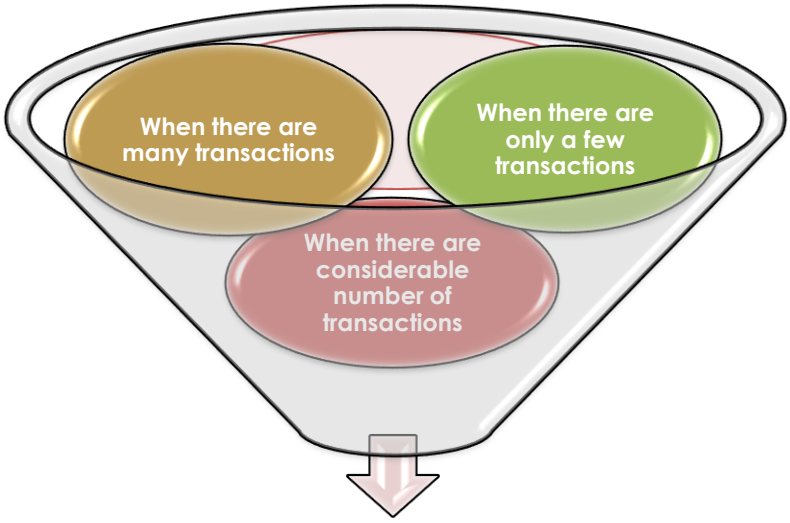
CMA Students Newsletter (For Intermediate Students)

Vol.8B: April 30, 2015

SALE OF GOODS ON APPROVAL OR RETURN BASIS

- **Sometimes goods are sent to Customers with an option either to accept the goods or to reject the goods within a stipulated time.**
- **This type of transactions is known as "Sale on Approval Basis" or "Sale or Return Basis".**
- **The main purpose of this type of sale is to boost up sales although this facility usually goes to very few reliable customers in the Supply Chain or Value Chain.**

Three methods of accounting are usually followed for recording "sale on approval or return basis" transactions, viz.



Methods of Accounting for Sale on Approval or Return Basis

Accounting Steps: When there are only a few transactions

(i) When goods are sent

Debtors A/c	Dr.	
To, Sales A/c		

(ii) If goods are taken or approval is received within stipulated time period:

NO ENTRY

(iii) When goods are returned (i.e. returned after non-acceptance)

Sales A/c	Dr.	
To, Debtors A/c		

When goods are with customers but time period for acceptance has not expired. The treatment on that date shall be :

(iv) If the consent of the customer is not yet received

(a)	Sales A/c		Dr.
	To, Customer A/c		
	(at sale value)		
(b)	Closing stock A/c		Dr.
	To, Trading A/c		
	(at cost price)		

Example :

Mr. Ramdas sends goods to his customers on sale or return basis. The following transactions took place during the month of April 2014 :

		₹
April 4	**Goods sent on Sale or Return basis at cost plus 20%**	**60,000**
8	**Goods returned by customers**	**15,000**
20	**Sale information received from customers**	**30,000**
30	**No intimation received about the goods (i.e., neither sold nor returned)**	**15,000**

Assume that the accounts are closed on 31st March every year and Ramdas records the above transactions as ordinary sales basis.

Answer:

Date	Particulars	L.F	Debit ₹	Credit ₹
4.4.2014	Debtors A/c Dr. To, Sales A/c (Being goods sent on sale or approval basis and treated as sales)		60,000	60,000
8.4.2014	Returns Inward/ Sales A/c Dr. To, Debtors A/c (Being goods returned by customers)		15,000	15,000
20.4.2014	NO ENTRY			
30.4.2014	Closing Stock A/c Dr. To, Trading A/c (Recorded at cost price)		15,000	15,000

FAQ ON SECTION 194C [PAYMENT TO CONTRACTORS AND SUB-CONTRACTORS]

Question 1: What would be the scope of an advertising contract for purpose of section 194C of the Act?

Answer: The term 'advertising' has not been defined in the Act. During the course of the consideration of the Finance Bill, 1995, the Finance Minister clarified on the floor of the House that the amended provisions of tax deduction at source would apply when a client makes payment to an advertising agency and not when advertising agency makes payment to the media, which includes both print and electronic media. The deduction is required to be made at the rate of 1 per cent. It was further clarified that when an advertising agency makes payments to their models, artists, photographers, etc., the tax shall be deducted at the rate of 5 per cent as applicable to fees for professional and technical services under section 194J of the Act.

Question 2: Whether the advertising agency would deduct tax at source out of payments made to the media?

Answer: No. The position has been clarified in the answer to question No. 1 above.

Question 3: At what rate is tax to be deducted if the advertising agencies give a consolidated bill including charges for art work and other related jobs as well as payments made by them to media?

Answer: The deduction will have to be made under section 194C at the rate of 1 per cent. The advertising agencies shall have to deduct tax at source at the rate of 5 per cent under section 194J while making payments to artists, actors, models, etc. If payments are made for production of programmes for the purpose of broadcasting and telecasting, these payments will be subjected to TDS @ 2 per cent. Even if the production of such programmes is for the purpose of preparing advertisement material, not for immediate advertising, the payment will be subjected to TDS at the rate of 2 per cent.

Question 4: Whether the tax is required to be deducted at source on payments made directly to the print media/Doordarshan for release of advertisements?

Answer: The payments made directly to print and electronic media would be covered under section 194C as these are in the nature of payments for purposes of advertising. Deduction will have to be made at the rate of 1 per cent. It may, however, be clarified that the payments made directly to Doordarshan may not be subjected to TDS as Doordarshan, being a Government agency, is not liable to income-tax.

Question 5: Whether a contract for putting up a hoarding would be covered under section 194Cor 194-I of the Act?

Answer: The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sub-lets the same fully or in part for putting up a hoarding, he would be liable to TDS under section 194-I and not 194C of the Act.

Question 6: Whether payment under a contract for carriage of goods or passengers by any mode of transport would include payment made to a travel agent for purchase of a ticket or payment made to a clearing and forwarding agent for carriage of goods?

Answer: The payments made to a travel agent or an airline for purchase of a ticket for travel would not be subjected to tax deduction at source as the privity of the contract is between the individual passenger and the airline/travel agent, notwithstanding the fact that the payment is made by an entity mentioned in section 194C(1). The provision of section 194C shall, however, apply when a plane or a bus or any other mode of transport is chartered by one of the entities mentioned in section 194C of the Act. As regards payments made to clearing and forwarding agents for carriage of goods, the same shall be subjected to tax deduction at source under section 194C of the Act.

Question 7: Whether a travel agent/clearing and forwarding agent would be required to deduct tax at source from the sum payable by the agent to an airline or other carrier of goods or passengers?

Answer: The travel agent, issuing tickets on behalf of the airlines for travel of individual passengers, would not be required to deduct tax at source as he acts on behalf of the airlines. The position of clearing and forwarding agents is different. They act as independent contractors. Any payment made to them would, hence, be liable for deduction of tax at source. They would also be liable to deduct tax at source while making payments to a carrier of goods.

Question 8: Whether section 194C would be attracted in respect of payments made to couriers for carrying documents, letters, etc.?

Answer: The carriage of documents, letters, etc. is in the nature of carriage of goods and, therefore, provisions of section 194C would be attracted in respect of payments made to the Couriers.

Question 9: In case of payments to transports, can each GR be said to be a separate contract, even though payments for several GRs are made under one bill?

Answer: Normally, each GR can be said to be a separate contract, if the goods are transported at one time. But if the goods are transported continuously in pursuance of a contract for a specific period or quantity, each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of the TDS.

Question 10: Whether there is any obligation to deduct tax at source out of payment of freight when the goods are received on "freight to pay" basis?

Answer: Yes. The provisions of tax deduction at source are applicable irrespective of the actual payment.

Question 11: Whether a contract for catering would include serving food in a restaurant/sale of eatables?

Answer: TDS is not required to be made when payment is made for serving food in a restaurant in the normal course of running of the restaurant/cafe.

Question 12: Whether payment to a recruitment agency can be covered by section 194C?

Answer: Provisions of section 194C apply to a contract for carrying out any work including supply of labour for carrying out any work. Payments to recruitment agencies are in the nature of payments for services rendered. Accordingly, provisions of section 194C shall not apply. The payment will, however, be subject to TDS under section 194J of the Act.

Question 13: Whether section 194C would cover payments made by a company to a share registrar?

Answer: In view of answer to the earlier question, such payments will not be liable for tax deduction at source under section 194C. But these will be liable to tax deduction at source under section 194J.

Question 14: Whether FD commission and brokerage can be covered under section 194C?

Answer: No.

Question 15: Whether section 194C would apply in respect of supply of printed material as per prescribed specifications?

Answer: Yes.

Question 16: Whether tax is required to be deducted at source under section 194C or 194J on payment of commission to external parties for procuring orders for the company's product?

Answer: Rendering of services for procurement of orders is not covered under the provisions of section 194C. However, rendering of such services may involve payment of fees for professional or technical services, in which case tax may be deductible under the provisions of section 194J.

Question 17: Whether advertisement contracts are covered under section 194C only to the extent of payment of commission to the person who arranges release of advertisement, etc. or whether deduction is to be made on the gross amount including bill of media?

Answer: Tax is to be deducted at the rate of 1 per cent of the gross amount of the bill.

Question 18: Whether deduction of tax is required to be made under section 194C for sponsorship of debates, seminars and other functions held in colleges, schools and associations with a view to earn publicity through display of banners, etc. put up by the organisers?

Answer: The agreement of sponsorship is in essence, an agreement for carrying out a work of advertisement. Therefore, provisions of section 194C shall apply.

Question 19: Whether deduction of tax is required to be made on payments for cost of advertisements issued in the souvenirs brought out by various organisations?

Answer: Yes.

Question 20: Whether payments made to a hotel for rooms hired during the year would be of the nature of rent?

Answer: Payments made by persons other than individual and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I.

Question 21: Whether the limit of ₹ 1,80,000 per annum would apply separately for each co-owner of a property?

Answer: Under section 194-I, the tax is deductible from payment by way of rent, if such payment to the payee during the year is likely to be ₹ 1,80,000 or more. If there are a number of payees, each having definite and ascertainable share in the property, the limit of ₹ 1,80,000 will apply to each of the payee/co-owner separately. The payers and payees are, however, advised not to enter into sham agreements to avoid TDS provisions.

Question 22: Whether the rent paid should be enhanced for notional income in respect of deposit given to the landlord?

Answer: The tax is to be deducted from actual payment and there is no need of computing notional income in respect of a deposit given to the landlord. If the deposit is adjustable against future rent, the deposit is in the nature of advance rent subject to TDS.

Question 23: Whether payments made by company taking premises on rent but styling the agreement as a business centre agreement would attract the provisions of section 194-I?

Answer. The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement as mentioned in clause (i) of Explanation to section 194-I.

Question 24: Whether in a case of composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover, section 194-I of the Act would be attracted?

Answer: If the composite agreement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof.

Question 25: Whether the receipts prior to 1-7-1995 are to be aggregated to determine limit of ₹ 20,000 for each financial year?

Answer. Clause (B) of proviso to section 194J(1) makes it clear that tax shall be deducted at source if the aggregate sums credited or paid or likely to be credited or paid during the financial year are likely to exceed ₹ 20,000. Therefore, in regard to financial year 1995-96, the limit of ₹ 20,000 will have to be worked out taking into account all the payments from 1-4-1995 to 31-3-1996. But the deduction of tax at source would be made at the specified rate only from the payment made on or after 1 -7-1995.

Question 26: Whether commission received by the advertising agency from the media would require deduction of tax at source under section 194J of the Act?

Answer. Yes.

Question 27: Whether the services of a regular electrician on contract basis will fall in the ambit of technical services to attract the provisions of section 194J of the Act? In case the services of the electrician is provided by a contractor, whether the provision of section 194C or 194J would be applicable?

Answer. The payments made to an electrician or to a contractor who provides the service of an electrician will be in the nature of payment made in pursuance of a contract for carrying out any work. Accordingly, provisions of section 194C will apply in such cases.

Question 28: Whether a maintenance contract including supply of spares would be covered under section 194C or 194J of the Act?

Answer. Routine, normal maintenance contracts which include supply of spares will be covered under section 194C. However, where technical services are rendered, the provision of section 194J will apply in regard to tax deduction at source.

Question 29: Whether the deduction of tax at source under sections 194C and 194J has to be made out of the gross amount of the bill including reimbursements or excluding reimbursement for actual expenses?

Answer: Sections 194C and 194J refer to any sum paid. Obviously, reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source.

Question 30: Whether TDS from income in respect of units is applicable to dividend or is it applicable to capital appreciation distributed at the time of re-purchase/redemption of the units?

Answer: The provisions of section 194K regarding deduction of tax at source from income in respect of units are applicable to periodical distribution of income, which is in the nature of dividend. These provisions do not apply to capital gains arising at the time of re-purchase or redemption of the units.

Question 31: Whether TDS on reinvestment term deposit should be made on accrual basis, which is quarterly, or once in a financial year?

Answer: Tax has to be deducted at source at the time of credit of interest to the account of the payee or at the time of payment thereof, whichever is earlier. If credit is given to the account of the payee or payment is made to him annually, the tax may be deducted annually. It may be clarified that a credit to interest payable account or suspense account, etc. is also taken as credit to the account of the payee, even though this credit is not reflected separately in the payee's account.

Question 32: Whether variable deposit schemes are liable to deduction of tax at source from interest?

Answer. Under section 194A, tax is to be deducted from interest from banks on time deposits. As variable deposits are in the nature of time deposits, tax is deductible at source from interest on such deposits.

Question 33: Whether tax has to be deducted from principal on renewal of deposits made after 1-7-1995 but which matured on or before 30-6-1995 when the renewal is made retrospectively?

Answer. Tax has to be deducted from interest credited or paid, whichever is earlier, on time deposits with a bank made on or after 1-7-1995. When a time deposit is renewed retrospectively, the relevant date for deciding the applicability of section 194A would be that date of renewal. Thus, if the time deposit is renewed after 1-7-1995, the tax deduction at source will have to be made from interest paid or credited in respect of such a time deposit. [Circular No. 715, dated 8-8-1995]

NOTIONAL ACTUAL COST [EXPLANATIONS TO SECTION 43(1)]

Summarised Table of Notional Actual Cost [Section 43(1)]

Sl. No.	Situation	Notional Actual Cost	Relevant Explanation to section 43(1)
1.	Asset used in business after it ceases to be used for Scientific Research	Actual cost of the asset minus the amount of deduction allowed u/s 35 i.e. it will be 'Nil'.	Explanation 1
2.	Asset acquired by way of gift or inheritance	Actual cost to the previous owner minus the depreciation actually allowed prior to assessment year 1988-89 and depreciation allowable on that asset for assessment year 1988-89 and onwards assuming it is the only asset in the block.	Explanation 2
3.	Depreciable asset transferred to reduce tax liability by claiming depreciation at enhanced cost	Actual cost as determined by Assessing Officer with approval of Joint Commissioner. Genuine cases not covered.	Explanation 3
4.	Depreciable assets earlier transferred reacquired by the assessee	(a) original actual cost minus the depreciation actually allowed to him prior to assessment year 1988-89 and amount of depreciation allowable to him for assessment year 1988-89 and onwards, or (b) actual price for which reacquired, whichever is less.	Explanation 4

Sl No.	Situation	Notional Actual Cost	Relevant Explanation to section 43(1)
5.	Asset previously used by any person and on which depreciation allowed to him, acquired by another person but leased back to the seller	Actual cost in the hands of the person who has leased back the asset shall be same as the W.D.V. of the said asset to the seller at the time of transfer thereof.	Explanation 4A
6.	Buildings brought into use for business purpose subsequent to its acquisition	Depreciation that would have been Actual cost of the building minus all allowable had the building been used for business since its acquisition.	Explanation 5
7.	Assets transferred by holding company to 100% subsidiary or vice versa where transferee company is an Indian company	Actual cost to the transferee company shall be same as would have been to transferor company, if it continued to hold it.	Explanation 6
8.	Assets transferred under a scheme of amalgamation	Actual cost to the amalgamated company shall be same as would have been to the amalgamating company, if it continued to hold it.	Explanation 7
9.	Asset transferred to the resulting company in case of demerger	Same as would have been to demerged company, if it continued to hold the asset.	Explanation 7A
10.	Interest pertaining to post acquisition period	Interest on money borrowed for the purpose of acquiring a capital asset, pertaining to the period after the asset is put to use is to be claimed as a revenue expenditure u/s 36(1)(iii).	Explanation 8
11.	Actual cost of Cenvatable asset	Actual cost minus duty of excise/ customs for which credit of Cenvat has been taken.	Explanation 9
12.	Asset acquired where portion of cost met by some other person	Actual cost minus cost met by some other person.	Explanation 10
13.	Asset acquired by non-resident outside India but brought by him to India for the purpose of business and profession	Actual cost minus depreciation that would have been allowable in India since the date of its acquisition.	Explanation 11

Sl No.	Situation	Notional Actual Cost	Relevant Explanation to section 43(1)
14.	Assets acquired by a company under a scheme for corporatisation of a recognised stock exchange in India.	Actual cost to the company shall be the amount which would have been regarded as actual cost had there been no such corporatisation.	Explanation 12
15.	Capital asset on which 100% deduction has been allowed or is allowable to the assessee under section 35AD	'Nil'— (a) in the case of such assessee; and (b) in any other case if the capital asset is acquired or received,— (i) by way of gift or will or an irrevocable trust; (ii) on any distribution on liquidation of the company; and (iii) by such mode of transfer as is referred to in clauses (i) (iv), (v), (vi), (vib), (xiii), (xiiib) and (xiv) of section 47.	Explanation 13

UNDER/OVER ABSORPTION OF OVERHEADS

When a company uses standard costing, it derives a standard amount of overhead cost that should be incurred in an accounting period, and applies this standard amount of overhead to cost objects (usually produced goods). If the actual amount of overhead turns out to be different from the standard amount of overhead, then the overhead is said to either under absorbed or over absorbed.

If overhead is **under absorbed**, this means that more actual overhead costs were incurred than expected, with the difference being charged to expense as incurred. This usually means that the recognition of expense is accelerated into the current period, so that the amount of profit recognized declines.

If overhead is **over absorbed**, this means that fewer actual overhead costs were incurred than expected, so that more cost is applied to cost objects than were actually incurred. This means that the recognition of expense is reduced in the current period, which increases profits.

For example, if the overhead rate is predetermined to be ₹20 per direct labor hour consumed, but the actual amount should have been ₹18 per hour, then the ₹2 difference is considered to be over absorbed overhead.

There can be several reasons for overhead under absorption or over absorption:

- The amount of overhead incurred is not the same as the amount expected.
- The basis upon which overhead is applied is in an amount different than expected.

  For example, if there are ₹100,000 of standard overhead to be applied and 2,000 hours of direct labour are expected to be incurred in the period, then the overhead application rate is set at ₹50 per hour. However, if the number of hours actually incurred is only 1,900 hours, then the ₹5,000 of overhead associated with the missing 100 hours will not be applied.
- There may be seasonal differences in the amount of overhead actually incurred or in the basis of application, versus a standard rate that is based on a longer-term average.
- The basis of allocation may be incorrect, perhaps due to a data entry or calculation error.

When under or over absorption is encountered, it is normally dealt with in one of the following ways:

- The difference (either positive or negative) is charged to the cost of goods sold at once.
- The difference (either positive or negative) is applied to the relevant cost objects.

The first approach is easier to accomplish, but less precise. Consequently, an immediate write-off is usually limited to smaller variances, while the latter method is used for larger variances.

The entire issue of overhead absorption can be reduced by using just-in-time systems to reduce the amount of inventory on hand at the end of a reporting period. By doing so, a case can be made to charge all overhead costs to expense as incurred.

Treatment of Under/Over Absorption of Overhead

The methods used in treating the under or over absorbed overheads in Cost Accounts are:

- Application of Supplementary Rates
- Write off to Costing Profit and Loss Account
- Carry Forward to Subsequent Year

Application of Supplementary Rates:

- The under or over recovered overhead is adjusted by application of supplementary rates.
- This method is used to adjust the difference between overheads absorbed and overhead actually incurred by computing supplementary overhead rates.
- Such rate may be either positive or negative.

Positive supplementary Rate: A positive rate is used to add the under absorbed overheads to cost of production.

$$\text{Positive Supplementary Rate (in case of under absorption)} = \frac{\text{Actual Overheads - Absorbed Overheads}}{\text{Actual base}}$$

Negative supplementary Rate: A negative rate is used to correct the cost of production by deducting the amount of over absorbed overheads.

$$\text{Negative Supplementary Rate (in case of over absorption)} = \frac{\text{Absorbed overheads - Actual overheads}}{\text{Actual base}}$$

Write off to Costing Profit and Loss Account:

- If the under or over absorbed overhead is small and negligible, then it will be written off by transferring it to the Costing Profit and Loss Account without using the supplementary rates.

Carry Forward to Subsequent Year:

- Treating the under or over absorbed overheads as seasonal fluctuations, may be carried forward to the subsequent accounting year. This may be transferred to Overhead Suspense Account or Overhead Reserve Account.

Example

- XYZ Ltd. uses a historical cost system and absorbed overheads on the basis of predetermined rate. The following data are available for the year ended 31st March, 2015.

Manufacturing Overheads	₹
Amount Actually Spent	1,90,000
Amount Absorbed	1,70,000
Cost of Goods Sold	3,36,000
Stock of Finished Goods	96,000
Work-in-Progress	48,000

Using two methods of disposal of under-absorbed overheads show the implication on the profits of the company under each method.

Solution:

Calculation of Under absorbed Overheads: (₹)	
Overheads Actually Incurred	₹1,90,000
Less: Overhead Absorbed	(1,70,000)
Overhead Under absorbed	20,000

(i) Applying Supplementary Rate:

Since, the overheads are under absorbed so we have to apply positive supplementary rates per unit to adjust the cost of production by under absorbed amount. Now, here the cost of production has been distributed under three accounts i.e., Cost of Goods Sold Account, Stock of finished goods account & WIP account, hence we have to apportion the total under absorbed overheads to the above accounts in the rates of their amounts to adjust the cost books by amount of under absorbed overheads.

Apportionment of Under Absorbed Overheads:			
Account	Amount (₹)	Share of under absorbed overheads (in the ratio of their amount (₹)	Revise Amount (₹)
Cost of Goods Sold	3,36,000	14,000	3,50,000
Stock of Finished Goods	96,000	4,000	1,00,000
WIP	48,000	2,000	50,000
	4,80,000	20,000	5,00,000

(ii) Writing off to Costing P/L A/c:

The amount of under absorbed overhead of ₹20,000 could be written off to Costing P/L & hence the profit would be reduced by ₹20,000

Valuation under Central Excise

Practical illustration on Methods of Valuation under different circumstances

(1) The effect of price escalation subsequent to the removal of goods, on the assessable value

The amount realized under an escalation clause would form part of the assessable value and would attract Central Excise duty. The same is payable once the enhanced rate is fixed and finalized. In addition to the duties of excise, interest at appropriate rate is also payable. In Petrofab v CCE 2008 (223) ELT 656 (CESTAT) where the buyer did not agree to additional payment and did not pay the amount as there was no price variation clause in agreement. Held that the demand was not sustainable.

(2) The effect of reduction in price subsequent to the removal of excisable goods

After the goods are cleared on payment of duty, subsequent reduction of price for any reason, including Govt. interference, discount etc would not create a claim for refund of Central Excise duty paid on the quantum of price reduced. It was held in Traco Cable Co. v. CCE 2004(172) ELT 33(CESTAT) that where assessee gave a price reduction after the clearance from factory, refund not eligible.

(3) Whether interest payable after the expiry of credit period would form part of transaction value -Such interest would not form part of transaction value.

Illustration - Assessee charges ₹ 200 per unit for his goods and payment under the contract is required to be made within 45 days from the date of clearance. ₹ 200 per unit would include the interest component pertaining to the general credit period of 45 days. Even if the payment is made at the time of delivery, ₹ 200 would be the assessable value, irrespective of the possible inclusion of interest element in the price. If the assessee charges ₹ 204 per unit after 45 days and ₹ 4 per unit being relatable to time lag in payment and not relating to the manufactured goods, this amount of ₹ 4 per unit would not form part of the value.

(4) Role of notional interest on the advances/deposits accepted by the manufacturer

Interest on advance/deposits received against future sale of goods is includible in the assessable value only when there is a nexus between the advance/deposit and the sale price. The ratio decided in the *Metal Box case* 1995 (75) ELT 449 (SC) requires establishment of the facts that the interest free advance reflected favour or special treatment and that advances had the effect of pegging down the price. If the assessee charges the same price from those who provide advances and those who do not, the question of including notional interest on advances does not arise - *VST Industries Ltd* v *CCE* 1998 (97) ELT 395 (SC).

(5) The value of trade mark and assessable value

Where a manufacturer is the owner of the brand name, the price including the value of the brand name, at which he sells the goods in the course of wholesale trade, would constitute the normal price. But where the goods are manufactured by other manufacturer and then sold to a dealer who owns the brand name, the value of the brand name cannot be considered for computing the assessable value, as the brand name owner cannot be construed as manufacturer and the price at which the brand name owner sells the goods cannot be taken as assessable value.

(6) Consultancy/technical services and assessable value

The costs towards drawing, designing and technical specifications are clearly elements of machinery costs and are to be included in the assessable value. However, the cost towards project report, plant layout, civil works and training which are in the nature of services are not includible in the assessable value.

(7) Inspection charges and testing charges

Where the manufacturer bears the cost towards inspection and testing of goods prior to their clearance, such costs are includable in the assessable value. The inspection and testing charges incurred *subsequent* to the clearance of the goods should ideally suffer service tax as such services are taxable services under the provisions of service tax.

(8) Excess amounts charged to the customer

Amount charged and recovered from customers by providing separate bills would be considered as gross receipts or cum duty price and duty is to be paid after computing the assessable value from the gross receipts.

(9) Handling cost and assessable value

Handling cost incurred before the clearance of the goods from the place of removal is includible in the assessable value.

(10) The cost of accessories supplied by the buyer

There is a distinction between the component and the accessory. A thing is a part or a component of the other, only if the other is incomplete without it. A thing is an accessory of the other if the thing is not essential for the other, but only adds to its convenience or effectiveness.

The cost of accessory supplied by the buyer as a package of sale of the manufactured goods would be includable in the value and Cenvat credit benefit is also available on the accessories.

(11) The cost of transportation

Cost of transportation and insurance can be excluded for the purpose of determining the assessable value of goods. In cases where the vehicles are owned by the manufacturers, then the cost of transportation can be calculated through the accepted principles of costing. A cost certificate from a Cost Accountant/ Chartered Accountant/Company Secretary may be accepted. The cost of transportation should, however, be separately shown on the invoice.

It is clarified *vide* Circular No. 827/4/2006-CX, dated 12-4-2006, that as per Rule 5 of the Valuation Rules the actual cost of transportation from the place of removal up to the place of delivery is only to be excluded. If the assessee is recovering an amount from the buyer towards the cost of return fare of the empty vehicle from the place of delivery, this amount would not be available as a deduction. Therefore, unless it is specifically mentioned on the invoice that the transportation charges indicated therein do not include cost of transportation for the return journey of the empty truck/vehicle, the deduction of the said transportation charges would not be admissible.

However vide Circular No. 923/13/2010-CX dated 19.5.2010 it was clarified that if the manufacturer/transporter charges for transportation cost for outward journey upto point of delivery and return there from, cost of transportation of return journey of empty truck/vehicle would also be allowed as a deduction.

(12) Valuation in cases where the manufacturer is supplying some of the parts free of cost

It is clarified *vide* Circular No. 725/41/2003-CX., dated 30-6-2003 that since the assessable value shall take the entire intrinsic value of the article sought to be assessed, irrespective of the fact that manufacturer or processor of the article does not pay for the cost of some of its components, the value of caps fitted with the tubes should be included while determining assessable value of the tubes. However where the components are received under Rule *4(5)(a)* for job work, only the cost of goods supplied by the job worker needs to be included as per the decision of the Supreme Court in the case *of International Auto Ltd.* 2005 (183) ELT 239 (SC). This is as per the logic that the manufacturer would again be discharging the duty of excise on the finished components and would have availed of the duty on the components sent for job work.

JUDICIAL DECISIONS ON VALUATION

Particulars	*Citation*
The transaction value concept is quite different from the classic concept of price of goods and is based on the GATT protocol and WTO agreement introduced through the Customs Valuation rules 1988.	Associated Cement Companies v CC, 2001 (128) ELT 21 (SC)
Expenses on advertisement and after sales service during guarantee period provided under an agreement at arms length, and the manufacturer shared half of the advertisement and after sales charges, which benefited both the dealers and the manufacturer, not to be added to the value.	Philips India Ltd. v CCE 1997 (91) ELT 540 (SC)
Sales organisation expenses upto the stage of delivery of goods, such as handling charges, interest on inventories, transportation to such place of sale, marketing expenses are all includible in the assessable value.	UOI v Bombay Tyres 1983 (14) ELT 1896 (SC)
Warranty charges for the first twelve months collected from customers are includible in assessable value. If repair charges are collected during warranty period being labour charges from customers, the same held to be different from services. Provision for free repair during warranty period by manufacturer through the dealer for the customers' benefit includible in the value.	*V. B. Office Systems* v *CCE,* 2001 (128) ELT 162 (Tri-Chennai)
Commission paid to wholesale buyer in the form of credit notes is a permissible deduction. Commission paid to a selling agent is not deductible.	Ballarpur Industries Ltd v UOI 1987 (30) ELT 267 (Bom- HC)
Service charges paid to selling agent for services rendered by an organisation for procuring orders and payments from various government departments, are includible in value of goods. So also inspection charges.	*Siddhartha Tubes Ltd* v *CCE* 2006 (193) ELT 3 (SC)

Particulars	*Citation*
The PDI (pre-delivery inspection charges for vehicles and after sale service charges are to be includible in the assessable value even if paid to dealer, as these are in connection with sale.	Maruti Suzuki India v CCE 2010 (257) ELT 226 (Tri-LB). Note: Earlier in a plethora of cases it was held that predelivery inspection and after-sale-service recovered by dealers from buyers would not be included in the assessable value. The aforesaid decision of the Larger Bench of the Tribunal takes a contrary view to the earlier judgements.
Cost of additional testing of goods conducted at the request of and borne by the customer, was not includible in the assessable value.	CCE v Bhaskar Ispat Pvt. Ltd. 2004 (167) ELT (189) (T-LB)
Development and artwork charges recovered by debit notes for making printed flexible packaging laminates are to be included for the purpose of section 4.	Paper Products Ltd. v CCE, 2005 (189) ELT 248 (SC). This was appealed to the Supreme Court, appeal was disposed off in 2004 (214) ELT 161 (SC).
Head Office expenses for maintenance and upkeep of factory, where the manufacture takes place, raw material is procured, R&D takes place, are includible in the assessable value.	Colour Chem Ltd. v CCE, 2004 (177) ELT 1080 (T-Mum)
The cost of printing or labeling of customer's logo on the goods sold by the manufacturer in the case of aluminum extruded tubes includible in the assessable value. Printing is not a process of manufacture, but if manufactured bottles were printed and decorated inside the same factory, the cost of printing is includible.	UOI v Metal Box Co. of India Ltd. 1996 (87) ELT 327 (SC) UOI v J G Glass Industries Ltd. 1998 (97) ELT 5 (SC)
Erection, installation and commissioning charges of goods at the site of customer, whether movable or which eventually turn out to be immovable property after erection is not includible. Maintenance charges and site charges for installation of air conditioners and water coolers were not includible in the assessable value.	Thermax Ltd. v CCE 1998 (99) ELT 481 (SC). Voltas Ltd. v UOI 1991 (56) ELT 329 (HC-Bom.)

Particulars	Citation
The demand on advertising, marketing and sales promotion expenses not sustainable.	Pinakini Beverages (P) Ltd v CCE Guntur ((2007) TIOL 639 CESTAT Bangalore)
Expenditure incurred by dealers on sales promotion not includible in assessable value.	Ford India (P) Ltd v CCE Chennai ((2007) TIOL 1055 CESTAT Chennai)
Bonus to dealer deductible from assessable value but freight and transportation charges and commission to agents not deductible.	CCE Bhopal v Raymond Ltd ((2007) TIOL 956 CESTAT Mumbai)
When independent factory sale price is available, that should be the basis for determining the value of captively consumed goods; The assessable value of the captively consumed grey yarn would be on the basis of the price at which the grey yarn was sold by the assessee to unrelated buyers in wholesale at the factory.	CCE v Scan Synthetics 2008-TIOL-34
It has been finally confirmed that free samples of medicines of physician's are to be valued on pro-rata basis on basis of price of regular pack (and not based on Cost of Production plus 10%).	Medley Pharmaceuticals v CCE (2011 (263) ELT 641 (SC).
Even if the parties are related, if it has not influenced the price at which goods are sold; transaction value has to be accepted.	CCE v Bharti Telecom Ltd 2008-TIOL-124
The sale of the goods by the respondents to M/s. DIS was one of a 'dealer', which transaction was on principal-to-principal basis, and, therefore, the payment of duty made by the respondents on the assessable value of the goods determined on the basis of the discounted price is in order.	CCE v Mag Torqpowder Clutches P Ltd 2009-TIOL-92
Cost of design and drawings to be included in Assessable Value by the component vendors who were supplying components on the basis of the drawings and designs.	CCE v Tata Motors 2009-TIOL-241

Particulars	*Citation*
Where onward freight was not includible in the assessable value, there was no question of return freight being included: It defies all logic that for Central Excise purposes, the freight for carrying the empty container back is held to be part of the assessable value of the manufactured goods, whereas the outward freight for carrying goods is not considered to be part of the assessable value. Considering the fact that it is a legal requirement to use specially designed containers for carrying the goods which is notified as an explosive and consequently, the return of the empty containers that carry the impugned goods namely, Butadiene becomes a necessity and considering the fact that transaction value exclusive of the freight element, is available for sale at the factory gate, such transaction value has to be taken as the assessable value under section 4(1)(a) of the Central Excise Act. 1944.	Haldia Petrochemicals Ltd v CCE 2009-TIOL-360
Freight charges shown on invoice were an approximation vis-a-vis that actually collected from buyer, deduction of freight cannot be denied in its entirety by contending that only the actual, if shown on invoice, is allowable.	Indo Rama Synthetics (I) Ltd v CCE 2009-TIOL-310
Even if there is no flow back of any money, the fact that the price is not the sole consideration is sufficient for rejecting the transaction value.	CCE v Sun Pharmaceuticals 2009-TIOL-572
Installation charges collected from the buyers are not includable in the transaction value. Installation charges are not collected for the reason of, or in connection with, sale of computers. Transaction value is the total consideration received by the assessee in exchange for the excisable goods at the time of sale, or later. Installation of computers is not after sales service of the computers sold. Excise duty and service tax cannot be levied on the same activity.	HCL Infosyslems Ltd v CCE 2009-TIOL-535
Cost of transportation from one place of removal (factory) to another place of removal (depot) is not deductible from the assessable value.	Industrial chemicals and Monomers Ltd v CCE 2009-TIOL-534

Particulars	Citation
The cost of transportation from place of removal upto place of delivery is excluded when delivery is at a place other than place of removal. If freight is not shown separately in invoice, burden of proof is on assessee claiming such a deduction.	Wearwell Tyres v CCE (201O (257)ELT 126 (CESTAT)
Assessee had rate contract with DGS&D. Goods were dispatched at consignor risk on freight paid basis. Held that transport of property in goods was when the goods were handed over at buyer's premises. Hence outward freight includible in assessable value.	CCE v Punjab Tractors (2010 (259) ELT 123 (CESTAT).
Issue of 0% interest fully convertible debentures by the holding company to subsidiary company cannot be held to be interest free loan. In the absence of allegation of mutuality of interest on any other ground, the sale price adopted by the appellant is acceptable.	SV Sugar Mills Ltd v CCE 2009-TIOL-622
Torches cleared for free supply by manufacturers as advertisement propaganda to be assessed in terms of Section 4 of the CEA'44.	Vineetha Polymers P Ltd v CCE 2008-TIOL-70
Interest on receivables not to be included in the assessable value of the goods manufactured and cleared by the assessee. Any compensation for damage or breakage of goods after its removal from the factory not deductible from the assessable value	CCE v Raptakos Brett & Co 2008-TIO1-28
Agreement with the buyer of the goods to purchase minimum quantity failing which the buyer has to pay "Minimum Take or Pay". Such payments are in the nature of liquidated damages for breach of contract and are not includible in the assessable value.	CCE v Praxair India Ltd 2008-TIOL-160.
Once the sale was effected at the factory gate on the basis of purchase order, the additional responsibility of arranging transport and physical delivery at a different place cannot make any difference.	Blue Star Ltd v CCE 2008-TIOL-272

Particulars	Citation
MRP Assessment cannot be denied on the ground that footwear was not sold in a package bearing MRP when the foot wears themselves bore MRP on them.	Pond's Exports Ltd v CCE 2008-TIOL-349
The discount granted to buyer of excisable goods described by whatever name was not to be included in the assessable value provided that the discount was known at or prior to removal of the goods on sale.	CCE v Texmo Industries 2008-TIOL-623
Held that discount can be passed on later by way of a credit note. If buyers were aware of discount structure deduction of discount is admissible even if it is not shown in invoice.	Gujarat Borosil v CCE (2010 (253) ELT 610 (CESTAT) Maintained in 2012 (284) ELT A163 (Supreme Court)
Assessee was supplying specialised tankers for transport of his final product and was charging rental for the same from the transporters. It was held that the rental charges was not includible in assessable value.	Sree Rayalseema Hi-Strength Hypo v CCE (2010 (252) ELT 87 (CESTAT)
Freight charges from the depot to the place of delivery are not includable.	CCE & CC v Birla Tyres 2008-TIOL-I238
Stock-transfer of goods from factory to depot with duty liability discharged at rate at which goods were sold from depot, at time of their removal from factory. Goods so cleared to depot prior to price reduction sold at reduced price - HELD : Assessee's plea that excise duty recovered by them from customers was less than what they paid at factory, rejected as duty was paid according to Rule 7 of Central Excise (Valuation) Rules, 2000.	Finolex Cables Ltd. v Commissioner of Central Excise, Pune-I (2011 (270) ELT 81 (Tri. - Mumbai)
Expenses incurred by the dealers on account of sale promotion of vehicles is not includable in the assessable value.	TVS Motor Company Ltd v CCE 2008-TIOL-1405
There was a reciprocal arrangement between Oil marketing Companies to supply petroleum products at a price which was much lower than the price charged to independent dealers. Held that such price cannot be accepted for valuation. In such case, the valuation to be done under Rule 4 at the basis of price to independent dealers.	Bharat Petroleum Corporation Ltd v CCE (2009 (242) ELT 358 (CESTAT).
Merely because a holding company is related to its subsidiary company, it is not sufficient to invoke valuation rules. Revenue has to establish that the relationship had influenced the price.	CCE v Beacon Neyrpic Ltd 2008-TIOL-1717

Particulars	Citation
Held that mere common directors, employees or premises are not sufficient to lift corporate viel. Financial flowback and mutuality of interest is to be shown and proved.	Motorol Speciality Oils v CCE (2009 (243) ELT 449 (CESTAT).
Merely giving an interest free advance as a matter of commercial expediency and as a trade practice it is not sufficient to say that the buyer and seller are related persons.	CCE v Kwality Ice Cream (2010-TIOL-100-SC-CX)
Cost of transportation, laying, jointing, testing and commissioning, by any stretch of reasoning, cannot be considered to be the elements of price of goods at the factory gate.	CCE v Koya & Company Constructions P Ltd 2008-TIOL-2044
Different MRPs are acceptable for different packages. It is the prerogative of the manufacturer to affix the MRP on the goods and if different MRPs are affixed keeping in view the market condition, different MRP so fixed would be the retail sale price in respect of that packet.	CCE v Bell Granito Ceramics Ltd 2008-TIOL-2030
Held that the fans sold to various Government Departments by way of DGS & D rate contract were to be assessed under MRP based valuation under Section 4A of Central Excise Act, 1944.	[Commissioner v Jay Engineering Works Ltd. - 2011(263) ELT A 16 (SC)]
Performance bonus received from customers not includible in assessable value.	MPR Refactories Ltd v CCE 2008-TIOL-2176
Cost of gift articles viz. gold/silver coins put inside the containers of the lubricating oil or sunglasses and watches given as gifts with lubricating oil containers is required to be included in the Assessable value of Lubricating oil.	CCE v Nandan Petrochem Ltd 2008-TIOL-2124
Though know-how was received free of cost and its cost was includible in assessable value of medicine manufactured by assessee, in absence of a proper mechanism to quantify its value to medicines cleared, its value could not be included in assessable value of medicine manufactured using it - Section 4 of Central Excise Act, 1944.	Commissioner of C. Ex., Bangalore-III v Wintac Limited 2011 (263) ELT 273 (Tri. - Bang.)
Assessable value of goods shall be the transaction value excluding the actual cost of transportation charges incurred from the factory gate to the premises of Consignment agents.	Bhuwalka Alloys P Ltd v CCE 2008-TIOL-2483

Particulars	*Citation*
Once the product is covered under MRP provisions, quantity discount or free supply is not applicable. The transaction value is not relevant. If sale is through related party it is immaterial. Trade discount is not relevant.	Indica Laboratories v CCE (2007 (213) ELT 20
Constitutional validity of section 3(2) was upheld.	Century Manufacturing Company Ltd 1992 (60) ELT 3 (SC)
Assessee involved in manufacture and sale of cars. Cars sold below COP continuously for 5 years. Held that the goods are sold below costs to penetrate the market. Therefore such a sale is not done in ordinary course of sale or trade. The price based on costing to be assessable value.	Commissioner of Central Excise, Mumbai v M/s Fiat India Pvt Ltd & Anr (2012 (283) E.L.T. 161 (S.C.)