CMA Students Newsletter (For Intermediate Students)

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SOME ISSUES RELATING TO ELECTRICITY ACT, 2003

The Electricity Act, 2003

The Electricity Act, 2003 replaced the following three existing legislations, namely:

(i) The Indian Electricity Act, 1910,
(ii) The Electricity {Supply) Act, 1948 and
(iii) The Electricity Regulatory Commissions Act, 1998.

It extends to whole of India except the State of Jammu and Kashmir.

Central Electricity Authority

The Central Government has the power to constitute a body called Central Electicity Authority generally to exercise prescribed functions and perform prescribed duties. The office of the CEA is an "Attached Office" of the Ministry of Power.

Central Electricity Regulatory Commission (CERC)

Meaning: The Central Electricity Regulatory Commission shall be a body corporate, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

State Electricity Commission (SEC)

Meaning: The State Electricity Commission shall be a body corporate, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. **Functions:** The functions of the State Commission include determining the tariff of generation, supplying, transmission and wheeling of electricity companies, wholesale, bulk or retail, regulating the inter-State transmission of electricity, to issue licenses, to levy fees, to fix trading margin etc.

How to Account for Security Deposit

Legal Provisions:

(i) The Distribution Licensee may require the consumer to deposit sufficient security against the estimated payment which may become due to him in respect of electricity supplied to the consumer.

(ii) The Distribution Licensee shall pay interest equivalent to the Bank Rate or more, as may be specified by the concerned State Commission, on the security and refund such security on the request of the person who gave such security.

(iii) Determination of Security Deposit amount (for a consumer) —

= Load x Load Factor of the category in which the consumer falls x (Billing cycle + 45 days) x Current tariff.

Accounting of Security Deposit:

Journal of Distribution Licensee

Date	Particulars	L.F.	Dr. (₹)	Cr. (₹)
	On Receipt of Security Deposit			
	Bank A/c Dr.		XXXX	
	To Security Deposit A/c			XXXX
	(Being the Security Deposit received)			
	On Making Provision for Interest Accrued on Security Deposit			
	Interest Expense A/c Dr.		XXX	
	To Interest Accrued on Security Deposit A/c			XXX
	(Being the Provision for Interest Accrued on Security Deposit Made)			
	On Adjustment of Interest Accrued on Security Deposit in Consumer's Bill			
	Interest Accrued on Security Deposit A/c Dr.			
	To Sales Turnover A/c		XXX	
	(Being the Adjustment of Interest Accrued on Security Deposit in Consumer's Bill)			XXX

Reporting of Security Deposit In Balance Sheet of Distribution Licensee:

- Balance of Security Deposit at the end of the accounting period should be disclosed as Non-current liability in the Balance Sheet as the same is, in substance, not repayable within a period of 12 months from the reporting date and hence does not satisfy any of the conditions of classifying a liability as current.

- Balance of Interest Accrued on Security Deposit *A/e* at the end of the accounting period should be disclosed as Non-current liability in the Balance Sheet since the same is, in substance, not repayable within a period of 12 months from the reporting date and hence does not satisfy any of the conditions of classifying a liability as current.

DIRECT TAXATION - INTEREST

Interest payable by the assessee

Interest is payable by the assessee under the Income-tax Act in the circumstances enumerated below:

1. For defaults in furnishing return of income [Sec. 234A] - If a return of income is furnished after the due date or is not furnished, the assessee is liable to pay interest under section 234A.

HOW TO CALCULATE INTEREST - Interest is calculated as under:

1.Rate of interest	1 per cent per month or part of month (simple interest).
2.Period for which interest is payable.	Commencing on the date immediately following the due date for filing the return of income and ending on— a. the date of furnishing the return (where return has been filed after the due date) ; or b. the date of completion of assessment under section 144 (where no return has been furnished).
3.Amount on which interest is payable.	It is calculated as under : 1. Find out the tax on total income as determined under section 143(1) or on assessment under section 143(3) or section 147 or 153A (if the assessment is made for the first time under section 147 or 153A) 2. From the tax so determined advance tax paid, tax deducted or collected at source, relief under section 90/90A/91, MAT credit under section 115JAA and alternate minimum tax credit under section 115JD (but not tax paid under section 140A) shall be deducted.

OTHER POINTS - The following points shall also be kept in view :

(i) SELF-ASSESSMENT TAX PAID BEFORE THE DUE DATE AND RETURN SUBMITTED AFTER DUE DATE – Interest would not be payable in a case where tax has been deposited prior to due date of filing of income-tax return even if the return of income is filed after the due date of furnishing such return (provided the return could not be filed for reasons beyond the assessee's control)—CIT v. Pranoy Roy [2009] 179 Taxman 53(SC). In Milan Enterprise v. CIT [2005] 95 ITD 18, the Mumbai Bench of the Tribunal held that it is not open to the Assessing Officer to charge interest under section 234A in a situation where the assessee has paid due taxes and merely filing of income-tax return is delayed.

(ii) SLEF-ASSESSMENT TAX PAID AFTER DUE DATE AND RETURN IS SUBMITTED THEREAFTER - In the case of Pranoy Roy (supra), the Apex Court held that -

a. if self-assessment tax is paid before the due date of submission of return of income and return is submitted after the due date, interest under section 234A is not applicable [Case (a)]; and

b. if self-assessment tax is paid after the due date of submission of return of income, interest under section 234A is applicable [Case (b)].

However, the Court's ruling is silent on the point whether in Case (b), interest is payable till the date of payment of self-assessment tax or till the date of submission of return of income. The Court's ruling gives consideration to the fact that when self-assessment tax is paid before submitting return of income [under Case (a)] interest should not be payable after the deposit of self-assessment tax (there being no loss to the revenue). A similar view should be taken in Case (b) as well. If self-assessment tax is paid after the due date of submission of return of income (assume date of payment is December 20, 2014) and return is submitted belatedly after payment of tax (say, return is submitted on January 20, 2015 for the assessment year 2014-15), interest under section 234A should be payable up to date of payment of self-assessment tax (i.e., up to December 20, 2014).

(iii) WHEN ASSESSMENT IS MADE FOR THE FIRST TIME UNDER SECTION 147 - A belated return cannot be submitted after the expiry of one year from the end of the assessment year. If an assessment is made for the first time under section 147, then the assessee cannot be made liable to pay interest for the period during which it was not possible on the part of the assessee to file return (i.e., after one year from the end of the assessment year) till issuance of notice under section 148—Priti Pithawala v. ITO [2003] 129 Taxman 79 (Bom.) (Mag.).

(iv) INTEREST IN THE CASE OF REASSESSMENT - Section 234A(3) is applicable if return of income is not submitted or submitted belatedly in the course of reassessment proceedings. Interest in such a case is payable by the assessee at the rate of 1 per cent per month (for part thereof) for the period of default. The period of default commences on the date immediately following the expiry of time given by notice under section 148 or 153A and ends on the date of furnishing of return (or on the date of completion of reassessment under section 147 or 153A where no return has been furnished). Interest is payable on the amount by which the tax on the total income as reassessed exceeds the tax on the total income determined on the basis of the earlier assessment.

(v) INCREASE/REDUCTION IN INTEREST - If as a result of an order under section 154, 155, 250, 254, 260, 262, 263, 264 or 245D(4), the tax payable is increased or reduced, as the case may be, the interest shall be increased/reduced accordingly.

(vi) REDUCTION OF INTEREST - There is no provision for reduction or waiver of interest.

(vii) DELAY DUE TO STRIKE - Interest should not be charged where delay in filing return is due to strike of personnel of Income-tax Department—Income-tax Bar Association v. Chief CIT[1990] 182 ITR 43 (Guj.).

(viii) NO OPPORTUNITY OF HEARING - The liability to pay interest under sections 234A, 234B and 234C is automatic and the question of granting opportunity of being heard does not arise — CIT v. R. Ramalingair [2000] 108 Taxman 1 (Ker.).

(ix) INTEREST MUST BE CHARGED IN THE ASSESSMENT ORDER - While charging interest under section 234A, 234B or 234C, the Assessing Officer is required to pass a specific order to this effect in its assessment order. When the assessment order is silent, as to whether any interest is leviable, the notice of demand under section 156 cannot be beyond the assessment order and the assessee cannot be served with any such notice demanding the interest. Interest cannot be charged by mere observation like charge interest as per law. It has to be by means of a speaking order—CIT v. Inchcape India (P.) Ltd. [2002] 124 Taxman 744 (Delhi), CIT v. Ranchi Club Ltd. [2001] 247 ITR 209/114 Taxman 414 (SC), Tej Kumari v. CIT[2001] 247 ITR 210/114 Taxman 404 (Pat.).

(x) BOOKS OF ACCOUNT IN CUSTODY OF INCOME-TAX AUTHORITY- During the period when the books of account are in the custody of the concerned income-tax authorities, it is not possible for the taxpayer, to submit the return of income. Consequently, he cannot be saddled with liability to pay penal interest under section 234A for that period—Paras Bansilal Patel v. B.M. Jindel [2004] 135 Taxman 125 (Guj.).

(xi) ISSUE OF NOTICE UNDER SECTION 142(1)- Issue of notice under section 142(1)(ii)and 142(1)(iii) does not give the Assessing Officer jurisdiction to levy interest under section 234A—CIT v. Ranchi Club Ltd. [2001] 114 Taxman 414 (SC).

(xii) CONCESSIONS AVAILABLE TO THE MIGRANTS AND RESIDENTS OF KASHMIR VALLEY - Vide Notification No. 275/12/2007-IT(B), dated April 26, 2007, interest chargeable under section 234A and section 234B for assessment year 2007- 08 shall be waived for the period up the date of filing of the return of income or up to March 31, 2009, whichever is earlier, in respect of the migrant assessees of Kashmir Valley and assessees who reside in, or have their principal place of business in, the Kashmir Valley. The Board gave a similar concession for the earlier assessment years.

2. For failure to deduct or collect and pay tax at source [Sec. 201(1A) or 206C(7)] – The provisions are given below—

- **Default -** Interest is payable in respect of any of the following defaults—
  1. If the person responsible for deducting /collecting tax at source does not deduct/collect tax at source, wholly or partly, under sections 192 to 196C and 206C.
  2. After deducting/collecting tax, he fails to pay the same as required by the Act.

(i) INTEREST FOR FAILURE TO DEDUCT TAX AT SOURCE [SEC. 201(1A)] - In the above two cases, the person responsible for deducting tax at source is liable to pay interest as follows -

Rate of interest (per month or part)	Period for which interest is payable
1 per cent	From the date on which tax was deductible to the date on which tax is actually deducted
1.5 per cent	From the date on which tax was actually deducted to the date on which tax is actually paid

(ii) INTEREST FOR FAILURE TO COLLECT TAX AT SOURCE [SEC. 206C(7)] - In the above two cases, the person responsible for collecting tax at source is liable to pay. Interest is calculated at the rate of 1 per cent per month (or part thereof). Interest is payable on short payment or nonpayment. It is payable from the date on which such tax was collectible to the date on which the tax is actually paid.

(iii) RELIEF APPLICABLE FROM JULY 1, 2012 - The Finance Act, 2012 has amended the aforesaid provisions, with effect from July 1, 2012.

Relief for default in tax deduction - After this amendment, the payer shall not be deemed to be an assessee in default if-

a. the resident recipient has included such income in the return submitted under section 139 and the recipient has paid tax on such income; and

b. the payer submits a certificate (in Form No. 26A) to this effect from a chartered accountant.

In such a case, interest shall be payable at the rate of 1 per cent from the date on which tax was deductible to the date of furnishing of return of income by the resident recipient.

Relief for default in tax collection - Similar rule will be applicable from July 1, 2012 in the case of non-collection of tax at source. However, the certificate of chartered accountant should be taken in Form No. 27BA.

Date of applicability of relief - The aforesaid relaxation given by the Finance Act, 2012 is applicable only when the recipient (or the purchaser in the case of tax collection) is resident and the default pertains to the period commencing on or after July 1, 2012. If the recipient (or the purchaser in the case of tax collection) is a non-resident (or if such recipient/purchaser is a resident but default pertains to the period prior to July 1, 2012), the amendment made by the Finance Act, 2012 is not applicable. In such a case, one can take shelter of judicial rulings where the Courts held that interest cannot be recovered for non-deduction or short-deduction from the payer for any period which falls after the date of payment of tax by the recipient – CIT v. Rishikesh Apartments Co-op. Housing Society Ltd. [2001] 119 Taxman 239(Guj.), CIT v. Eli Lilly & Co. (India) (P.) Ltd. [2009] 178 Taxman 505 (SC), S.A.A. Ispahani Trust v. ITO [2013] 216 Taxman 1 (Mad.).

3. For default in payment of advance tax [Sec. 234B] - Under section 234B(1), interest is payable as follows :

When interest is payable	Amount on which interest is payable	Rate of interest	Period for which interest is payable
An assessee who is liable to pay advance tax, has failed to pay such tax	Interest is payable on assessed tax	Simple interest @ 1 per cent for every month or part of month	From April 1 of the assessment year to the date of determination of income under section 143(1) and where a regular assessment is made to the date of such regular assessment
An assessee who had paid advance tax but the amount of	Assessed tax minus advance tax	Simple interest @ 1 per cent for every month or part of	From April 1 of the assessment year to the date of determination of income under section 143(1) and where

advance tax paid by him is less than 90 per cent of assessed tax"		month	a regular assessment is made to the date of such regular assessment

(i) ASSESSED TAX - MEANING OF - "Assessed tax" means the tax on total income determined under section 143(1) or on regular assessment as reduced by tax deducted or collected at source on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

Relief under section 90/90A/91, MAT credit under section 115JAA and alternate minimum tax credit under section 115JD shall be deducted.

Only tax actually deducted/collected shall be reduced from assessed tax. If tax is deductible or collectible but the payer or collector has not deducted/collected tax at source, such tax cannot be reduced after the amendment made by the Finance Act, 2012 (applicable from April 1, 2012). This rule is applicable only from April 1, 2012. Prior to April 1, 2012, one can take advantage of judicial rulings where the Courts held that even tax deductible (but not actually deducted) by the payer will be reduced from assessed tax.

(ii) ADJUSTMENT WHEN TAX IS PAID BEFORE REGULAR ASSESSMENT UNDER SECTION 140A - If before the date of completion of a regular assessment tax is paid on the basis of self-assessment under section 140A, the interest shall be calculated as under:

a. up to the date of payment of tax under section 140A, interest will be calculated as mentioned in the table above; and

b. from the date of payment of tax under section 140A, interest will be calculated on the amount by which advance tax and tax paid under section 140A falls short of assessed tax. From the amount of interest computed above, amount paid under section 140A towards interest chargeable under section 234B shall be deducted.

(iii) ADJUSTMENT IN THE CASE OF REASSESSMENT / RECOMPUTATION UNDER SECTION 147 OR 253A [SEC. 234B(3)]- If as a result of reassessment/recomputation [under section 147 or 153A], the amount on which interest was initially payable is increased, the taxpayer will be liable to pay additional interest under section 234B(3) at the rate of 1 per cent per month (or part of month) for the period starting from the date of regular assessment and ending on the date of reassessment/recomputation. This additional interest is to be paid on the excess of tax determined on the basis of reassessment/ recomputation over tax payable on the basis of regular assessment.

The following propositions should also be kept in view—

1. In order to levy interest under section 234B(3) in reassessment proceedings under section 147, there is no need for a pre-existing levy of interest under section 234B(1) in regular assessment and interest can be levied for first time in reassessment completed under section 147—South Indian Bank Ltd. v. CIT [2010] 191 Taxman 301 (Ker.).

2. Interest can be levied under section 234B(3) in second revision of assessment under section 147 even if in first reassessment proceeding completed under very same provision, interest under section 234B was not levied.

(iv) ADJUSTMENT IN THE CASE OF RECTIFICATION/REVISION/MODIFICATION UNDER SECTION 154, 155, 250, 254, 260, 262, 263, 264 OR 245D(4) - If as a result of an order of rectification/revision/ modification under the aforesaid sections, the amount on which interest was payable under section 234B has been increased/reduced, the interest shall be increased/reduced, accordingly. In the case of increase in interest liability, the Assessing Officer will serve on the assessee a notice of demand specifying the sum payable. In the case where interest is reduced, the excess interest shall be refunded. Further after decision of the Tribunal, the Assessing Officer is duty bound to charge interest under section 234B up to date of original order of assessment passed by him and not upto date of reassessment order passed by him in pursuance of order of Tribunal—Freightship Consultants (P.) Ltd. v. ITO [2007] 15 SOT 617 (Delhi).

(v) INTEREST UNDER SECTION 234B OR 234C IN CASE OF MAT/AMT - All companies are liable for payment of advance tax having regard to the provisions contained under section 115JB. Consequently, interest under sections 234A, 234B and 234C will be calculated after taking into consideration section 115JB—Circular No. 13/2001, dated November 9, 2001. Likewise, a non-corporate assessee is liable for payment of advance tax having regard to the provisions of alternate minimum tax (AMT) contained under section 115JC. Interest under sections 234A, 234B and 234C shall be calculated after taking into consideration section 115JC. However, interest under sections 234A, 234B and 234C can be levied only on that deficiency which arises after giving credit of MAT under section 115JAA and AMT under section 115JD.

(vi) SHIPPING BUSINESS OF NON-RESIDENTS - Under the provisions of section 172(7), the non-resident owner or charterer is allowed an option to be assessed on his total income of the previous year in accordance with other provisions of the Act. When such option is exercised and an assessment is made accurately, the tax already paid under the provisions of section 172(4) by the non-resident owner or charterer would be treated as tax paid in advance for that assessment year before determining the amount of tax finally due.
The Board has clarified that in case of a regular assessment under section 172(7), the non-resident assessee is liable to pay interest under sections 234B and 234C and also entitled to receive interest under section 244A as the case may be—Circular No. 9/2001, dated July 9, 2001.

(vii) PAYMENT BY CHEQUE - If tax is paid by cheque, it shall be deemed that payment has been made on the date when cheque is handed over to the Government's bankers (if the cheque is not dishonoured later).

(viii) SPECIFIC ORDER - In the absence of any specific order of the assessing authority, interest under sections 234A and 234B cannot be charged. Where there is no direction to charge interest at all in assessment order, levy of

interest under sections 234B and 234C would be illegal. Where, however, there is a direction to charge interest in assessment order but specific section has not been mentioned, department can be justified in charging interest under applicable sections—Shadi Ram & Sons v. CIT [2005] 142 Taxman 30 (Luck.).

(ix) IF RETURNED INCOME AND ASSESSED INCOME OF LATEST YEAR IS NIL - Where the returned income and assessed income of the latest previous year is nil, and the Assessing Officer has not made his order under section 210(3), there is no obligation on the assessee to pay advance tax and no liability to pay.

(x) CHARGE OF INTEREST MANDATORY - Sections 234A, 234B and 234C in clear terms impose a mandate to collect interest at the rates stipulated therein. The expression 'shall' used in the said section cannot by any stretch of imagination be construed as 'may'. There are sufficient indications in the scheme of the Act to show that the expression 'shall' used in sections 234A, 234B, and 234C is used by the Legislature deliberately and it has not left any scope for interpreting the said expression as 'may'—CIT v. Anjum M.H. Ghaswala [2001] 119 Taxman 352 (SC).
Since the provisions of section 234B are mandatory, while framing assessment, the Assessing Officer has no jurisdiction to consider as to whether there is reasonable cause for non-payment of advance tax or not but to levy interest—CIT v. Haryana Warehousing Corpn. [2005] 1 SOT 258 (Chd.). Once a default within the meaning of sections 234B and 234C takes place, levy of penal interest is automatic and there is no scope for applying the principles of equity or rules of natural justice or finding out reasonable cause of non-payment of advance tax. No hearing is required to be given to the assessee seeking any justification for not making the payment of advance tax.

(xi) CASH SEIZED DURING SEARCH - Cash seized during search should be treated as advance tax for the purpose of computation of interest under section 220(2) and sections 234A, 234B and 234C.

(xii) SHORTFALL BECAUSE OF INTERPRETATION OF LAW - If short payment of advance tax is mainly because of a bona fide dispute regarding the interpretation of law, interest under section 234B is not applicable—CIT v. Sedco Forex International Drilling Co. Ltd. [2004] 134 Taxman 109 (Uttaranchal). Some leniency is called for in the matter of fixing interest liability of an assessee under sections 234B and 234C where advance tax is not paid for reason that position of tax liability is not clear to him.

(xiii) WHEN ADVANCE TAX LIABILITY ARISES BECAUSE OF A SUBSEQUENT COURT RULING OR AMENDMENT – If short payment is because of retrospective amendment in law, or because of subsequent court ruling, interest under sections 234B and 234C cannot be imposed.
In Balkrishna Breeding Farms (P.) Ltd. v. CIT [2005] 147 Taxman 148 (Kar.), the assessee- company engaged in business of hatchery claimed deduction under sections 80HHA and 80-I on basis of decision of the High Court in CIT v. Rahebar Farms Ltd. [I.T. Reference Case No. 25 of 1991] and had not paid any advance tax on amounts claimed as deduction under sections 80HHA and 80-I. The Assessing Officer allowed claim and completed

assessment. Subsequently, above decision was reversed by Supreme Court in CIT v. Venkateswara Hatcheries (P.) Ltd [1999] 237 ITR 174/103 Taxman 503, wherein it was held that units engaged in poultry farming or hatcheries do not manufacture any article or thing and as such they are not entitled to special deduction under section 80HHA or 80-IA. Accordingly, the Assessing Officer, in view of the Supreme Court's order, issued notice under section 148. The assessee filed revised returns and deposited all tax payable. The Assessing Officer levied interest under section 234B on ground that assessee had defaulted in payment of advance tax in regard to amount which had now become taxable in view of pronouncement of the Supreme Court. The Chief Commissioner took view that since decision of the High Court had been reversed by the Supreme Court on March 24, 1999, and having regard to reasonable time which had to be allowed to the assessee for filling its revised return which according to him was up to April 30, 1999, the assessee was liable to pay interest for period subsequent to April 30, 1999 and interest payable up to April 30, 1999 was waived.

Reversing the order of the Commissioner, the Karnataka High Court held that there is no provision in the Act requiring the assessee to file a revised return of income in regard to relevant assessment years after the Supreme Court has reversed judgment of High Court. Since the assessee filed its revised return within time allowed by notice issued under section 148 and tax that became due in terms of revised return had also been paid within time, no delay could be attributed to the assessee.

Likewise, interest is not payable under section 234B or 234C, where at time when the assessee submitted return and paid advance tax, it was entitled to exemption under section 47(v), but it ceased to be entitled to that exemption because of certain development in next financial year.

(xiv) APPLICATION OF SECTION 234B IN THE CASE OF SETTLEMENT OF CASES - Section 234B is applicable to proceedings of the Settlement Commission up to the stage of section 245D(1) and not beyond that. Consequently, the terminal point for levy of interest under section 234B is up to the date of order under section 245D(1) and not up to the date of order of settlement under section 245D(4).

Settlement Commission cannot reopen its concluded proceedings by invoking section 154 so as to levy interest under section 234B.

(xv) INTEREST UNDER SECTIONS 234B AND 234C IN THE CASE OF NON-RESIDENT ASSESSEE - In the case of a non-resident/foreign company, all payments received from Indian sources are subject to TDS and hence, such assessee is not liable to interest under section 234B/234C.

4. For deferment of advance tax [Sec. 234C] - Interest is payable under section 234C if an assessee has not paid advance tax or underestimated installments of advance tax. Interest is to be computed on the following basis:

(i) IN THE CASE OF A NON-CORPORATE ASSESSEE [SEC. 234C(1)(b)] - In the case of a non- corporate-assessee, interest under section 234C is payable as follows :

When interest is payable under section 234C	Rate of interest	Period of interest	Amount on which interest is payable
(1)	(2)	(3)	(4)
If advance tax paid on or before September 15 is less than 30% (a—b)	Simple interest @ 1 per cent per month	3 months	30% (a—b)— c
If advance tax paid on or before December 15 is less than 60% (a—b)	Simple interest @ 1 per cent per month	3 months	60% (a—b)—d
If advance tax paid on or before March 15 is less than 100% (a—b)	Simple interest @ 1 per cent	---	100% (a—b)—e

Notes:

a. Tax on the total income declared in the return filed by the assessee.

b. Tax deducted or collected at source, relief under section 90/90A/91 and alternate minimum tax credit under section 115JD.

c. Amount of advance tax paid on or before September 15 of the financial year immediately preceding the relevant assessment year.

d. Amount of advance tax paid} on or before December 15 of the financial year immediately preceding the relevant assessment year.

e. Amount of advance tax paid} on or before March 15 of the financial year immediately preceding the relevant assessment year.

(ii) IN THE CASE OF A CORPORATE-ASSESSEE [SEC. 234C(1)(a)] - A corporate-assessee will be liable for interest under section 234C as under :

When interest is payable under section 234C by a company	Rate of interest	Period of interest	Amount on which interest is payable
(1)	(2)	(3)	(4)
If advance tax paid on or before June 15 is less than 12% (a—b)	Simple interest @ 1 per cent per month	3 months	15% (a—b)—c
If advance tax paid on or before September 15 is less than 36% (a—b)	Simple interest @ 1 per cent per month	3 months	45% (a—b)—d
If advance tax paid on or before December 15 is less than 75% (a—b)	Simple interest @ 1 per cent per month	3 months	75% (a—b) — e
If advance tax paid on or before March 15 is less than 100% (a—b)	Simple interest @ 1 per cent	---	100% (a—b)—f

Notes:

a. Tax on the total income declared in the return filed by the assessee.

b. Tax deducted or collected at source, relief under section 90/91A/91 and MAT credit under section 115JAA.
c. Amount of advance tax paid on or before June 15 of the financial year immediately preceding the relevant assessment year.
d. Amount of advance tax paid on or before September 15 of the financial year immediately preceding the relevant assessment year.
e. Amount of advance tax paid on or before December 15 of the financial year immediately preceding the relevant assessment year.
f. Amount of advance tax paid on or before March 15 of the financial year immediately preceding the relevant assessment year.

(iii) SHORT PAYMENT OF ADVANCE TAX IN CASE OF CAPITAL GAINS/CASUAL INCOME [FIRST PROVISO TO SEC. 234C(1)] - No interest will be levied in respect of any shortfall in the payment of advance tax due on the returned income if—

a. the shortfall is on account of underestimate or failure to estimate the amount of capital gains (short-term or long-term) or income of the nature referred to in section 2(24)(ix) (i.e., lottery income, gambling income, etc.); and
b. the assessee has paid the whole of the amount of tax payable in respect of such income, as part of the remaining installments of advance tax which are immediately due or if no installment is due, then such tax is paid before the end of the financial year.

(iv) WHAT IS RETURNED INCOME - Income shown by assessee in the revised computation of income filed before the Assessing Officer after time-limit prescribed in section 139(5), cannot be treated as 'returned income' of the assessee for purpose of levy of interest under section 234C.

(v) INTEREST UNDER SECTIONS 234B AND 234C IN THE CASE OF NON-RESIDENT ASSESSEE - In the case of a non-resident/foreign company, all payments received from Indian sources are subject to TDS and hence, such assessee is not liable to interest under section 234B/234C.

5. Interest on excess refund [Sec. 234D] - In a case where an assessee claims refund of a substantial portion of advance tax or TDS or TCS treated as paid by him on the basis of the total income as declared in his return of income furnished under section 139, such refund has to be granted to him at the time of processing of the return under section 143(1). Subsequently, if regular assessment is made on a total income much higher than the returned income, the refund earlier granted to the assessee or a substantial portion of it is treated as tax payable. But while the assessee pays interest for shortfall in payment of advance tax with effect from the first day of the assessment year, nothing is charged from the assessee for having utilized the refund amount, till the date of

regular assessment. Section 234D was inserted (with effect from June 1, 2003) to charge interest on excess refund granted at the time of summary assessment.

Interest under section 234D(1) - In any of the following two cases interest is attracted under section 234D(1)—

Case one - If any refund is granted under section 143(1) but no refund is due on regular assessment.

Case two - If any refund is granted to the assessee under section 143(1) and the refund so granted exceeds the amount refundable on regular assessment.

For the aforesaid purpose, regular assessment means assessment under section 143(3) or 144. If an assessment is made for the first time under section 147 or section 153 A, the assessment so made shall be regarded as a regular assessment.

Computation of interest - In any of the above two cases interest is payable under section 234D(1) as follows—

Rate of interest	**½ per cent per month or part of a month;**
Period for which interest is payable	The period commencing from the date of grant of refund under section 143(1) to date of regular assessment;
Amount on which interest is payable	In Case One on whole of the amount refunded; in Case Two on the excess of amount refunded under section 143(1) over the amount refundable on regular assessment.

Adjustment under section 234D(2) - Where, as a result of an order under section 154 or 155 or 250 or 254 or 260 or 262 or 263 or 264 or an order of the Settlement Commission under section 245D(4) the amount of refund granted under section 143(1) is held to be correctly allowed, either in whole or in part, as the case may be, then the interest chargeable under section 234D(1), shall be reduced accordingly.

6. For making late payment of income-tax [Sec. 220(2)] - If any assessee fails to pay any tax (other than advance tax) specified in a demand notice within 30 days of the service of notice of demand, he is liable to pay interest at the rate of 1 per cent for every month or part of month from the expiry of 30 days of the service of demand notice.

Section 220 has been amended by the Finance Act, 2012 (with effect from July 1, 2012) to provide that when interest is charged under section 201(1A) on the amount specified in the intimation issued under section 200A(1), then no interest will be charged for the same amount for the same period under section 220(2).

The following points should also be kept in view:

(i) REDUCTION OR waiver OF INTEREST [SECTION 220(2A)] - The Chief Commissioner or Commissioner may reduce or waive the amount of interest payable by an assessee under section 220(2), if he is satisfied that—

a. payment of such interest would cause genuine hardship to the assessee ;

b. the default in the payment of the amount on which interest was payable was due to circum stances beyond the control of the assessee; and

c. the assessee has co-operated in any inquiry relating to the assessment or in any proceeding for the recovery of any amount due from him.

(ii) WHEN ASSESSMENT REFRAMED - Where an assessment order is cancelled/set aside by an appellate/ revisional authority and the cancellation/setting aside becomes final (i.e., it is not varied as a result of further appeals/revisions), no interest under section 220(2) can be charged pursuant to the original demand notice. The necessary corollary of this point will be that even when the assessment is reframed, interest can be charged only after the expiry of 30 days from the date of service of demand notice pursuant to such fresh assessment order—Circular No. 334, dated April 3, 1982.

Where the assessment made originally by the Assessing Officer is either varied or even set aside by one appellate authority but on further appeal, the original order of the Assessing Officer is restored (either in part or wholly), the interest payable under section 220(2) will be computed with reference to the due date reckoned from the original demand notice and with reference to the tax finally determined. The fact that during an intervening period, there was no tax payable by the assessee under any operative order would make no difference to this position—Circular No. 334, dated April 3, 1982.

The observation given in Circular No. 334 does not find support in the judicial pronouncement given by the Apex Court in Vikrant Tyres Ltd v. First ITO [2001] 115 Taxman 202. In this case the assessee deposits the demand made by the Assessing Officer and goes in appeal. The appellate authority decides the issue in favour of the assessee and the tax collected is refunded. In further appeal by the revenue before the High Court, the assessee looses the case. Fresh demand notices are issued to the assessee demanding interest under section 220(2) for the period commencing from the refund of tax consequent upon the first appellate order. The assessee disputes the charge of interest.

The Supreme Court held that for invoking section 220 one of the conditions is that if there is a default in payment of amount demanded under a notice by the revenue within the time stipulated therein and if such a demand is not satisfied, interest is leviable under section 220(2). The Court held that the section cannot be invoked to revive a demand notice, which has already been fully satisfied. The landmark ruling of the Supreme Court is a clear pointer to taxpayers to pay tax demands in full (and not in part) as and when they arise to save the burden of interest in the ultimate.

However, the Supreme Court ruling has been superseded by the Finance (No. 2) Act, 2014 with effect from October 1, 2014. The amended provisions provide that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be and such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

(iii) STAY BY TRIBUNAL - Appellate Tribunal has power to grant stay of recovery of interest demanded under section 220(2)—Bhoja Reddy v. CIT [1998] 231 ITR 47/100 Taxman 44 (AP).

(iv) OTHER POINTS - One should also keep in view the following points—

- Separate notice for determination of interest is not necessary—Rajam Pictures Circuit v. CIT[2000] 108 Taxman 26 (Mad.).
- Company court has powers to waive recovery of interest levied under section 220(2)—Catholic Centre v. Pilot Pen Co. (India) (P.) Ltd [2003] 131 Taxman 437 (Mad.).
- Before levy of interest opportunity need not be given to assessee — J. Jayalalitha v. CIT [1999] 107 Taxman 476 (Mad.).
- Where the assessee has not paid interest under section 234B which is included in the demand notice issued under section 156, the assessee is liable to pay interest under section 220(2) even on interest levied under section 234B—Shriram Chits & Investments (P.) Ltd v. CIT [2005] 2 SOT 838 (Chennai).
- Petition for waiver of interest under section 220(2) can be filed even after interest has been paid— Jewellers Om Prakash v. CIT [2011] 202 Taxman 71 (Delhi).

7. Fees for defaults in furnishing quarterly returns [Sec. 234E] - Section 234E has been inserted with effect from July 1, 2012. It is applicable in respect of quarterly TDS/TCS return which is to be submitted on or after July 1, 2012. In other words, it is applicable from the first quarter return of the financial year 2012-13. Under this section, if a person fails to deliver (or cause to be delivered) a quarterly TDS/TCS return within the time prescribed in section 200(3) or the proviso to section 206C(3), he shall be liable to pay, by way of fee, a sum of ₹ 200 for everyday during which the failure continues.

This fees will be in addition to other consequences under the Act. However, the fees shall not exceed the amount of tax deductible/collectible. After July 1, 2012, it will not be possible to submit belated quarterly TDS/TCS returns without payment of fees under section 234E.

8. Interest payable to assessee [Sec. 244A]:

Interest is payable where any refund arises due to any excess payment of tax. There is no need for making claim for refund.

How to compute interest - Interest is payable by the Government as follows—

	Refund of advance income- tax, tax deducted/collected at source or advance fringe benefit tax	**Refund in any other case**
(1)	**(2)**	**(3)**
Whether any application for obtaining refund is required	No	No
Rate of interest	0.5 per cent per month (or part of	0.5 per cent per month (or part

	month)	of month)
Period	From the first day of the assessment year to the date of grant of refund (i.e., the date of signing of the refund order)	From the date of payment of tax" or penalty to the date of grant of refund (i.e., the date of signing of the refund order)

9. Procedure to be followed in calculation of interest [Rule 119A]

In calculating interest payable by the assessee or interest payable by the Central Government to the assessee, the amount of tax, penalty or other sum in respect of which interest is to be calculated will be rounded off to the nearest multiple of ₹ 100 ignoring any fraction of ₹ 100.

Where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month/months and for this purpose any fraction of a month shall be ignored. Where, however, the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month.

10. Waiver or reduction of interest under sections 234A, 234B and 234C

In exercise of the powers conferred under section 119(2)(a), the Central Board of Direct Taxes have directed (vide order dated June 2, 1994) that in cases where any income accrues or arises for any previous year due to the operation of any order of a Court, statutory authority or of the Government (other than an order of assessment, appeal, reference or revision passed under the provisions of the Income-tax Act) passed after the close of the said previous year (such income and the order hereinafter referred to as the "relevant income" and the "relevant order" respectively) interest under sections 234A, 234B and 234C shall be reduced or waived by the Chief Commissioner/Director-General subject to certain conditions.

(i) Conditions - The following conditions shall be satisfied—

Condition 1	The relevant income is disclosed in a return of income furnished for the said previous year or is otherwise disclosed to the Assessing Officer
Condition 2	The tax attributable to such income has been paid.

(ii) Period - Reduction/waiver of interest is given in respect of the following period—

Section	Period in respect of which reduction or waiver is allowed
Section 234A	From the date immediately following the due date for furnishing the return of income for the relevant assessment year till the end of the month in which the relevant order giving rise to the relevant income is passed.
Section 234B	From the first day of April of the relevant assessment year till the end of the month in which the relevant order giving rise to the relevant income is passed.
Section 234C	For the period mentioned in that section.

(iii) Extent of interest to be reduced or waived - The quantum of interest to be reduced or waived shall be the difference between:

a. the interest computed for the period with reference to the tax on the total income inclusive of the relevant income ; and

b. the interest computed for the same period with reference to the tax on the total income as reduced by the relevant income.

(iv) Discretion should be exercised in judicial manner - It is true that the waiver of interest is at the discretion of the concerned official. But the discretion must be exercised in a judicial manner and cannot be ipse dixit of the officer and the result of any whim.

11. Chief Commissioner/Director General (Investigation) to reduce penal interest in certain cases:

The Central Board of Direct Taxes has decided to authorise Chief Commissioners and Directors General (Investigation) to reduce or waive penal interest under sections 234A, 234B and 234C. However, no reduction or waiver of such interest shall be ordered unless the assessee has filed the return of income for the relevant assessment year and paid the entire income-tax (principal component of demand) due on the income as assessed. The Chief Commissioner of Income-tax or Director-General of Income-tax may also impose any other conditions as deemed fit for the said reduction or waiver of interest. Penal interest charged under the aforesaid sections may be reduced or waived in the following circumstances, namely:

1. Where, in the course of search and seizure operation, books of account have been taken over by the Department and were not available to the taxpayer to prepare his return of income.
2. Any income other than capital gains which was received or accrued after the date of first or subsequent installment of advance tax, which was neither anticipated nor contemplated by the taxpayer and on which advance tax was paid by taxpayer after the receipt of such income.
3. Where, as a result of any retrospective amendment of law or the decisions of the Supreme Court, certain receipts which were hitherto treated as exempt, become taxable. Since no advance tax would normally be paid in respect of such receipts during the relevant financial year, penal interest is levied for the default in payment of advance tax.
4. Where a return of income is filed voluntarily without detection by the Income-tax Department and due to circumstances beyond the control of the taxpayer such return of income was not filed within the stipulated time-limit or advance tax was not paid at the relevant time.

12. Power of CBDT and Settlement Commission to reduce/waive interest

CBDT has power to make relaxation in cases covered by sections 234A, 234B and 234C and where assessee makes an application for waiver of interest under said sections, the Board cannot decline assessee's request by a cryptic order that it was unable to interfere in matter.

Settlement Commission - The Settlement Commission in exercise of its power under section 245(4) and (6) does not have the power to reduce or waive interest statutorily payable under sections 234A, 234B and 234C except to the extent of granting relief under the Circulars issued by the Board under section 119.

TRANSFER PRICING

- The price at which divisions of a company transact with each other. Transactions may include the trade of supplies or labour between departments. Transfer prices are used when individual entities of a larger multi-entity firm are treated and measured as separately run entities.

- The price charged to the interdivisional transfer of goods and services is revenue to the selling division and cost to the buying division. Therefore the price charged will affect the profit of both divisions; benefit to one division can create only at the expense of the profit of other division.

  For example, the selling division will benefit from charging higher prices for such transfers of goods and services. However, for the buying division this will result into higher costs. The transfer prices, thus, can have impact on the evaluation of each division's performance and measures applied for such measurements of performance.

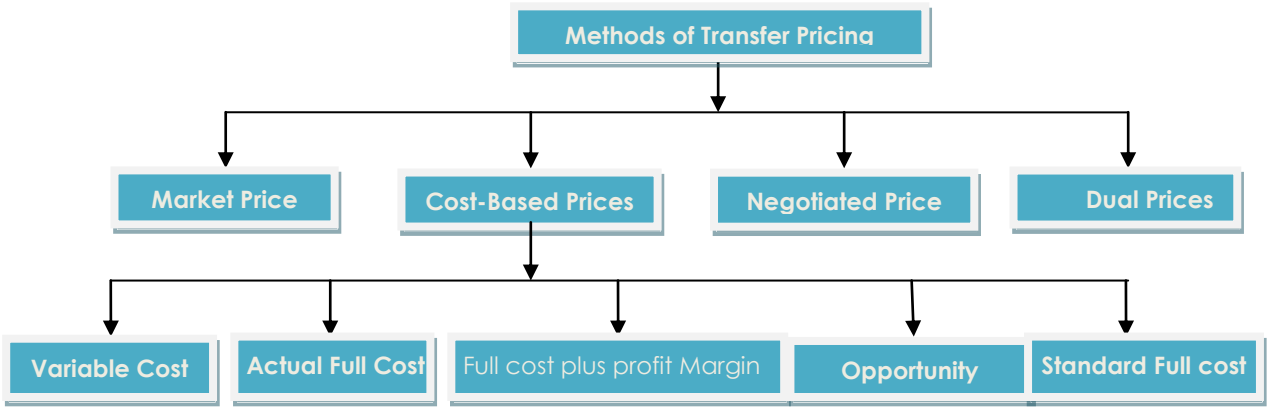
C

Requisites of Sound Transfer Pricing System

- It should be simple to understand and easy to operate.
- It should enable fixation of Fair transfer prices for the output transferred or service rendered. A divisional manager who considers the transfer price to be unfair to the division would be de motivated.
- It is profitable to allow the divisional managers to sell a small quantity (5-10 percent) to customers outside the organizations or to buy small quantities from sources outside it.
- The business unit / division should have free access to various sources of market information.
- There should be a negotiation for transfer prices between the business unit/ divisional managers of the selling business unit/division and the buying unit/ division.
- Top management should discourage prolonged arguments between business unit/ divisional managers.
- Transfer prices can be reviewed annually or as dictated by the demand and supply conditions in the market. Transfer pricing guidelines must state the circumstances under which a revision of transfer prices can be made during the year.
- When transfer prices are based on market price, long-term competitive/ normal prices must be considered.

The characteristics of a good transfer price

- **Preserve divisional autonomy**: almost inevitably, divisionalisation is accompanied by a degree of decentralization in decision making so that specific managers and teams are put in charge of each division and must run it to the best of their ability. Divisional managers are therefore likely to resent being told by head office which products they should make and sell. Ideally, divisions should be given a simple, understandable objective such as maximizing divisional profit.
- **Be perceived as being fair for the purposes of performance evaluation and investment decisions.**
- **Permit each division to make a profit**: profits are motivating and allow divisional performance to be measured using positive ROI or positive RI.
- **Encourage divisions to make decisions which maximize group profits**: the transfer price will achieve this if the decisions which maximize divisional profit also happen to maximize group profit – this is known as goal congruence. Furthermore, all divisions must want to do the same thing. There's no point in transferring divisions being very keen on transferring out if the next division doesn't want to transfer in.



The Methods of Transfer Pricing can be understood by the fallowing example:-
Example:-1

The XY division of Amco Products manufactures batteries that it sells primarily to the AB division for inclusion with that division's main product. In 2014 half batteries were sold to outside companies at a price of ₹200 each, the remaining batteries went to AB division. Cost data for 2015 for XY division are given below

Production	1,20,000
Variable Cost	1,20,00,000
Fixed Overhead	60,00,000
Selling expenses (all variable)	30,00,000
Administration expenses	20,00,000

What should be the transfer price for the batteries if company uses:
(i) Market Price
(ii) Variable Cost
(iii) A negotiated transfer price that will yield a markup of 20% on its product cost for XY?

Solution:

(i) Markup price= ₹200 per unit

(ii) Variable cost: =(₹1,20,00,000+₹30,00,000)/1,20,000 unit
=₹125 per unit

(iii) Absorption cost= ₹1,20,00,000+₹60,00,000 =₹1,80,00,000
=₹1,80,00,000/1,20,000 units =₹150 per unit
Thus the Negotiated transfer price is:
=₹150+20% (₹150)
=₹150+₹30
=₹180 per unit

Example:-2

Boraco Ltd. has been offered supplies of special ingredients S at a transfer price of ₹15 per kg by chhotaco Ltd. which is part of the same group of companies. Chhotaco Ltd processes and sells S to customers external to the group at ₹15 per kg. Chhotaco Ltd. bases its transfer price on cost plus 25% profit mark-up. Total cost has been estimated as 75% variable and 25% fixed.
You are required to:
Discuss the Transfer prices at which Chhotaco Ltd. should offer to transfer special ingredient S to Boraco Ltd. in order that group profit maximizing decisions may be taken on financial ground in each of the fallowing situations:-

(i) Chhotaco Ltd. has an external market for all of its production of S at a selling price of ₹15 per kg. Internal transfers to Boraco Ltd. would enable ₹1.50 per kg of variable packing cost to be avoided.

(ii) Conditions are as per (i) but Chhotaco Ltd has production capacity for 3,000 kg of S for which no external market is available.

(iii) Conditions are as per (ii) but Chhotaco Ltd has an alternative use for some of its spare production capacity. This alternative use is equivalent to 2,000 kg of S and would earn a contribution of ₹6,000.

Solution:

(i) The proposed Transfer price [tp], ₹15, is 125% of cost. So, cost= ₹12, of which variable cost is 75%= ₹9 and fixed cost is 25%= ₹3. Since Chhotaco [C] can sell all its production of S in external market, the market price, which is marginal cost plus opportunity cost, should normally be the internal tp.
MP=₹15, Variable cost is ₹9; so opportunity cost is ₹6. However, for internal transfer, packing cost of ₹1.50 will not be needed. Hence, while the outside SP will remain at ₹15, internal tp will be=Variable cost of ₹7.50+opportunity cost of ₹6 = ₹13.50 – which is the same as MP- Selling expenses avoided.

(ii) For the 3,000 kg where no external market is available, the opportunity cost will not apply and transfers should be at the variable cost of ₹7.50. It will not add to the profit of C Ltd but will enable it to avoid under-capacity working. The remaining output should be transferred at ₹13.50 as described above.

(iii) The lost contribution for the 2,000 kg is ₹3 per kg (₹6,000/2,000 kg) giving a tp of ₹10.50 (₹7.50 variable cost + ₹3 opportunity cost). The remaining 1,000 kg for which there is an external market at ₹13.50.

We can explain by a Case:-

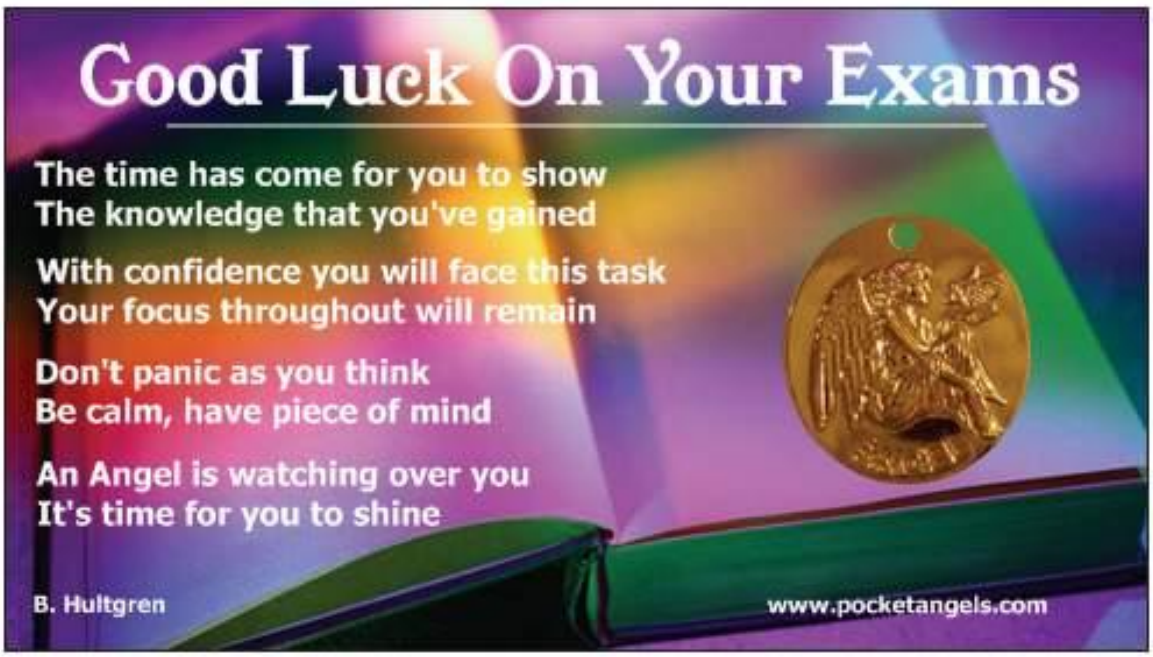
Supreme Industries Ltd. started as a single plant that produced the major components of electric motors, the Company's main product, and then assembled them. Supreme later expanded by developing outside markets for some of the components used in motors.

Eventually, Supreme recognized into four manufacturing divisions: Bearing, Casing, Switch, and motor. Each of the four manufacturing divisions operates as an autonomous unit.

Supreme's transfer pricing policy permits the manufacturing divisions to sell externally to outside customers as well as internally to the other divisions. The price for goods transferred between divisions to be negotiated between the buying and selling divisions without any reference from top management.

Supreme's profits have dropped for the current year even though sales have increased, and the drop in profits can be traced almost entirely to the Motor Division. Ashok, chief financial officer, has determined that the Motor Division has purchased switches for its motors from an outside supplier during the current year rather than buying them from the Switch Division. The Switch Division is at capacity and has refused to sell the switches to the Motor Division because it can sell them to outside customers at a price higher than the actual full (absorption) manufacturing cost that has always been negotiated in the past with the Motor Division. When the motor division refused to meet the price the switch divisions were receiving from its outside buyer, the Motor Division had to purchase the switches from an outside supplier at an even higher price.

Ashok is reviewing Supreme's transfer pricing policy because he believes that sub optimization has occurred. While the Switch Division made the correct decision to maximize its divisional profit by not transferring the Switches at actual full manufacturing cost, this decision was not necessarily in the best interest of the Company. The Motor Division paid more for the switches than the selling price the Switch Division charged its outside customers. The Motor Division has always been Supreme's largest division and has tended to dominate the smaller division. Ashok has learned that the Causing and Bearing Divisions are also resisting the Motor Division's desires to continue using actual full manufacturing cost as the negotiated price.



Indirect Taxation - Central Excise

Frequently Asked Questions

1. Is registration under Central Excise a pre-condition to the commencement of manufacture?

Answer:

No, The following manufacturers need not register.

(i) Exporters (Including SEZ, STP etc.)

(ii) Manufacturers of only exempted goods

(iii) Manufacturers of products under state excise alone.

(iv) Small manufacturer who do not manufacture goods by affixing the brand name of another person.

(v) Small manufacturers who manufacture branded products based in "rural area".

(vi) Manufacturers of specified goods whose clearance have not crossed ₹150 Lakhs. [Eligible for SSI Exemption]

(vii) A trader who is not interested in passing on the cenvat credit.

Note: Manufacturer may opt to register to ensure availment of credit on capital goods, inputs and input services even within the exemption limit or since they wish to get benefit of exports.

2. When does registration u/s 6 of the Central Excise Act of 1944 become compulsory?

Answer:

Registration u/s 6 becomes compulsory in the following cases:

(i) Any manufacture or production of excisable goods leviable to duty takes place and the clearances exceed ₹150 lakhs.

(ii) Any warehouse is maintained where goods manufactured are to be stored without payment of duty.

(iii) Any trader who wishes to pass on the cenvat credit paid to his customers.

3. Who is the authority to grant registration?

Answer:

The Assistant/Deputy Commissioner of Central Excise having jurisdiction over the area of manufacture is the authority to grant registration.

4. Is a separate registration required for more than one manufacturing premises of the same assessee?

Answer:

Yes. The assessee has to obtain a separate registration for each manufacturing premise under which manufacturing activity is undertaken by him. However if the premises is divided by a road, canal railway track then one registration may be granted subject to approval of commissioner.

Note: Where the other unit only works as a job work unit located away from the main unit then registration would not be required.

5. Can the registration certificate be transferred in case of transfer of business?

Answer:

No. Registration is not transferable. Fresh registration has to be obtained by the transferee as the registration is based on person i.e. PAN based.

6. What is the time limit for granting registration?

Answer:

As per the Board Circular the registration has to be given if the application is duly filled in and all the information contained therein is provided, registration would be given on the same day. For any technical reasons it is not possible, the same would be given on the next working day.

7. Is a fresh registration required in case of change of constitution of partnership firm or a company?

Answer:

No. But the change has to be intimated to the department within 30 days of such change.

8. In case a manufacturer decides to manufacture a new product, should the registration certificate be changed?

Answer:

No. Under the present concept of registration there is no mention about the different goods being manufactured. Therefore there is no requirement of including or amending the registration. However an intimation [RPAD] may be advisable along with the classification, process flow chart and methodology of valuation proposed to be adopted with confirmation sought.

9. When is an assessee exempt from registration?

Answer:

An assessee is exempt from registration in the following cases:

(i) When the products are completely and unconditionally exempt from duty.

(ii) If the turnover does not exceed 150 lakhs and' the assessee is eligible and has opted for the benefit of SSI exemption.

(iii) If he gets goods manufactured on his account by others, and if he authorises the actual manufacturer to comply with all the excise procedures and agrees to furnish him information regarding the selling price.

(iv) Manufacturers in EOUs, FTZs, STPs etc. if all the final products, including scrap are either exported or do not have any domestic clearances. Similarly they also do not have any domestic procurement of goods. Normally scrap if any would be sold locally on payment of duty for which registration would be necessary.

10. Are dealers required to register themselves?

Answer:

Wholesale and retail traders and dealers require registration as dealers only if they intend to issue cenvatable invoices for passing on credit.

Note: Wholesalers/dealers who do branding, labeling, repacking etc. may confirm that they are not covered under deemed manufacture in which case they would be treated as manufacturers.

11. Is there any requirement of inspection of premises and equipment for grant of registration?

Answer:

There is no such requirement for the purpose of issuing registration. However after registration, departmental officer visits the premises to ensure the existence of the unit and the manufacturing activity. Unfortunately at this time unreasonable demands are made by some of the officers.

12. What is the turnover limit for which exemption is available from registration to SSI units?

Answer:

SSI units need not register themselves until they reach a turnover of ₹150 lakhs. However, they have to submit a declaration in the prescribed form if their turnover exceeds 90 lakhs. This declaration is required to be filed only once in a year.

13. What is the penalty imposable for non-registration?

Answer:

Manufacture without applying for registration is an offence u/r 25(1)(c) of the Central Excise Rules, 2002 and a general penalty upto ₹ 5000/-.can be imposed and the goods can be confiscated.

14. Should a manufacturer of fully exempted goods file any declaration?

Answer:

Yes. He has to file a declaration that he is manufacturing fully exempted goods vide Notification No. 36/2001 CE (NT) dated 26-6-1. The industry at large has been ignoring this requirement which has been there for more than a decade due to the perception that they would invite harassment. However advisable as they can avoid the charges of suppression at any time in future.

15. Who can sign the application for registration?

Answer:

This depends on the organisation. In a proprietary concern, the proprietor, in a partnership, the partner, in a company any officer, who has been authorised by way of a Board resolution to do so, can sign.

16. When does a registration cease to be valid?

Answer:

Once a registration certificate is granted, it has a permanent status unless it is suspended or revoked by the appropriate authority in accordance with law or surrendered by the concerned person.

17. When does an assessee have to surrender his registration certificate?

Answer:

An assessee has to surrender his registration certificate if he ceases to carry on the operation for which he is registered. Ideally at the time of surrender, assessee has to file the return upto that date and provide the forwarding/ contact details. However when there is any demand or dispute pending the surrender may not be processed by the revenue.

18. Where should a branch office (non-manufacturing unit) of an assessee having his main office in another range be registered?

Answer:

No branches are required to be registered unless they wish to pass on the convent duty. Wherever they opt for the same, they have to be registered in the corresponding jurisdictional range where they are situated.

19. How does a registered dealer prove to be more advantageous than an unregistered dealer?

Answer:

A registered dealer has the facility of passing on the credit to his customer whereas an unregistered dealer cannot pass on the same and has to bear the duty burden himself. When selling to customer who can avail cenvat credit (mainly industries or other dealers who have industries as their customers) it is illogical not to register. Many traders have lost their very old customers due to no registration.

Note: In today's date procurement from unregistered dealers for a manufacturer/ service provider who pays duty/ tax would mean a loss of 10 + % of the total cost of procurement.

20. In case of manufacture of multiple products (having no link) taking place under one roof, should separate **registration be obtained?**

Answer:

No. The fact that various products are manufactured or one product is manufactured makes no difference. For arriving at the total value of clearance for the SSI exemption, the value of all the products dutiable would be included.

21. Is there a concept of centralised registration under Central Excise where all units concerned can have one **single registration?**

Answer:

There is no such concept of centralised registration under Central Excise as under Service Tax and therefore the billing pattern and the fact that the accounting is centralised or decentralised would not be relevant in this

regard. Each manufacturing unit is to be registered separately. For large manufacturers the LTU registration is available, though presently not working in as well as it started.

22. Whether the registration application can be filed online? If yes what are the procedures to be followed?

Answer:

Yes. The registration application for excise registration can be filed online. The person wanting to get registered should file an application by logging onto the website www.aces.gov.in. Initially, he would be asked to obtain user name and password. Based on the new user name and password, the application can be filled on the website after confirming the jurisdiction code.

23. Whether the application for excise registration is required to be filed manually after online registration?

Answer:

Yes. The assessee can take a print out of the application filed online and file the same with the department along with the supporting documents like copy of PAN, board resolution for authorising a person to sign the excise correspondences, partnership deed/MOA/AOA, address proof, ROC registration certificate copy, copy of IEC certificate, sales tax registration certificates copy, brief description on activity and product etc.

24. How do you classify a product?

Answer:

The product would have to be classified under one of the Chapters given in the First Schedule to the CETA 1985. This would help one in determining the rate at which the duty is to be paid. In order to classify a product, one would have to be familiar with the characteristics and the functionalities of the product. The goods have been spread across 96 chapters and the product would have to fall under one of those chapters. Where none of the chapters is applicable, the product may not be excisable at all and no duty would have to be paid. The Chapters are grouped under sections and each chapter is further sub divided into sub-chapters or sub-headings. The assessee would have to go through the various sub-headings of the relevant chapter once the likely Chapter has been identified. One would have to follow the Section notes and chapter notes given at the beginning of sections and chapters which explain the classification, in case of doubt. The basic principles governing classification have also been explained in the Interpretative Rules which clarifies the overall classification process and the principles laid thereunder can be followed where the product appears capable of being classified under more than one heading/sub-heading. Readers should be careful to note that where they have genuine difficulty it would be better to approach a professional rather than wrongly classifying the product and having to face unnecessary litigation at a future date.

25. Whether the date of manufacture is relevant where the duty is imposed for the first time?

Answer:

The date of manufacture is relevant even though for the sake of convenience the date of removal has been considered. Therefore the goods manufactured prior to the date of imposition of the duty for the 1st time would not be liable even though they are removed after the said date However where the rate of duty changes there is no effect, i.e. date of removal in such cases would be relevant for the duty rate applicable.

26. Whether the date of manufacture is relevant when exemption notification is withdrawn?

Answer-

The date of manufacture may not be relevant and the stocks in hand at the factory also would be liable to suffer the duty as applicable. Goods removed to the depot or sent / in transit to customer would not be liable.

27. At what intervals should the duty be debited/paid?

Answer:

An SSI unit has to pay duty on 5th day of the month following that quarter (6th of the month following that quarter where remittance is electronically through internet banking). Other units are required to pay duty on monthly basis within 5 days of completion of the month in question (by the 6th of the succeeding month where remittance is electronically through internet banking). The assessee is required to deposit the amount of duty payable in the nominated bank along with the prescribed GAR-7 challan and on this amount being credited in the government account; he can take credit in the account current (earlier called as PLA) register. Such credited amount can then be utilized for discharging the duty on goods cleared from his factory. However, for the month of March every year, the duty has to be paid by 31st March, both for SSI and Non SSI units.

28. What is the interest for delayed payment of duty?

Answer:

The interest is leviable at 18% per annum (simple interest). The interest rate has been increased to 18% pa w.e.f. 1.4.2011 vide notification no 6/2011-CE(NT dated 1.3.2011), starting from first day after due date i.e. from the date on which the duty was required to be paid, till the date of actual payment.

29. What are the modes of payment of excise duty?

Answer:

As per Rule 8 of CER, 2002, every assessee shall pay duty electronically through internet banking w.e.f, 1st October 2014 unless otherwise allowed through any other mode by ACCE/DCCE. However, upto 30th of September 2014, excise duty is payable either in cash through GAR 7 Challan (previously TR6 challan) and using it for payment of duty or by utilising (adjusting) the cenvat credit. E - Payment is a mode of payment in addition to the conventional methods of payment offered by the banks under specific security norms of Reserve Bank of India. This scheme facilitates anytime, anywhere payment and an instant cyber receipt is generated once the transaction is complete. It provides the convenience of making online payment of Central Excise through Bank's Internet banking service.

Facility is available to: Registered Central Excise Assessee who possesses the 15 digit PAN based Assessee Code. Customer of any authorized bank, which provide e-Payment solution. Customers having Banks' Internet banking ID and who have given the option for effecting Central Excise payment through the Internet with the authorized bank.

Upto 30-09-2014, where an assessee has paid duty of rupees ten lakhs or more in the preceding financial year, it is mandatory that the duty has to be paid electronically through internet banking.

30. What are the basic conditions for levy of excise duty?

Answer:

The following conditions should be followed for the excise duty to be levied:—

(i) The concerned product should be capable of being regarded as goods i.e. it should be movable and marketable. Where it is capable of being brought to the market, it would be regarded as goods.

(ii) The goods must be excisable (one which is specified in Central Excise Tariff)

(iii) The goods must be manufactured (including deemed manufacture)

(iv) The manufacture or production must be in India

31. When does the excise duty become payable?

Answer:

Though the excise duty liability arises as soon as the goods are manufactured, the duty is payable only at the time of removal. (Rule 4 of CE Rules, 2002)

32. Can duty payable on goods lost/destroyed in the store room be remitted?

Answer:

If goods in the store-room are lost/destroyed by natural causes or by unavoidable accidents or are unfit for market consumption, the proper officer can give remission of duty, on application made before removal of the goods from the factory (Rule 21 of CE Rules, 2002). The proper officer as per limits fixed by the Rule would be—

(a) Where the duty amount to be remitted does not exceed ₹10,000 the Superintendent of Central Excise

(b) Where the duty amount exceeds ₹10,000 but does not exceed ₹100,000 the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise.

(c) Where the duty amount exceeds ₹100,000 but does not exceed ₹500,000 the Joint Commissioner of Central Excise or the Additional Commissioner of Central Excise.

33. Can duty on goods lost/destroyed after clearance be refunded?

Answer:

No. The duty on goods lost/destroyed after clearance cannot be refunded. The assessees are advised to have insurance policies in this regard to cover loss in transit and file such claims if the need arises to protect themselves from possible losses.

34. Can the duty liability be deemed to be discharged as soon as the cheque is deposited in the bank?

Answer:

Yes. The duty liability is deemed to be discharged on the date of submitting the cheque to the bank but this is subject to subsequent realisation. However, w.e.f, 1-10-2014, the duty has to be mandatorily discharged electronically through internet banking.

35. What are the facilities withdrawn in case of delayed or non-payment of excise duty?

Answer:

Where the assessee defaults in making payment beyond one month from the due date for payment, he shall be liable to pay penalty at the rate of one percent on such amount of the duty not paid, for each month or part thereof calculated from the due date for the period during which such failure continues. As per the erstwhile provisions, where the assessee makes default, he cannot utilize the cenvat credits for subsequent clearances till the arrears is paid with interest and shall pay duty in cash at the time of removal of each such consignment.

36. Can credit be taken for receipts after the month but before the due date for duty payment be utilisedfor paynient of duty of that month?

Answer:

No. Only credits pertaining to receipts in that month can be utilised for duty payment with regard to clearances made during the concerned month. Similarly in case of an SSI unit, the credits available on the receipts during the quarter alone can be utilised for the purpose of making payment of duty for the concerned quarter.

37. Can payment of excise duty be rounded off?

Answer:

Yes. Payment of excise duty can be rounded off to nearest rupee.

38. Is excise duty payable by persons residing abroad?

Answer:

Yes. Excise duty is payable by persons residing abroad provided excisable goods are manufactured by them in India.

39. Is excise duty payable on overseas project for which payment is received in foreign exchange?

Answer:

No. Section 3 specifically states that manufacture should take place in India and there should be a domestic clearance.

40. Is excise duty payable in case of no actual removal of goods, but there is a transfer of document of title to goods?

Answer:

Removal as per the Central Excise Law is removal from the place of removal. Therefore even if it is used for another purpose within the factory of manufacture, the same would be considered as deemed removal. However it is exempted under notification No. 67/95-CE, if the final product for which it is used is dutiable. However if the final product is exempt then the intermediate product would be liable to duty. The transfer of title to the goods would be irrelevant for the purpose of levying central excise duty.

41. What amounts to deemed manufacture?

Answer:

Any process which is specified in relation to any goods in the Sections or Chapter Notes of the Schedule to the Central Excise Tariff Act, 1985 is termed as deemed manufacture. Here even if the items cannot be regarded as having been manufactured as per the conventional definition of the term "manufacture", they can be regarded as having been manufactured by the concept of deemed manufacture. Thus proper classification of the items concerned would assume significance. Where items happen to be covered under Third Schedule (which generally coincides with products also being under MRP based levy), (Here it should be noted that vide FA 2011 Section 4A of the Central Excise Act 1944 which deals with the MRP valuation of goods has been amended to replace the words 'Standards weights and measures Act 1976' with the words 'Legal Metrology Act 2009)'.the concept of deemed manufacture would apply where the process specified u/s 2(f)(iii) of CEA 1944 are carried out on the said goods

42. Is excise duty payable on goods destroyed by the assessee voluntarily?

Answer:

In case the goods are destroyed by the assessee in the course of manufacture there is no requirement to pay duty though there could be issues as far as the Cenvat credits on raw materials contained in such destroyed items are concerned. The final decision regarding cenvat eligibility would have to be taken depending on the facts and circumstances of each case. However if they have reached finished goods stage but over time became unfit for market consumption, the duty payable would be remitted by the proper Central Excise officer. The details of the goods and reasons for destruction, along with the proof that the goods are unfit for consumption/market consumption would have to be submitted in this regard.

43. What is the value on which duty is to be paid and how is it determined?

Answer:

Generally the transaction value has to be taken for payment of duty if all the conditions set out in section 4(1)(a) is fulfilled. In other cases the government has framed the Central Excise (Determination of Price of Excisable Goods) Rules 2000 to specify the adjustments to the value in cases where the transaction value cannot be

applied. We also have a scheme of charging of Excise duty on a value which is equal to MRP less specified abatement in case of products notified in this regard by the Government. The aforesaid two categories would cover almost 98% of the goods in question. Apart from the stated categories, the government can also notify tariff values with regard to certain products as well as levy based on capacity of machine.

44. What is the duty rate to be paid and how is it determined?

Answer:

The duty rate depends on the classification of the goods in question. The correct chapter heading and sub-heading under which the goods fall, have to be identified which would then enable the assessee to identify the rate to be adopted. The general rate at present is 12%. In addition to this, the exemption notification (if any) issued with regard to the goods in question (which are normally indicated at the end of the Chapter) would have to be referred to see the effective rates.

45. Can credit of CVD be taken on courier Bills of entry?

Answer:

Yes. But the courier agency should file a separate BOE for the importer instead of the consolidated one. Sometimes it is not practicable. However there are Tribunal Decision where the benefit was given if copy of the consolidated bill of entry duly attested by the Customs Officer and the Courier Agency support proof of receipt and consumption.

46. Would goods used in the manufacture of capital goods which are further used in the factory of manufacture, qualify for credit?

Answer:

Yes. They qualify for credits as inputs [for manufacture of capital goods] and the credit can be taken as it is goods used within factory. Some restrictions for structure have been inserted in Finance Act 2011.

47. Is there any time limit to take credit?

Answer:

Rule 4(1) states that credit of the duty paid on inputs received in the factory can be taken by the manufacturer "immediately" on receipt of inputs. As per the amended provisions of CCR, 2004, w.e.f, 1st September 2014, the credit on inputs and input services has to be availed within six months from the date of invoice or any other document based on which credit can be availed. Prior to this date, there is no time limit to take credit. Tribunal decisions also confirmed the absence of any time limit.

48. Which are the excise duties on which credits can be taken?

Answer:

Credits can be taken for basic excise duty, additional excise duty*, special excise duty, National Calamity Contingent duty* and additional customs duty or countervailing duty, Education cess and Secondary & Higher Education cess.* Credit to be adjusted against the same duty if payable.

A manufacturer can also avail credit of the Special Additional Duty (Spl. CVD 4%) leviable on imports for offsetting the levy of sales tax/VAT on locally sourced items.

49. Can all the credits be utilised for payment of all excise duties?

Answer:

No. Additional excise duties and National Calamity Contingent duty can be set off only by the credits taken on respective duties. But Special excise duty, additional customs duty and basic excise duties can be set off by credits taken on either of them on any count. Credit of Education cess and Secondary Higher Education cess has to be used for payment of education cess and SHE cess respectively though excise duty credit can be used for payment of education cess and SHE cess.

50. Can the entire 100% credit be taken on capital goods in the year of receipt?

Answer:

No. Only 50% of the duty credit can be taken on capital goods in the year of receipt. The remaining 50% credit can be taken in any of the subsequent years while having possession of the capital goods. However in case of SSI units, full credit on capital goods can be taken in one installment in the year of receipt of such goods.

Further where the capital goods are removed in the year of receipt itself then also the credit of 100% can be availed.

51. Can credit be taken when goods are returned to the factory for repairs, reconditioning etc.?

Answer:

Yes. Under Rule 16 of the CER, credit can be taken on the goods returned to the factory for repairs, reconditioning etc., provided they have been received with reference to the invoice under which the goods had been originally cleared. Alternatively the customer may also raise an invoice in which case too the credit is admissible on that amount.

52. What is the duty to be debited on the goods sent back after repairs, etc., from the factory?

Answer:

If the process of repair amounts to re-manufacture, duty is to be paid on the value and at the rate applicable on the date of removal. Otherwise, the duty credit availed at the time of receipt of the goods inside the factory should be reversed.