value is the price actually paid or payable, trade discount is allowable as deduction.
4. Design and engineering charges of machine are included in the assessable value as such charges are 'in connection with sale'.
5. Cost of return fare of vehicles is not included in the assessable value [Circular No. 923/13/2010 CX dated 19.05.2010].
6. Advertisement and publicity expenses borne by the buyer are included in the assessable value [Circular No. 643/34/2002 CX dated 01.07.2002].
7. Since the pre-delivery inspection charges and after sales service charges have been charged by the manufacturer, they are included in the assessable value [Tata Motors Ltd. v. UOI 2012 (286) E.L.T. 161 (Bom.)].

Question 15

Compute the assessable value of the goods manufactured by Bharat Enterprises, under section 4 of the Central Excise Act, 1944, with the help of the following particulars:-

Particulars	Amount (₹)
Contracted sale price for delivery at buyer's premises	2,42,000
The contracted sale price includes the following elements of cost:-	
(i) Cost of containers supplied by the buyer	15,200

(iii) Loading and handling charges incurred after removal from the factory	6,000
(iii) Dharmada charges	2,100

Answer**Computation of the assessable value of goods manufactured by Bharat Enterprises:-**

Particulars	Amount (₹)
Contracted sale price for delivery at buyer's premises	2,42,000
Less: Loading and handling charges incurred after removal from the factory	<u>6,000</u>
Assessable value of the goods	<u>2,36,000</u>

Notes:-

While computing the assessable value,

1. cost of containers supplied by the buyer is includible [Circular No. 643/34/2002-CX. dated 1-7-2002].
2. loading and handling charges incurred after removal from the factory are not includible.
3. dharmada charges are includible [Circular No. 763/79/2003-CX. dated 21-11-2003].

Question 16

Enumerate the conditions under which MRP valuation under section 4A of the Central Excise Act, 1944 shall apply.

Answer

MRP valuation under section 4A of the Central Excise Act, 1944 shall apply if the following two conditions are satisfied cumulatively:

- (a) The excisable goods to be valued are covered under the Legal Metrology Act, 2009 or related rules or under any other law and such law requires declaration of the retail sale price on the package of such goods and
- (b) The Central Government has notified the said goods as goods in relation to which the payment of excise duty will be on the basis of the MRP less such deductions/abatements as it may allow in the notification.

Question 17

Excise Department cannot challenge the reasonability of MRP printed on the package. Discuss the validity of the statement.

3.15 Central Excise

Answer

The statement is valid. 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)*].

Question 18

Hand blender manufactured by the assessee was cleared as gift along with each unit of juicer, mixer and grinder (JMG). MRP of hand blender was printed on the label of JMG, while no MRP was printed on the hand blender box. The hand blender was not sold separately. The Department issued a show cause notice on the ground that duty on the hand blender should be paid on the value determined under section 4A, while assessee had valued it under section 4 of the Central Excise Act, 1944. Examine whether the notice issued by the Department is sustainable in law.

Answer

No, the notice issued by the Department is not sustainable in law. The facts of the given case are similar to the case of *Jayanti Food Processing (P) Ltd. v. CCEx., Rajasthan 2007 (215) ELT 327 (SC)*. In this case, the assessee sold chocolates to a cold drink manufacturer. These chocolates were to be offered as a free gift to the one who purchased a bottle of the cold drink. Supreme Court, in the said case, observed that section 4A is attracted only where goods are sold in retail. Therefore, even though the product of the assessee, i.e. chocolates, was covered under the MRP provisions, it is not required to be assessed under section 4A as the said product was not sold in retail. Consequently, the valuation should be on the basis of section 4.

Applying the ratio of *Jayanti Food Processing (P) Ltd.* in the given case, it may be concluded that duty on the hand blender should be paid on the value determined under section 4 and not under section 4A of the Central Excise Act, 1944.

Question 19

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 whether the view taken by the Department is correct in law.

Answer

No, the stand taken by the Department is not valid in law.

Section 4A is attracted only in case of those goods, in relation to which it is required to declare on the package thereof the retail sale price of such goods, under the provisions of the Legal Metrology Act, 2009 or the rules made thereunder or under any other law for the time being in force.

As per Legal Metrology (Packed Commodities) Rules, 2011, retail sale price is required to be declared on the retail package and not on the wholesale package. As per the definition of the wholesale package under rule 2(r) of the said rules, a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity to the consumer in similar quantities is a wholesale package. Thus, the single package of 12 water mineral bottles falls within the definition of the wholesale package. Consequently, the retail sale price is not required to be declared on such wholesale packages as required in case of packages intended for retail sale.

Further, as per section 3(b) of the said rules, the provisions applicable to packages intended for retail sale will not apply to packaged commodities meant for industrial consumers or institutional consumers. Institutional consumer means any institution which hires or avails of the facilities or service in connection with transport, hotels, hospitals or such other service institutions which buy packaged commodities directly from the manufacturer for use by that institution [Section 2(bc)]. Hence, in the given case, Speed Airways is the institutional consumer and not the ultimate consumer. Consequently, it is reaffirmed that the retail sale price is not required to be declared on the package of 12 water mineral bottles as it is meant for the institutional consumer.

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 20

How will the value of samples, which are distributed free as part of marketing strategy, or as gifts or donations, be determined?

Indicate whether your answer will remain same in case such samples are notified for MRP based assessment under section 4A of the Central Excise Act, 1944.

Answer

Circular No. 813/10/2005 CX dated 25.04.2005 clarifies that value of samples which are distributed free as part of marketing strategy, or as gifts or donations is determined under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

In case such samples are notified for MRP based assessment under section 4A of the Central Excise Act, 1944, *Circular No. 915/05/2010 CX dated 19.02.2010* clarifies that such goods would be assessed under rule 4 of the Valuation Rules by taking into consideration the deemed value under section 4A. Accordingly, the value for payment of excise duty for

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samples notified for MRP based assessment would be the value determined under section 4A for the similar goods (subject to adjustment for size and pack etc.).

Exercise

1. *State and briefly discuss the important deductions that are statutorily available under section 4 of the Central Excise Act, 1944?*
2. *Differentiate between “tariff value”, “transaction value” and “normal transaction value”.*
3. *What are the legal/penal actions that can be taken in case the retail sale price is not mentioned or is unduly tampered after the removal?*
4. *Explain briefly the significance of rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 relating to goods produced or manufactured by a job worker.*