APPLIED INDIRECT TAXATION

INTERMEDIATE
GROUP - II

PAPER - 10

STUDY NOTES

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SYLLABUS

Paper 10 : Applied Indirect Taxation
(One paper : 3 hours : 100 Marks)

OBJECTIVES

To gain knowledge about the tax laws in force for the relevant accounting year and to provide an insight into procedural aspects for filing tax returns for various assesses.

Learning Aims

The syllabus aim to test the student's ability to :

- Explain the basic principles underlying the Central Excise, Service tax, VAT & Sales Tax.
- Understand Procedure for tax return preparation, filing, assessment and tax refund for various assesses.
- Understand the powers of various assessing authorities.
- Understand appellate procedure under various provisions of these Acts.

Skill set required

Level B: Requiring the skill levels of knowledge, comprehension, application, and analysis.

CONTENTS

1. Canons of Taxation - Indirect Taxes

- Features of Indirect Tax. Constitutional validity. Indirect Tax Laws, administration and relevant procedures

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- Goods, Excisable goods, Manufacture and manufacturer, Classification, Valuation, Related Person, Captive Consumption, CAS 4, CENVAT.
- Basic procedures, Export, SSI, Job Work.
- Assessment, Demands, Refund, Exemptions;
- Powers of Officers.
- Adjudication, Appeals, Settlement Commission, Penalties.
- Central Excise Audit and Special Audit under 14A and 14AA of Central Excise Act
- Impact of tax on GATT 94, WTO, Anti Dumping processing;
- Tariff Commission and other Tariff authorities.

3. Customs laws

- Basic concepts of customs law;
- Territorial waters, high seas;
- Types of custom duties., Anti-Dumping Duty, Safeguard Duty;
- Valuation;
- Customs Procedures, Import and Export Procedures, Baggage.

- Exemptions.
- Warehousing, Demurrage;
- Project Imports and Re-Imports;
- Penalties and Offences.
- Export Promotion Schemes. EOU
- Duty Drawback.
- Special Economic Zones.

4. Service Tax

- Introduction, Nature of Service Tax.
- Service Provider and Service Receiver.
- Registration procedure
- Records to be maintained
- Classification of taxable services
- Valuation of taxable services.
- Exemptions and Abatements.
- Payment of service tax, Return
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- Export and import of services.
- Other aspects of Service Tax.
- Taxable Services.
- Special Audit under 14A and 14AA of Central Excise Act

5. Central Sales Tax Act & VAT Act

- Introduction, definition of sale under CST;
- Stock transfer, branch transfer under CST;
- Inter state sale,
- Various forms for filing of sales tax returns under CST;
- Sales outside territorial waters under CST;
- Procedures.
- Practical examples on CST.
- VAT, Salient feature of State VAT Acts
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Paper 10

APPLIED INDIRECT TAXATION

Contents

STUDY NOTE - 1
OVERVIEW OF CENTRAL EXCISE ACT, 1944

This Study Note includes

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- Important Provisions of Central Excise Rules, 2002
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1.1 CONSTITUTIONAL BACKGROUND

Central Excise is a duty on excisable goods manufactured or produced in India, other than alcoholic liquor. Duty liability is principally on 'manufacturer', except in a few cases. In majority of cases, duty rate w.e.f. 24.2.09 is 10% plus education cess of 2% and Secondary and Higher Education Cess of 1%. Thus, generally, duty is 10.30%. There are some exclusions, partial or full exemptions and higher duties in some cases. As per Appendix IV of CETA, the rate of additional duty on Goods of special Importance is 8% in majority of the cases. (Section 3(1) of The Additional Duties of Excise (Goods of Special Importance) Act, 1957.

Power of Taxation under Constitution of India is as follows :

(a) The Central Government gets tax revenue form Income-tax (except on Agricultural Income), Excise (except on alcoholic drinks) and Customs.

(b) The State Governments get tax revenue from sales tax, excise from liquor and alcoholic drinks, tax on agricultural income.

(c) The Local Self Governments e.g. municipalities, etc. get tax revenue from entry tax and house property tax.

Article 265 provides that no tax shall be levied or collected except by authority of Law. The authority for levy of various taxes, as discussed above, has been provided for under Article 246 and the subject matters enumerated under the three lists set out in the Schedule-VII to the Constitution.

List I : Union List

Item No. 82	Tax on income other than agricultural income
Item No. 83	Duties of customs including export duties
Item No. 84	Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium narcotics, but including medical and toilet preparations containing alcohol, opium or narcotics
Item No. 85	Corporation Tax
Item No. 92A	Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of interstate trade or commerce.
Item No. 92B	Taxes on consignment of goods, where such consignment takes place during interstate trade or commerce
Item No. 92C	Taxation of Services
Item No. 97	Any other matter not included in the List II, List III and any tax not mentioned in List II or List III

List-II i.e. the State List, in respect of which the State Government has exclusive powers to levy taxes, are as follows :

Item No. 46	Taxes on agricultural income
Item No. 51	Excise duty on alcoholic liquors, opium and narcotics
Item No. 52	Tax on entry of goods into a local area for consumption, use or sale therein (usually called as Octroi)
Item No. 54	Tax on sale and purchase of goods other than newspapers except tax on interstate sale or purchase

List-III : Concurrent List — List III of Seventh Schedule, called "concurrent list", includes matters where both Central Government and State Government can make laws.

1.2 LAWS RELATING TO CENTRAL EXCISE

Central Excise Act, 1944(CEA) : The basic Act which provides the constitutional power for charging of duty, valuation , powers of officers, provisions of arrests, penalty, etc.

Central Excise Tariff Act, 1985 (CETA): This classifies the goods under 96 chapters with specific codes assigned.

Central Excise Rules, 2002: The procedural aspects are laid herein. The rules are implemented after issue of notification.

Central Excise Valuation(Determination of Price of Excisable Goods) Rules,2000: The provisions regarding the valuation of excisable goods are laid down in this rule.

Cenvat Credit Rules, 2004: The provisions relating to Cenvat Credit available and its utilisation is mentioned.

1.3 CENTRAL EXCISE ACT, 1944

The duty of Central Excise is levied if the following conditions are satisfied :

(1) The duty is on goods.

(2) The goods must be excisable.

(3) The goods must be manufactured or produced

(4) Such manufacture or production must be in India.

In other words, Unless all of these conditions are satisfied, Central Excise Duty cannot be levied.Ownership of raw material is not relevant for duty liability - Ownership of raw material is not relevant for duty liability – *Hindustan General Industries* v. *CCE* 2003 (155) ELT 65 (CEGAT)

* *CCE* v. *Mahindra & Mahindra* 2001(132) ELT 632 (CEGAT).

1.4 DUTIES LEVIABLE

- **Basic Excise Duty** is levied u/s 3(1) of Central Excise Act. The section is termed as 'charging section'. General rate of duty of central excise on non-petroleum products is 10% w.e.f. 27-02-2010. (The duty rate was 14% during 1-3-2008 to 6-12-2008, which was reduced to 10% w.e.f. 7-12-2008 and to 8% w.e.f. 24-02-2009). This duty is applicable to majority of excisable goods. There is partial exemption to a few products.
- **Education Cess** @ 2% of excise duty under section 93 of Finance (No. 2) Act (w.e.f. 9-7-2004).
- **Secondary and Higher Education Cess** (S&H Education Cess) @ 1% of the total duties of excise vide section 136 read with section 138 of Finance Act, 2007 w.e.f. 1-3-2007.
  Thus, total excise duty is 10.30% in majority of the cases.

National Calamity Contingent Duty – A 'National Calamity Contingent Duty' (NCCD) has been imposed vide section 136 of Finance Act, 2001 on some products. NCCD of 1% has been imposed on mobile phones w.e.f. 1-3-2008.
In addition, cesses and duties have been imposed on some specified products.

1.5 LEVY, COLLECTION & EXEMPTIONS FROM EXCISE DUTY

1.5.1 *What is the Taxable Event?*

The taxable event is of great significance in levy of any tax or duty. Excise duty is leviable on all excisable goods, which are produced or manufactured in India. Thus, 'manufacture or production in India' of an 'excisable goods is a 'taxable event' for Central Excise. It becomes immaterial that duty is levied and collected at a later stage i.e. at the time of removal of goods. Therefore, removal from factory is not the 'taxable event'.

1.5.2 ***Who is liable to pay duty?***

Rule 4(1) of the Central Excise Rules, 2002 provides that every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured or from a warehouse, unless otherwise provided.

It is provided that the goods falling under Chapter 61 or 62 of the First Schedule to the Tariff Act, produced or manufactured by a job worker may be removed without payment of duty leviable thereon and the duty of excise leviable on such goods shall be paid by the person referred to in sub-rule (3), as if such goods have been produced or manufactured by him, on the date of removal of such goods from his premises registered under rule 9.

Explanation – Where such person has authorized the job worker to pay the duty leviable on such goods under sub-rule (3), such duty shall be paid by the job worker on the date of removal of such goods from his registered premises.

Rule 4(2) provides that notwithstanding anything contained in sub-rule (1), where molasses are produced in a *khandsari* sugar factory, the person who procures such molasses, whether directly from such factory or otherwise, for use in the manufacture of any commodity, whether or not excisable, shall pay the duty leviable on such molasses, in the same manner as if such molasses have been produced by the procurer.

Rule 4(3) provides that notwithstanding anything contained in sub-rule (1), every person who gets the goods, falling under Chapter 61 or 62 of the First Schedule to the Tarrif Act, produced or manufactured on his account on job work, shall pay the duty leviable on such goods, at such time and in such manner as may be specified under these rules, whether the payment of such duty be secured by bond or otherwise, as if such goods have been manufactured by such person :

Provided that such person may authorize the job worker to pay the duty leviable on such goods on his behalf and the job worker so authorized undertake to discharge all liabilities and comply with all the provisions of these rules.

From the above discussion it can be concluded that the following persons shall be liable to pay excise duty :

(i) A person, who produces or manufactures any excisable goods,
(ii) A person, who stores excisable goods in a warehouse,
(iii) In case of *molasses,* the person who procures such molasses,
(iv) In case goods are produced or manufactured on job work,
    (a) the person on whose account goods are produced or manufactured by the job work, or
    (b) the job worker, where such person authorizes the job worker to pay the duty leviable on such goods.

1.5.3 Liability to Excise Duty

Section3(1) provides that there shall be levied and collected in such manner, as may be prescribed :

(a) a duty of excise to be called the Central Value Added Tax (CENVAT), on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985;

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods specified in the Second Schedule to the Central Excise Tariff Act, 1985, which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule :

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured :

(i) in a free trade zone or a special economic zone and brought to any other place in India; or
(ii) by a hundred per cent export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 or any other law for the time being in force on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value.

1.5.4 Collection of Excise Duty

For collection of Central Excise duty the following two procedure are followed by the Central Excise Department :

(i) *Physical Control Procedure*: Applicable to cigarettes only. In this case, the assessment precedes clearance, which takes place under the supervision of Central Excise officers;

(ii) *Self-Removal Procedure*: Applicable to all other goods produced or manufactured within the country. Under this system, the assesee himself determines the duty liability on the goods and clears the goods.

1.5.5 Exemptions from Levy of Excise Duty

Section A of the Central Act, 1944 empowers the Central Government to grant Exemption form lay of excise duty and lays down the provisions relating thereto :

(1) *Power to Notify Exemptions in Public Interest*

Section 5A(1) provides that the Central Government is empowered to exempt in the public interest, any excisable goods from the levy of whole or any part of excise duty. Such exemption may be granted either absolutely or subject to such conditions, as may be specified in the Notification.

Exceptions —However, unless specifically provided in such notification, no exemption shall apply to excisable

Exceptions —However, unless specifically provided in such notification, no exemption shall apply to excisable goods, which are produced or manufactured :

(i) in a free trade zone or special economic zone and brought to any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and brought to any place in India.

(2) *Exemption in public interest*

Section 5A(2) provides that if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

(3) *Notification may provide for different method of levy of duty as well*

Section 55A(3) provides that an exemption in respect of any excisable goods from any part of the duty of excise leviable thereon may be granted by providing for the levy of a duty on such goods at a rat expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the duty statutorily payable.

Section 5A(2A) provides that the Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued or order issued, insert an *Explanation* in such notification or order, as the case may be, by notification in the Official Gazette at any time within one year of issue of the notification or order, and every such *Explanation* shall have effect as if it had always been the part of the first such notification or order, as the case may be.

1.6 GOODS

It is obvious from section 3(1) that, to attract excise duty, the following conditions must be fulfilled :

- There should be goods;
- The goods must be excisable;
- The goods must be manufactured or produced; and
- The manufacture or production must be in India.

Goods manufactured or produced in SEZ are "excluded excisable goods". This means, that the goods manufactured or produced in SEZ are "excisable goods" but no duty is leviable, as charging section 3(1) excludes these goods. Thus, the goods manufactured in SEZ are not "Exempted goods". They can be termed as "excluded excisable goods".

As per explanation to section 2(d), 'goods' includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable'.

Basic Ingredients

From the above definitions of 'goods', the two essential elements of goods are emanated:

(i) They should be movable, and

(ii) They should be marketable.

1.6.1 Goods must be movable

In order to be movable, an article must fulfill two conditions:

(i) It should come into existence (as a result of manufacture); and

(ii) It should be capable of being moved to market to be bought and sold.

Thus, goods must exist. Where goods have not come into existence, they can not be moved as well. So long as the goods have not come into existence, no question of levy of excise duty would arise. It has been observed that the word 'manufacture' or 'production' are associated with movables.

In *Municipal Corporation of Greater Mumbai v. Union of India,* a petrol pump of huge storage capacity which was not embedded to earth but which could not be removed without dismantling was held to be immovable in nature.

In *Sirpur Papers Mills Ltd. V. CCE* the machinery embedded to a concrete base to ensure its wobble free operation was held to be a movable property.

CBEC has clarified that whatever is attached to earth, unless it is like a tree/building/similar thing, shall not necessarily be regarded as immovable property if the whole purpose behind such attaching to the concrete base is to secure maximum operational efficiency and safety.

Thus, excise duty cannot be levied on immovable property.

1.6.2 Goods must be marketable

Marketability denotes the capability of a product, of being put into the market for sale. Where goods are not marketable, excise duty cannot be charged on them. Marketability is the decisive test for durability. The article must be capable of being sold to consumer without any additional thing.

The test of marketability will depend on the facts and circumstances of each case. It is a question of fact. The vendibility or marketability test includes the following three essential components : -

(a) the goods should be capable of being sold in the market,

(b) the goods should be capable of being sold ordinarily, and

(c) the goods should be capable of being sold as such.

The following points can be noted –

- Marketability is to be decided on the basis of condition in which goods are manufactured or produced.
- Everything that is sold is not necessarily 'marketable'.
- Waste and Scrap can be 'goods' but dutiable only if 'manufactured' and are mentioned in Tariff.
- The marketability test requires that the goods *as such* should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied. Thus, if machinery has to be dismantled before removal, it will not be goods - *Triveni Engineering* v. *CCE* AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC).
- Branded Software is goods. However, service tax will be payable on tailor made software after Finance Bill, 2008 is passed.

Case Laws

(1) In *Cipla Ltd. V Union of India,* it was held by the Karnataka High Court that for dutiability, a product must pass the test of marketability, even if it is a transient item captively consumed in the manufacture of other finished goods and that the onus is on the Department to produce evidence of marketability.

(2) In *UOI v Indian Aluminium Co. Ltd. v CCE*, the Supreme Court held that marketability of a product must be for its dutiability. Mere manufacture or specification of an article in Tarrif is not enough.

(3) In *Bhor Industries Ltd. v CCE*, the Supreme Court held that the mere inclusion of a particular article in the Tariff Schedule will not render it liable to excise duty. The marketability of that article is of primary importance. The decision given in this case was a turning point because prior to this decision, it was normal to treat all goods in the Tariff Schedule, as chargeable to duty regardless of the test of marketability.

(4) In *Union Carbide India Ltd. v UOI & Geep Industrial Syndicate Ltd. v Central Government*, the Supreme Court held that intermediate products, which were in a crude form, would not constitute goods. In this case, aluminium cans produced by the extrusion process were not to be goods, as they were neither capable of being sold nor were marketable.

1.7 EXCISABLE GOODS

- Section 2(*d*) of Central Excise Act defines Excisable Goods as 'Goods specified in the Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. As per explanation to section 2(d), 'goods' includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable'. Thus, unless the item is specified in the Central Excise Tariff Act as subject to duty, no duty is leviable.

In terms of the above definition of 'Excisable Goods, it may be held that all those goods, which are specified in the Tariff Schedule are 'excisable goods'. However, question arises as to whether those goods, which are exempted from duty by a notification, but find a place in the tariff schedule are excisable goods.

By analyzing the definition, the following two important ingredients of excisable goods are found :

(a) Goods must be specified in the Schedule to the Central Excise Tariff Act, 1985;

(b) The goods so specified must be subject to duty.

1.7.1 Excisability of Plant & Machinery

In view of Entry N. 84 of List-I Seventh Schedule to the Constitution of India, duty of excise could be levied only on goods and not on immovable property. The goods are classified and charged to duty according to the state and condition in which they are removed from the factory.

Assembly of Plant & Machinery at Site

Mere bringing together of parts of a plant and machinery at site cannot be termed to be manufacture and hence, assembled plant cannot be treated to be goods.

Where assembly of parts and components brings out a different recognizable marketable product, before its installation or erection or attachment to the earth, it would be goods and hence chargeable to duty.

In *Sirpur Paper Mills Ltd. v CCE*, the Supreme Court held that machinery assembled and erected at site from bought out component was held to be goods and hence chargeable to duty, as it was attached to earth for operational efficiency and could be removed and sold.

However, in Triveni Engineering v CCE the Supreme Court overruled its decision given in Sirpur case and held that the marketability test, essentially, requires that goods should be in such condition, as could be brought as such to the market and sold, but if machinery requires dismantling before removal, it cannot be goods and hence, not chargeable to duty.

1.7.2 Excisability of Waste & Scrap

Section 3 imposes duty on manufacture of goods. Waste and scrap are not manufactured, but arise as a result of manufacture of the final product. Therefore, generally, there should not be levied any tax on the waste and scrap. Thus, waste and scrap can be 'goods' but duitable only if 'manufactured' and are mentioned in Tariff.

Case Laws

In 1987 in the case of Modi Rubber Ltd., it was held that even though the waste was capable of fetching some amount of sale, it would not be chargeable to excise duty. Similar decision was given in the case of Captainganj Distilleries.

Later in 1989, the criteria for determining, whether waste generated would be excisable or not was laid down in the case of Asiatic Oxygen Limited v CCE. The Tribunal held that the question as to whether waste would be charged to duty or not would depend on:

(a) whether a process of manufacture has taken place, and

(b) whether the waste generated is marketable.

1.8 MANUFACTURE

Any Taxable event for central excise duty is manufacture or production in India. The word 'produced' is broader than 'manufacture' and covers articles produced naturally, live products, waste, scrap etc. Manufacture means to make, to inset, to fabricate, or to produce an article by hand, by machinery or by other agency. To manufacture is to produce something new, out of existing materials.

- 'Manufacture' means :
  - (a) Manufacture as specified in various Court decisions i.e. new and identifiable product having a *distinctive name, character or use* must emerge *or*
  - (b) Deemed Manufacture.
- Deemed manufacture is of two types –
  - (a) CETA specifies some processes as 'amounting to manufacture'. If any of these processes are carried out, goods will be said to be manufactured, even if as per Court decisions, the process may not amount to 'manufacture', [Section 2(f)(ii)].
  - (b) In respect of goods specified in Third Schedule to Central Excise Act, repacking, re-labelling, putting or altering retail sale price etc. will be 'manufacture'. The goods included in Third Schedule of Central Excise Act are same as those on which excise duty is payable u/s 4A on basis of MRP printed on the package. [Section 2(f)(iii) w.e.f. 14-5-2003].

Definition

Section 2(f) defines the term 'Manufacture' to include any process :-

(i) incidental or ancillary to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the Section or Chapter Notes of the Schedule to the Central Excise Tariff Act, 1985, as amounting to manufacture or,

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer. And the word "manufacturer" shall be constued accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.
[Clauses (ii) and (iii) are called deemed manufacture]

Case Laws

It was decided in the case of *"Union of India v Delhi Cloth & General Mills Ltd" that.,* the manufacturer of vanaspati used to purchase oil from market and *vanaspati* was manufactured after subjecting the oil with various processes. The excise was paid on *vanaspati*. The Excise Department contended that during the process of manufacture of *vanaspati,* vegetable non-essential oil was produced, which is a separate dutiable product. The court decided that :

Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulations. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name and character or use."

Based on the above definition, the Court held that mere processing of basic oils did not amount to manufacture, because it is not marketable product. The refined oil requires deodorization before marketing.

In *South Bihar Sugar Mills Ltd. v UOI* the Supreme Court held that there must be such a transformation that a new and different article must emerge having a distinctive name.

In *Ujagar Prints v UOI*, the Supreme Court held that the generally accepted test to ascertain whether there was a manufacture, is whether the change or the series of changes brought about by the application of processes should take the commodity to the point, where commercially can no longer be regarded as the original commodity, but instead is recognized as a distinct and new article that has emerged out of and because of the result of processes.

1.8.1 ***Assembly or repair or production- whether the same is manufacture***

Assembly involves use of certain duty paid components to bring into existence an operational or functional product. As per the cardinal list laid down by the Supreme Court in *Emperor Industries* case, "any process would amount to manufacture if as a result of the said process the object has been transferred into a commercially known new and different product".

Thus, where assembly brings into existence of a new commercially known different product, however minor the consequent change be, it would amount to manufacture.

However, in *Enfield India Ltd*. case the tribunal held that an assembly, repair or reconditioning only improves the quality of performance of something which is not otherwise useful or fit to use, it would be manufacture.

Explanation as to what is not Manufacture

Any activity shall not be deemed to be manufacture, only because it has been so written in the licence granted. The following are not manufacture :

(a) Natural activity, even if carried otherwise, e.g. drying yarn in natural sun;
(b) Processing of duty paid goods;
(c) Purchasing various item and putting into a container and selling them;
(d) Obtaining of natural products;
(e) Testing/quality control of items manufactured by others;
(f) Cutting and polishing of diamond;
(g) Upgradation of computer system;
(h) Printing on glass bottles;
(i) Affixing brand name;
(j) Crushing of boulders into smaller stones.

1.8.2 Explanation about incidental & Ancillary Process

'Incidental' means anything that occurs incidentally. It refers to occasional or casual process.

'Ancillary' means auxiliary process, which unless pursued, shall not result into manufacture of the product. The definition of 'manufacture' under section 2(f), includes the processes which are 'incidental or ancillary to the completion of a manufactured product'. A process can be regarded as incidental or ancillary to the completion of the manufactured product, if it comes in relation to the finished product. It is immaterial whether the process is significant or inessential. On the other hand, where a process is not connected to the manufacture of the final product, it cannot be termed as incidental or ancillary.

Intermediate Products & Captive Consumption

The definition of manufacture under section 2*(f)* implies that manufacture would take place even at an intermediate stage, so long as the intermediate product is commercially and distinctly identifiable.

Intermediate products are such products, which are produced in a process naturally in the course of manufacture of a finished product, which involves more than one process. Thus, such products are output of one process and input for the subsequent process. Captive consumption means consumption of such output of one process in the subsequent process. Generally, the intermediate products do not have any marketable identity and can hardly be sold in the market.

In the case of *JK Spinning &Weaving Mills v UOI* the Supreme Court held that the captive consumption would amount to removal, hence chargeable to duty. However, in *Union Carbide v UOI,* the Supreme Court held that an intermediate product would be chargeable to excise duty, only if it is a complete product and can be sold in the market to a consumer. This decision was affirmed in *Bhor Industries v UOI.*

1.9 MANUFACTURER

Manufacturer is the person who actually brings new and identifiable product into existence.

- Duty liability is on manufacturer in most of the cases.
- Mere supplier of raw material or brand name owner is not 'manufacturer'.
- Loan licensee is not 'manufacturer'.

Loan licensee can be treated as manufacturer only if the manufacture is carried out by use of his own raw material under his own supervision by hiring the premises and equipment shift-wise or otherwise.

1.9.1 Definition of Manufacturer

Section 2*(f)* defines the term 'manufacture' to "include any process –

(i) incidental or ancillary to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985, as amounting to manufacture;

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retails sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

And the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account".

Thus, according to the above definition, the manufacturer is a person :

(a) who manufactures or produces any excisable goods, or

(b) carries on any process incidental or ancillary to the completion of the manufactured products.

1.9.2 Who is a Manufacturer as per statute

The following are held to be manufacturer :

(a) Person manufacturing for own consumption,

(b) Person hiring labour or employees for manufacturing,

(c) A job-order worker,

(d) A contractor.

1.9.3 Who is not a Manufacturer

The following have been held as not to be a manufacturer :

(a) `Where an activity is not a manufacture;

(b) Brand Owners, if their relation with the manufaturer is 'Principal to Principal' basis.

(c) Labour Contractors, who supply labor;

(d) Loan licensee.

(e) Raw material supplier is not manufacturer

1.9.4 Dutiability of Packing, Labelling and Repacking Activities

Section 2*(f)*, defines 'Manufacture' to include any process, which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 (CETA) as amounting to

manufacture. Thus, the process may not amount to manufacture as per principles evolved by Courts, but the same may be liable to excise duty, if it is defined as amounting to manufacture under CETA.

This provision seemingly includes the process like packing, labeling, re-labelling, re-packing into manufacture, though otherwise these processes are not 'manufacture' as no new product emerges. In fact, these processes are adjunct to manufacture. The manufacture shall be complete only when the product is rendered marketable and movable and for this purpose packing is an inevitable process. Therefore, packing and associated with that the labeling is a part of the manufacturing process.

In *CCE v Prabhat Packging Ltd.,* the Tribunal has held that repacking of an already manufactured product would not amount to manufacture in excise law, since repacking does not result into a new commercially distinct product.

Labelling on packaged products is also not manufacture, since in the common market parlance a labeled and unlabelled product is treated as the same product and the distinction as such is made. The principle was affirmed in the case of *Pioneer Tools and Appliances Ltd. v UOI* by the Bombay High Court.

1.10 CLASSIFICATION OF GOODS

Central Excise Duty is chargeable on the goods, which are manufactured in India and are subject to excise duty. However, all goods cannot be charged with the same rate of duty. Therefore, the goods need to be grouped into separate categories and sub-categories, for which the rate of excise duty may be determined. This identification of goods through groups and sub-groups is called classification of goods.

The rate of duty is found out by classifying the product in its appropriate heading under Central Excise Tariff. The Central Excise Tariff Act, 1985 (CETA) classifies all the goods under 96 chapters and specific code is assigned to each item. CETA is based on International convention of Harmonised System of Nomenclature (HSN), which is developed by World Customs Organisation (WCO) (That time called as Customs Cooperation Council). This is an International Nomenclature standard adopted by most of the Countries to ensure uniformity in classification in International Trade. HSN is a multi purpose 6 digit nomenclature classifying goods in various groups. Central Excise Tariff is divided in 20 broad sections. Section Notes are given at the beginning of each Section, which govern entries in that Section. Each of the sections is divided into various Chapters and each Chapter contains goods of one class. Chapter Notes are given at the beginning of each Chapter, which govern entries in that Chapter. There are 96 chapters in Central Excise Tariff. Each chapter and sub-chapter is further divided into various headings and sub-headings depending on different types of goods belonging to same class of products.

The Central Excise Tariff Act, 1985 (CETA) came into force w.e.f. 28th February, 1986.

The main features of the Excise Tariff are :

(a) The Central Excise Tariff has been made very detailed and comprehensive as all the technical and legal aspects in relation to goods have been incorporated in it.

(b) The Excise Tariff is based on the Harmonised System of Nomenclature, which is an internationally accepted product coding system formulated under the GATT.

(c) The goods of the same class have been grouped together to bring about parity in treatment and restrict the dispute in classification matter.

(d) The Central Excise Tariff provided detailed clarificatory notes under each section/chapter.

(e) The interpretation of the Tariff have been provided for at the beginning of the Schedule. All the section notes, chapter notes and rules for interpretation are legal notes and/therefore serve as statutory guidelines in classification of goods.

(f) The Tariff is designed to group all the goods relating to one industry under one chapter from one raw material in a progressive manner.

1.11 HARMONISED SYSTEM OF NOMENCLATURE

All goods are classified using 4 digit system. These are called 'headings'. Further 2 digits are added for sub-classification, which are termed as 'sub-headings'. Further 2 digits are added for sub-sub-classification, which is termed as 'tariff item'. Rate of duty is indicated against each 'tariff item' and not against heading or sub-heading.

Harmonised System of Nomenclture (HSN) is an internationally accepted product coding system, formulated to facilitate trade flow and analysis of trade statistics. The system was developed by World Customs Organisation (WCO), which was earlier known as Customs Cooperative Council. HSN was adopted by International Convention of Harmonised System of Nomeclature.

The CETA is also based on the HSN pattern, of course, with some deviation. HSN has got commercial as well as judicial recognition.

1.12 INTERPRETATIVE RULES OF CETA

The Central Excise Tariff Act, 1985 incorporates FIVE Rules of interpretation, which together provide necessary guidelines for classification of various products under the schedule. Rules for Interpretation of Schedule to Tariff are given in the Tariff itself. These are termed as 'General Interpretative Rules' (GIR). GIR (General Interpretative Rules) are to be applied for interpretation of Tariff, if classification is not possible on the basis of tariff entry and relevant chapter notes and section notes. Following are the steps of classification of a product.

(1) Refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes. If there is no ambiguity or confusion, the classification is final (Rule 1 of GIR). You do not have to look to classification rules or trade practice or dictionary meaning. If classification is not possible, then only to GIR. The rules are to be applied sequentially.

(2) If meaning of word is not clear, refer to trade practice. If trade understanding of a product cannot be established, find technical or dictionary meaning of the term used in the tariff. You may also refer to BIS or other standards, but *trade parlance* is most important.

(3) If goods are incomplete or un-finished, but classification of finished product is known, find if the un-finished item has *essential characteristics* of finished goods. If so, classify in same heading - Rule 2(a).

(4) If ambiguity persists, find out which heading is specific and which heading is more general. Prefer specific heading.- Rule 3(a).

(5) If problem is not resolved by Rule 3(a), find which material or component is giving ' *essential character* ' to the goods in question - Rule 3(b).

(6) If both are equally specific, find which comes last in the Tariff and take it - Rule 3(c).

(7) If you are unable to find any entry which matches the goods in question, find goods which are most akin - Rule 4.

(8) Packing material is to be classified in the heading in which the goods packed are classified – Rule 5.

(9) In case of mixtures or sets too, the procedure is more or less same, except that each ingredient of the mixture or set has to be seen in above sequence. As per rule 2(b), any reference to a material or substance includes a reference to mixtures or combinations of that material or substance with other material or substance.

As regards the Interpretative Rules, the classification is to be first tested in the light of Rule 1. Only when it is not possible to resolve the issue by applying this Rule, recourse is taken to rules 2,3 and 4 in seriatim.

Steps in Classification

The following steps are involved in classification :

1. First reference is made to the heading and sub-heading, together with corresponding section notes and chapter notes. In case of no ambiguity, as per Rule 1, the classification would be final.

2. Where the product name is not clear, reference is made to the common trade practice, Further reference may be made to dictionary meaning or technical terminology, if the product name is not understood in common trade practice or, it is a new product.
3. In case of incomplete or un-finished goods, the essential characteristics of the product must be matched with the known finished product. In case of similarity, it should be classified, as per Rule 2, under the same heading.
4. In case of ambiguity Rule 3(a) should be applied and specific heading should be preferred over general heading.
5. If Rule 3(a) does not apply, goods should be classified, as per rule 3(b) as if they consist of material or components which gives them their essential character.
6. When goods cannot be classified with reference to rules 3(a) and 3(b), they should be classified, as per Rule 3(c) under the heading, which occurs last in numerical order.
7. In case of residuary items classification should be made as per Rule 4 under heading, which is most akin to the goods in question.

1.13 VALUATION OF GOODS

Excise duty is payable on *one of the following basis* :

- *Duty based on production capacity* - Some products (e.g. pan masala, rolled steel products) are perceived to be prone to duty evasion. In case of such products, Central Government, by notification, can issue notification specifying that duty on such notified products will be levied and collected on the basis of production capacity of the factory [section 3A(1) of Central Act inserted w.e.f. 10th May 2008]. When such notification is issued, annual capacity will be determined by Assistant Commissioner [section 3A(2)(a) of CEA]. Factors relevant to determine production capacity will be specified by rules issued by Central Government [section 3A(2)(b)(i)].
- *Specific Duty* - It is the duty payable on the basis of certain unit like weight, length, volume, thickness etc. For example, duty on Cigarette is payable on the basis of length of the Cigarette, duty on sugar is based on per Kg basis etc.
- *Tariff value* - In some cases, tariff value is fixed by Government from time to time. This is a " *Notional Value* " for purpose of calculating the duty payable. Once 'tariff value' for a commodity is fixed, duty is payable as percentage of this 'tariff value' and not the Assessable Value fixed u/s 4.
- Duty based on basis of Maximum Retail Price printed on carton after allowing deductions - section 4A of CEA.
- *Compounded Levy Scheme* - Normal excise procedures and controls are not practicable when there are numerous small manufacturers. Rule 15 of Central Excise Rules provides that Central Government may, by notification, specify the goods in respect of which an assessee shall have option to pay duty of excise on the basis of specified factors relevant to production of such goods and at specified rates. The scheme is presently applicable only to stainless steel pattas/pattis and Aluminium circles. These articles are not eligible for SSI exemption.
- Duty as % based on *Assessable Value* fixed under section 4 (*ad valorem duty*) (If not covered in any of above)

1.13.1 Methods & Techniques of Valuation

Proper valuation of goods manufactured is an integral part towards levy of Excise Duty accurately. Accordingly, goods manufactured should be valued strictly in the manner as prescribed in the Central Excise Act, 1944 and Rules framed there-under. Details of the provisions relating to valuation has been discussed herein below :

1.13.2 Value under the Central Excise Act, 1944

Value of the excisable goods has to be necessarily determined when the rate of duty *is* on ad-valorem basis. Accordingly, under the Central Excise Act, 1944. the following values are relevant for assessment of duty. Transaction value is the most commonly adopted method.

(i) Transaction value under Section 4 of the Central Excise Act

(ii) Value determined on basis of maximum Retail Sale Price as per Section 4A of the Act, if applicable to a given commodity.

(iii) Tariff value under Section 3, if applicable.

Details of all the methods of valuation are discussed below :

1. ***Transaction Value***

Section 4(3)(d) of the Central Excise Act, as substituted by section 94 of the Finance Act, 2000 (No. 10 of 2000), came into force from the 1st day of July, 2000. This section contains the provision for determining the Transaction value of the goods for purpose of assessment of duty.

For applicability of transaction value in a given case, for assessment purposes, certain essential requirements should be satisfied. If anyone of the said requirements is not satisfied, then the transaction value shall not be the assessable value and value in such case has to be arrived at under the valuation rules notified for the purpose. The essential *conditions for application* of a Transaction value are :

(a) The goods are sold at the time of removal from the factory or warehouse.

(b) The transaction is between unrelated parties, i.e, the assessee and the buyer are not related parties

(c) The price the sole consideration for the sale

  (i) The goods are sold by an assessee for delivery at the time of place of removal. The term "place of removal" has been defined basically to mean a factory or a warehouse, and will include a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearances from the factory.

  (ii) The assessee and the buyer of the goods are not related; and

  (iii) The price is the sale consideration for the sale.

Transaction value would include any amount which is paid or payable by the buyer to or on behalf of the assessee, on account of the factum of sale of goods. In other words, if, for example, an assessee recovers advertising charges or publicity charges from his buyers, either at the time of sale of goods or even subsequently, the assessee cannot claim that such charges are not to be included in the transaction value. The law recognizes such payment to be part of the transaction value, that is assessable value for those particular transactions.

(1) As per the new Sec.4, transaction value shall include the following receipts/recoveries or charges, incurred or provided for in connection with the manufacturing, marketing, selling of the excisable goods :

  (a) Advertising or publicity;

  (b) Marketing and selling organization expenses;

  (c) Storage;

  (d) Outward handling;

  (e) Servicing, warranty;

  (f) Commission or

  (g) Any other matter.

  The above list is not exhaustive and whatever elements which enrich the value of the goods before their marketing and were held by Hon'ble Supreme Court to be includible in "value" under the erstwhile section 4 would continue to form part of section 4 value even under new section 4 definition.

(2) Thus if in addition to the amount charged as price from the buyer, the assessee recovers any other amount by reason of sale or in connection with sale, then such amount shall also form part of the transaction value. Where the assessee includes all their costs incurred in relation to manufacture and marketing while fixing price payable for the goods and bills and collects an all inclusive price -as happens in most cases where sales are to independent customers on commercial consideration - the transaction price will generally be the assessable value.

However, where the amount charged by an assessee does not reflect the true intrinsic value of goods marketed and total value split up into various elements like special packing charges, warranty charges, service charges etc. it has to be ensured that duty is paid on correct value.

1.13.3 Inclusions in Assessable Value:

(i) Packing charges :

Packing charges shall form part of the assessable value as it is a charge in connection with production and sale of the goods, recovered from the buyer. Under the erstwhile See. 4, inclusion of cost of packing in the value was related to the nature of packing such as preliminary or secondary ete. Such issues are .not relevant in the new See. 4 and any charges recovered for packing, whether ordinary or special is includible in the transaction value if the same is not included in the price of the goods.

In the case of reusable containers (glass bottles, crates etc.), normally the cost is amortized and included in the cost of the product itself. Therefore, the same is not required to be included in the value or the product unless it is found that the cost of reusable container has not been amortised and included in the value of the product.

However, rental charges or cost of maintenance of reusable metal containers like gas cylinders etc. are to be included in the value since the amount has been charged by reason of, or in connection with the sale of goods.

Similarly, cost or containers supplied by the buyer will be included in the transaction value of the goods, as the price will not be the sole consideration of the sale and the valuation would be governed by Rule 6 of the Valuation Rules, 2000.

Durable and returnable packing — In case of durable/returnable containers, all that would be necessary, as per the Board's Circular No. 643/34/2002-CX dated 1-7-2002 [2002 (143) E.L.T. T39], is to include the amortised cost of the container in the price of the product itself; the returnable deposit taken from the buyer or deposit of the empty container by him would not then be treated as additional consideration.

(ii) Design and Engineering charges being an essential process/activity for the purpose of manufacture shall be included in the Assessable value.

(iii) Consultancy charges relating to manufacturing/production is included as such payment is 'by reason of sale".

(iv) Loading and handling charges within the factory are included in Assessable Value.

(v) Royalty charged in franchise agreement for permission to use the brand name is included in Assessable value as such payment is 'by reason of sale' or 'in connection with sale'.

(vi) Advance authorisation surrendered in favour of seller is additional consideration and includible. It is considered as an Additional consideration. It shall be included if it is paid by or on behalf of buyer to manufacturer-assessee and not when it is given by third party.

(vii) Price increase, variation, escalation subsequent to removal of goods cleared from the factory is not relevant, *provided the price is final at the time of removal.*

(viii) Free After Sales Service/Warranty charges will form part of the transaction value irrespective of whether the warranty is optional or mandatory.

(ix) Advertisement and sales promotion expenses incurred by the buyer: Manufacturer incurs advertisement expenditure. These are obviously built in the selling & distribution cost for determining the selling price. In addition, often dealers also advertise for the product at their own cost.

Definition of "Transaction value" includes charges for "advertisement, publicity and marketing expenses". However, these are includible only if the buyer is liable to pay the amount to assessee or on behalf of the assessee.

Thus, advertisement and sales promotion expenses incurred by dealer/distributor, if done on his own, are not to be included, if transaction between buyer and seller is on principle to principle basis. This is because the buyer is not incurring these expenses "on behalf of the assessee".

(x) After sales service and pre delivery inspection (PDI) charges

After sales service and pre delivery inspection (PDI) are services provided free by the dealer on behalf of the assessee and the cost towards this is included in the dealer's margin (or reimbursed to him).

The value of goods which are consumed by the assessee or on his behalf in the manufacture of other articles will be on cost construction method only (Rule 8). The assessable value of captivity consumed goods will be taken at 110% (substituted by 60/2003 (NT.) 5-10-2003 - prior to that it was 115%) of the cost of manufacture of goods even if identical or comparable goods are manufactured and sold by the same assessee as there have been disputes in adopting values of comparable goods. The concept of deemed profit for notional purposes has also been done away with and a margin of 10% by way of profit etc. is prescribed in the rule itself for ease of assessment of goods used for captive consumption. The cost of production of captively consumed goods will be done strictly in accordance with CAS- 4.

(xi) "**Transaction Value**" includes receipts/recoveries or charges incurred or expenses provided for in connection with the manufacturing, marketing, selling of the excisable goods to be part of the price payable for the goods sold. In other words, whatever elements which enrich the value of the goods before their marketing and were held by Hon'ble Supreme Court to be includible in "value" under the erstwhile Section 4 would continue to form part of Section 4 value even under new Section 4 definition. Where the assessee charges an amount as price for his goods, the amount so charged and paid or payable for the goods will form the assessable value. If however, in addition to the amount charged as price from the buyer, the assessee also recovers any other amount "by reason of sale" or "in connection with sale", then such amount shall also form part of the transaction value for valuation and assessment purposes. Thus if assessee splits up his pricing system and charges a price for the goods and separately charges for packaging, the packaging charges will also form part of assessable value as it is a charge in connection with production and sale of the goods recovered from the buyer.

1.13.4 Exclusions from Transaction Value:

(i) **Taxes and duties :** The definition of transaction value mentions that whatever amount is actually paid or actually payable to the Government or the relevant statutory authority by way of excise, sales tax and other taxes, such amount shall be excluded from the transaction value. If any excise duty or other tax is paid at a concessional rate for a particular transaction, the amount of *excise* duty or tax actually paid at the concessional rate shall only be allowed to be deducted from price.

(ii) **Erection, installation and commissioning charges :-**

If the final product is not excisable, the question of including these charges in the assessable value of the product does not arise. As for example, since a thermal power, as a whole, is an immovable property and therefore not excisable, no duty would be payable on the cost of erection, instigations and commissioning of the steel plant. Similarly, if a machine is cleared from a factory on payment of appropriate duty and later on taken to the premises of the buyer for installation/erection and commissioning into an immovable property, no further duty would be payable. On the other hand if parts/components of a generator are brought to a site and the generator erected/installed and commissioned at the site then, the generator being an excisable commodity, the cost of erection, installation and commissioning charges would be included in its assessable value. In other words if the expenditure on erection, installation and commissioning has been incurred to bring into existence any excisable goods, these charges would be included in the Assessable Value of the goods. If these costs are incurred to bring into existence some immovable property, they will not be included in the assessable value of such resultant property.

However, 'time of removal' in case of excisable goods removed from the place of removal is deemed to be the time of clearance of such goods from the 'factory'. therefore, the assessable value is with reference to delivery at the 'time and place of removal, transaction value will be the assessable value.

(iii) **Freight :** It follows from the Valuation Rules that in such categories of cases also if the price charged is with reference to delivery at a place other than the depot, etc. then the actual or average cost of transportation (average freight being calculated according to generally accepted principles of costing - CAS - 5 beyond the depot/place of sale will not be taken to be a part of the transaction value and exclusion of such cost allowed on similar lines as discussed earlier, when sales are effected from factory gate/warehouse. There is no question of including the freight etc. right upto the buyer's premises even though delivery may be effected at that place. Delivery to the carrier at factory gate/depot is delivery to the buyer and element of freight and transit insurance are not includible in assessable value. Moreover, the ownership of the goods has no relevance so far as their transit insurance is concerned. - *Escorts JCB Ltd.* v. CCE., *Delhi-II* - 2002 (146) E.L.T. 31 (S.C) and *Prabhat Zarda Factory Ltd.* v. CCE. -2002 (146) E.L.T. 497 (S.C). Freight (actual or average) upto the point of depot etc. will, however, continue to be included.

(iv) Advertising/Publicity expenditure by brand name/copyright owner — the expenditure incurred by brand name/copyright owner on advertisement and publicity charges, in respect of goods will not be added to assessable value, as such expenditure is not incurred on behalf of the manufacturer-assessee.

(v) Notional interest on security deposit/advances — The notional interest on advances may not be includible if relation between advance and selling price is only casual. There is 'relation' but 'no connection in relation to manufacture'.

(vi) Interest on Receivables: As regards interest for delayed payments it is the normal practice in industry to allow the buyers some credit period for which no interest is charged. That is to say, the assessee allows the buyers some time (normally 30 days, which could be less or even more depending upon industry) to make the payment for the goods supplied. Interest is charged by him from the buyer only if the payments are made beyond this period. A question has been raised whether such interest on receivables (for delayed payments) should form part of the transaction value or not. As per the earlier practice under Section 4 such amount of interest is not included in "value". Also, similar is the practice followed in this regard on the Customs side, where duties are collected on transaction value basis, and the importers are given certain "free" period for payment or to pay up interest for delayed payments. As the intention is not to disturb the existing trade practice in this regard, charges for interest under a financing arrangement entered between the assessee and the buyer relating to the purchase of excisable goods shall not be regarded as part of the assessable value provided that :

(a) the interest charges are clearly distinguished from the price actually paid or payable for the goods;

(b) the financing arrangement is made in writing; and

(c) where required, assessee demonstrates that such goods are actually sold at the price declared as the price actually paid or payable.

(vii) Discounts — As regards discounts, the definition of transaction value does not make any direct refer-ence. In fact, it is not needed by virtue of the fact that the duty is chargeable on the net price paid or payable. Thus if in any transaction a discount is allowed on declared price of any goods and actually passed on to the buyer of goods as per common practice, the question of including the amount of discount in the transaction value does not arise. Discount of any type or description given on any normal price payable for any transaction will, therefore, not form part of the transaction value for the goods, e.g. quantity discount for goods purchased or cash discount for the prompt payment etc. will therefore not form part of the transaction value.

(i) cash discount for prompt payment and

(ii) interest or cost of finance for delayed payment, when not exorbitant, is to be granted abatement whether availed or not even under new Section 4 - 2006 (204) E.L.T. 570 (Tri - L.B.) - *CCE* v. *Arvind Mills Ltd.*

The differential discounts extended as per commercial considerations on different transactions to unrelated buyers if extended can not be objected to and different actual prices paid or payable for various transactions are to be accepted for working assessable value. Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently - as for example, year end discount - the assessment for such transactions may be made on a provisional basis. However,. the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment. Trade discount not paid to dealers at the time of in-voice preparation but paid later on net sale value was held as deductable for valuation purpose by Hon'ble Supreme Court in the case of *Commissioner* v. *DCM Textiles* - 2006 (195) E.L.T. 129 (S.C). Liquidated damages (as for example price reduction for delay in delivery of goods) is acceptable - 2006 (204) E.L.T. 626 (Tri.) - *United Telecom Ltd.* v. *CCE.*

(viii)Deemed export incentives earned on goods supplied: Duty drawback cannot be added to assessable value, especially if there is no evidence of drawback with depression of prices.

(ix) Subsidy/rebate obtained by assessee: A general subsidy/rebate is not to be included as it has no connection with individual clearances of goods. In case of rebate/subsidy which is directly relatable to individual clerances, it should not be includible.

(x)Price of accessories and optional bought out items is not includible in Assessable value.

1.13.5 Value based on Retail Sale Price

Section 4A of CEA empowers Central Government to specify goods on which duty will be payable based on 'retail sale price'.

The provisions for valuation on MRP basis are as follows :

(a) The goods should be covered under provisions of Standards of Weights and Measures Act or Rules [section 4A(1)].

(b) Central Government has to issue a notification in Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Government can permit reasonable abatement (deductions) from the 'retail sale price'[section 4A(2)].

(c) While allowing such abatement, Central Government shall take into account excise duty,sales tax and other taxes payable on the goods [section 4A(3)].

(d) The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc. If under certain law, MRP is required to be without taxes and duties, that price can be the 'retail sale price' [*Explanation* 1 section 4A].

(e) If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered [Explanation 2(a) to section 4A]. If different MRP are printed on different packages for different areas, each such price will be 'retail sale price' for purpose of valuation [*Explanation* 2(c) to section 4A].

(f) Removing excisable goods without MRP or wrong MRP or tampering, altering or removing MRP declared on a package is an offence and goods are liable to confiscation [section 4A(4)] If price is altered, such increased price will be the 'retail sale price' for purpose of valuation [*Explanation* 2(b) to section 4A].

For example, Government had issued a notification to the effect that excise duty on 'cosmetics and toilet preparations' will be payable on the basis of MRP printed on retail carton after allowing abatement of 40%. In such case, if MRP printed on carton is ₹ 200 and if the duty on 'cosmetics & toilet preparations' is 10% plus education cess of 2% plus SAH education cess of 1%, the duty @ 10% will be payable on ₹ 120 (i.e. after allowing 40% abatement on MRP of ₹ 200). Thus duty payable per pack will be ₹ 12.00, plus education cess ₹ 0.24 plus SAH education cess of ₹ 0.12.

MRP provisions are overriding provisions – Section 4A(2) of Central Excise Act uses the words 'notwithstanding section 4'. Hence, when section 4A is applicable, provisions of section 4 for determination of assessable value are not applicable.

Provision of MRP based valuation are applicable only when product is statutorily covered both under Weights and Measures Act and notification issued under CEA - reiterated in *Swan Sweets* v. *CCE* 2006 (198) ELT 565 (CESTAT).

Same product sold in wholesale and under MRP - CBE&C has clarified in circular No. 737/53/2003-CX dated 19-8-2003 that when goods covered u/s 4A are supplied in bulk to large buyer (and not in retail), valuation is required to be done u/s 4. Provisions of section 4A apply only where manufacturer is legally obliged to print MRP on the packages of goods. Thus, there can be instances where the same commodity would be partly assessed on basis of section 4A and partly on basis of transaction value u/s 4.

Products covered under the MRP valuation scheme - So far, 96 articles have been covered under this scheme [Notification No. 2/2006-CE(NT) dated 1-3-2006.

Non-applicability of provisions of MRP - If an article is not covered under provisions in respect of marking MRP, provisions of duty payable on basis of MRP do not apply and in those cases, duty will be payable on *ad valorem* basis as per section 4. As per rules 2A and 34 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (as amended w.e.f. 14-1-2007), the provisions of marking MRP are not applicable to following commodities – Packages above 25Kg (50 Kg in case of cement) * Packaged commodities for industrial or institutional consumers * Small packages of 10gm/10 ml or less * Fast food items * Scheduled drugs and formulations * Agricultural farm produce * Bidis for retail sale * Domestic LPG gas.

Deemed Manufacture of products covered under MRP - In respect of goods specified in third schedule to Central Excise Act, any process which involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on the container or adoption of any other treatment on the goods to render the product marketable to consumer will be 'manufacture'. [section 2(f)(iii) effective from 14-5-2003].

1.13.6 Valuation rules to determine assessable value

As per Section 4(1)(b) of the Central Excise Act, if 'Assessable Value' cannot be determined u/s 4(1)(a), it shall be determined in such manner as may be prescribed by rules. Under these powers, Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 have been made effective from 1-7-2000.

In Ispat Industries Ltd. *v* CCE 2006, it was observed that Excise Valuation Rules should be applied serially. The rules are as below :

(i) **Value nearest to time of removal if goods not sold —** If goods are not sold at the time of removal, then value will be based on the value of *such goods* sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments. [Rule 4].

The rule applies when price at the time of removal is not available as the goods are not sold by the assessee at the time of removal. Thus, this rule should apply in case of removal of free samples or supply under warranty claims.

In case of new or improved products or new variety of products, price of similar goods may not be available. In such case, valuation should be on basis of cost of production plus 10%, in absence of any other mode available for valuation.

(ii) **Goods sold at different place —** Sometimes, goods may be sold at place other than the place of removal e.g. in case of FOR delivery contract. In such cases, actual cost of transportation from place of removal upto place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis. [Rule 5]

"Cost of transportation" includes – (i) the actual cost of transportation; and (ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

(iii) **Valuation when the price is not the sole consideration —** Where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of —

(a) such transaction value, and

(b) the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. [Rule 6]

In case any of the goods and services (*listed below*) is provided **by the buyer free of change or at reduced cost** in connection with production and sale of such goods, then, the value of such goods and services, apportioned as appropriate, shall be deemed to be the money value of the additional consideration.

Only the value of the following goods and services are to be added in the transaction value –

(a) materials, components, parts and similar items relatable to such goods;

(b) tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;

(c) material consumed, including packaging materials, in the production of such goods;

(d) engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.

(iv) **Sale at depot/consignment agent —** Section 4(3)(c)(iii) provides that in case of sale at depot/consignment agent, the depot/place of consignment agent will be the 'place of removal'. As per section 4(3)(cc), in case of sale from depot/place of consignment agent, 'time of removal' shall be deemed to be the time at which the goods are cleared from factory.

In other words, in case of sale from depot/place of consignment agent, duty will be payable on the price prevailing at the depot as on date of removal from factory. Price at which such goods are subsequently sold from the depot is not relevant for purpose of excise valuation.

When goods are sold through depot, there is no 'sale' at the time of removal from factory. In such cases, price prevailing at depot (but at the time of removal from factory) shall be the basis of Assessable Value. The value should be 'normal transaction value' of such goods sold from the depot at the time of removal or at the nearest time of removal from factory. [rule 7 of Valuation Rules].

As per Valuation Rule 2(b), "normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold.

For example, if an assessee transfers a consignment of paper to his depot from Delhi to Agra on 5-7-2000, and that variety and quality of paper is normally being sold at the Agra depot on 5-7-2000 at transaction value of ₹ 15,000 per tonne to unrelated buyers, where price is the sole consideration for sale, the consignment cleared from the factory at Delhi on 5-7-2000 shall be assessed to duty on the basis of ₹ 15,000 per tonne as the assessable value. If assuming that on 5-7-2000 there were no sales of that variety from Agra depot but the sales were effected on 1-7-2000, then the normal transaction value on 1-7-2000 from the Agra depot to unrealated buyers, where price is the sole consideration shall be the basis of assessment. [Illustration given in the departmental circular dated 30-6-2000].

(v) **Captive consumption —** Since excise duty is on manufacture of goods, duty is payable as soon as goods are manufactured within the factory. Such goods are called 'intermediate products' and its use within the factory is termed as 'captive consumption'. Duty is payable even when goods are despatched from one factory to another factory of the same manufacturer.

Duty payable on intermediated products – In A S Processors *v.* CCE 1999(112) ELT 706 (CEGAT), it was held that once a new marketable intermediate product comes into existence, it is to be charged to duty if not exempted by a notification – same view in CCE *v.* Citric India 2001(127) ELT 539 (CEGAT).

Captive consumption for dutiable final products – The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (*a*) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit *or* (*b*) Used for is or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. [Notification No. 67/1995 dated 16-3-1995].

Duty payable on captive consumption if intermediate product under compounded levy scheme – In *Gaya Aluminium Industries v. CCE* (2004) 170 ELT 98 (CESTAT), it was held that even if Aluminium Circles are captively consumed, duty will be payable under compounded levy scheme [However, assessee claimed that compounded levy scheme is optional and assessee can opt to pay normal duty. Hence, the matter was remanded to adjudicating authority for consideration].

In *Gouri Shankar Industries v. CCE* 2004 (173) ELT 247 (CESTAT) also, it was held that duty is payable if Aluminium circles are consumed captively.

Valuation in case of captive consumption – In case of captive consumption, valuation shall be done on basis of cost of production plus 10% [The percentage was 15% upto 5-8-2003]. (Rule 8 of Valuation Rules). Cost of production is required to be calculated as per CAS – 4.

Captive consumption means goods are not sold but consumed within the same factory or another factory of same manufacturer (i.e. inter-unit transfers).

The rule may also be helpful if goods are to be transferred to job worker for job work and then brought back for further processing. If job worker is utilizing some of his own material, it may be advisable to clear processed inputs on payment of duty to job worker. The job worker can avail Cenvat credit and then send back the goods manufactured by him on payment of duty.

Rule 8. Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

Captive consumption by related person – In case goods are supplied to a 'related person' but consumed by the related person and not sold, valuation will be done on the basis of cost of production plus 10% [*Proviso* to rule 9]. – CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002, ahs clarified that this proviso applies when goods are transferred to a sister unit or another unit of the same factory for captive consumption in their factory.

Cost Sheet

Suggested cost sheet as per CAS-4 (issued by ICWAI) is as follows -

Statement of cost of production of .....
..... manufactured/to be manufactured during the period .....

Q1	Quantity Produced (Unit of Measure)		
Q2	Quantity Dispatched (Unit of Measure)		
	Particulars	**Total Cost (₹)**	**Cost/ Unit(₹)**
1	Material Consumed		
2	Direct Wages and Salaries		
3	Direct Expenses		
4	Works Overheads		
5	Quality Control Cost		
6	Research and Development Cost		
7	Administrative Overheads (Relating to production capacity)		
8	Total (1 to 7)		
9	Add - Opening stock of Work-in-Progress		
10	Less - Closing stock of Work-in-Progress		
11	Total (8+9-10)		
12	Less - Credit for Recoveries/Scrap/By-Products/Misc Income		
13	Packing Cost		
14	Cost of Production (11-12+13)		
15	Add - Inputs received free of cost		
16	Add - Amortised cost of moulds, tools, dies and patterns etc. received free of cost		
17	Cost of Production for goods produced for captive consumption(14+15+16)		
18	Add - Opening stock of finished goods		
19	Less - Closing Stock of finished goods		
20	Cost of production of goods dispatched (17+18-19)		

[Note - The form is common both for future cost and historical cost. In case of future cost (say for future quarter or half year), some of the columns e.g. opening and closing stock of WIP and FG are not relevant].

Illsustration 1. Raj & Co. furnish the following expenditure incurred by them and want you to find the assessable value for the purpose of paying excise duty on captive consumption. Determine the cost of production in terms of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and as per CAS-4 (cost accounting standard) (i) Direct material cost per unit inclusive of excise duty at 10% - ₹ 1,320 (ii) Direct wages - ₹ 250 (iii) Other direct expenses - ₹ 100 (iv) Indirect materials - ₹ 75 (v) Factory Overheads - ₹ 200 (vi) Administrative overhead (25% relating to production capacity) ₹ 100 (vii) Selling and distribution expenses - ₹ 150 (viii) Quality Control - ₹ 25 (ix) Sale of scrap realized - ₹ 20 (x) Actual profit margin - 15%.

Answer :

	Particulars	Amount (₹)
(1)	Direct Material (exclusive of Excise Duty) [$\frac{1320}{110} \times 100$]	1,200.00
(2)	Direct Labour	250.00
(3)	Direct Expenses	100.00
(4)	Works Overhead [indirect material (75) plus Factory OHs (200)]	275.00
(5)	Quality Control Cost	25.00
(6)	Research & Development Cost	Nil
(7)	Administration Overheads (to the extent relates to production activity)	25.00
	Less: Realizable Value of scrap	(20.00)
	Cost of Production	1,855.00
	Add 10% as per Rule 8	185.50
	Assessable Value	2,040.50

Illustration 2. Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation (DPE) Rules, 2000 - Direct material - ₹ 11,600, Direct Wages & Salaries - ₹ 8,400, Works Overheads - ₹ 6,200, Quality Control Costs - ₹ 3,500, Research and Development Costs - ₹ 2,400, Administrative Overheads - ₹ 4,100, Selling and Distribution Costs ₹ 1,600, Realisable Value of Scrap - ₹ 1,200. Administrative overheads are in relation to production activities. Material cost includes Excise duty ₹ 1,054.

Answer : Cost of production is required to be computed as per CAS-4. Material cost is required to be exclusive of Cenvat credit available.

	Particulars	Total Cost (₹)
1	Material Consumed (Net of Excise duty) (11,600 – 1,054)	10,546
2	Direct Wages and Salaries	8,400
3	Direct Expenses	-
4	Works Overheads	6,200
5	Quality Control Cost	3,500
6	Research and Development Cost	2,400

Note - (1) Indirect labour and indirect expenses have been included in Works Overhead (2) In absence of any information, it is presumed that administrative overheads pertain to produc-tion activity. (3) Actual profit margin earned is not relevant for excise valuation.

Illustration 3. Hero Electronics Ltd. is engaged in the manufacture of colour television sets having its factories at Kolkata and Gujarat. At Kolkata the company manufactures picture tubes which are stock transferred to Gujarat factory where it is consumed to produce television sets. Determine the Excise duty liability of captively consumed picture tubes from the following information: - Direct material cost (per unit) ₹ 800 Indirect Materials ₹ 50 Direct Labour ₹ 100; Indirect Labour ₹ 50; Direct Expenses ₹ 100; Indirect Expenses ₹ 50; Administrative Overheads ₹ 50; Selling and Distribution Overheads ₹ 100. Additional Information: - (1) Profit Margin as per the Annual Report of the company for 2011-2012 was 12% before Income Tax. (2) Material Cost includes Excise Duty paid ₹ 73 (3) Excise Duty Rate applicable is 10%, plus education cess of 2% and SHEC @ 1%.

Answer : Cost of production is required to be computed as per CAS-4. Material cost is required to be exclusive of Cenvat credit available.

	Particulars	Total Cost (₹)
1	Material Consumed (Net of Excise duty) (800 – 73)	727
2	Direct Wages and Salaries	100
3	Direct Expenses	100
4	Works Overheads	100
5	Quality Control Cost	-
6	Research and Development Cost	-
7	Administrative Overheads (Relating to production capacity)	50
8	Total (1 to 7)	1,077
9	*Less* - Credit for Recoveries/Scrap/By-Products/Misc Income	-
10	Cost of Production (8-9)	1,077
11	*Add* - 10% as per rule 8	108
12	Assessable Value	1,185
13	Excise duty @ 10% of ₹ 1,185	118.50
14	Education Cess @ 2% of ₹ 118.5	2.37
15	SHEC @ 1% on ₹ 118.5	1.185

∴ Total Duty Liability = ₹ (118.5 + 2.37 + 1.185) = ₹ 122.055

Note - (1) Indirect labour and indirect expenses have been included in Works Overhead (2) In absence of any information, it is presumed that administrative overheads pertain to produc-tion activity. (3) Actual profit margin earned is not relevant for excise valuation.

(vi) **Sale to a related person —** 'Transaction Value' can be accepted as 'Assessable Value' only when buyer is not related to seller. *In other words, price to an independent buyer has to be considered for excise valuation.*

As per section 4(3)(b) of Central Excise Act, persons shall be deemed to be 'related' if –

(a) They are inter-connected undertakings

(b) They are relatives

(c) Amongst them, buyer is a relative and a distributor of assessee, or a sub-distributor of such distributor or

(d) They are so associated that they interest, directly or indirectly, in the business of each other.

Interconnected Undertakings – Buyer and seller are 'related' if they are inter-connected undertakings, as defined in section 2(g) of Monopolies and Restrictive Trade Practices Act, 1969 (MRTP). – *Explanation* (i) to section 4(3)(b) of Central Excise Act.

The essence of the definition under MRTP is that the inter-connection could be through ownership, control or management. Just 25% of total controlling power in both undertakings is enough to establish inter-connection.

Since only 25% control is enough to make to buyer and assessee as inter connected undertakings, many assessees would come under the definition. This would have affected many assessees.

However, the provisions in respect of 'inter connected undertaking' have been made almost ineffective in valuation reules. Now, the 'inter connected undertakings' will be treated as 'realated person' only if they are holding and subsidiary or they are 'related person' under any other clause. In other cases, they will not be treated as 'related person'. If they are not treated as related person, price charged by assessee to buyer will be accepted as 'transaction value' – confirmed in *South Asia Tyres* v. *CCE* (2003) 152 ELT 434 (CEGAT)

Interest in business of 'each other' – As per section 4(3)(b)(iv), buyer and seller are 'related' if they are associated that they have interest, directly or indirectly, in the business of each other. It is not enough if only buyer has interest in seller or seller has interest in buyer. Both must have interest, directly or indirectly, in each other - *Atic Industries Ltd.* v. *UOI* (1984) 3 SCR 930 = 1984 (17) ELT 323 (SC) = AIR 1984 SC 1495 = (1984) 3 SCC 575.

The term 'relative and distributor' should be 'read down' and understood to means as '*distributor who is a Relative*' of assessee.

The word 'relative' is defined in section 6 of Companies Act, 1956 as follows : - A person shall be deemed to be a relative of another if, and only if, - *(a)* they are members of a Hindu undivided family; or *(b)* they are husbad and wife; or *(c)* the one is related to the other in the manner indicated in Schedule I-A of Companies Act. This Schedule contains following relatives : (1) Father (2) Mother (including step-mother) (3) Son (including step-son)(4) Son's wife (5) Daughter (including step-daughter) (6) Father's father (7) Father's mother (8) Mother's mother (9) Mother's father (10) Son's son (11) Son's son's wife (12) Son's daughter (13) Son's dougher's husband (14) Daughter's husband (15) Daughter's son (16) Daughter's son's wife (17) Daughter's daughter (18) Daughter's daughter's husband (19) Brother (including step-brother) (20) Brother's wife (21) Sister (including step-sister) (22) Sister's husband.

It is obvious that only a living i.e. natural person can be 'relative' of other. Thus, a company, partnership firm, body corporate, HUF, trust cannot be 'relative' of other.

Valuation when sale is through related person – If entire sale is made through 'related person', price relevant for valuation will be 'normal transaction value' at which the related buyer sales to unrealated buyer, as per rules 9 and 10 of Valueation Rules.

As per Valueation Rule 2(b), 'normal transaction value' means the transaction value at which the greatest aggregate quantity of goods are sold. The term 'GREATEST AGGREGATE QUANTITY' is used in Rule 7 of Customs Valuation Rules.

Provision when sale is only partly through related person – Rules 9 and 10 of Central Excise Valuation Rules make it clear that these rules apply only in cases where assessee sales goods *exclusively* to or through 'related person'.

Thus, there is no provision in rules when assessee partly sale to related person and partly to unrelated persons. As the wroding stands, even if negligible quantity is sold to unrelated buyer, rules 9 and 10 become inapplicable. Valuation cannot be done on the basis of 'transaction value' of assesee to buyer as that is prohibited u/s 4(1)(a).

In such case, the only alternative seems to be residual method i.e. rule 11 of Valuation Rules, which states that if value cannot be determined under any of the foregoing rules, value shall be determined using reasonable means consistent with the principles and general provisions of section 4 and Valuation Rules.

(vii) **Best judgement assessment —** If assessment is not possible under any of the foregoing rules, assessment will be done by 'best judgement'. If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act. [Rule 11]

As the Valuation Rules stand today, there is no provision for calculating 'Value' in following cases- (a) If assessee makes sale partly to related person and partly to others. (b) Free samples. In these cases, valuation may be done under rule 11.

1.14 VALUATION IN CASE OF JOB WORK – RULE 10A

1.14.1 MEANING OF JOB WORKER

Job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.

According to **Rule 10A**, the value of goods manufactured on job work shall be determined as under :

(i) When the goods are sold by the principal manufacturer from the premises of jobworker : In a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;

(ii) **When the goods are sold by the principal manufacturer from a place other than the premises of jobworker :** In a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker;

(iii) **In any other case :** In a case not covered under (i) or (ii), the provisions of foregoing rules, wherever applicable, shall *mutatis mutandis* apply for determination of the value of the excisable goods.

1.15 SOME CRITICAL ISSUES IN CENTRAL EXCISE

1.15.1 SOFTWARE IS 'GOODS', BUT UNBRANDED SOFTWARE IS SERVICE

In *Tata Consultancy Services* v. *State of Andhra Pradesh* (2005) 1 SCC 308 = 141 Taxman 132 = 271 ITR 401 = AIR 2005 SC 371 = 2004 AIR SCW 6583 = 137 STC 620 = 178 ELT 22 (SC 5 member Constitution bench), it has been held that canned software (i.e. computer software packages sold off the shelf) like Oracle, Lotus, Master-Key etc. are 'goods'. The copyright in the programme may remain with originator of programme, but the moment copies are made and marketed, they become 'goods'. It was held that test to determine whether a property is 'goods' for purpose of sales tax, is not whether the property is tangible or intangible or incorporal. The test is whether the concerned item is capable of abstraction, consumption and use, and whether it can be transmitted, transferred, delivered, stored, possessed etc. Even intellectual property, once it is put on a media, whether it be in form of books or canvas (in case of painting) or computer discs or cassettes and marketed would become goods. In all such cases, intellectual property has been incorporated on a media for purpose of transfer. The buyer is purchasing the intellectual property and not the media, i.e. the paper or cassette or discs or CD. - - There is no distinction between 'branded' and 'unbranded' software. In both cases, the software is capable of being abstracted, consumed and used. In both the cases, the software can be transmitted, transferred, delivered, stores, possessed etc. Unbranded software when marketed/sold may be goods.

However, Supreme Court did not express any opinion because in case of unbranded software, other questions like *situs* of contract of sale and/or whether the contract is a service contract may arise. Hence, in case of unbranded software, the issue is not yet fully settled. [SC upheld decision of AP High Court reported in *Tata Consultancy Services* v. *State of AP* (1997) 105 STC 421 (AP HC DB)].

In *Bharat Sanchar Nigam Ltd* . v. *UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 145 STC 91 = 282 ITR 273 (SC 3 member bench), following extract from decision in case of *Tata Consultancy Services* v. *State of Andhra Pradesh* was quoted with approval and adopted, 'A 'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold and (c) capable of being transferred, delivered, stored and possessed. If a software, whether customised or non-customised satisfies these attributes, the same would be goods'.

Earlier also, in *Associated Cement Companies Ltd.* v. *CC* 2001(4) SCC 593 = 2001 AIR SCW 559 =128 ELT 21 = AIR 2001 SC 862 = 124 STC 59 (SC 3 member bench), it was held that computer software is 'goods' even if it is copyrightable as intellectual property.

In *State Bank of India* v. *Municipal Corporation* 1997(3) Mh LJ 718 = AIR 1997 Bom 220, it was held that 'computer software' is 'appliance' of computer. It was held that it is 'goods' and octroi can be levied on full value and not on only value of empty floppy. [In this case, it was held that octroi cannot be levied on license fee for duplicating the software for distribution outside the corporation limits].

Excise duty on software - All software, except canned software i.e. software that can be sold off the shelf, is 'exempt' under notification No. 6/2006-CE dated 1-3-2006.

Para 138 of Finance Minister's speech dated 28-2-2006 reads as follows, 'I propose to impose an 8 per cent excise duty on packaged software sold over the counter. Customized software and software packages downloaded from the internet will be exempt from this levy'.

Meaning of 'software' - 'Information Technology Software' is defined in Supplementary Note of chapter 85 of Central Excise Tariff (and also Customs Tariff) as follows - 'For the purpose of heading 8523, 'Information Technology Software' means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine'.

In *CCE* v. *Pentamedia Graphics* (2006) 198 ELT 164 (SC), it was held that 'motion picture animation file' recorded in a machine readable format and capable of being manipulated by automatic data processing machine is software – referred in *Padmini Polymers* v. *CCE* (2007) 215 ELT 392 (CESTAT), where it was held that multimedia application software on CD ROM is exempt. In this case, Cook Books and games which were interactive were held as 'software'. Reference was made to CBE&C circular No. 7/98-Cus dated 10-2-1998 where it was clarified that encyclopedia, games, books will be 'software' if these satisfy the interactivity criterion.

The SC decision was also followed in *Gayatri Impex* v. *CC* (2007) 215 ELT 397 (CESTAT) and *Adani Exports* v. *CCE* (2007) 210 ELT 443 (CESTAT). However, from the decision, it is not clear what was exactly imported. There is no requirement that to qualify as software, it must work without any operating system preloaded on computer. Any programme which requires anther programme like operating system will also be treated as software – *Contessa Commercial Co. P Ltd.* v. *CC* (2007) 208 ELT 299 (CESTAT). In this case, the importer had imported educational programmes and games.

Classification of encyclopedia, books on CD - In case of encyclopedia and books, there is hardly any 'interactivity', except that search engine helps in locating particular information. Further, search engine, which can be termed as 'software' forms insignificant part of the whole goods.

Applying the criteria of 'essential character' in case of mixture of goods, in my view, these cannot be termed as 'software'. These have to be classified as books.

Chapter 49, Note no 2 reads as follows, 'For the purpose of Chapter 49, the term 'printed' also means reproduced by means of a duplicating machine, produced under the control of an automatic data processing machine, embossed, photographed, photocopies, thermocopied or type-written. Hence, it can be argued that a book can be 'printed' on CD since it is produced under the control of an automatic data processing machine.

As per item Sr. No. 26 of Notification No. 6/2006-CE dated 1-3-2006, CD-ROMs containing books of an educational nature, journal, periodicals (magazines) or newspaper are fully exempt from excise duty. Thus, a book can be on CD has been recognised in law.

Unbranded software is service

Though Supreme Court has held that tailor made software is also goods, Finance Bill, 2008 has imposed service tax on tailor made i.e. unbranded software. "Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment [proposed section 65(53a) of Finance Bill, 2008]. Any service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including :—

(*i*) development of information technology software,

(*ii*) study, analysis, design and programming of information technology software,

(*iii*) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

(*iv*) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software

(*v*) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products

(*vi*) acquiring the right to use information technology software supplied electronically, is a taxable service [proposed section 65(105)(zzzze) of Finance Bill, 2008].

Departmental clarification – CBE&C TRU letter F. No.334/1/2008-TRU dated 29-1-2008 clarifies as follows -

Software consists of carrier medium such as CD, Floppy and coded data. Softwares are categorized as "normal software" and "specific software". Normalised software is mass market product generally available in packaged form off the shelf in retail outlets. Specific software is tailored to the specific requirement of the customer and is known as customized software.

Packaged software sold off the shelf, being treated as goods, is leviable to excise duty @ 8%. In this budget, it has been increased from 8% to 12% vide notification No. 12/2008-CE dated 01.03.2008. Number of IT services and IT enabled services (ITeS) are already leviable to service tax under various taxable services :

- Consulting engineer's service - advice, consultancy or technical assistance in the discipline of hardware engineering [section 65(105)(g)].
- Management or business consultant's service - procurement and management of information technology resources [section 65(65)].
- Management, maintenance or repair service - maintenance of software, both packaged and customized and hardware [section 65(64)].
- Banking and other financial services - 'provision and transfer of information and data processing' [section 65(12)].
- Business support service - various outsourced IT and IT enabled services [section 65(105)(zzzq)].
- Business auxiliary service - services provided on behalf of the client such as call centres [section 65(19)].

IT software services provided for use in business or commerce are covered under the scope of the proposed service. Said services provided for use, other than in business or commerce, such as services provided to individuals for personal use, continue to be outside the scope of service tax levy. Service tax paid shall be available as input credit under Cenvat credit Scheme.

Software and upgrades of software are also supplied electronically, known as digital delivery. Taxation is to be neutral and should not depend on forms of delivery. Such supply of IT software electronically shall be covered within the scope of the proposed service.

With the proposed levy on IT software services, information technology related services will get covered comprehensively.

1.15.2 PLANT AND MACHINERY ASSEMBLED AT SITE

Plant and Machinery assembled and erected at site cannot be treated as 'goods' for the purpose of Excise duty, if it is not marketable and movable. [It may be noted that even if goods are held as 'excisable', they will be exempt if manufactured within factory of production. See case law under 'Captive Consumption' in earlier chapter].

The word 'goods' applies to those which can be brought to market for being bought and sold, and it is implied that it applies to such goods as are movable. Goods erected and installed in the premises and embedded to earth cease to be goods and cannot be held to be excisable goods. - *Quality Steel Tubes (P.) Ltd.* v. *CCE* 75 ELT 17 (SC) = (1995) 2 SCC 372 = 6 RLT 131 = 1995 AIR SCW 11 - in this case, it was held that tube mill and welding head erected and installed in the premises and embedded in the earth for manufacture of steel tubes and pipes are not 'goods'. followed in *Mittal Works* v. *CCE* (1997) 1 SCC 203 = 1996 (88) ELT 622 (SC) = 106 STC 201 -quoted with approval in *Thermax Ltd.* v. *CCE* 1998(99) ELT 481 (SC) - same view in *TriveniEngineering* v. *CCE* AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC) * *CCE* v. *Damodar Ropeways* 2003(151) ELT 3 = 54 RLT 125 (SC 3 member bench).

In *Municipal Corporation of Greater Bombay* v. *Indian Oil Corporation* AIR 1991 SC 686 = 1991 Supp (2) SCC 18, it was held that if the chattel is movable to another place in the same position (condition?), it is movable property. If it has to be dismantled and re-erected at later place, it is attached to earth and is immovable property.

Assembly at site is not manufacture, if immovable product emerges - In *Mittal Engg Works* v. *CCE* 1996 (88) ELT 622 = 17 RLT 612 = 106 STC 201 = (1997) 1 SCC 203, it was held that if an article has to be assembled, erected and attached to the earth at site and if it is not capable of being sold as it is, without anything more, it is not 'goods'.

Erection and installation of a plant is not excisable - followed in *CCE* v. *Hyderabad Race Club* 1996 (88) ELT 633 (SC), where it was held that an article embedded in the earth was not 'goods' and hence excise duty is not leviable – followed in *TTG Industries* v. *CCE* 2004 AIR SCW 3329 = 167 ELT 501 (SC) – same view in case of storage cabinets, kitchen counters etc. erected at site in *Craft Interiors P Ltd.* v. *CCE* 2006 (203) ELT 529 (SC) – same view in respect of refrigeration plant, air conditioning plant and caustic soda plant in *CCE* v. *Virdi Brothers* 2007 (207) ELT 321 (SC).

Capital Goods manufactured within factory of production are exempt even if manufactured by third party - It may be noted that capital goods manufactured within the factory and used within the factory are exempt from excise duty *vide* notification No. 67/1995-CE dated 16.3.1995.

The exemption is available even when the capital goods are manufactured in the factory of production by third party. [refer case law under 'Captive Consumption'].

Assembly is manufacture only if machinery can be removed without dis-assembly – In *Triveni Engineering* v. *CCE* AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC), it was observed, 'The marketability test requires that the goods as such should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. [Thus, if machine has to be dis-assembled for removal, it is not 'goods' and duty cannot be levied].

If machine (generating set in this case) is only bolted on a frame and is capable of being shifted from that place, it is capable of being sold. It is goods and not immovable property – *Mallur Siddeswara Spinning Mills* v. *CCE* 2004 (166) ELT 154 (SC).

Present legal position in respect of machinery erected at site – The latest judgment on the issue is of *Triveni Engineering* judgment dated 8-8-2000, which has been practically accepted by Board *vide* its circular dated 15-1-2002. Hence, the present legal provision is, as decided in *Triveni Engineering* , i.e. 'The marketability test requires that the goods ***as such*** should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. Thus, if machinery has to be dismantled before removal, it will not be goods. Following is also clear (a) Duty cannot be levied on immovable property (b) If plant is so embedded to earth that it is not possible to move it without dismantling, no duty can be levied (c) If machinery is superficially attached to earth for operational efficiency, and can be easily removed without dismantling, duty is leviable (d) Turnkey projects are not dutiable, but individual component/ma chinery will be dutiable, if marketable.

Article can be 'goods' if marketable before erection - An article will be liable to duty if its manufacture is complete before it is fastened to earth. Similarly, if 'machinery' is in marketable condition at the time of removal from factory of manufacture, duty will be leviable, even if subsequently, it is to be fastened to earth.

1.15.3 DUTIABILITY OF STEEL AND CONCRETE STRUCTURES

Following are covered in 'iron and steel structure' as defined in tariff heading 7308 – (i) big structures like bridges, transmission towers, and lattice masts, lock-gates, roofs etc. of iron and steel (ii) parts of structures e.g. doors, windows and their frames, shutters, balustrades, pillars and columns etc. of iron and steel (iii) Plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel.

In *Mahindra & Mahindra Ltd.* v. *CCE* 2005 (190) ELT 301 (CESTAT 3 member LB), it has been held as follows –

(i) Immovable iron and steel structures are not goods.

(ii) Structures and parts mentioned in parenthesis of 7308 like bridges, lock-gates, towers, trusses, columns frames etc., *in their movable state* will be subject to excise duty, even if latter they get permanently fixed in the structures. (iii) Plates, rods, angles, sections, tubes and the like, prepared for use in the structures will also be excisable goods subject to duty *in their pre-assembled or disassembled state.*

Fabrication of steel structurals like columns, crane, grinders, trusses amounts to 'manufacture'- *R S Avtar Singh* v. *CCE* (2007) 213 ELT 105 (CESTAT).

Structure for pre-fabricated building is dutiable – Steel structure for prefabricated building is dutiable. – *Mittal Pipe Mfg. Co* . v. *CCE* 2002(146) ELT 624 (CEGAT).

Fabrication of steel structure at site is exempt - As per Sr. No. 64 of notification No. 3/2005-CE dated 24-2-2005, (earlier it was in tariff entry 7308.50), structures fabricated at site of work for use in construction at site are exempt from duty. In *Delhi Tourism* v. *CCE* 1999(114) ELT 421 (CEGAT), it was held that the term 'site' should be given wider meaning and not narrow meaning. Even if structure is cast at different place and brought to site of construction, it will be eligible for exemption.

1.15.4 GOODS WITH BLANK DUTY RATE IN CENTRAL EXCISE TARIFF ARE 'EXCISABLE GOODS'

Some goods are mentioned in Central Excise Tariff but column of rate of duty is blank (e.g. live animals in Chapter 1, Electrical Energy in chapter 27, Newspaper and maps in Chapter 49).

As per additional note No. 1(c) to Central Excise Tariff, 'tariff item' means description of goods in the list of tariff provisions accompanying either eight-digit number and the rate of duty or eight-digit number with blank in the columns of the rate of duty. Hence, goods where duty rate is blank is excisable goods – para 22 of *Geetanjali Woolens* v. *CCE* (2007) 218 ELT 152 (CESTAT) [Interestingly, in case of Customs Tariff, the note 1(c) does not make mention of 'blank' rate in the column of rate of duty].

However, in *CCE* v. *Solaris Chemtech* (2007) 9 STT 412 = 214 ELT 481 (SC), it is observed that electricity is not an excisable item. In excise tariff, rate is 'blank' in items like rice, wheat, soya bean, cotton seed etc. These are 'produced'. In excise tariff, rate is 'blank' in items like rice, wheat, soya bean, cotton seed etc. These are 'produced'.

Goods mentioned as 'free' in Customs Tariff - In *Associated Cement Companies Ltd* . v. *CC* 2001 AIR SCW 559 = AIR 2001 SC 862 = (2001) 4 SCC 593 = 128 ELT 18 = 124 STC 59 = (SC 3 member bench), it was held that if duty rate specified in Customs Tariff Act is 'FREE' (i.e. no duty is payable), no duty is payable on such goods and hence these are not 'dutiable goods'. [In Central Excise Tariff, the duty rate indicated is 'Nil'. Hence, these are 'excisable goods'].

1.15.5 MANUFACTURE – Other Aspects

Cutting of jumbo rolls of typewriter to make ribbon of standard length and winding on spool and blister packed - In *Kores India* v. *CCE* (2003) 152 ELT 395 (CEGAT), it was held that conversion of jumbo reels of ribbons into spool form to suit particular model and make of typewriting/telex machine is 'manufacture' as new and distinct product emerges – view upheld in *Kores India* v. *CCE* (2005) 1 SCC 385 = 174 ELT 7 (SC) – followed in *CCE* v. *Sohum Industries Ltd* .2006 (203) ELT 493 (CESTAT).

This decision was discussed in *Anil Dang* v. *CCE* (2007) 213 ELT 29 (CESTAT 3 member bench). It was held that this was no mere cutting and slitting but the roll was spooled on metal spools, plaster packed and sealed with aluminium foils. Hence, this decision will not apply where only slitting and cutting is involved.

Betel Nut to supari powder is not manufacture – Crushing betel nuts into smaller pieces and sweetening them does not result in a distinct product, as 'betel nut remains a betel nut' – *Crane Betel Nut Powder Works* v. *CCE* 2007 (210) ELT 171 = 6 VST 532 (SC) – decision of Tribunal in *CCE* v. *Crane Betel Nut Powder Works* 2005 (187) ELT 106 (CESTAT) is now not valid.

Upgradation of computer system is not manufacture - Upgradation of computer system by increasing its storage / processing capacity by increasing hard disk capacity, RAM or changing processor chip is not manufacture as new goods with different name, character and use do not come into existence. - CBE&C circular No. 454/20/99-CX dated 12-4-1999 – view confirmed in *Maxim Information Tech* v. *CCE* 2005 (184) ELT 78 (CESTAT) * *CCS Infotech* v. *CCE* (2007) 216 ELT 107 (CESTAT).

1.15.6 CLASSIFICATION OF GOODS

Classification of parachute coconut oil – In *Amardeo Plastics Industries* v. *CCE* (2007) 210 ELT 360 (CESTAT 2 v. 1 order), on the basis of chapter notes, it was held that parachute coconut oil is 'vegetable oil' under chapter 15 and not 'preparation for use on the hair', since the marking on package did not say that it is for 'such specialized use', though advertisements did indicate so.

However, in *Shalimar Chemical Works* v. *CST* (2008) 12 VST 485 (WBTT), it has been held that except in a few Southern States, coconut oil is not treated as edible oil for use of daily cooking. In West Bengal, considering consumption pattern, coconut oil cannot be treated as 'edible oil'. It has to be treated as 'hair oil'.

Plastic name plate - Plastic name plate for motor vehicle is to be classified as 'accessory of motor vehicle' in chapter 87 and not 'other articles of plastic' in chapter 39, since 'name plate' is not specified in any heading in chapter 39 – *Pragati Silicons P Ltd.* v. *CCE* (2007) 8 VST 705 = 211 ELT 534 (SC).

Meaning of 'set of articles' – distinction between laptop and desktop – 'Set of article' should consist of more than one item, each complementing the work of another and retaining their individual identity all the time – *CC* v. *Acer India P Ltd.* (2007) 218 ELT 17 (SC). In this case, it was held that a desktop computer is a combination of CPU with monitor, mouse and keyboard as a set. A desktop computer does not lose individual identities of CPU, monitor, mouse and keyboard. Not only they are marketable as separate items but are also used separately. On the other hand, a laptop (notebook computer) comes in an integrated and inseparable form. It is a combination of CPU, monitor, mouse and keyboard. A laptop cannot be said to be set of CPU with monitor mouse and keyboard – confirming Tribunal decision in *CC* v. *Acer India P Ltd* . (2007) 208 ELT 132 (CESTAT).

Software/records/tapes supplied along with equipment – Software imports are exempt from customs duty. Earlier, Customs and Central Excise Tariff had a note No. 6 which stated that software when presented with the apparatus for which it was intended will be classifiable as software. This note has been deleted w.e.f. 1-1-2007. Hence, software embedded or pre-loaded in machine is to be classified along with the machine. This will also be case when software is brought separately, but as a 'set'. If tangible software e.g. operating software or application software loaded on disk, floppy, CD-ROM etc. is imported, it will be classifiable as software under heading 8523 – CC (Import), Mumbai PN 39/2007 dated 3-12-2007. In *CC* v. *Hewlett Packard India (Sales) P Ltd.* (2007) 215 ELT 484 (SC), it was held that pre-loaded software in laptop forms integral part of the laptop. Without operating system like windows, the laptop cannot work. Hence, the laptop along with software has to be classified as laptop and values as one unit. Software pre-loaded cannot be classified separately as software (In this case, the importer wanted to classify hard disk along with software as 'software' and refused to give value of software even when called upon to do so. Hence, the decision has to be seen from peculiar facts of the case).

Principles of classification irrelevant for valuation – Classification decides the applicable rate. It is followed by valuation i.e. value at which rate is to be applied. The concept of 'classification' is therefore different from the concept of valuation. Section and chapter notes in Tariff and interpretative rules do not provide guidelines for valuation - *CCE* v. *Frick India Ltd* . (2007) 216 ELT 497 (SC).

1.16 MRP BASED VALUATION

1.16.1 ***Same product partly sold in retail and partly in wholesale*** - CBE&C has further clarified in circular No. 737/53/2003-CX dated 19-8-2003 that when goods covered u/s 4A are supplied in bulk to large buyer (and not in retail), valuation is required to be done u/s 4. Provisions of section 4A apply only where manufacturer is legally obliged to print MRP on the packages of goods. Thus, there can be instances where the same commodity would be partly assessed on basis of section 4A and partly on basis of transaction value u/s 4 – view noted and approved in *Jayanti Food Processing* v. *CCE* (2007) 10 STT 375 = 215 ELT 327 (SC).

1.16.2 ***Valuation on MRP basis even if package is not really intended for retail sale*** - In *Jayanti Food Processing* v. *CCE* (2007) 10 STT 375 = 215 ELT 327 (SC), it was observed that nature if sale is not the relevant factor for application of section 4A but application would depend on five factors i.e. (i) goods should be excisable goods (ii) They should be such as are sold in the package (iii) There should be requirement of SWM Act or rules or any other law to declare price of such goods relating to their retail price on package (iv) The Central Government must have specified such goods by notification of Official gazette and (v) Valuation of such goods would be as per the declared retail price on the package less the amount of abatement.

In *ITEL Industries P Ltd.* v. *CCE* 2004 (163) ELT 219 (CESTAT 2 v. 1 decision), telephone instruments were supplied to DOT/MTNL in bulk with MRP duly marked. DOT/MTNL lent these to subscribers retaining their ownership. It was held that since goods were packed, the valuation is required to be done u/s 4A on basis of MRP, even if goods were not sold to customers – followed in *BPL Telecom* v. *CCE* (2004) 168 ELT 251 = 60 RLT 664 (CESTAT), where it was held that there is no requirement under Packaged Commodities Rules that goods covered by those provisions must be actually sold in retail – view confirmed in *Jayanti Food Processing* v. *CCE* (2007) 10 STT 375 = 215 ELT 327 (SC).

This was followed in *CCE* v. *Liberty Shoes* (2007) 216 ELT 692 (CESTAT), where it was held that MRP provisions apply even when sale is in bulk to institutional buyers.

1.16.3 ***Provision does not apply to ice cream sold in bulk*** - In *Monsanto Manufacturers* v. *CCE* 2006 (193) ELT 495 (CESTAT), it was held that if ice cream is sold in bulk to hotels and not intended for retail sale, valuation will be as per section 4 and not on MRP basis – view confirmed in *Jayanti Food Processing* v. *CCE* (2007) 10 STT 375 = 215 ELT 327 (SC).

1.16.4 ***Two items in combi-pack with one item free*** - In *Icon Household Products* v. *CCE* (2007) 216 ELT 579 (CESTAT), assessee was selling Mosquito Repellant Liquid (MRL) and Liquid Vapourising Device (LVD) as combi-pack. MRP was contained only on plastic container of MRL and not on LVD. It was held that this MRP will be taken for valuation of multipack. LVD supplied free in the multipack is not liable to assessment separately – relying on *Himalaya Drug Company* v. *CCE* (2006) 195 ELT 109 (CESTAT) - same view in *CCE* v. *J L Morison* (2008) 223 ELT 655 (CESTAT SMB).

1.16.5 ***No MRP on free gifts/samples, hence valuation as per section 4*** – In *Jayanti Food Processing* v. *CCE* (2007) 10 STT 375 = 215 ELT 327 (SC), assessee as selling Kitkat chocolates to Pepsi. These were distributed as free gift along with Pepsi bottle as a marketing strategy. It was held that even if product (chocolate) is covered under MRP provisions, since the product was not to be sold in retail, MRP is not required. Hence, valuation should be on basis of section 4.

1.16.6 Provision when more than one retail price declared

MRP printed on package is required to be inclusive of taxes. Rate of taxes vary from State to State. Hence, in some cases, a manufacturer may print different prices for different States. In some cases, manufacturer earmarks different packages for different areas and marks different prices for different areas.

If a package bears more than one retail sale price, maximum out of these will be deemed to be retail price for purpose of section 4A [*Explanation* 2(a) to section 4A(4)]. If retail price declared on the package at the time of removal is subsequently altered to increase the price, such increased retail price will be retail price for purpose of section 4A [*Explanation* 2(b) to section 4A(4)]. Where different retail sale prices are declared on different packages, each such retail price shall be the 'retail sale price' for purposes of valuation of excisable goods intended to be sold in area to which the retail price relates. [*Explanation* 2(c) to section 4A(4)]. Thus, if different prices are printed on different packages, each such price will be 'retail price'.

There is no stipulation in the Act that all packages should bear same MRP. Different MRPs for different buyers can be fixed. Even if MRP is different for each packet, such MRP is required to be adopted for assessable value– *CCE* v. *Bell Granito Ceramics* (209) 235 ELT 171 (CESTAT).

1.17 ASSESSABLE VALUE UNDER SECTION 4

1.17.1 ***Factory can be place of removal even if insurance taken by assessee as service to customers*** – In *Blue Star Ltd* . v. *CCE* (2008) 224 ELT 258 (CESTAT), transport was arranged by assessee since individual customer cannot arrange for transportation. Insurance was taken for safe transport of goods, as a service to customers. It was held that insurance cover cannot be taken as criteria for determining ownership of goods. It was held that there was sale at factory gate and freight is not includible in assessable value.

1.17.2 Minimum charges if assured quantity not purchased, are not part of excise assessable value - In *Jindal Praxair Oxygen* v. *CCE* (2007) 208 ELT 181 (CESTAT), MTOP charges were payable to assessee if buyer fails to purchase minimum quantity assured, as in such cases, assessee is not in position to operate his plant at optimum capacity. It was held that these are not includible in assessable value - followed in *CCE* v. *Praxair India* (2008) 223 ELT 596 (CESTAT).

1.17.3 ***Place of removal in case of exports*** – In case of exports, the place of removal is port where export documents are presented to customs office – *Kuntal Granites* v. *CCE* (2007) 215 ELT 515 = 2007 TIOL 930 (CESTAT) – quoted and followed in *Rajasthan Spinning & Weaving Mills* v. *CCE* (2007) 8 STR 575 (CESTAT).

1.17.4 ***Cash discount admissible whether availed or not*** - In *CCE* v. *Arvind Mills Ltd.* (2006) 204 ELT 570 (CESTAT 3 member bench), it has been very clearly held that cash discount and finance cost are admissible under new section 4 of CEA also. Differential price represents interest for delayed payment. Cost of finance and cash discount whether availed or not are to be granted as abatement even after 1-7-2000.

1.17.5 ***Self insurance charges addible*** - In *Gujarat Borosil* v. *CCE* (2007) 217 ELT 367 (CESTAT), assessee was collecting 7% amount was 'insurance charges'. Actual insurance premium paid was much less. The charge was to cover breakage of goods in transit. It was held that this cannot be permitted as deduction since assessee was not an insurance company.

1.17.6 ***Valuation of free samples*** – CBE&C, *vide* circular No. 813/10/2005-CX dated 25-4-2005 has clarified that in case of samples distributed free, valuation should be done on basis of rule 4 i.e. value of similar goods. The revised circular dated 25-4-2005 stating that valuation of samples should be on basis of rule 4, has been upheld as valid in *Indian Drugs Manufacturers' Assn* v. *UOI* (2008) 222 ELT 22 (Bom HC DB).

1.17.7 ***Valuation in case of stock transfer*** - In case of stock transfer, value to be adopted is the price prevailing in depot at the time of clearance from factory. Once goods are cleared from factory to depot on payment of duty (on basis of price prevailing at the time of removal from factory), it is not necessary to chase the goods and see at what price the goods were subsequently sold -*CCE* v. *Carborandum Universal Ltd.* (2008) 224 ELT 290 (CESTAT).

1.17.8 Sale to parent company both as spares as well as for maintenance – In *CCE* v. *Aquamall Water Solutions* (2008) 223 ELT 385 (CESTAT), assessee sold its water purifying equipment to its parent company (Eureka Forbes Ltd.). Assessee also supplied parts of the water purifying equipment to its parent company, both for sale as spares and also for maintenance purposes. In case of spares for sale, duty was paid on the basis of selling price of spares of parent company. In case of parts supplied for use in maintenance, duty was paid on the basis of cost of production plus 10%. Department contended that in case of parts supplied for maintenance also, duty should be paid on basis of selling price of parent company. However, Tribunal held that when parts are not sold by parent company, duty should be paid under rule 8 on basis of cost of production plus 10% since no other specific rule to cover this (The decision is based on a Board circular which has since been withdrawn).

Part sale and part consumption – in *Ispat Industries Ltd.* v. *CCE* 2006 (201) ELT 65 (CESTAT), it was held that if goods are partially sold to unrelated buyers and partially supplied to sister concern, valuation should be under rule 4 i.e. on the basis of price at which goods are sold to other independent buyers – relying on *Aquamall Water Solutions* v. *CCE* 2003 (153) ELT 428 (CEGAT).- view upheld in *Ispat Industries* v. *CCE* 2007 (209) ELT 185 (CESTAT 3 member bench).

1.17.9 Valuation in case of job work

Excise duty will not be payable if raw material/semi-finished components are sent for job work under Cenvat provisions or under notification No. 214/86-CE. However, in other cases, if job work results in 'manufacture' of a product, duty will become payable by job worker. Rule 10A of Valuation Rules, as inserted w.e.f. 1-4-2007 provides that in such cases, excise duty will be payable on the basis of price at which the raw material supplier (termed as 'principal manufacturer' in valuation rules) sales the goods. Rule 10A has been inserted in the Central Excise Valuation (Determination of Price of ExcisableGoods) Rules, 2000 to provide that where goods are manufactured by a job-worker on behalf of a person (commonly known as principal manufacturer), the value for payment of excise duty would be based on the sale value at which the principal manufacturer sells the goods, as against the present provision where the value is taken as cost of raw material plus the job charges - *Para 32.1 of DO letter F. No. 334/1/2007-TRU dated 28-2-2007.*

1.17.10 ***Provisions relating to valuation*** - The liability to pay duty will rest with the job-worker as per the present practice - *Para 32.2 of DO letter F. No. 334/1/2007-TRU dated 28-2-2007.* The value in such cases shall be as follows, w.e.f. 1-4-2007 :

1.17.11 ***When goods are sold at the factory of job worker by Principal Manufacturer*** – If the goods are sold by 'Principal Manufacturer' (raw material supplier) from factory of job worker, the value will be the 'transaction value of the goods at which the goods are sold' by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker. This would be so if the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale [rule 10A(i) of Valuation Rules]. *Proviso* to rule 10A of Valuation Rules clarifies that cost of transport from premises from which goods are sold to place of delivery will not be included in the assessable value.

1.17.12 ***When goods are sold by Principal Manufacturer from some other place*** – If goods manufactured by job worker are delivered at other place (e.g. depot, branch, godown etc. of Principal Manufacturer) and sold from there, the valuation will be on the basis of 'normal transaction value of goods sold at or about the same time' by the Principal Manufacturer from such place.

This would be so if the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale [rule 10A(ii) of Valuation Rules]. *Proviso* to rule 10A clarifies that cost of transport from premises from which goods are sold to place of delivery will not be included in the assessable value. This methodology is similar to valuation in case of sale through depot.

1.17.13 ***When valuation as per rule 10A(i) or 10A(ii) of Valuation Rules is not possible*** – If valuation is not possible as per rule 10A(i) or 10A(2) of Valuation Rules, 'value' will be determined in accordance with the principles enunciated in the Valuation Rules on a case-to-case basis [rule 10A(iii) of Valuation Rules]. For example, if the excisable goods manufactured on job-work are sold by the principal manufacturer where the price is not the sole consideration for sale, the value of such goods shall be determined in terms of principles laid down in rule 6. If goods are captively consumed by Principal Manufacturer, valuation can be on basis of rule 8.

1.17.14 ***Meaning of job worker*** – As per *Explanation* to rule 10A, for the purposes of rule 10A, 'job worker' means a person engaged in manufacture or production of goods on behalf of a principal manufacturer, from any inputs or capital goods supplied by the said principal manufacturer or by any other person authorised by him.

Question : A Trader supplies raw material of ₹ 1,150 to processor. Processor processes the raw material and supplies finished product to the trader. The processor charges ₹ 450, which include ₹ 350 as processing expenses and ₹ 100 as his (processor's) profit. Transport cost for sending the raw material to the factory of processor is ₹ 50. Transport charges for returning the finished product to the trader from the premises of the processor is ₹ 60. The finished product is sold by the trader at ₹ 2,100 from his premises. He charges Vat separately in his invoice at applicable rates. The rate of duty is 16% plus education cess as applicable. What is the AV, and what is total duty payable ?

Answer on and after 1-4-2007 : Assessable Value is to be calculated on basis of selling price of trader which is ₹ 2,100. This price is to be treated as inclusive of excise duty. Hence, assessable value will be (2,100 x 100)/110.30 i.e. ₹ 1,903.89. Basic excise duty @ 10% will be 190.40. Education Cess (2%) is ₹ 3.80 and Secondary and Higher Education Cess is ₹ 1.90. Total duty payable will be ₹ 196.10.

Answer upto 31-3-2007 - Assessable Value (AV) is ₹ 1,650 (1,150+350+100+50). Duty is not payable on ₹ 1,800, which includes Traders' profit. Since place of the processor is the place of removal of goods, no duty is payable on outward freight of ₹ 60. Material cost is not required to be added if parent manufacturer had sent material under Cenvat, as per decision of Supreme Court in *International Auto Ltd* . v. *CCE* 2005 (183) ELT 239 = 68 RLT 341 (SC 3 member bench).

Practical examples

1. 1,500 pieces of a product 'A' were manufactured during the financial year. Its list price (i.e. retail price) is ₹ 250 per piece, exclusive of taxes. The manufacturer offers 20% discount to wholesalers on the list price. During the year, 840 pieces were sold in wholesale, 510 pieces were sold in retail, 35 pieces were distributed as free samples. Balance quantity of 115 pieces was in stock at the end of the year. The rate of duty is 10% plus education cess and SAH education cesses as applicable. What is the total duty paid during the financial year ?

Assume that the manufacture is not eligible for SSI concession.

The total selling price is as follows –

Qty	Price	Total
510	250	1,27,500
840	200	1,68,000
35	200	7,000
Total		3,02,500

Duty payable is 10% of ₹ 3,02,500 i.e. ₹ 30,250, plus education cess @ 2% i.e. ₹ 605.00 plus SAH education cess @ 1% is ₹ 302.50.

Note – (a) Since 115 pieces were in stock at year end, no duty will be payable. Duty will be payable only when goods are cleared from factory. (b) In case of samples, as per rule 4 of Valuation Rules, value nearest to the time of removal, subject to reasonable adjustments is required to be taken. However, since prices are varying, value nearest to the time of removal may not be ascertainable and will not be acceptable for valuation as the prices are changing. In such case, recourse will be taken to rule 11 of Valuation Rules, i.e. best judgment assessment. We can take recourse to rule 7 and 9 where principle of 'normal transaction value' is accepted, when prices are varying. As per rule 2(b) of Valuation Rules, 'normal transaction value' means the transaction value at which the greatest aggregate quantity of goods are sold. Since greatest quantity of 840 pieces are sold at ₹ 200, that will be 'normal transaction value', which can be taken for valuation of free samples. A manufacturer has appointed brokers for obtaining orders from wholesalers. The brokers procure orders for which they get brokerage of 5% on selling price. Manufacturer sells goods to buyers at ₹ 250 per piece. The price is inclusive of State Vat and Central excise duty. State Vat rate is 4% and excise duty rate is 10% plus education cess and SAH education cess as applicable. What is the AV, and what is duty payable per piece ?

Assume that Assessable Value = x. No deduction is available in respect of brokerage paid to third parties from Assessable Value.

Since Excise duty is 10%, education cess is 2%, SAH education cess is 1% and State Vat rate is 4%, price including excise will be 1.103x.

State Vat @ 4% of 1.103x is 0.04412x. Hence, price inclusive of sales tax and excise duty will be 1.14712x.

Now,	1.14712x	= ₹ 250.00
Hence,	x	= ₹ 217.94
Check the answer as follows –		
Assessable Value		= ₹ 217.94
Add duty @ 10.30% of ₹ 206.37		= ₹ 22.45
Add State Vat @ 4% on ₹ 240.39 (217.94+22.45)		= ₹ 9.62
Total Price (Including duty and tax) (217.94+22.45+9.62)		= ₹ 250.00

2. Find Assessable Value and duty payable. The product is not covered under section 4A. Maximum Retail Trade Price : ₹ 1,100/- per unit. - State Vat, Octroi and other Local Taxes : 10% of net price- Cash Discount : 2% - Trade Discount: 10% - Primary and Secondary packing cost included in the above MRP : ₹ 100 - Excise duty rate : 8% ***ad valorem*** **plus education cesses as applicable.**

Cash discount ₹ 22 (2% of ₹ 1,100) and trade discount 88 [8% of ₹ 1,100] are available as deduction. Packing cost is not allowable as deduction. Hence, price of excise purposes is ₹ 990. [₹ 1,100 – 22 – 88]. — Now, if X is the assessable value, excise duty is 0.103x and price including Excise duty is 1.103x. State Vat and local taxes @ 10 % of 1.103x will be 0.1103x. Thus, price inclusive of excise duty and sales tax will be 1.2133x.

Now,	1.2133x	= ₹ 990.00
Hence,	x	= ₹ 815.96
Excise Duty @ 10.30% of	x	= ₹ 84.04
Check the answer as follows –		
Assessable Value		= ₹ 815.96
Add duty @ 10.30% of ₹ 206.37		= ₹ 84.04
Add State Vat @ 4% on ₹ 900 (815.96+84.04)		= ₹ 90.00
Total Price (After allowable deductions)		= ₹ 990.00

3. A manufacturer has to supply a machinery on following terms and conditions : (a) Price of machinery : 3,40,000 (net of taxes and duties) (b) Machinery erection expenses : 26,000 (c) Packing (normally done by him for all machinery) : 4,000 (d) Design and drawing charges relating to manufacture of machinery : 30,000 (Net of taxes and duties) (e) Central Sales Tax @ 4% (f) Central Excise Duty @ 10% plus education cess of 2% plus SAH education cess of 1% (g) Cash discount of ₹ 5,000 will be offered if full payment is received before dispatch of goods. (h) the machine will The buyer made all payment before delivery. (b) The manufacturer incurred cost of ₹ 1,200 in loading the machinery in the truck in his factory. These are not charged separately to buyer. Find the 'Assessable Value' and the duty payable.

Erection expenses are not includible in AV. Cash discount is allowable as deduction. Duty is not payable on optional bought out accessories supplied along with the machinery. The cost of ₹ 1,200 is already included in the selling price of machinery (as it is not charged separately) and hence is not to be added again. Hence, AV is ₹ 3,69,000 [₹ 3,40,000 + 4,000 + 30,000 – 5,000]. Duty @ 10% will be ₹ 36,900, plus education cess @ 2% i.e. ₹ 738.00 and SAH education cess @ 1% i.e. ₹ 369.00

1.18 OTHER ISSUES

1.18.1 When two exemption notifications are available, assessee can select either - If applicant is entitled to claim benefit under two different notifications, he can claim more (i.e. better) benefit and it is the *duty* of authorities to grant such benefit to applicant – *Share Medical Care* v. *UOI* 2007 (209) ELT 321 (SC).

1.18.2 Benefit of exemption can be claimed at any stage - Even if an applicant does not claim benefit under a particular exemption notification at initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage - *Share Medical Care* v. *UOI* 2007 (209) ELT 321 (SC) – quoted and followed in *Cipla Ltd* . v. *CC* (2007) 218 ELT 547 (CESTAT), where it was held that benefit of exemption notification can be claimed at appellate stage also.

1.18.3 Manufacturer not liable for duty liability of scrap / waste generated at end of job worker

Earlier rule 57F provided that waste and scrap arising during job work is required to be returned to raw material supplier. New Cenvat Credit Rules make no such provision. Hence, in *Rocket Engineering Corporation* v. *CCE* 2006 (193) ELT 33 (CESTAT), it has been held that the scrap is not required to be returned to raw material supplier and the raw material supplier is not required to pay any duty on the scrap, since Cenvat Credit Rules after 1-4-2000 do not make any such provision – view confirmed in *CCE* v. *Rocket Engineering Corporation* (2008) 223 ELT 347 (Bom HC DB) - followed in *Emco Ltd.* v. *CCE* (2008) 223 ELT 613 (CESTAT). In *Preetam Enterprises* v. *CCE* 2004 (173) ELT 26 (CESTAT), it was held that even in respect of inputs sent under Cenvat Credit Rules, job worker is manufacturer of scrap and he is liable to pay duty on scrap. Duty on scrap cannot be demanded from raw material supplier after 1-4- 2000 – same view in *Rocket Engineering* v. *CCE* 2006 (193) ELT 33 (CESTAT) [Scrap is treated as a final product if mentioned in the Tariff. However, it is 'final product' of job worker and not of raw material supplier].

In *Silicon Cortec* v. CCE (2004) 166 ELT 473 (CESTAT SMB), it has been held that waste and scrap is final product of job worker and he can clear the same on payment of duty. In *Timken India* v. *CCE* (2007) 215 ELT 182 (CESTAT), it was held that duty liability on scrap is of the job worker. If he is under SSI exemption, no duty is payable by him. In *GKN Sinter Metals* v. *CCE* 2007 (210) ELT 222 (CESTAT), it was held that if waste and scarp is only in nature of floor sweeping, and if there is invisible loss, no duty is required to be paid on such scrap.

1.18.4 Service tax on job work

Job work falls under 'Business Auxiliary Service', if the job work is not 'manufacture'. Service tax will be payable. Job work done under Cenvat provisions is exempt from service tax. If the job worker is not availing any Cenvat credit of any common input or input services, question does not arise. However, if the job worker is availing Cenvat credit on inputs or input services, he will be liable to pay 8% 'amount' on job charges under rule 6(3) of Cenvat Credit Rules, or he may have to go in for proportionate reversal of Cenvat Credit as per rule 6(3A) of Cenvat Credit Rules effective from 1-4-2008. If the job worker thinks that the rule 6(3A) is cumbersome, it may be advisable to pay service tax @ 12.36% on job charges, since the customer will be in a position to avail Cenvat credit. If job worker charges 8% 'amount', customer cannot avail Cenvat credit, but if job worker charges regular service tax, the customer will be eligible to avail Cenvat credit.

1.19 REFUND & OTHER IMPORTANT PROVISIONS

Other important provisions are summarized below.

1.19.1 Refund of excise duty

- Assessee can claim refund of duty within one year from relevant date u/s 11B, in form R.
- Refund is subject to doctrine of unjust enrichment, i.e. refund will be available only if the amount was not recovered from buyer. These are overriding provisions.
- Doctrine of unjust enrichment applies to captive consumption, provisional assessment and also when duty was paid under protest.
- If refund is delayed beyond three months, interest is payable @ 6% p.a.

1.19.2 Exemption from Duty

Goods exported under bond are not 'exempted goods'

Rule 19(1) of Central Excise Ruloes states that any material may be exported wiothout payment of duty from factory of producer or manufacturer by removing under bond. Thus, the goods are cleared 'without payment of duty'. They are not 'exempt' goods. Ministry of Law Advice dated 29.10.1974 – confirmed and circulated vide CBE&C circular No. 278/112/96-CX dated 11.12.1996, states as follows, 'Under Central Excise, 'exemption' means exemption by notification under section 5A of CEA [earlier rule 8]. Thus, goods exported under bond are not 'exempt' from duty. These goods also cannot be termed as 'chargeable to Nil rate of duty', as in fact, the goods are dutiable.

- Section 5A(1) of Central Excise Act and section 25(1) of Customs Act empower Central government to exempt any excisable goods from duty, by issuing notification in Official Gazette.
- Such exemption may be partial or full, conditional or unconditional.
- Absolute i.e. unconditional exemption is compulsory, while conditional notification is at option of assessee.
- Central Government can also grant exemptions in exceptional cases u/s 5A(2).
- An exemption notification should be strictly construed, but purposeful construction is permissible.
- Principle of promissory estoppel can apply to an exemption notification.

1.19.3 EA 2000 Excise Audit

An Audit section is attached to each Commissionerate. Audit of assessee's factory is carried out by visit by 'audit party'. The Audit Party usually consist of 2/3 inspectors and a Deputy Office Superintendent, headed by a Excise Superintendent. The audit system is termed as 'EA-2000' [Excise Audit 2000]

The frequency of audit will be on basis of excise duty paid annually. The 'duty paid' means paid by cash plus through Cenvat credit. The frequency is as follows, as per CBE&C letter No. 381/145/2005 dated 6-6-2006 –

- Units paying duty more than ₹ three crores – every year.
- Units paying duty between ₹ one crore and ₹ 3 crores – once every two years.
- Units paying duty between ₹ 50 lakhs and ₹ one crore – once every five years.
- Units paying duty below ₹ 50 lakhs – 10% of units every year.

CERA audit - In addition to departmental audit, C&AG carries out selective audits, which is termed as 'CERA' (Central Revenue Audit').

1.20 ASSESSMENT UNDER CENTRAL EXCISE LAW

1.20.1 Assessment

The expressions 'assessment' and 'assessee' have been defined in the Central Excise Rules, 2002.

Assessment, as per Rule 2(b), includes self-assessment of duty made by the assessee and provisional assessment under Rule 7 of the said Rules.

1.20.2 Assessee, as per Rule 2(c), means any person, who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person.

1.20.3 Liability to assessment and Payment of Duty

Rule 4 of the Central Excise Rules, 2002 provides that every person, who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law. No excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided.

1.20.4 Incidence of Duty i.e. Removal

For the purposes of the Rule 4, excisable goods manufactured in a factory and utilized, as such or after subjecting to any process, for the manufacture of any other commodity, in such factory, shall be deemed to have been removed from such factory immediately before such utilization.

1.20.5 .Major Ingredients of Assessment

Before each removal, whether outside the factory of manufacture or production or for captive consumption, duty has to be assessed on the excisable goods.

1.20.6 ***Classification and Rate of Duty***

For determining the rate of duty, classification is a prerequisite.

Classification means the appropriate classification code, which is applicable to the excisable goods in question under the First Schedule to Central Excise Tariff Act, 1985. There are Section Notes and Chapter Notes, in the Tariff which are helpful in determining the appropriate classification. In case of difficulties, there are "Interpretative Rules" in the said Act.

1.20.7 Valuation

Where rate of duty is dependent on the value of goods (*ad valorem duty*), value has to be determined, in accordance with the provisions of Central Excise Act, 1944, as follows :

(i) Value under section 4 based on transaction value or determined in terms of valuation Rule,

(ii) Value based on retail sale price under section 4A,

(iii) Tariff value fixed under section 3.

1.20.8 Self Assessment

As per Rule 6 of the Central Excise Rules, 2002 a Central Excise assessee is himself (self-assessment) required to determine duty liability at the time of removal of excisable goods and discharge the same. In other words, the assessee should apply correct classification and value (*where duty is ad valorem*) on the quantities being removed by him and indicate the same in the invoice. However, in case assesses manufacturing cigarettes, the Superintendent or Inspector of Central Excise has to assess the duty payable before removal by the assessee.

1.20.9 Provisional Assessment

Provisional assessment is resorted to, in the event the duty can not be determined at the point of clearance of the goods.

1.20.10 ***Guidelines and Procedure for Provisional Assessment***

Rule 7 of the Central Excise Rules lays down that where the assessee is unable to determine the value of excisable goods or determine the rate of duty applicable thereto, they may request the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, indicating :

1. Specific grounds and reasons and the documents or information's, for want of which final assessment cannot be made.

2. Period for which provisional assessment is required.
3. The rate of duty or the value or both, as the case may be, proposed to be applied by the assessee, for Provisional Assessment.
4. That he undertakes to appear before the Assistant Commissioner or Deputy Commissioner of Central Excise within 7 days or such date fixed by him, and furnish all relevant information and documents within the time specified by the Assistant or Deputy Commissioner of Central Excise in his order, so as to enable the proper officer to finalize the provisional assessment.

Rule 7 further provides that the payment of duty on provisional basis may be allowed, if the assessee executes a bond in the form prescribed by notification by the Board with such surety or security in such amount as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, deem fit, binding the assessee for payment of difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed.

1.20.11 ***Payment of Duty under Protest***

Sometimes it happens that the classification of goods done by excise authorities, Assessable Value determined by the excise authorities in adjudication proceedings, etc. are not agreeable or acceptable to the assessee. In such cases, the assessee can file an appeal and in the meanwhile he can pay duty under protest (If no stay is obtained from Appellate Authorities).

1.20.12 ***Duty Liability of Pre-budget Stock***

Some goods in stock on the budget day are cleared subsequent to presentation of budget. If there is change in duty at budget, it was felt that these goods should be cleared at the rate applicable before the budget. The thinking was that duty liability is fastened as soon as goods are manufactured as 'manufacture in India' is taxable event in Central Excise. Since goods were already manufactured before budget, rate as applicable at the time of manufacture should be applied.

1.21 WAREHOUSING

1.21.1 Warehousing

Facility of warehousing of excisable goods without payment of duty has been provided in respect of the specified commodities by Notification No. 47/2002-CE(NT), dated 26th June, 2001. The Central Board of Excise and Customs has also specified detailed procedure including the conditions, limitations and safeguards for removal of excisable goods under Rule 20(2) of the Central Excise Rules, 2002 and in the Central Excise Manual, 2001.

1.21.2 ***Place of registration of warehouse***

Commissioner of Central Excise will specify the places under his jurisdiction where warehouse can be registered, by issuing Trade Notice. Any person desiring to have warehouse will get himself registered under the provisions of Rule 9 of the Said Rules.

1.21.3 ***Failure to receive a warehousing certificate***

(a) The consignor should receive the duplicate copy of the warehousing certificate, duly endorsed by the consignee, within ninety days of the removal of the goods. If the warehousing certificate is not received within ninety days of the removal or such extended period as the Commissioner may allow, the consignor shall pay appropriate duty leviable on such goods.

(b) If the Superintended-in-charge of the consignor of the excisable goods does not receive the original warehousing certificate, duly endorsed by the consignee and countersigned by the Superintendent-in-charge of the consignee, within ninety days of the removal of the goods, weekly reminders must be issued by him to the Superintendent-in-charge of the consignee.

1.21. 4 ***Warehouse to store goods belonging to the registered person***

(a) A warehouse shall be used solely for storing excisable goods belonging to the registered person of the warehouse alone. He shall not admit or retain in the warehouse any excisable goods on which duty has been paid.

(b) The Commissioner of Central Excise having jurisdiction over the warehouse may permit storage of excisable goods along with the excisable goods belonging to another manufacturer.

(c) The Commissioner of Central Excise having jurisdiction over the warehouse may permit the registered person of the warehouse to store duty paid excisable goods or duty paid imported goods along with non-duty paid excisable goods in the warehouse.

1.21.5 Export Warehousing

In pursuance of Rule 20(1) of the Central Excise Rules, the Board had issued Notification No. 46/2001-Central Excise (N.T.), dated 26th June, 2001 which has come into form on 1st July, 2001, whereby the warehousing provisions have been extended to all excisable goods specified in the First Schedule to the Central Excise Tariff Act, 1985 intended for storage in a warehouse registered at such places as may be specified by the Board and export there from.

In pursuance of the above-mentioned notification the Board has also specified by Circular N. 581/18/2001-CX, dated 29th June, 2001 the places and class of persons to whom the provisions of the Notification No. 46/2001-Central Excise (N.T.), dated 26th June, 2001 shall apply. In the same Circular, the Board has specified the conditions (including interest), limitations, safeguards and procedures.

1.22 EXPORT BENEFITS AND PROCEDURES

1.22.1 Export benefits and incentives

In order to boost exports from India various incentives and benefits have been allowed *inter alia* under the Excise and Customs Law. A brief account of the same is given below :

(i) Rebate of duty on "export goods" and "material" used in manufacture of such goods : Rule 18 of the Central Excise Rules, 2002 provides for grant of rebate of duty paid on goods exported or duty paid on the material used in the manufacture of export goods, subject to such conditions, limitations and procedures as specified in the Notifications Nos. 40/2001-CE(NT) and 41/2001-CE(NT), both dated 26-6-2001.

(ii) Export of goods without payment of excise duty under Bond: As per Rule 19, any excusable goods can be exported or inputs for manufacture of such goods can be removed without payment of duty from the factory or warehouse or any other premises as may be approved by the Commissioner under Bond subject to the conditions safeguards and procedures notified by CBEC *vide* the Notifications Nos. 42/2001-CE(NT) to 45/2001-CE(NT), all dated 26-6-2001.

Further, to facilitate export under Bond, export warehouses have been allowed to be setup, from where goods can also be exported directly. Goods can also be cleared directly from the job workers' premises to export warehouses of even merchant exporters for export.

(iii) Cenvat credit of input excise duty provided drawback for the same is not taken : Where goods are exported under bond, the input credit taken on account of export can be utilized for paying duty on similar products cleared for home consumption. Assessee may also obtain cash refund. However, cash refund of input credit is not admissible for 'deemed exports to FTZ units and 100% EOU's.

(iv) Setting up of units in FTZ/EPZ/ETP and Jewellery Complexes and 100% EOU/SEZ : All required inputs and capital goods, whether indigenous or imported, are made available to these units free of customs and excise duties under bond. For getting indigenous/imported inputs, CT-3 book-lets/Procurement Certificate is issued to them by the Range Officer. These are customs bonded units set up under section 65 of the Customs Act, 1962 but with a much relaxed control and in accordance with the EXIM Policy for manufacture of articles for export out of India or for production or packaging or job work for export of goods or services out of India.

Inter-unit transfers for valid reasons are freely allowed among EPZ/EOU/SEZ units themselves. The warehousing licence for that would be valid for 5 years.

100% EOUs have been given the facility of sending the Customs bonded goods to such contractors in DTA for job work and EOUs/EPZ units have also been allowed to carry out job work for DTA units. Capital goods can be sent to DTA for repairs and return under the Range Superintendent's permission. All EOUs and units having an investment of ₹ 5 crores or above, in plant and machinery, have to show positive value addition only.

(v) *Drawback of Customs and Central Excise Duties in respect of inputs, both indigenous and imported* : An All Industry Rate Schedule is laid down and published for this purpose within 3 months of presentation of each Budget. If an exporter's goods do not figure therein or if he finds the all Industry rate too low (less than four-fifths of the input duties paid by him), he can apply for fixation of brand rate(s) for his goods. Anti-dumping duty, if actually paid on inputs, can only be claimed by way of brand rate. It is a Simplified Brand Rate Fixation Scheme under which all applicant exporters can be allowed a provisional brand rate within 15 days without pre-verification of data submitted by them. Exporters should send the data duly verified by them and accompanied by original duty paying documents (bills of entry and invoices) direct to the Ministry of Finance (Revenue Department), Joint Secretary (Drawback), Jeevan Deep Building 10, Parliament Street, New Delhi – 110 001.

DTA exporters are also eligible for grant of drawback at *brand* rate only in respect of duties suffered on their inputs which are processed by EOU/EPZ units. Sanctions for brand rate are normally valid for one year but for brand rates having all Industry Rate linkage, validity is up to notification of the next AIR Schedule.

Drawback for inputs is permissible not only in case of manufacture but also for processing or other operations for export of goods.

(vi) *Drawback of 98% customs duty (including anti-dumping duty)*. If imported goods are re-exported as such, drawback of 98% customs duty is permitted. Re-export can be through any port and to any party (not necessarily the original supplier of the goods).

(vii) *Duty free Replenishment Scheme* : The scheme allows duty free replenishment on post-export basis for import of inputs on the basis of input-output norms where such norms exist and on condition of uniform value addition of 33%. The duty exemption is only for basic customs duty, surcharge and SAD. There would be no exemption for anti-dumping duty or safeguard duty or CVD. But Cenvat credit of CVD can be taken.

(viii) *DEEC Scheme* : For imported inputs against Advance Licence (Quantity Based only) Duty Entitlement Export Certificate has to be taken subject to bond executed with customs authorities undertaking to export stipulated quantity/value of specified finished goods. These licences are not transferable. However, imports against these licenses have been exempted from payment of all kinds of duties like basic, additional Customs duty, special customs duty, anti-dumping/safeguard duty.

(ix) *DEPB Scheme* : Duty entitlement pass book scheme patterned on the credit-debit system of Central Excise CENVAT scheme was scheduled to phase out by March 31, 2002 but is being continued till VAT comes comes into force.

Under the scheme, exporters are granted duty credits, on the basis of pre-notified entitlement rates, which will allow them to import inputs duty free. The exporter can export any product under the DEPB Scheme provided the same is covered by the Standard Input-Output Norms. The importer has the option to forego exemption from C.V.D. and pay the C.V.D. in cash so that he or the customer can claim Cenvat credit. Goods in the Negative List of EXIM Policy cannot be exported.

Pass Book credit can also be used for paying duty on (1) SIL imports, and (2) imports under other schemes like EPCG Scheme or Project Imports, thereby availing the exemption from Special Additional Duty. In case the imported goods are eligible for another partial exemption from payment of duty, such exemption would also be applicable to goods imported against a DEPB scrip. In the case of composite items, the lowest rates applicable to their constituents would be allowable.

Verification of present market value of the export product is assigned to SIIB Branch of Customs House to be completed in 30 days.

(x) *Imports for repair, jobbing, etc. free of duties (both basic and additional)* : Such imports are made subject to bond for their re-export with 10% value addition. No CCP is required now. Jobbing operations would be carried out in accordance with the Customs (Import of Capital Goods at Concessional Rate for Manufacture of Excisable Goods) Rules, 1996 and not in Customs Bond under section 65. Such export should be completed within 6 months.

(xi) *Import of capital goods at 5% concessional rate under EPCG Scheme* : Such imports are subject to export obligation and are applicable to all sectors and to all capital goods without any threshold limit. No payment of additional Customs duty (e.v.d.) and special additional duty (SAD) applies. The scheme has also been extended to identified service sectors. The export obligation is to be completed in eight years. However, for the following categories, export obligation period will be 12 years :

1. EPCG licences of ₹ 100 crores or more;
2. Units in agri-export zones; and
3. Companies undet the revival plan of the BIFR.

Further, supplies under deemed exports are eligible to counting for discharge of export obligation.

(xii) *Duty Free Entitlement Credit Certificate to Status holders* : Who show incremental growth of more than 25% in exports, such certificate would be equal to 10% of the incremental growth achieved during 2002-2003 subject to a maximum turnover of ₹ 25 crores. Imports under it would be exempt from basic customs duty, CVD and SAD. Actual user condition would apply to certificate and the goods imported thereunder [Notificatio No. 53/2003-Cus]

(xiii) *Duty Free Entitlement Credit Certificate to Service Providers* : It would be equal to 10% (5% in the case of hotels) of average forex earnings of the preceding three years subject to a maximum earning of ₹ 10 lakhs. Extent of exemption and all conditions shall be same as in case of status holders. Service providers should register themselves with FIEO. [Notification No. 54/2003-Cus]

(xiv) *Special Economic Zones* : By new notifications 22, 23,24, 25/2003-CE & 51-52/2003-Cus. Special incentives have been provided for the special economic zones set up on Chinese model at Mumbai, Kandla, Cochin and other locations by converting the existing EPZs into SEZ, which would be treated as under outside territory of India.

1.22.2 Export Without Payment of Duty

Statutory Provisions

The Rule 19 of the Central excise Rules, 2002, which corresponds to Rule 13 of the Central excise Rules. 1944 provides that :

1. Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner.
2. Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner.
3. The export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.

Categories of Exports

There are two categories of export without payment of duty –

(i) Export of finished goods without payment of duty under bond or undertaking.

(ii) Export of manufactured/processed goods after procuring raw material without payment of duty under bond.

Simplified Export Procedure For Exempted Units

Units, which are fully exempted from payment of duty by a notification granting exemption based on value of clearances for home consumption, may be exempted from filing ARE. 1 and Bond till they remain within the full exemption limit. The following simplified export procedure, as detailed out in the Central Excise Manual, 2001, shall be followed in this regard by such units :

Filing of Declaration

Manufacturers exempted for payment of duty will not be required to take Central Excise Registration. They shall however, file a declaration in terms of Para 2 of Notification No. 36/2001-CE(NT), dated 26-6-2001, and obtain declarant code number [notwithstanding they are exempted form declaration], but for this procedure.

Documentation

The clearance document will be, as follows :

(i) Such manufacturers are permitted to use invoices or other similar documents bearing printed Serial Numbers beginning from 1st day of a financial year for the purpose of clearances for home consumption as well as for exports. (The printing of Serial Numbers can be done by use of franking machine). The invoices meant for use during a month shall be pre-authenticated by the owner or partner or Director/ Managing Director of a Company or other authorized person.

(ii) The declarant's Code Number should be mentioned on all clearance document.

(iii) Such declarant's document should contain particulars of the description of goods, name and address of the buyer, destination, value, [progressive total of total value of excisable goods cleared for home consumption since beginning of the financial year], vehicle number, date and time of the removal of the goods.

(iv) The clearance document will be signed by the manufacturer or his authorized agent at the time of clearance.

(v) In case of export through merchant exporters, the manufacturer will also mention on the top "EXPORT THROUGH MERCHANT EXPORTERS" and will mention the Export-Import Code No. of such merchant exporters.

(vi) In case of direct export by the manufacturer-exporters, he will mention on the top "FOR EXPORT" and his own Export-Import Code No., if any.

1.23 EXCISE ON SMALL SCALE INDUSTRIES

1.23.1 Small Scale Industries

The contribution of Small Scale Sector in the industrial growth of the Indian economy and to the Gross Domestic Product is significant, besides the potential for employment generation. Keeping this into consideration, special provisions of Central Excise are applicable to small-scale units.

1.23.2 Exemption to SSI

- SSI are eligible for exemption from duty under Notification No. 8/2003-CE dated 1-3- 2003. The SSI unit need not be registered with any authority.
- Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, Power driven pumps for water not confirming to BIS, products covered under compounded levy scheme etc. are specifically excluded, even when these can be manufactured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible for SSI exemption, but anyway, these are beyond capacity of SSI unit to manufacture.
- Unit whose turnover was less that ₹ 4 crores in previous year are entitled to full exemption upto ₹ 150 lakhs in current financial year.

- SSI units manufacturing goods with brand name of others are not eligible for exemption, unless the goods are manufactured in rural area.
- Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit.
- Clubbing is also possible if two units are sham or bogus or if there is unity of interest and practically they are one.While calculating limit of ₹ 400/150 lakhs -
- Turnover of Exports, deemed exports, turnover of non-excisable goods, goods manufactured with other's brand name and cleared on full payment of duty, job work done under notification No. 214/86-CE, 83/94-CE and 84/94-CE, processing not amounting to manufacture, strips of plastics used within factory is to be excluded.
- Value of intermediate products (when final product is exempt under notification other than SSI exemption notification), branded goods manufactured in rural area and cleared without payment of duty, export to Nepal and Bhutan and goods cleared on payment of duty is to be included.
- Value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of ₹ 400 lakhs, but excluded for limit of ₹ 150 lakhs.

Distinction between mode of calculations of ₹ 150/ 400 lakhs

Generally, provisions for calculation of turnover for ₹ 150 lakhs and ₹ 400 lakhs are similar. Major distinction is that if goods are exempt under a notification other than SSI exemption notification or job work exemption notification, that turnover is included for calculating ₹ 400 lakhs limit but *not* for ₹ 150 lakhs limit. If final product is exempt under job work exemption notification, it is not to be considered either for ₹ 150 lakhs or for ₹ 400 lakhs.

Clearances of goods exempted under any other notification to be excluded for 150 lakhs but includible for ₹ 400 lakhs - Some goods may be exempt under some other notification, i.e. other than SSI exemption notification. In some cases, duty may not be payable on such goods for some other reason. Turnover of such goods is not to be considered for calculating exemption limit of ₹ 150 lakhs. *However, this turnover (except clearances to EOU, SEZ, STP, EHTP, UN etc. and job work under notifications 214/86-CE, 83/94-CE and 84/94-CE) will have to be considered for calculating exemption limit of ₹ 400 lakhs.*

If some intermediate product gets produced during manufacture of exempted final product, its turnover will be held as includible for calculating exemption limit of ₹ 150 lakhs, if such intermediate product is dutiable.

Question 1. A Ltd. is having a manufacturing unit at Faridabad. In the financial year 2011-12 the value of total clearances from the unit was ₹ 750 lakhs as per the following details: (i) Exports to USA : ₹ 100 lakhs; to Nepal: ₹ 50 lakhs (ii) Clearances to a 100% export oriented unit : ₹ 75 lakhs (iii) Clearances as loan licensee of goods carrying the brand name of another upon full payment of duty: ₹ 200 lakhs (iv) Clearances exempted *vide* Notification No. 214/86-C.E. dated 25-3-86 : ₹ 125 lakhs. (v) Balance clearances of goods in the normal course: ₹ 200 lakhs. You are required to state with reasons whether the unit is entitled to the benefit of exemption under Notification No.8 / 2003-C.E.dated 1-3-2003 as amended for the financial year 2009-10.

Answer : Following is includible for calculating limit of ₹ 400 lakhs - (i) Exports to Nepal - ₹ 50 lakhs (ii) Normal clearances ₹ 200 lakhs. Total ₹ 250 lakhs. Since the turnover is less than ₹ 400 lakhs, A Ltd. is entitled to SSI concession in 2012-13.

Question 2. Z Associates is a Small Scale unit located in a rural area and is availing the benefit of Small Scale exemption under Notification No. 8/2003-C.E. in the year 2011-12. Determine the value of the first clearance and duty liability on the basis of data given below: (1) Total value of clearances of goods with own brand name - ₹ 75,00,000 (2) Total value of clearances of goods with brand name of other parties - ₹ 90,00,000 (3) Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances) ₹ 35,00,000. Normal rate of Excise duty-10%. Education cess @ 3% of Excise duty. Calculations should be supported with appropriate notes. It may be assumed that the unit is eligible for exemption under Notification No. 8/2003.

Answer : While calculating SSI exemption limit of ₹ 150 lakhs, goods cleared under brand name in rural area are to be included, since goods manufactured in rural area with brand name of others are entitled for SSI exemption.

However, goods which are exempted from duty under notification other than exemption based on quantity or value of clearances is not required to be considered. Thus, for purpose of SSI exemption, his value of turnover is ₹ 165 lakhs. His first turnover of ₹ 150 lakhs is exempt. Thus, he is liable to pay service tax on ₹ 15 lakhs. This will be inclusive of excise duty @ 10.3%.

Hence, assessable value is ₹ 15,00,000 × 100/10.3 i.e. ₹ 13,59,928. Excise duty @ 10.3% is ₹ 1,40,072 .

Question 3. S & Co., a small scale unit, had cleared goods of the value of ₹ 750 lakhs during the financial year 2011-12. Records show that the following clearances were included in the total turnover of ₹ 750 lakhs : (i) Total exports during the year - 200 lakhs (30% of total exports were to Nepal). (ii) Job-work in terms of Notification No. 214/86 - 50 lakhs (iii) Job-work in terms of Notification No.83 /94-E - 50 lakhs (iv) Clearances of excisable goods without payment of duty to a 100% E.O.U.- 20 lakhs (v) Goods manufactured in rural area with others brand - 100 lakhs. Find out whether the unit is eligible to avail concession for the year 2012-13, under Notification No. 8/2003-CE dated 1st March, 2003, giving reasons for your answer.

Answer : Turnover not to be considered for ₹ 400 lakhs - (i) ₹ 140 lakhs (ii) ₹ 50 lakhs (iii) ₹ 50 lakhs (iv)₹ 20 lakhs. Excluding this turnover, his turnover during 2012-13 was ₹ 490 lakhs. Since it is more than ₹ 400 lakhs, he is not eligible for SSI exemption in 2012-13.

Question 4. The clearances of Dreams Ltd. were ₹ 400 lakh during the financial year 2011-12. The following are included in the said clearances: (i) Exports to Nepal and Bhutan - 120,00,000, (ii) Exports to countries other than Nepal and Bhutan - ₹ 1,00,00,000 (iii) Job work exempted from duty under Notification No. 214/86 - ₹ 90,00,000 (iv) Sales to 100% EOU against Form CT-3 - ₹ 50,00,000. The company is of the view that it is not liable to pay any duty on its clearances in the financial year 2011-12 as per Notification No. 8/2003 dated 1st March, 2003. Do you agree with the company? Give reasons for your answer.

Answer : SSI exemption is available upto first clearances of ₹ 150 lakhs. While calculating limit of ₹ 150 lakhs, exports to countries other than Nepal and Bhutan, job work under notification No. 214/86-CE and supplies to EOU (deemed exports) are not required to be considered. However, supplies to Nepal and Bhutan are required to be considered. If these are excluded, the turnover of the assessee for purpose of calculation of limit of ₹ 150 lakhs is ₹ 160 lakhs ₹ (= 400 – 100 – 90 – 50). Thus, the assessee can avail exemption of ₹ 150 lakhs and will have to pay duty on ₹ 10 lakhs.

Question 5. A Small Scale Unit (SSI) has effected clearances of goods of the value of ₹ 460 lakhs during the financial year 2011-12. The said clearances include the following: (i) Clearance of excisable goods without payment of Excise duty to a 100% EOU unit : ₹ 40 lakhs. (ii) Export to Nepal and Bhutan : ₹ 50 lakhs. (iii) Job-work in terms of Notification No. 214/86 C.E., which is exempt from duty : ₹ 60 lakhs. (iv) Goods manufactured in rural area with the brand name of others : ₹ 70 lakhs. Write a brief note with reference to the Notifications governing SSI under the Central Excise Act whether the benefit of exemption would be available to the unit for the financial year 2012-13.

Answer : Turnover in respect of sale to EOU (₹ 40 lakhs) and job work under notification No. 214/86-CE (₹ 60 lakhs) is required to be excluded for purpose of SSI exemption limit of ₹ 400 lakhs. Turnover of SSI excluding these sales is ₹ 360 lakhs (460-40-60 lakhs). Hence, the SSI unit will be entitled to exemption in 2012-13 upto first turnover of ₹ 150 lakhs.

Question 6. A SSI unit has effected clearances of goods of the value of ₹ 475 lacs during the Financial Year 2012-13. The said clearances include the following: (i) Clearance of excisable goods without payment of excise duty to a 100% EOU unit. ₹ 120 lacs (ii) Job work in terms of notification no :214/86 CE, which is exempt from duty - ₹ 75 lacs (iii) Export to Nepal and Bhutan - ₹ 50 lacs (iv) Goods manufactured in rural area with the brand name of the others ₹ 90 lacs. Examine with reference to the notification governing SSI, under the Central Excise Act whether the benefit of exemption would be available to the unit for the Financial Year, 2012-13.

Answer : While calculating the turnover of ₹ 400 lakhs, following are not required to be considered -

(a) Deemed exports i.e. supplies to 100% EOU (₹ 120 lakhs)

(b) Job work that amounts to 'manufacture' done under notifications No. 214/86-CE, 83/ 94-CE and 84/94-CE (₹ 75 lakhs).

Turnover in respect of sale to EOU (₹ 120 lakhs) and job work under notification No. 214/86-CE (₹ 75 lakhs) is required to be excluded for purpose of SSI exemption limit of ₹ 400 lakhs. Turnover of SSI excluding these sales is ₹ 280 lakhs (475-120-75 lakhs). Hence, the SSI unit will be entitled to exemption in 2012-13 upto first turnover of ₹ 150 lakhs.

GOODS NOT ELIGIBLE FOR SSI CONCESSION

Many of goods manufactured by SSI are eligible for the concession. However, some items are not eligible (some of the items not eligible for SSI exemption are eligible for exemption under different notifications. Some are not exempt at all). Thus, SSI exemption is available only if the item is covered in this notification.

Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, Power driven pumps for water not confirming to BIS, products covered under compounded levy scheme etc. are specifically excluded, even when these can be manufac-tured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible for SSI exemption, but anyway, these are beyond capacity of SSI unit to manufacture.

Goods with other's brand name not eligible, but packing material with other's brand name eligible - Goods manufactured by an SSI unit with brand name of others are not eligible for SSI concession, unless goods are manufactured in a rural area. However, SSI exemption will be available to all packing materials meant for use as packing material by or on behalf of the person whose brand name they bear.

OTHER PROVISIONS IN RESPECT OF CONCESSION TO SSI

Other provisions for concession to SSI are as follows. **'Value' for calculating SSI exemption limit**

Value for purpose of calculating the SSI exemption limit of ₹ 150 and ₹ 400 lakhs is the *'Assessable Value'* as per section 4, i.e. transaction value.

However, when goods are assessed on basis of MRP (Maximum Retail Price), the 'value' will be as determined under section 4A.

SSI exemption available in respect of goods exported to Nepal & Bhutan

The SSI exemption is available for home consumption, i.e. for consumption within India. However, explanation to SSI exemption notifications make it clear that clearances for home consumption shall also include clearances for export to Bhutan & Nepal. Thus, exports to Nepal & Bhutan will qualify for SSI exemption, whether the Indian exporter receives payment in Indian Rupees or foreign exchange.

Question 1. Small and company a small scale industry provides the following details. Determine the eligibility for exemption based on value of clearances for the Financial year 2011-12 in terms of Notfn.No. 8/2003-CE dated 1.3.2003 as (I) Total value of clearances during the financial Year 2010-11 (including VAT ₹ 50 lakhs) ₹ 870 lakhs (II) Total exports (including for Nepal and Bhutan ₹ 200 lakhs) ₹ 500 lakhs (III) Clearances of excisable goods without payment of duty to a Unit in software technology park ₹ 20 lakhs (IV) Job work under Notfn.No.84/94-CE dated 11.4.1994 ₹ 50 lakhs. Job work under Notfn.No.214/86-CE dated 25.3.1986 ₹ 50 lakhs (v) Clearances of excisable goods bearing brand name of Khadi and Village Industries board ₹ 200 lakhs. Make suitable assumptions and provide brief reasons for your answers where necessary.

Answer :

	₹ Lakhs
Total turnover	870.00
Less : Value of clearances including VAT	50.00
Total Exports excluding Nepal & Bhutan (500 – 200)	300.00
Clearance for STP jobs	20.00
Clearance for Job work	100.00
Turnover (for calculating limit of 4 crores)	400.00

Goods bearing brand name of Khadi and Village Board are eligible for SSI exemption. Hence, its turnover cannot be excluded for calculating limit of ₹ 4 crores.

Thus, his turnover for purpose of SSI exemption limit is 400 lakhs. The requirement is that turnover should not exceed ₹ 400 lakhs.

Since it is not exceeding ₹ 400 lakhs, the company will be entitled to avail exemption upto first ₹ 150 lakhs in financial year 2012-13.

Question 2. M/s Punctual Ltd., (manufacturing watches) has cleared goods of the value of ₹ 120 lakhs during the financial year 2011-12 exclusive of duties and taxes. The goods attract 10% *ad valorem* Excise Duty plus Education cess as applicable. Determine the Excise Duty liability when the assessee opts for CENVAT facility and also in the case when the assessee decides not to avail CENVAT benefit. The turnover of the assessee in the previous year 2010-11 was ₹ 100 lakhs.

Answer : Watches are not eligible for SSI exemption. Hence, the assessee has to pay excise duty on entire turnover of ₹ 120 lakhs @ 10% plus education cess. Thus, duty payable is - Basic ₹ 12,00,000. Education cess @ 2% - ₹ 24,000 and SAHE education cess - ₹ 12,000. The duty payable is same whether or not he avails Cenvat credit.

Question 3. Mahesh Ltd., which is engaged in manufacturing of excisable goods started its business on 1st June, 2010. It availed SSI exemption during the financial year 2010-11. The following are the details available to you : (i) 12,500 kg of inputs purchased @ ₹ 1,190.64 per kg (inclusive of Central excise duty @ 10.3%) - ₹ 1,48,83,000 (ii) Capital goods purchased on 31-5-2010 (inclusive of Excise duty @ 10.3%) - ₹ 80,09,400 (iii) Finished goods sold (at uniform transaction value throughout the year) - ₹ 3,00,00,000. — You are required to calculate the amount of excise duty payable by M/s Mahesh Ltd. in cash, if any, during the year 2010-11. Rate of duty on finished goods sold may be taken @ 10.3% for the year and you may assume the selling price exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Output input ratio maybe taken as 2 : 1.

Answer : Excise duty paid on inputs

$$= ₹\ 1,48,83,000 \times \frac{10.3}{110.3} = ₹\ 13,89,800$$

$$\text{Duty paid on Capital Goods} \quad = ₹\ 980,09,400 \times \frac{10.3}{110.3} = ₹\ 7,47,931$$

In the first turnover of ₹ 1.50 crores, assessee did not pay any excise duty. Hence, he did not avail any Cenvat credit. On crossing the limit, he can take Cenvat credit of raw material used for manufacture of excisable goods on which duty is payable. Thus, he can take Cenvat credit of 50% of ₹ 13,89,800 i.e. ₹ 6,94,900. He can avail Cenvat credit of 50% of excise duty paid on capital goods i.e. ₹ 3,73,966 [Balance credit he can take in 2011-12. If the year was 2011-12 or any year after that, he could have taken entire Cenvat credit in first year itself] Thus, total credit available with him is ₹ 10,68,866.

Duty payable on remaining ₹ 1.50 crores is ₹ 15,45,000 [10.3% of ₹ 1.50 crores, since the selling price is exclusive of excise duty.

Hence, net excise duty payable is ₹ 4,76,134 [15,45,000 – 10,68,866].

[**Note** - there is some confusion as in the first part of question, it is stated that goods are sold at uniform 'transaction value', while in later part, it is stated that selling price is exclusive of excise duty. It is assumed that both are same for purpose of this question.]

Question 4. An SSI unit (manufacturing goods eligible for benefits of SSI exemption notification) has cleared goods of the value of ₹ 60 lakhs during the financial year 2011-12. The effective rate of Central Excise Duty on the goods manufactured by it is 10% Ad valorem. Education cesses are payable at applicable rates. What is the correct amount of duty which the unit should have paid on the above clearances for 2011-12?.

Answer : (a) If unit intends to avail Cenvat credit on inputs, duty payable is normal duty i.e. 8% of ₹ 60 lakhs, i.e. ₹ 6,00,000, plus education cess of ₹ 12,000 (2% of ₹ 6.00 lakhs), plus SAH education cess of ₹ 6,000 (1% of ₹ 6.00akhs). (b) If unit does not intend to avail Cenvat credit on inputs, duty payable is Nil.

Question 5. The value of excisable goods viz. Iron and Steel articles manufactured by M/s. Alpha Ltd., was ₹ 120 lakhs during the financial year 2011-12, net of taxes and duties. The goods attract 10% *ad valorem* basic duty plus education cess of 2% plus SAH education cess as applicable. Determine the excise duty liability when the assessee opts for 'CENVAT' and 'opts for not to avail CENVAT' under SSI exemption notifications respectively.

Answer : If the assessee does not avail Cenvat, duty payable is Nil. If assessee avails Cenvat credit, duty payable will be - Basic - ₹ 12.00 lakhs, Education Cess - ₹ 24,000 and SAH education Cess - ₹ 12,000.

Question 6. A small scale manufacturer had achieved sales of: 86 lakhs in 2010-11. Turnover achieved during 2011-12 was ₹ 1.52 crores. Normal duty payable on the product is 10% plus education cesses as applicable. Find the total excise duty paid by the manufacturer during 2011-12 (a) If the unit has availed Cenvat credit (b) If the unit has not availed Cenvat credit. [The turnover is without taxes and duties].

Answer : (a) If the unit has availed Cenvat credit, it has to pay full duty on entire turnover. Hence, duty payable is 10% of ₹ 1.52 crores i.e.₹ 15.20 lakhs, plus education cess @ 2% of ₹ 15.32 lakhs i.e. 30,400, plus SAH education cess @ 1% of ₹ 15.32 lakhs i.e. ₹ 15,320. Total - ₹ 15,65,600.

(b) If the SSI unit has not availed Cenvat, the duty payable is as follows: (i) On first ₹ 150 lakhs : Nil (ii) On subsequent sales : Normal duty of 10% plus education cesses as applicable. Thus, duty on remaining ₹ 2 lakhs will be ₹ 20,000. Thus, excise duty paid is ₹ 20,000, plus education cess of ₹ 400 plus SAH education cess of ₹ 200 Total - ₹ 20,600.

Question 7. Z Ltd. is a small-scale industrial unit manufacturing a product X. The Annual report for the year 2011-12 of the unit shows a gross sale turnover of ₹ 1,91,40,000, which includes excise duty and sales tax. The product attracted an excise duty rate of 10% as BED, education cess @ 2% of excise duty and Sales Tax 10%. Determine the duty liability under Notification No. 8/2003-CE, if SSI unit had availed SSI exemption and then paid duty. On the other hand, if SSI had availed Cenvat credit on all its inputs, what would be the excise duty liability? (Ignore SAH education cess).

Answer : Duty liability of Z Ltd. in each case is as follows -

(a) Under this excise notification, an SSI unit is exempt from duty on first ₹ 150 lakhs and duty payable on balance amount is 1696 plus education cess. The assessee can avail Cenvat credit on inputs after it crosses turnover of ₹ 150 lakhs. Since the example gives gross sale turnover, it is first necessary to find net sales turnover.

In respect of first net turnover of ₹ 150 lakhs (₹ 1,50,00,000), excise duty is Nil and education cess is also Nil. Sales tax @ 10% is payable on net turnover on ₹ 1,50,00,000. Hence, sales tax @ 10% is ₹ 15,00,000. Thus, gross sale turnover in respect of first net turnover of ₹ 150 lakhs (where excise duty is not paid) is ₹ 1,65,00,000.

Therefore, balance gross sale turnover is ₹ 36,40,000 (1,91,40,000 - 1,65,00,000). This includes excise duty at 10%, education cess @ 2% of duty, SAH education cess @ 1% and sales tax @ 10%.

Sales tax is payable on cum duty price. If Net turnover for excise purposes is 'Z', the gross sale turnover will be as follows :

Net Turnover	=	Z
Duty @ 10.3%	=	0.103 × Z
Sub-Total	=	1.103 × Z
Add : Sales Tax @ 10%	=	0.1103 × Z
Total price (i.e., inclusive ofduty and sales tax)	=	1.2133 × Z

Now :		₹
1.2133 × Z	=	36,40,000.00
∴ Z	=	30,00,082.42
Net turnover	=	30,00,082.42
Excise duty @ 10%	=	3,00,008.24
Education Cess @ 2%		6,000.16
SAH Education Cess @ 1%		3,000.08
Sub-Total	=	3,09,090.90
Add : Sales Tax @ 10%	=	3,30,909.10
Gross Selling Price	=	36,40,000.00

Hence, total excise duty is as follows -

Assessable Value	Basic Excise Duty	Education Cess	Sales Tax @ 10% (10% of A+B+C)	GrossTurnover
A	B	C	D	E
1,50,00,000.00	-	-	15,00,000.00	1,65,00,000.00
30,00,082.42	3,00,008.24	9,000.24	3,30,909.09	36,40,000.00
1,88,00,082.42	**3,00,008.24**	**9,000.24**	**18,30,909.90**	**2,01,40,000.00**

(b) If SSI unit intends to avail Cenvat credit on all its inputs, it has to pay full 10.3% duty on its entire turnover of ₹ 2,01,40,000

	₹
1.2133 × Z	2,01,40,000.00
∴ Z = Net Sales =	1,65,99,357.00
Check this as follows	
Net Sales	1,65,99,357.00
Add excise duty and education cess @ 10.3%	17,09,734.00
Sub-Total	1,83,09,090.90
Add : Sales Tax - 10%	18,30,909.09
Gross Sales	2,01,40,000.00

1.23.3 Practical Problems

Question 1: A small scale manufacturer produces a product 'P'. Some of the production bears his own brand name, while some production bears brand name of his customer. The customer purchases the goods from the small scale unit and sales himself by adding 20% margin over his purchase cost. Clearances of the SSI unit in 2011-12 was ₹ 3,53,00,000. He achieved clearances of ₹ 445 lakhs in 2011-12 as per following break up. [These clearances are without considering excise duty and sales tax]

(*a*) Clearances with his own brand name : ₹ 80 lakhs. (*b*) Clearances of product bearing his customer's brand name : ₹ 365 lakhs. Normal excise duty of his product is 10% plus education cesses as applicable. The SSI unit intends to avail Cenvat benefit on inputs on goods supplied to the brand name owner but intends to avail SSI exemption on his own clearances.

***(A)* Find the total duty paid by the manufacturer in 2011-12, if (i) Inputs are common but SSI unit is able to maintain separate records of inputs in respect of final products under his brand name and those with other's brand name (ii) The inputs are common and SSI unit is not able to maintain separate records on inputs used in final products**

manufactured under his brand name and with other's brand name.

***(B)* What will be the rate of excise duty payable by him in April 2012 (*i*) on product bearing his own brand name *and* (*ii*) on product bearing his customer's brand name.**

***(C)* Will there be any difference in duty payable in April 2012 if all his clearances of ₹ 445 lakhs in 2011-12 were of product under his own brand name ?**

Answer - (*A*) SSI unit can avail Cenvat on final products cleared under other's brand name and avail SSI exemption in respect of his own production. (i) In the first case, he has to pay duty @ 10% on ₹ 365 lakhs, i.e. ₹ 36.50 lakhs plus education cess of ₹ 73,000 plus SAH education cess of ₹ 36,500. He cannot avail Cenvat credit in respect of inputs used to manufacture product under his own brand name.

(ii) In the second case, since he is unable to maintain separate record of inputs, he will have to pay 10% 'amount' on ₹ 80 lakhs as per rule 6(3)(b) of Cenvat Credit Rules. Thus, he has to pay duty of ₹ 36.50 lakhs, plus education cess of ₹ 73,000 plus SAH education cess of ₹ 36,500, plus an 'amount' of ₹ 8.00 lakhs. He can avail Cenvat of all the inputs. — Note that in respect of goods bearing customer's brand name, duty is payable on his selling price to the customer even if customer sells them subsequently at higher price.

The assessee has to carefully do his costing and decide (i) whether to avail Cenvat on all inputs, pay full duty on all final products and 10% 'amount' on final products cleared under his own brand name or (ii) Not avail Cenvat at all and avail exemption from duty on his own production with his brand name.

(*B*) The turnover of SSI during 2011-12 was over ₹ 4 crores. However, for purposes of calculating the upper limit of ₹ 4 crores, clearances with other's brand name are not to be considered. Hence, from 1st April 2012, he can clear goods bearing his own brand name upto ₹ 150 lakhs without payment of duty, if he does not avail Cenvat credit on inputs used in such products. If he is unable to maintain separate records, he will have to pay 10% 'amount' on goods manufactured under his own brand name.

(*C*) If total turnover of ₹ 4.45 crores in 2011-12 was under his own brand name, the manufacturer is not eligible for any Small industry concession in April 2010, and he will have to pay duty at normal rates on his total clearances in April 2012.

1.23.4 Exemption from registration

The requirement of registration has been exempted for the following persons *vide* Notification No. 22/98-CE(NT), dated 4-6-1998 as amended :

- Manufactures, who are only manufacturing goods, which are exempted from payment of duty of Central Excise.
- For small scale industries, which are manufacturing goods up to an aggregate value of less than ₹ 90 lakhs. After crossing ₹ 90 lakhs turn over the SSI must file declaration.
- In case an SSI is manufacturing goods of more than 30 lakhs it must file a declaration only once in prescribed form.

1.24 PROCEDURAL ASPECTS UNDER CENTRAL EXCISE DUTY

1.24.1 Remission of duty for goods lost, destroyed or unfit for consumption or marketing

(1) Rule 21 provides for remission of duty if the assessee can prove to the satisfaction of the Commissioner of Central Excise that the goods have been lost or destroyed by natural cause or by unavoidable accident or the manufacturer claims them as unfit for consumption or for marketing, before their clearance. In such cases Commissioner can remit the duty on such goods subject to such conditions as may be imposed by him or ordered in writing. Power of remission given to various officers have been increased in 2007. The assessee should apply for destruction and remission in duplicate. Credit taken for inputs of the goods so lost or destroyed need not be reversed as such loss cannot be equated to exemption to goods - 2007 (208) E.L.T. 336 (Tri.-LB) - *Grasim Industries* v. *CCE.* But as per new sub-rule (5C) of Rule 3 of Cenvat Credit Rules, 2004, such credit on input requires reversal. No remission is allowable if goods are lost due to theft or dacoity - 2008 (232) E.L.T. 796 (Tri.-LB) - *Gupta Metal Sheets* v. *CCE.*

(2) But no remission of duty is grantable for any loss or destruction or deterioration of any goods taking place after the goods have been cleared for home consumption on payment of duty or in cases of theft.

(3) For duty upto ₹ 10,000, Superintendent of Central Excise has been empowered to grant remission. Deputy /Assistant Commissioner can grant remission of duty exceeding ₹ 10,000 and upto ₹ 1 lakh. Additional/Joint Commissioner will have the power to remit duty exceeding ₹ 11akh and upto ₹ 5 lakhs. No limit has been prescribed for Commissioner in this regard.

(4) Remissions have to be claimed by the assessee and the burden to furnish adequate evidence of loss is on the assessee. Remission when granted is subject to conditions as may reasonably be imposed by the officer, such as irretrievable destruction under official supervision of goods claimed to be unfit for consumption or for marketing.

1.24.2 Compounded Levy Schemes.

(1) As per Rule 15, the Central Government may by notification specify the goods in respect of which the assessee shall have the option to pay excise duty on the basis of such factors as may be relevant to production of such goods and at such rate as may be notified in this respect. The Central Government has, therefore, notified the *Compounded Levy Scheme for Stainless Steel pattis/pattas, aluminium circles, subject* to *the process of cold rolling. - Notification No. 17/2007-C.E., dated 1-3-2007.* These units have to pay Education Cess and SHE Cess also over and above the compounded levy rates as per C.B.E. & c. Letter F. No. 27/16/2008-CX.1, dated 25-8-2008 [2008 (230) E.L.T. T19].

(2) Section 3A has been inserted by Finance Act, 2008, empowering the Central Government to charge excise duty on the basis of capacity of production in respect of notified goods and to notify the procedure for the same. Accordingly, pan masala and pan mas ala containing tobacco commonly known as gutkha manufactured with the aid of packing machine and packed in pouches have been notified for this purpose with effect from 1-7-2008. Pan masala with betel nut content not exceeding 15% is not covered. Detailed procedures and other matters like filing of specified declaration/intimation, payment of duty at notified rates, abatement in case of non-production, requirement of declaration of retail sale price on packages, bar on Cenvat credit availment, addition or removal of packing machines, penalty and confiscation for contravention and the like are provided in Pan Masala Packing Machines (Capacity Determination And Collection of Duty) Rules, 2008.

New procedure for end-use exemption (erstwhile Chapter X procedure). - (1) A new procedure for end-use exemption has been notified in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. facture of Excisable Goods) Rules, 2001.

(3) The new Rules contemplate that procurement of goods for end-use under concessional (including fully ted) rate of duty.

(4) Goods received duty free can be removed to another eligible manufacturer under the new end-use exemption procedure. Commissioner can also allow sending goods outside the factory for test, repair, reconditioning etc. and return thereof under their supplemental instruction power under Central *Excise* Rule 31.

1.24.3 Removal of goods from FTZ, EOU and SEZ to domestic tariff area.

(1) As per Rule 17, removal of goods from FTZ and EOD to the domestic tariff area shall be made under an invoice and on payment of appropriate duty by 5th of the following month except March, like other units in DT A. Such unit shall maintain proper account relating to production, description of goods, quantity removed, duty paid and each removal made on an invoice. Unit shall also submit a monthly Return to the Superintendent, Central Excise within ten days from the close of the month to which the return relates. The Return shall be submitted in form ER-2.

(2) For the period prior to 11-5-2001 when Section 3 of the Act was amended to substitute the words "allowed to be sold" with the words "brought to any other place", clearances from EODs if not allowed to be sold into India shall continue to be chargeable to duty under main Section 3(1) of Central Excise Act, 1944 as such units are also situated in India.

(3) SEZ having been given the status of foreign territory, imports there from to DT A will be governed by the provisions of the Special Economic Zones Act, 2005. Removal of semi-finished goods or finished

goods for further processing, or testing has been permitted under Rules 16B and 16C, broadly on the pattern of old Rule 56B.

1.24.4 Return of duty paid goods for repairs etc. - Credit of duty.

(1) As per Rule 16 of the Central Excise Rules, 1944 where any dllty paid goods (whether originally manufactured in the same or another factory) are subse-quently returned to the factory for being remade, refined, reconditioned or for any other reason, the assessee shall record the particulars of such returned goods in his record and take Cenvat Credit of the duty paid on such goods as if they are inputs and shall utilize this credit according to the Cenvat Credit Rules, 2002. But the goods received must be eventually returned.

(2) When the process to which the returned goods are subjected, does not amount to manufacture, the as-sessee shall pay the amount equal to Cenvat credit taken in respect to such returned goods. In other cases the returned goods after processing shall be removed on payment of duty according to the value and rate of duty applica-ble as on the date of removal.

(3) As per sub-rule (3) of Rule 16, where it is difficult to follow the provisions of sub-rule (1) and sub-rule (2) of Rule 16, the assessee can receive the goods subject to such conditions as may be specified by the Commissioner of Central Excise. Thus, in case where it is not possible to know the amount of the duty paid on returned goods as they may have been removed originally long back and the original invoice may not be available, in such or similar cases the return of goods shall be subject to the general or specific orders of the Commissioner of Central Excise and there will be no credit and no payment of duty.

(4) According to one school of thought, under the Rules there are now no restrictions on return, re-entry, retention and re-issue of duty paid goods if no credit is desired and taken. But presence of the retuned goods in the factory may cause accounting and surprise stock checking problems unless the returned goods are clearly identifi-able as such and are stored and accounted for (in private accounts) separately It has been held that restrictions for re-entry apply only to identical or similar to those manufactured in the factory and not to other goods - 2004 (168) E.L.T. 53 (Tri.) - *Varsha Engineering* v. *C.C.E.*

1.24.5 Removal of excisable goods on payment of duty.

(1) As per Rule 4, no excisable goods on which duty is payable shall be removed without payment of duty from any place where they have been produced, manufac-tured or warehoused, unless otherwise provided. Duty, however is payable as specified in Rule 8.

(2) As per Rule 4(2), where molasses are produced in a khandsari sugar fatory, the person who procures such molasses, whether directly from such factory or otherwise, for use in the manufacture of any commodity (whether or not excisable) shall pay the duty payable on such molasses as if it W,l~ produced by him.

(3) By virtue of Rule 12AA excise duty can be paid either bv the principiil jewellery manufacturer or by his job worker.

(4) Full amount collected from the customer by way of duty should be shown distinctly in the invoice and paid to the credit of the Govemment [Sections 110 and *12A).*

1.24.5 Storage of non-duty paid goods outside the factory.

As per Rule 4(4) of the Central Excise Rules, 2002, the storage of non-duty paid goods out5'ide the factory can be permitted by the Commissioner of Central Excise subject to such safeguards as he may specify. Such storage outside the factory premises is permissible in exceptional circumstances having regard to the nature of the goods and shortage of storage space in the factory. No merchant overtime charges would be recovered for supervision over such storage.

1.24.6 Manner of payment of duty monthly.

(1) Rule 8 provides the manner of payment of duty. 'Duty' for this purpose includes the 'amount' payable in terms of the Cenvat Credit Rules, 2004. This rule allows payment of duty on monthly basis by 5th day of the succeeding month (6th day of the following month in case of e-payment through internet banking) except for the month of March when duty is to be paid by 31st March.

(2) The buyers of the goods cleared by manufacturers would be allowed to avail credit in respect of the duty payable on such goods immediately on receipt of the goods by them.

(3) The duty liability shall be deemed to have been discharged only if the cheque received by the nominated bank is honoured. Where the cheque is duly honoured, even if a few days later, the date of presentation of the cheque to the nominated bank is the date of payment of duty/deposit. For P.L.A. format (Annexure 8 in Part 7) and the proced ure of its maintenance in triplicate, please see Part V of Chapter 3 in Part 6 of this Manual.

(4) Electronic payment (e-payment) of excise duty using Intemet banking facility has been made mandatory w.e.f. 1-4-2007 for assessees who have paid excise duty of rupees 50 lakhs or more in cash (i.e. from P.L.A.) during the preceding financial year. It is optional for others. For features of the department's Electronic Accounting System in Excise and Service Tax (EASIEST) and the list of banks authorised for Intemet banking, see 2007 (211) E.L.T. T25-30; 2007 (213) E.L.T. *A62* and 2009 (235) E.L.T. T19-T22. Cut off time for e-payment on a particular day is 8 PM. E-payment received after 8 PM will be treated as received on the next day.

(5) GAR-7 Challans for paying amounts in banks must contain the 15-digit PAN/TAN based assessee code as well as Commissionerate code besides other particulars. A separate GAR -7 Challan should be used for each major head of account.

1.24.7 Action in case of default.

As per Rules 8(3) and *8(3A),* when the assessee fails to pay the duty by the due date he shall be liable to pay the outstanding amount along with interest at the rate notified under Section 11AB from the first day of default to the date of actual payment of the outstanding amount. If the default in payment continues beyond 30 days from the due date, then without the need for any order from the A.C/D.C, duty requires to be paid for each consignment at the time of removal till outstanding amount with interest thereon is paid. Cenvat credit is not utilisable for such payment. In the event of any failure, it shall be deemed that such goods have been cleared clandestinely with consequential penal action. Tribunal, however, holds: "It is well settled that Cenvat account is the same as PLA in regard to debit of Central Excise duty - 2006 (202) E.L.T. 814 (Tri.) - *SCT Ltd.* v. *CCE.*

1.25 OTHER PROCEDURES IN CENTRAL EXCISE

Some procedures are basic, which every assessee is required to follow. Besides, some procedures are required to be followed as and when required.

Basic Procedures

(1) Every person who produces or manufactures excisable goods, is required to get registered, unless exempted. [Rule 9 of Central Excise Rules]. If there is any change in information supplied in Form A-1, the same should be supplied in Form A-1.

(2) Manufacturer is required to maintain Daily Stock Account (DSA) of goods manufactured, cleared and in stock. [Rule 10 of Central Excise Rules]

(3) Goods must be cleared under Invoice of assessee , duly authenticated by the owner or his authorised agent. In case of cigarettes, invoice should be countersigned by Excise officer. [Rule 11 of Central Excise Rules]

(4) Duty is payable on monthly basis through GAR-7 challan / Cenvat credit by 5th/6th of following month, except in March. SSI units have to pay duty on monthly basis by 15th/ 16th of following month. Assessee paying duty through PLA more than ₹ 50 lakhs per annum is required to make e-payment only [Rule 8].

(5) Monthly return in form ER-1 should be filed by 10th of following month. SSI units have to file quarterly return in form ER-3. [Rule 12 of Central Excise Rules] — EOU/STP units to file monthly return in form ER-2 – see rule 17(3) of CE Rules.

(6) Assessees paying duty of ₹ one crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4 [rule 12(2) of Central Excise Rules].

(7) Specified assessees are required to submit Information relating to Principal Inputs every year before 30th April in form ER-5, to Superintendent of Central Excise. Return for 2004-05 was required to be submitted by 31-12-2004 [rule 9A(1) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Any alteration in principal inputs is also required to be submitted to Superintendent of Central Excise in form ER-5 within 15 days [rule 9A(2) to Cenvat Credit Rules inserted w.e.f. 25-11-2004]. Only assessees manufacturing goods under specified tariff heading are required to submit the return. The specified tariff headings are – 22, 28 to 30, 32, 34, 38 to 40, 48, 72 to 74, 76, 84, 85, 87, 90 and 94; 54.02, 54.03, 55.01, 55.02, 55.03, 55.04. Even in case of assessees manufacturing those products, only assessees paying duty of ₹ one crore or more through PLA (current account) are required to submit the return.

(8) Assessee who is required to submit ER-5 is also required to submit monthly return of receipt and consumption of each of Principal Inputs in form ER-6 to Superintendent of Central Excise by tenth of following month [rule 9A(3) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. *Only those assessees who are required to submit ER-5 return are required to submit ER-6 return.*

(9) Every assessee is required to submit a list in duplicate of records maintained in respect of transactions of receipt, purchase, sales or delivery of goods including inputs and capital goods, input services and financial records and statements including trial balance [Rule 22(2)].

(10) Inform change in boundary of premises, address, name of authorised person, change in name of partners, directors or Managing Director in form A-1.

These are core procedures which each assessee has to follow. There are other procedures which are not routine.

Non-core procedures - The non-core procedures are as follows : -

(a) Export without payment of duty or under claim of rebate [Rules 18 and 19 of Central Excise Rules]

(b) Receipt of goods for repairs / reconditioning [Rule 16 of Central Excise Rules]

(c) Receipt of Goods at concessional rate of duty for manufacture of Excisable Goods.

(d) Payment of duty under Compounded Levy Scheme

(e) Provisional Assessment [Rule 7 of Central Excise Rules]

(f) Warehousing of goods.

(g) Appeals and settlement.

1.25.1 Invoice for removal of final products

Rule 11(1) of Central Excise Rules provides that excisable goods can be removed from factory or warehouse only under an 'Invoice' signed by owner or his authorised agent. In case of cigarettes, invoice shall be counter-signed by Inspector. Invoice should bear serial number and should be in triplicate. As per Rule 11(2) of Central Excise Rules, Invoice shall contain –

(a) Registration Number

(b) Address of jurisdictional Central Excise Division.

(c) Name of consignee

(d) Description and classification of goods

(e) Time and date of removal

(f) Mode of transport and vehicle registration number

(g) Rate of duty

(h) Quantity and Value of goods

(i) Duty payable on the goods.

1.25.2 Export Procedures

Exports are free from taxes and duties.

- Goods can be exported without payment of excise duty under bond under rule 19 or under claim of rebate of duty under rule 18.
- Excisable Goods should be exported under cover of Invoice and ARE-1 form.
- Merchant exporter has to execute a bond and issue CT-1 so that goods can be cleared without payment of duty. Manufacturer has to issue Letter of Undertaking.
- Export to Nepal/Bhutan are required to be made on payment of excise duty.
- EOU has to issue CT-3 certificate for obtaining inputs without payment of excise duty.

Bringing goods for repairs, re-making etc.

- Duty paid goods can be brought in factory for being re-made, refined, reconditioned or for any other reason under rule 16.
- The goods need not have been manufactured by assessee himself.
- Cenvat credit of duty paid on such goods can be taken, on basis of duty paying documents of such goods.
- After processing/repairs, if the process amounts to 'manufacture', excise duty based on assessable value is payable.
- If process does not amount to manufacture, an 'amount' equal to Cenvat credit availed should be paid [rule 16(2)].
- If some self manufactured components are used, duty will have to be paid on such components.
- Buyer/recipient of such goods can avail Cenvat credit of such amount/duty.
- If the above procedure cannot be followed, permission of Commissioner is required [rule 16(3)].

1.25.3 Receipt of Goods at concessional rate of duty

Some users of excisable goods can obtain goods at nil or lower rate of duty, subject to certain conditions. In other words, the exemption is based on end use. If the buyer is entitled to obtain excisable goods at nil or concessional rate of duty, he is required to follow prescribed proceure. The provisions are contained in Central Excise (Removal of Goods at Concessional Rate for Manufacture of Excisable Goods) Rules, 2001.

1.25.4 Returns to be filed

Form of Return Description Who is required to file

Form of Return	Description	Who is required to file	Time Limit
ER-1 [Rule 12(1) of Central Excise Rules]	Monthly Return by large units	Manufacturers not eligible for SSI concession	10th of following month
ER- 2 [Rule 12(1) of Central Excise Rules]	Return by EOU	EOU units	10th of following month
ER-3 [Proviso to Rule 12(1) of Central Excise Rules]	Quarterly Return by SSI	Assessees availing SSI concession	20th of next month of the quarter
R-4 [Rule 12(1) of Central Excise Rules]	Annual Finan-cial Information Statement	Assesses paying duty of ₹. One crore or more per annum through PLA	Annually by 30th November of succeeding year
ER-5 [Rule 9A(1) and 9A(2) of Cenvat Credit Rules]	Information relating to Principal Inputs	Assessees paying duty of ₹ one crore or more per annum thorugh PLA and manufacturing goods under specified tariff headings	Annually, by 30th April for the current year (e.g. return for 2005-06 is to be filled by 30.4.2005].
ER-6 [Rule 9A(3) of Cenvat Credit Rules]	Monthly return of receipt and con-sumption of each of Principal Inputs	Assessees required to submit ER-5 return	10th of following month

1.26 DEMANDS AND PENALTIES

1.26.1 Demands of Excise Duty

- If duty is short paid or not paid or erroneously refunded, show cause notice can be issued u/s 11A(1) of CEA within one year from 'relevant date'.
- In case of allegation of suppression of facts, willful misstatement, fraud or collusion, the show cause notice can be issued within five years.
- Show cause notice is to be issued by authority who is empowered to adjudicate the case.
- Adjudicating authority is required to follow principles of natural justice. He has to pass orders with reasons
- In case of delay in payment of duty, interest @ 13% is payable u/s 11AB(1) of CEA.
- Property of person to whom show cause notice has been issued can be attached provisionally during adjudication, to protect interest of revenue.

1.26.2 Adjudication powers The adjudication powers are as follows -

Authotity	Issuof SCNduty And Demand of duty	Remission of duty for loss of goods	Other Power
Commissioner	Without limit	Without limit	
Additional Commissioner	Between ₹ 20 lakhs to 50 lakhs	₹ 5,00,000	Cases relating matters under *proviso* to section 35B(1) i.e. export under bond or under claim of rebate, loss of goods during transit to warehouse - without upper monetary limit
Joint Commissioner	Between ₹ 5 lakhs to 50 lakhs	₹ 5,00,000	Cases relating matters under *proviso* to section 35B(1) i.e. export under bond or under claim of rebate, loss of goods during transit t0 warehouse-wit without upper monetary limit
Deputy/Assistant Commissioner	Upto ₹ 5 lakhs	₹ 1,00,000	(1) Issue registration certificate (2) Refund claim without limit
Superintendent	No powers	Upto ₹ 10,000	

Note : 1. Demand of duty or differential duty may be relating to * determination of valuation and / or classification or * Cenvat credit cases or * duty short paid or not paid or erroneously refunded for any reason. Such demand may or may not contain for allegation of fraud, suppression of facts etc. (in other words, whether or not there is allegation of fraud/suppression of facts etc., the monetary limit of adjudication remains same.

2. As per CBE&C circular No. 809/6/2005-CX dated 1-3-2005, in case of refund claim,AC/DC can pass order without any monetary limit. However, claims of ₹ 5 lakhs and above will be subject to pre-audit at level of jurisdictional Commissioner

3. It has been clarified that value of goods/conveyance, plants, machinery, land, building etc. liable to confiscation will not alter the powers of adjudication as the powers solely depend upon the amount of duty/Cenvat credit involved on the offending goods.

Who can issue show cause notice - Show cause notice should be approved and signed by officer empowered to adjudicate the case.

1.27 APPEALS

Excise and Customs Law empower excise/customs officers to pass adjudication orders demanding duty and interest and imposing penalty and confiscation of goods.

Excise and Customs Act have made elaborate provisions for appeals against adjudication orders passed by excise/customs authorities. There is only one appeal in case of orders of Commissioner, while in case of other orders (i.e. orders of Superintendent, Assistant Commissioner, Dy. Commissioner, Jt. Commissioner, and Additional Commissioner), first appeal is with Commissioner (Appeals) and other with Tribunal. In some matters, revision application lies with Government against order of Commissioner and Commissioner (Appeals). Tribunal is final fact finding authority and no further appeal lies against facts as found by Tribunal (CESTAT). In case of order of Tribunal relating to classification or valuation, appeal lies with Supreme Court. In other matters, appeal can be made to High Court only if substan-tial question of law is involved.

Pre-deposit for filing appeal - Section 35F of Central Excise Act (similar section 129E of Customs Act) provides that person desirous of appealing against the order shall, *pending the appeal* , deposit the duty demanded or penalty levied. In case of customs, pre-deposit of duty, interest and penalty is required. However, the appellate authority [Commissioner (Appeals) or Appellate Tribunal] is empowered to dispense with such deposit if it is of the opinion that the deposit of duty or penalty will cause undue hardship to the person. Such waiver may be subject to such conditions as may be imposed to safeguard interests of revenue.

Meaning of 'duty demanded' - As per *explanation* to section 35F of CEA (inserted w.e.f. 11-5-2007), 'duty demanded' shall include following – (i) amount determined u/s 11D (ii) amountof erroneous Cenvat credit taken (iii) amount payable under earlier Central Excise Rule 57cc (iv) amount payable under rule 6 of Cenvat Credit Rules (v) Interest payable under provisions of Central Excise Act and Rules.

1.28 IMPORTANT PROVISIONS OF CENTRAL EXCISE ACT, 1944

Section No.	Brief Contents
2(d)	'Excisable Goods' means goods specified in the Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includessalt. *Explanation* - 'goods' includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable
2(e)	'Factory' means any premises, including the precincts thereof, wherein or in any part of which, excisable goods other than salt are manufactured; or wherein or in any part of which any manufacturing process connected with production of these goods is being carried on or is *ordinarily* carried on.
2(f)	*"Manufacture"* includes any process - (*i*) incidental or ancillary to the completion of manufactured product; (*ii*) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture; *or (iii)* which, in relation to goods specified in Third Schedule to the CEA,involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to consumer; — and the word 'manufacturer' shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. *[Clauses (ii) and (iii) are called deemed manufacture]*. The definition of 'manufacture' is inclusive and not exhaustive.
2 (h)	'Sale' and 'purchase' with their grammatical variations and cognate expressions, means any transfer of possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuation consideration.
3 (1) (a)	This section is the 'charging section' of 'basic excise duty' and Reads as follows - There shall be levied and collected in such manner as may be prescribed duties on all excisable goods (*excluding goods produced or manufactured in special economic zones*) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985.
3 (2)	Central Government can fix tariff values for puose of levying excise duty. Once tariff value is fixed, valuation section 4 will not apply, as made clear in section 4(2).
3A	On goods to be notified by Central Government, duty will be payable onthe basis of annual capacity of production. The production capacity will be determined by Assistant/Deputy Commissioner on the basis of rules.The provision will not apply to goods manufactured by EOU.
4(1) Explanation to section 4(1)	Where under this Act,the duty of exciseis chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—(*a*) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value; (*b*) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed. Price actually paid to assessee (less sales tax and other taxes) will be price-cum-duty and shall be deemed to include the duty payable on such goods.

Section No.	Brief Contents
4 (3) (b)	Persons shall be deemed to be 'related' if – (i) They are inter-connected undertakings (ii) They are relatives (iii) Amongst them, buyer is a relative and a distributor of assessee, or a sub-distributor of such distributor or (iv)They are so associated that they have interest, directly or indirectly, in the business of each other. *Explanation* (i) inter-connected undertakings shall have meaning assigned to it in section 2(g) of Monopolies and Restrictive Trade Practices Act, 1969 (MRTP) (ii) 'relative' shall have meaning assigned to it in section 2(41) of the Companies Act.
4(3)(c)	'Place of removal' means - (i) a factory or any other place or premises of production or manufacture of the excisable goods from where such goods are removed (ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty from where such goods are removed (iii) A depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from factory; from where such goods are removed.
4(3)(cc)	"Time of removal", in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory.
4(3)(d)	'Transaction value' means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.
4A	Section 4A of CEA empowers Central Government to specify goods on which duty will be payable based on 'retail sale price'. The provisions for valuation on MRP basis are as follows - (a) The goods should be covered under provisions of Standards of Weights and Measures Act or Rules [section 4A(1)]. (b) Central Government has to issue a notification in Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Government can permit reasonable abatement (deductions) from the 'retail sale price' [section 4A(2)]. (c) While allowing such abatement, Central Government shall take into account excise duty, sales tax and other taxes payable on the goods [section 4A(3)]. (d) The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc. If under certain law, MRP is required to be without taxes and duties, that price can be the 'retail sale price' [Explanation 1 section 4A]. (e) If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered [Explanation 2(a) to section 4A]. If different MRP are printed on different packages for different areas, each such price will be 'retail sale price' for purpose of valuation [Explanation 2(c) to section 4A]. (f) Removing excisable goods without MRP or wrong MRP or tampering, altering or removing MRP declared on a package is an offence and goods are liable to confiscation [section 4A(4)] If price is altered, such increased price will be the 'retail sale price' for purpose of valuation [Explanation 2(b) to section 4A].

Section No.	Brief Contents
5	Government can provide for remission of duty of excise payable on excisable goods, which due to any natural cause, are found to be deficient in quantity, by making rules in that behalf (Rule 21 provides for remission of duty)
5A(1)	Central Government can exempt any excisable goods, (*a*) generally (*b*) either absolutely or subject to such conditions (to be fulfilled before or after removal), (*c*) from whole or any part of excise duty leviable. Such exemption should be in public interest and it should be by way of a notification published in Official Gazette.
Proviso to section 5A(1)	The exemption notification issued u/s 5A is not applicable in respect of DTA clearances by EOU unit, unless specifically provided in the notification.
5A(1A)	Absolute i.e. unconditional exemption is compulsory.
5A(2)	Central Government can grant exemption, in public interest, in exceptional circumstances by a special order (This is *ad hoc* exemption and can be granted even retrospectively)
5A(2A)	Central Government, for the purpose of clarifying the scope or applicability of exemption notification or exemption order, may insert an explanation to the exemption notification or order within one year of such notification or order. Such Explanation to an exemption Notification will have retrospective effect from date of exemption notification.
5A(3)	Partial exemption under section 5A(1) or 5A(2) can be granted by providing exemption from duty at a rate expressed in form or method different from which statutory duty is leviable. However, the duty prescribed by an exemption notification can never exceed the *Statutory Duty*.
6	Registration is required to be obtained by any prescribed person who is engaged in (*a*) every manufacturer or producer of excisable goods i.e. goods specified in First or Second Schedule to Central Excise Tariff Act and (*b*) wholesale purchase or sale (whether on his own account or as broker or commission agent) or storage of any specified goods included in First or Second Schedule to Central Excise Tariff Act – Rule 9 makes provisions in respect of registration.
9(1)	Following are offences punishable with imprisonment and fine - (i) Contravening provisions of restrictions of possession of goods in excess of prescribed quantity as prescribed under section 8. (a) Evading payment of duty payable under CEA. (b) Removing excisable goods or concerning himself with such removal, in contravention of provisions of Central Excise Act and Rules. (c) Acquiring or in any way concerning himself with transporting, depositing, concealing, selling, purchasing or otherwise dealing with excisable goods where he knows or has reason to believe that the goods are liable to confiscation under Central Excise Act or Rules. (d) Contravening any provision of Central Excise Act or rules in relation to Cenvat credit. (e) Failure to supply information or knowingly supplying false information. (f) Attempting to commit or abetting commission of an offence regarding evasion of duty or transit of goods or restriction on storage of goods or non-registration of a unit. Punishment imposable is imprisonment upto seven years and fine (without limit) if (a) the duty leviable on the excisable goods exceeds one lakh of rupees [section 9(1) or (b) a person already convicted for offence under Central Excise Act is convicted again [section 9(2)]

Section No.	Brief Contents
9C	Mens rea (culpable mental state) shall be presumed by Court. Accused can prove that he had no culpable mental state.
11	Excise authorities can recover excise duty by any of the following means – • Adjusting against money payable to the person (e.g. if refund is due to him) • By attachment and sale of excisable goods belonging to the assessee. • As Arrears of Land Revenue, by issuing certificate to District Collector of Revenue, who is empowered to recover the amount as arrears of land revenue.
Proviso to section 11	If a person transfers his business or trade or disposes of his business to a third person, any duty or any other sum due from predecessor can be recovered from successor in trade or business, by attaching all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles which was transferred to the successor.
11A(1)	Central Excise Officer can, within one year from relevant date, serve show cause notice on person chargeable to duty, if – (a) duty of excise has not been levied or paid or (b) short levied or paid or (c) erroneously refunded. The show cause notice should ask the person why he should not pay the amount specified in the notice.
Proviso to section 11A (1)].	In case of fraud, collusion, wilful mis-statement and suppression of facts, or contravention of any provision of Central Excise Act or rules with intent to evade payment of duty, demand for duty can be raised within 5 years
11A(1A)	Where notice has been served on assessee under proviso to section 11A (1) of Central Excise Act (CEA), for short payment or non-payment of duty on account of fraud, collusion or wilful misstatement or suppression, the person to whom notice is service can pay full duty or in part as accepted to him within 30 days. In addition, he should pay interest payable under section 11AB of Central Excise Act and penalty equal to 25% of excise duty specified in the notice or 25% of duty as acceptable to him. In such cases, other persons to whom notices have been sent shall be deemed to be concluded, as per proviso to section 11A (2) of Central Excise Act.
11A(2)	After considering representation of the person on whom notice is served, the central excise officer will determine the duty payable and then the person shall pay the duty so determined
11A(2B)	If assessee pays duty due on his own, the officer shall not issue any show cause notice. However, if the officer is of the opinion that there is short payment in respect of the amount, he can issue notice for payment of balance amount. In such case, the time limit for issue of show cause notice will be counted from the receipt of information of payment. Further, the provision does not apply if the short payment or non- payment or erroneous refund was due to collusion, wilful mis-statement or suppression of facts.
11A(3)(ii)	The prescribed period for service of show cause notice cum demand is one year or 5 years from "relevant date". The relevant date will be one of the following : • If Return is to be filed as per provision of law, the actual date of filing of return [section 11A(3)(ii)(a)(A)]. • If the return was required to be filed but was not filed, then the date on which return should have been filed [section 11A(3)(ii)(a)(B)]. • If no return is required to be filed under the relevant provisions of Excise law, then date of payment of duty [section 11A(3)(ii)(a)(C)]. • In case of provisional assessment, date of adjustment of duty after final adjustment [section 11A(3)(ii)(b)]. • In case of demand on account of erroneous refund, dare of such refund [section 11A(3)(ii)(c)].

Section No.	Brief Contents
11AB(1)	If duty is not paid when it ought to have been paid, interest is payable at the rates specified by Central Government by notification in Official Gazette (present rate is 13% w.e.f. 12-9-2003). The interest is payable from the first day of the month following the month in which the duty ought to have been paid, till the date of payment.
11AC	A mandatory penalty equal to the duty short paid or not paid or erroneously refunded is payable if such non-payment or short payment or erroneous refund was due to fraud, collusion, wilful mis-statement or suppression of facts etc. If duty and interest along with penalty is paid within 30 days, penalty will be 25% [There is dispute whether the penalty is mandatory or can be reduced in deserving cases].
11B(1)	Person claiming refund of excise duty and interest, if any, paid on such duty, to make application within one year of 'relevant date' to AC/DC. The limitation of one year shall not apply if duty was paid under protest.
11B(2)	Doctrine of unjust enrichment – Refund, after sanction, to be credited to Consumer Welfare Fund.
Proviso to section 11B(2)	Refund will be paid to assessee only in following cases – • Rebate of excisable goods exported out of India (if he had exported on section 11B(2) payment of duty) • Rebate of excise on excisable materials used in manufacture of goods exported out of India (if he has not availed Cenvat credit) • Refund of duty paid on inputs (if payable according to any rule or notification) • To Manufacturer, if he has not passed on incidence of the duty to another person • To Buyer, if he has borne the duty and if he has not passed on incidence of the duty to another person • To any other class of applicant if borne by any such class of applicants, as may be notified by Government of India, if the incidence of duty has not been passed on to any other person (not specified so far)
11B(3) Explanation B to section 11B	Section 11B(2) to have overriding effect over any judgment or rule Relevant date for purpose calculation of period of one year for filing refund claim is as under : (a) In case of exports (i) when the ships or aircraft leaves India (ii) if the goods are exported by land, the date on which the goods leave Indian frontier (iii) if export is by post, date of despatch of goods by post office to a place outside India. (b) If Compound levy scheme is applicable, if assessee pays the full duty and if rate is subsequently reduced by Government, then date on which notification regarding reduction of rate is published. (c) In case of refund claim filed by purchaser, date of purchase of the goods (d) If duty is exempted by a special order under section 5A(2), the date of issue of such order (e) If duty was paid on provisional basis, the date of adjustment of duty after final assessment of duty. (f) Where duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, CESTAT or any Court, date of such judgment, decree, order or direction (This clause inserted by Finance Act, 2007 w.e.f. 11-5-2007) (g) In other cases, date of payment of duty
11BB	Interest on delayed refund if not paid within three months from date of receipt of application u/s 11B(1), at rate notified (Presently, 6% w.e.f. 12-9-2003). As per explanation, order for refund by Commissioner (Appeals), Tribunal or Court, refund is also deemed to be an order passed u/s 11B(2).

Section No.	Brief Contents
11C	***Exemption if duty not paid as per past general practice*** - If (a) there was a generally prevalent practice of levy or non-levy of any excisable goods and (b) such goods were actually liable for duty at higher rates; Central Government may, by notification in Official Gazette, direct that such excess duty payable, need not be paid.
11D(1)	Duty collected from buyer must be paid - Every person, who is liable to pay duty under Central Excise Act and Rules and has collected from buyer any amount in excess of the duty assessed or determined and paid on any excisable goods under CE Act or rules, representing as duty of excise; must pay the amount immediately (forthwith) to the credit of Central Government
11D(1A)	Every person who has collected from buyer any amount in excess of the duty assessed or determined and paid on any excisable goods under CE Act or rules, representing as duty of excise; must pay the amount immediately (forthwith) to the credit of Central Government.
11DD	Interest on amount payable under section 11D
11DDA	Provisional attachment of property of a person to whom show cause notice has been serviced under sections 11A or 11D of Central Excise Act, if the Central Excise Officer (or customs officer as the case may be) is of the opinion that it is necessary to do so, to protect interests of revenue.
12	Central Government can apply provisions of Customs Act regarding levy, exemption, drawback, warehousing, offences, penalties, confiscation and procedure relating to offences and appeal to Central Excise, making suitable modifications and alterations to adapt them to circumstances.
12A	Every person liable to pay duty of excise, shall prominently indicate in all documents relating to assessment, sales invoice and other like documents, the amount of duty, which forms part of the price at which such goods are sold. (This is also required under rule 11(2) of Central Excise Rules).
12B	Every person who had paid duty shall be deemed to have passed on the burden to buyer of the goods.
12C	Constitution of Consumer Welfare Fund. Section 12D provides that the fund should be utilised for welfare of consumers.
12E(1)	Central Excise Officer can exercise powers and discharge duties conferred on CE officer subordinate to him.
13	Powers of arrest with prior approval of Commissioner
14(1)	Powers to issue summons to a person to attend and give evidence or produce document.
14A and 14AA	Special audit by Cost Accountant of Value u/s 14AA and of Cenvat credit u/s 14AA
18	Search and arrest under the Act to be made in accordance with Code of Criminal Procedure.
22	Vexatious search and seizure by Central Excise Officer
23A to 23H	Advance ruling
31 and 32 to 32PA	Settlement of Cases
33	Powers of adjudication of confiscation and penalty – Unlimited to Commissioner and limited to lower officers as per limits prescribed by CBE&C
34	Option to pay fine in lieu of confiscation

Section No.	Brief Contents
34A	Even if goods re confiscated or penalty is imposed, other punishment can be imposed.
35(1)	Appeal to Commissioner (Appeals) within 60 days from order of officer lower in rank than Commissioner.
35(1A)	Commissioner (Appeals) can adjourn the hearing but not more than three adjournments can be given.
35A(3)	Commissioner (Appeals) can pass order confirming, modifying or annulling the decision or order appealed against.
35B(1)	Appeal to Tribunal (CESTAT) against order of Commissioner or Commissioner (Appeals).
35B(2)	Committee of Commissioners can direct any Central Excise Officer to file appeal against order passed by Commissioner (Appeals). If there is difference of opinion between two Commissioners, the matter will be referred to jurisdictional Chief Commissioner who will decide whether to file appeal
35B(3)	Appeal to be filed within three months from date of communication of order to Commissioner or other party, as the case may be. As per section 35B(5), Tribunal can condone delay in filing appeal if sufficient cause is shown.
35B(4)	Other party can file cross-objection within 45 days from receipt of copy of appeal filed by other party.
35B(6)	Appeal to be filed in prescribed form with prescribed fees.
35C(1A)	Tribunal can give maximum three adjournments.
35C(2)	Tribunal can correct a mistake apparent from record, within six months from date of order, if mistake brought to notice by Commissioner or other party.
35D(3)	Single member bench can determine issue if duty involved or amount of fine/penalty involved is less than ₹ 10 lakhs. However, issue relating to rate of duty or value cannot be determined by a single member bench.
35E(1)	Committee of two Chief Commissioners can direct any Commissioner to apply to Tribunal for the determination of points arising out of order of Commissioner of Central Excise (This will be treated as departmental appeal). If there is difference of opinion between two Chief Commissioners, the matter will be referred to CBE&C (Board) who will decide whether to file appeal As per section 35E(3), order directing to file appeal shall be made within three months from date of communication of order. After that, as per section 35E(4), authorised officer should file appeal with Tribunal within one month.
35E(2)	Commissioner can direct any excise officer subordinate to him to apply to Commissioner (Appeals) for the determination of points arising out of order of an adjudicating authority subordinate to him (This will be treated as departmental appeal). As per section 35E(3), order directing to file appeal shall be made within three months from date of communication of order. After that, as per section 35E(4), authorised officer should file appeal with Commissioner (Appeals) within one month.
35EE(1)	In case of following order of Commissioner or Commissioner (Appeals), appeal does not lie with Tribunal, but revision application can be made to Central Government - (a) loss of goods occurring in transit from factory to warehouse or to another factory (b) rebate of duty on goods exported outside India or excisable goods used in manufacture of goods which are exported and (c) goods exported without payment of duty.

Section No.	Brief Contents
35EE(2)	Revision application should be filed within three months from date of communication of order. Delay upto three months can be condoned by Central Government.
35F	Duty, penalty, interest, erroneous Cenvat credit or 'amount' to be deposited pending appeal. Pre-deposit can be dispensed with if it may cause undue hardship to assessee.
35FF	If the amount deposited u/s 35F becomes refundable pursuance to order passed by Commissioner (Appeals) or Tribunal, the amount should be refunded within three months from date of communication of the order to adjudicating authority. If not so refunded, interest is payable at the rate specified in section 11BB of the Act
35G(1)	Appeal to High Court on substantial question of law. Appeal to High Court can be made if the order of CESTAT does not relate, among other things, to the determination of any question having a relation to rate of duty or to value of goods. Appeal to be filed within 180 days. Appeal against judgment of High Court lies with SC u/s 35L(a)(i).
35L(b)	Appeal to Supreme Court, if the order of CESTAT relates, among other things, to the determination of any question having a relation to rate of duty or to value of goods.
35Q	Appearance of authorised representative before Central Excise Officer or Tribunal.
36A	Documents produced by a person or seized from him shall be presumed to be true. Document will be admissible as evidence even if not duly stamped.
36B	Microfilms, fax copies and computer print puts will be admissible as evidence.
37B	Board empowered to issue orders, instructions and directions to Central Excise Officers for purposes of uniformity in the classification of excisable goods or with respect to levy of excise duties on such goods. However, such order cannot require central excise officer to make assessment in a particular way or interfere with discretion of Commissioner (Appeals).
37C	Any decision or order passed or any summons or notice under the Act shall be served (a) by tendering the same or by sending it with registered post with acknowledgement due to the person for whom it is intended or his authorised agent (b) If it cannot be served as aforesaid, then by affixing a copy at a conspicuous space in factory or warehouse. (c) If this is also not possible, then affixing a copy on the notice board of the office or authority which issued the notice, order, summons or decision.
37D Third Schedule	Duty, interest, penalty or fine to be rounded off to nearest rupee List of goods where packing, repacking, labelling etc. will amount to manufacture u/s 2(f)(iii) [These are same goods which are covered under MRP provisions under section 4A].

1.29 IMPORTANT PROVISIONS OF CENTRAL EXCISE RULES, 2002

Section No.	Brief Contents
2(b)	'Assessment' includes self-assessment of duty made by the assessee and provisional assessment made under rule 7.
2(c)	'Assessee' means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored, and includes an authorized agent of such person.
2(ea)	A taxpayer who is registered under Central Excise or Service tax provisions and is an assessee under Income Tax Act and has PAN number, and who fulfils prescribed conditions is 'Large Tax payer'.
5	Duty will be payable at rate and valuation as applicable at the time of actual removal from factory or warehouse, except in case of khandsari molasses [rule 5(1)]. Rate of duty applicable in case of khandsari molasses shall be the rate in force on date of receipt of such molasses in the factory of the procurer of such molasses [Rule 5(2)].
6	Assessee shall himself assess the duty payable on excisable goods, except that that in case of cigarettes, the Superintendent or Inspector of Central Excise shall assess the duty payable before removal of goods.
7	Provisional assessment can be requested by the assessee. Department cannot itself order provisional assessment. Final assessment will be made later by Assistant / Deputy Commissioner after getting the required details.
8	Duty is payable by 5th of following month (6th in case of e-payment). SSI units availing SSI exemption have to pay duty by 15th of following month (16th in case of e-payment). For the month of March, duty is payable by 31st March, both by large units as well as SSI
8(2)	Duty is deemed to have been paid for purpose of availment of Cenvat credit by the buyer
8(3)	If duty is not paid fully on due date, assessee is liable to pay the outstanding amount along with interest on unpaid amount at the rate specified under section 11AB. If part of duty is paid, the provision of interest will apply to that part of duty which is not paid [present rate of interest is 13%]
8(3A)	If duty and interest is not paid within 30 days after due date, assessee will forfeit the facility to pay duty in monthly instalments. He will have to pay duty through PLA before clearance of goods. He cannot utilise Cenvat credit for payment of duty during that period. This forfeiture of facility is automatic and mandatory. If despite such restrictions, assessee clears goods without payment of duty and consequences and penalties as applicable for removal of goods without payment of duty will follow.
9(1)	Every person who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods shall get registered.
9(2)	Board is authorised to issue notifications (a) specifying conditions and procedures for registration and (b) granting exemption to person or class of persons from provisions of registration.
10(1)	Daily Stock Account of manufactured goods - A daily stock of goods manufactured or produced has to be maintained by every assessee.
10(2) and 10(3)	The first page and last page of such account book shall be duly authenticated by the producer or manufacturer or his authorised agent [rule 10(2)]. All such records shall be preserved for 5 years [rule 10(3)].

Section No.	Brief Contents
11(1)	Goods should be removed from a factory or warehouse only under an invoice signed by owner or his authorised agent. In case of cigarettes, invoice shall be counter-signed by Inspector.
11(2)	Invoice shall contain Registration Number, Address of jurisdictional Central Excise Division (added w.e.f. 1-4-2007), Name of consignee, Description and classification of goods, Time and date of removal, Mode of transport and vehicle registration number, Rate of duty, Quantity and Value of goods and Duty payable on the goods.
11(3)	Invoice should be in triplicate and should be marked as follows (i) Original shall be marked 'ORIGINAL FOR BUYER' (ii) Duplicate copy shall be marked 'DUPLICATE FOR TRANSPORTER' (iii) Triplicate shall be marked 'TRIPLICATE FOR ASSESSEE'.
11(4)	Only one copy of invoice book at a time, unless otherwise allowed by AC/DC.
11(5)	Each foil of the Invoice shall be pre-authenticated by the assessee - by owner, working partner, Managing Director or Secretary or any person duly authorised for this purpose, before being brought into use.
11(6)	Before making use of the invoice book, serial numbers shall be intimated to Range Superintendent.
11(7)	Provisions of rule 11 (which is applicable to manufacturers) shall apply mutatis mutandis to goods supplied by a first stage dealer or a second stage dealer.
Proviso to rule 11(7)	If a first stage or second stage dealer receives goods under an invoice which mentions that Cenvat credit of the special CVD paid u/s 3(5) of Customs Tariff Act is not admissible, he should make similar endorsement in his invoice to buyer.
12(1)	A monthly return is to be submitted by every assessee to Superintendent of Central Excise, of production and removal of goods, and Cenvat credit availed, by 10th of the following month in form ER-1. SSI unit availing concession on basis of annual turnover have to file return on quarterly basis within 20 days from close of quarter in form ER-3.
12(2)	Assessees paying duty of Rupees One crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4.
12(3)	The Range Officer will scrutinise the monthly/quarterly return. He can call for documents from the assessee as he considers necessary.
12(4)	It will be responsibility of assessee to provide necessary records as and when required by excise officer.
12AA	Procedure for job work in articles of jewellery.
12BB	Procedures by LTU [Large Taxpayer Unit]
15	Central Government can notify scheme for payment of duty under 'Compounded Levy Scheme'.
16	Duty paid goods can be brought in factory for being re-made, refined, reconditioned or for any other reason under rule 16(1). After processing/repairs, if the process amounts to 'manufacture', excise duty based on assessable value is payable. If process does not amount to manufacture, an 'amount' equal to Cenvat credit availed should be paid. [rule 16(2)]. If the above procedure cannot be followed, permission of Commissioner is required [rule 16(3)].
16C	A manufacturer can, with specific permission of Commissioner, remove excisable goods manufactured in his factory for carrying out tests or any other process not amounting to manufacture, to some other premises, without payment of duty. The provision does not apply to prototype which are sent out for trial or development test. Conditions as specified in permission of Commissioner of CE will have to be followed [The rule is useful in cases where Cenvat provisions do not apply].

Section No.	Brief Contents
17	EOU to clear goods under invoice and duty is payable at the time of removal (not on monthly basis).
18	Duties can be paid on final product and subsequently rebate (refund) is claimed after exportation of such goods. Alternatively, rebate can be granted of duty paid on inputs used in the exported final product and final product is exported without payment of excise duty.
19	Excisable goods can be removed for export without payment of duty [Rule 19(1)]. Inputs to be used for manufacture of final product to be exported can be obtained without payment of excise duty [Rule 19(2)].
20	Facility of warehousing for removal of excisable goods from factory of production to a warehouse or from one warehouse to another warehouse without payment of duty. CBE&C can prescribe conditions, limitations and safeguards.
21	Remission of duty can be granted in following cases – Remission of duty can be granted in following cases – (a) Goods have been lost or destroyed by natural causes (b) Goods have been lost or destroyed by unavoidable accident (c) Goods are claimed by manufacturer as unfit for consumption or for marketing.
22(2)	Every assessee and first stage dealer and second stage dealer should submit a list in duplicate, of specified records prepared or maintained by him.
23	Power to stop and search conveyance
24	Power to detain or seize goods
25	Following are offences for which goods can be confiscated and penalty upto duty on contravening excisable goods or Rs 2,000, whichever is higher, can be imposed. (i) Removing excisable goods in contravention of Excise Rules or notifications issued under the rules [rule 25(1)(a)]. (ii) Not accounting for excisable goods manufactured, produced or stored [rule 25(1)(b)]. (iii) Engaging in manufacture, production or storage of excisable goods without applying for registration certificate u/s 6 of CE Act [rule 25(1)(c)]. (iv) Contravening any provision of Central Excise Rules or notifications issued under these rules with intent to evade payment of duty [rule 25(1)(d)].
26(1)	Personal penalty for knowingly dealing in goods liable to confiscation - Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or rules, shall be liable to a penalty upto the duty payable on such goods or Rs 2,000 whichever is greater.
26(2)	Penalty for issuing false invoice or document for availing ineligible Cenvat credit, upto amount of benefit or Rs 5,000 whichever is higher.
27	Residual penalty - for breach of any excise rule, if no penalty has been prescribed, the penalty would be Rs. 5,000 plus confiscation of goods in respect of which offence has been committed.

1.30 IMPORTANT RULES OF CENTRAL EXCISE VALUATION RULES, 2000

Section No.	Brief Contents
2(b)	"Normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold.
	If goods are not sold at the time of removal, then value will be based on the value of such goods sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments.
5	Some times, goods may be sold at place other than the place of removal e.g. in case of FOR delivery contract. In such cases, actual cost of transportation from place of removal upto place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis.
6	If price is not the sole consideration for sale, the 'Assessable Value' will be the price charged by assessee, plus money value of the additional consideration received. The buyer may supply any of the following directly or indirectly, free or at reduced cost. (a) Materials, components, parts and similar items (b) Tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used (c) Material consumed, including packaging materials (d) Engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of the goods In such cases, value of such additional consideration will be added to the price charged by assessee to arrive at the 'transaction value'. [explanation 1 to Rule 6].
Explanation 2 to Rule 6	Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods.
7	When goods are sold through depot, there is no 'sale' at the time of removal from factory. In such cases, price prevailing at depot (but at the time of removal from factory) shall be the basis of Assessable Value. The value should be 'normal transaction value' of such goods sold from the depot at the time of removal or at the nearest time of removal from factory.
8	In case of captive consumption, valuation shall be done on basis of cost of production plus 10% (Cost of production is required to be calculated as per CAS-4)
9	If entire production is sold to 'related person' other than inter- connected undertakings, the assessable value will be 'normal transaction value' at which the related person sells the goods to unrelated buyers.
Proviso to rule 9	If assessee sales goods to 'related person', but related person uses them in captive consumption (and not sell them), valuation will be done on basis of cost of production plus 10%, as per rule 8.

Rule No.	Brief contents
10	If entire production is sold to 'related person' who are inter- connected undertakings, the assessable value will be as follows – (a) If they are 'related person' as defined in other clauses or is a holding or subsidiary company of assessee, 'normal transaction value' at which the related person sells the goods to unrelated buyers (b) In other cases, the value will be as if they are not 'related person'
10A	In case of job worker manufacturing goods on behalf of Principal Manufacturer, value will be the value at which the Principal Manufacturer sales goods to unrelated buyer. 'Job worker' means a person engaged in manufacture or production of goods on behalf of a principal manufacturer, from any inputs or capital goods supplied by the said principal manufacturer or by any other person authorised by him.
11	Residuary method - If value cannot be determined under any of the foregoing rules, value shall be determined using reasonable means consistent with the principles and general provisions of section 4 and Valuation Rules.

1.31 RULES OF CLASSIFICATION

General Rules for Interpretation of Schedule to Central Excise Tariff and Customs Tariff are given in First Schedule to the Tariff. The rules are same for excise and customs. The highlights of rules are given below.

Rule	Brief contents
1	Classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or Notes do not otherwise require, according to other provisions of the rules
First part of rule 2(a)	Any reference to complete goods also includes incomplete or un-finished goods, if such incomplete or un-finished goods have the essential characteristic of finished goods.
Second part of rule 2(a)	Heading will also include finished goods removed un-assembled or disassembled i.e. in SKD or CKD packs.
2(b)	Any reference in heading to material or substance will also include the reference to mixture or combination of that material or substance with other materials or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in rule 3.
3	When by application of sub-rule (b) of rule 2 or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as given in rule 3(a), 3(b) or 3(c).
3(a)	The heading which provides most specific description shall be preferred to heading providing a general description.
3(b)	If Mixture and Composite goods consisting of different materials or different components cannot be classified based on above rule i.e. rule 3(a), it should be classified as if they consisted of the material or component which gives it their *essential character.*

Rule	Brief contents
3(c)	If two or more headings seem equally possible and the dispute cannot be resolved by any of the aforesaid rules, if both the headings appear equally specific, the heading which occurs last in numerical order is to be preferred (*i.e. latter the better*).
4	If the classification is not possible by any of the aforesaid rules 1, 2 and 3, then it should be classified under the heading appropriate to goods to which they are most akin. [This is only a last resort and a desperate remedy to resolve the classification issue]
5	cases for camera, musical instruments, drawing instruments, necklaces etc. specially shaped for that article, suitable for long term use will be classified along with that article, if such articles are normally sold along with such cases. Further, packing materials and containers are also to be classified with the goods *except when the packing is for repetitive use* (This provision is obviously made to ensure that the packing and the goods are charged at same rate of duty).
6	Classification of goods in sub-headings shall be determined in terms of those sub-headings. Only sub-headings at the same level are comparable

1.32 PRACTICAL PROBLEMS

Problem 1.

M/s XYZ. are in the business of supplying "Turbo-alternators" to various customers. They manufacture steam turbines in the factory, which are removed to the customer's site on payment of Central Excise Duty. They purchase duty paid alternators from the market which are delivered at the customer's site. M/s XYZ assemble both the items and fix them permanently on a platform at the site. Department demands central excise duty payable on "@ Turbo-alternator" when it comes into existence after being assembled on the platform embedded to the earth. Is the view taken by the department correct. Discuss with the help of case laws, if any.

Answer :

In the present case two issues are involved

(1) Whether assembly of steam turbines and duty paid alternators amounts to manufacture of turbo alternators, and

(2) Whether such assembly results in manufacture of excisable goods.

The facts of the case are similar to the case of *Triveni Engineering and Industries Ltd. v C. CEX, 2000* (120) El,T 273(SC)

In the present case, the Appellants were, according to specified designs, combining steam turbine and alternator by fixing them on a platform and aligning them. As a result of this activity of the Appellants, an new product, turbo alternator, came into existence, which has a distinctive name and use different from its components. Therefore, the process involved in fixing steam turbine and alternator and in coupling and aligning them in a specified manner to form a turbo alternator, a new commodity, is nothing but a manufacturing process.

Though the process of assembling results into a new commodity and therefore is a process amounting to manufacture, yet the turbo alternator set (known in the market as such) comes into existence only when a steam turbine and alternator with all their accessories are fixed at the site. Further, in order to be brought in the market the turbo would not remain turbo alternator. Thus, its is obvious that without fixing to the ground the turbo alternator does not come into being. The installation or erection of turbo alternator on the platform specially constructed on the land cannot be treated as a common base, therefore, such alternator would be immovable property. Accordingly, such activity could not be considered as 'excisable goods'.

Problem 2.

Snow White Ltd. Manufactures paper and in the course of such manufacture, "wastepaper" is produced (paper being the main product and dutiable goods). The Central Excise Tariff Act, 1985 (CE7) was amended w.e.f. 1-3-1995, so as to include waste paper. White Ltd. was issued a show cause notice by the Central Excise Officer,

demanding duty of ₹ 2 lakhs on waste paper produced during October, 1994 to February, 1995, but cleared during April-May, 1995. A reply is due to be filed immediately to the notice. As Counsel of Snow White Ltd. you we required to advise the company about –

(i) The legality and validity of the proposed levy and collection of duty on waste paper for the period prior to 1-3-1995; and

(ii) State (with the help of decided cases) the reasons for your advice/opinion.

Answer :

The issue involve in the given case is determination of taxable event for the purpose of levy of excise duty.

As per section 3 of the Central Excise Act, 1944, the taxable event for levy of Central Excise is "manufacture of excisable goods". The date for determination for rate of duty and tariff valuation is the date of actual removal of the goods from the factory or warehouse.

However, there must be a levy of duty of excise at the time of manufacture and only then, the duty can be collected at the time of removal as has already been held in *Vazir Sultan Tobacco Industry's* case 1996 (83) ELT 3(SC).

Therefore, the waste paper produced prior to the levy will not be chargeable to duty of excise even though it has been cleared after such levy and the proposed show cause notice demanding ₹ 2 lakhs of excise duty on such waste paper is invalid and illegal and liable to be quashed.

Problem 3.

Kagaz Karkhana Ltd., manufactures paper In the year 1995, it embarked on a major expansion programme, and for the purpose, fabricated at site, 75% of the portion of papermaking machine and procured (paying excise duty) the remaining parts of the papermaking machine from other suppliers. Having done so, it assembled all the parts together into a paper-making machine at site. The erection and installation was completed during November, 1995. and the machine was firmly fastened to the earth, with the help of bolts, nuts and grouting material on a concrete bed, to prevent rattling and ensure wobble-free operation and presently the machine is functional and operating. During July, 1998, the Central Excise authorities served the company a show cause demanding excise duty of ₹ 5 crores, on the paper-making machine, alleging that the activity resulted in manufacture of excisable goods, failing under chapter 84 of CET. The company engages you as 'counsel' to represent them and desires to contest the case on the grounds :

(i) That the activity of erection and installation was not manufacture,

(ii) That the activity resulted in "immovable property" emanating at site and

(iii) That the demand is time-barred

You are required to discuss the tenability or otherwise of the contentions of the notice client and advise them drawing support form the judicial decision.

Answer :

There are three issues involved in the present case :

(i) Whether the activity of erection and installation was not manufacture,

(ii) Whether the activity resulted in "immovable property" emanating at site and

(iii) Whether the demand is time-barred

In respect of the first issue, it is to be noted that the excise duty is levied on the excisable goods manufactured in India, and hence it will not be attracted where goods are not produced from the manufacturing process.

A commodity is said to be manufactured if by application of the process its identity is changed and it is known in the market as a separate and distinct commodity having separate name, character and use.

The assembly of parts results in paper-making machine which has distinct identity, name and character and use and hence such assembly amounts to manufacture.

The second issue is whether erection and installation of such machine on a concrete bas results in a immovable property. The Supreme Court, in *Sirpur Paper Mills v C.C.Ex., Hyderabad* 1998(97) ELT 3 (SC), has held that

papermaking machine if assembled and erected at site and embedded in concrete base to ensure wobble free operation will not become an immovable property. The machine can be dismantled from its base and sold in parts. Hence, the assessee's first two contentions are untenable and incorrect as the activity has resulted in the manufacture of goods and there is no immovable property brought into existence and assembly operations are liable to duty of excise.

The third issue is whether the demand notice is time barred. Under section 11A of the Central Excise Act, 1944, the extended period of limitation can be invoked only when there is a fraud, collusion, willful misstatement, suppression of facts or contravention of the provisions of the Act with an intent to evade the payment of duty of excise. If the manufacturing activity of paper-making machine was known to the department then the department cannot invoke the extended period of limitation. Hence, the contention of the assessee is an arguable pint and the same is legally tenable.

Problem 4.

Regarding the applicability of excise duty, Computers are covered under Heading no 84.71 of the First schedule to the Central Excise Tariff Act, 1985 which describes computers as automatic data processing machines. XYZ Ltd. has undertaken upgradation of its computers both in terms of storage capacity and processing speed by increasing the hard disc capacity, RAM, changing of processor chip from 386 to 486 and in certain cases from Pentium III to Pentium IV. The Department's contention is that new goods with a different name character and use have come into existence and the upgraded products are chargeable to excise duty. Discuss in the light of provision of section 2*(f)* of the Central Excise Act, 1944 relating to "manufacture" whether this stand of the Department is justified.

Answer :

The computers covered under heading No. 84.71 of the Schedule to the Central Excise Tariff Act, 1985 are described as automatic data processing machines. An automatic data processing machine will be known by this name, irrespective of its capacity of storage and processing, which may be enhanced by increasing the hard disk capacity. RAM or by changing the mother board or the processor chip. However, it cannot be said that new goods with a different name, character and use have come into existence, which can be subjected to duty again.

Accordingly, upgrading of old and used computer systems would not amount to manufacture, in so far as the upgradation does not bring into existence goods with a distinct new name, character and use.

Problem 5.

Full exemption is granted by exercising Central Excise Notification which explains all products of printing industry including newspapers and printed periodicals." A manufacturer, who is manufacturing cardboard cartons and subsequently doing varied printing on them, claims benefit of the said exemption notification on the ground that every material on which printing is done becomes a product of the printing industry. Is the claim of the manufacturer justified? Give reasons for your view.

Answer :

The cited Central Excise exemption notification grants full exemption to – "all products of printing industry including newspapers and printed periodicals". The products in respect of which exemption is claimed are cardboard, cartons although subsequently varied printing is done on them. These products relate to the packaging industry. The mere fact that printing is done on these products will not render these products as the products of the printing industry.

Accordingly, the products of the packaging industry shall not be entitled to the exemption granted to "all products of printing industry including newspapers and printed periodicals".The case in support is *Rollatainiers Ltd. v UOI* (1994) 72 ELT 793(SC).

Problem 6.

How would you arrive at the assessable value for the purpose of levy of excise duty from the following particulars-cum-duty selling price exclusive of sales-tax ₹ 10,000 – Rate of excise duty applicable to the product : 10.30% (including education cess) — Trade discount allowed – ₹ 1,200 – Freight ₹ 750.

Answer :

In computation of assessable value for the purpose of Levy of excise duty, trade discount and freight are allowed as deductions.

Thus, —

Net price = Selling Price – (Trade Discount + Freight)

= ₹ 10,000 – (1,200 + 750)

= ₹ 8,050

Since the price is inclusive of excise duty @ 10.30%,

Therefore, —

$$\text{Assessable Value} = \frac{\text{Selling Price} \times 100}{100 + \text{Excise Duty}}$$

$$= \frac{8050 \times 100}{100 + 10.30}$$

$$= 7{,}298.28$$

Excise Duty will be ₹ 8,050 – 7,298.28 = ₹ 751.72

Check : 10.30% of ₹ 7,298.28 is ₹ 751.72.

Problem 7.

X Ltd. is engaged in the manufacture of 'paracetamol' tablets that has an MRP of ₹ 9 per strip. The company cleared 1,00,000 tablets and distributed as physician's samples. The goods are not covered by MRP, but the MRP includes 10.30% Excise Duty and 2% CST. If the cost of production of the tablet is 40 paise per tablet, determine the total duty payable.

Answer :

If the product is not covered under MRP provisions, valuation provisions under section 4A do not apply. In that case, valuation is required to be done as per Central Excise Valuation Rules.

As per the CBEC's circular, any physicians samples or other samples distributed free of cost are to be valued under Rule 11 read with Rule 8 of Central Excise Valuation Rules, 2000.

As per Rule 8, such samples are to be valued at 110% of cost of production or manufacture. The given cost of production is 40 Ps, Assessable Value will be 44 Ps. Therefore, duty payable @ 10% on 46 paise = 10.30% × 0.46 = 0.047 paise per tablet.

Problem 8.

M/s. A.U.L. avail of CENVAT credit of the duty paid on the inputs namely, steel sheets. The scrap generated during the manufacture of their final product was cleared by them without payment of duty. Subsequently the Department raised a demand of Excise duty on waste and scrap. M/s. A.U.L. accepted the duty liability, but contended that the price at which waste and scrap had been sold should be considered to be cum-duty price and assessable value should be determined after deducting the element of excise duty. The contention of the Department is that as no central Excise duty was paid by them while clearing the scrap, no deduction on account of excise duty is available to M/s. A.U.L.

Answer :

The facts of the given ease are similar to those decided by the Supreme Court in *C.C.Ex. v Maruti Udyog Ltd.* (2002) 141 ELT 3 (SC) in the said case, the department raised duty demand on waste and scrap and the price realized by the assessee was taken as the assessable value. The assessee contended that the price of such waste and scrap was includive of excise duty. The Supreme Court decided the issue in favour of the assessee. Accordingly, in the given case, as the Department has raised duty demand on waste and scrap, the price collected by M/s. A.U.L. will be considered as the cum-duty price and it shall be deemed that the element of

excise duty is already included in such price. The manufacturer will therefore be entitled for deduction on account of such price. Thus the assessable value will be worker out as under –

$$\text{Assessable value} = \frac{\text{Cum - duty price} - \text{Permissible deduction} \times 100}{100 + \text{rate of duty}}$$

Problem 9.

State whether the following elements are to be included or not as part of the 'Transaction value' under section 4 of the Central Excise Act, 1944.

(i) Erection and commissioning charges

(ii) System software etched in the computer system

(iii) Cylinder holding charges

(iv) After-sales warranty charges –

Answer :

(i) Any payment made by buyer to assessee is includible in assessable value only if it is in 'connection' with sale. In case of erection and commissioning charges for erecting machinery at site, these are incurred after goods are removed from the factory. These may be in 'relation' to sales but are not in 'connection' with sales as there is no 'cause and effect' relationship between the two. Hence these are not includable in assessable value. This is also confirmed *vide* CBE&C Circular No. 643/34/2002-CX, dated 1-7-2002.

(ii) A computer manufacturer loads bought out computer software on computer while selling. Thus, the system software is loaded on computer while computer is cleared from the factory. Computer software as such is exempt from duty. Department had earlier clarified that value of computer software etched or loaded on computer will be includible. However, if computer software is supplied separately on floppy disc or tapes, its value will not be includible. [However, as per CBE&C circular dated 28-2-2003, value of computer software will not be includible in assessable value of computer].

(iii) In case of durable and returnable containers, the container is returnable after the gas or other material inside is used. Often, manufacturing companies take some deposit and charge some rent for the container. These are 'cylinder holding charges'. CBE&C, *vide* its Circular No. 643/34/2002-CX, dated 1-7-2002, has clarified that rental charges or cost of maintenance of reusable metal containers like cylinders etc. are to be included in assessable value. This view is correct as such rental charges and the sale of gas are so intrinsically connected that there can be no sale without such charges.

(iv) Compulsory after sales warranty charges are includible as the sale goods and such charges are inseparable. However, optional service charges are not includable as there is no connection between the sale of goods and the optional service charges.

Problem 10.

A Ltd., a manufacturer to tyres was extending a warranty discount on any tyres that, were defective. The scheme of warranty discount operated thus: the customers lodged their claim with-regard to any defects in the tyres. Such claims were then scrutinized by a Technical Committee of A Ltd., which would decide the amount of refund due to the customer on the basis of the reduction in the normal life of tyre attributable to the defect. This refund was to be given by the Technical Committee. This practice was being followed by A Ltd. for the last 15 years. A Ltd. claimed the 'warranty discount' as a Trade discount which is deductible in computing the assessable value of the tyres. Is this correct? Discuss in the light of the provisions under Section 4 of the Central Excise Act, 1944.

Answer :

According to section 4 of the Central Excise Act, 1944, regarding discounts, transaction value does not make a direct reference. Now actually the excise duty is paid/payable on the net price of the goods after deduction of discounts. If in any transaction discount is allowed in accordance with normal practice of trade and it is passed on to the buyer, tile inclusion of such discount is not justified. However, the said amount to be allowed as deduction must be in the nature of discount.

From the facts of the above case, the manufacturer was extending warranty discount on any tyres that were defective. Though this was known as discounts, but it was only a compensation for defects in tyres, which was given to the customers. Hence, it will not be allowed as deduction from the transaction value as was held in *GOI v MRF* (1995) 77 ELT 433(SC).

Problem 11.

How would you arrive at the assessable value for the purpose of levy of excise duty from the following particulars :

- Cum-duty selling price exclusive of sales tax ₹ 20,000
- Rate of excise duty applicable to the product 10.30%
- Trade discount allowed ₹ 2,400
- Freight ₹ 1,500

Answer :

Trade discount of ₹ 2,400 and freight of ₹ 1,500 are allowed as deductions.

Hence, net price will be ₹ 16,100 [₹ 20,000 – 2,400 – 1,500].

Since the price is inclusive of excise duty of 10.30%, Excise Duty will be ₹ (16,100 × 10.30)/110.30 *i.e.* ₹ 1,503.45 and Assessable Value will be ₹ 14,596.55 [16,100 – 1,503.45]

Problem 12.

M/s U.T.A. manufacture welding electrodes which are put first in Polythene bags and then packed together ill cardboard cartons. They sell electrodes at the factory gate packed in cardboard cartons whereas such electrodes are also packed in wooden boxes when sold to their customers located at outstations. Is the department justified to include the cost of wooden boxes in the assessable value of the welding electrodes? Discuss with the help of case laws, if any.

Answer :

The new Section 4 of the Central Excise Act, 1944, does not make any specific reference to packing charges. In normal commercial transactions the price of goods charged includes the cost of packing charges. The charges that are recovered on account of packing are obviously the charges in relation to sale of goods under assessment and will form the part of transaction value. Whatever be the nature of packing that is whether the packing is primary or secondary or special or packing for the purpose of transportation, the cost of such packing shall be includible.

In light of the new Section 4, the earlier case laws hold no significance now.

Problem 13.

X Ltd. manufactures three health drinks viz. Slim, Trim, Prim, Slim was sold only to Y Ltd., a subsidiary company of X Ltd. Trim was sold to Z Ltd., where the Managing Director of X Ltd. is a Manager. Prim is sold to P Ltd. who are sole distributor of X Ltd., and was coming under the same management of X Ltd. Determine the assessable value/transaction value of the three products in the hands of X Ltd. on the basis of the following information :

Price of X Ltd. to Y Ltd. ₹ 100
Price of X Ltd. to Z Ltd. ₹ 50
Price of X Ltd. to P Ltd. ₹ 20
Price of Y Ltd. to customer ₹ 120
Price of Z Ltd. to customer ₹ 60
Price of P Ltd. to customer ₹ 30

Answer :

As per Central Excise Valuation Rules, if goods are sold exclusively through a related person', the price at which goods are sold to unrelated person by the related person will be the transaction value for purposes of Central Excise. Product 'Slim' was sold exclusively to 'Y' where MD of the manufacturer is Manager. Hence, they are 'inter connected undertakings'. However, as per Rule 10 of Valuation Rules, inter connected undertakings are considered as 'related person' only if there is 'holding subsidiary' relationship. Since there is no such relationship, transaction value will be ₹ 50 only, *i.e.* price at which X sales to Z.

Product 'Prim' was sold to P. Since X and P are under same management, they are 'inter connected undertakings'. However, as per Rule 10 of Valuation Rules, inter connected undertakings are considered as 'related person'

only if there is 'holding subsidiary' relationship. Since there is no such relationship, transaction value will be ₹ 20 only, i.e. price at which X sales to P.

Problem 14.

M/s R.M.T. Industries manufactures cigarettes which are sold in wholesale, exfactory, at cum-duty price to wholesale dealers. The price charged to all the dealers from the cigarettes is the same. However, the dealers who purchase on credit are required to deposit interest free security with M/s R.M.T. The department has demanded duty from M/s R.M.T. contending that they had earned notional interest in the security deposit received from the dealers which should be included in the assessable value of the cigarettes being the additional consideration. Duty on cigarettes is being charged on advalorem basis. Discuss the stand taken by the department with decided case laws, if any.

Answer :

The facts of this case are similar to the case of *VST Industries Ltd. v C.C.Ex.* (1998) 97 ELT 395 (SC).

In the instant case the interest free deposit scheme was introduced by the assessee because of commercial consideration of covering the risk of credit sales, no special consideration flowing form the assessee to the buyer keeping tile deposit, the Supreme Court held that the notional interest cannot be included in the assessable value.

Problem 15.

Z Ltd. is a small-scale industrial unit manufacturing a product X. The Annual report for the year 2008-09 of the unit shows a gross sale turnover of ₹ 1,91,40,000. The product attracted an excise duty rate of 10% as BED and Sales Tax 10%. Determine the duty liability under Notification Nos. 8/2001 and 9/2001 meant for SSI units.

Answer :

(A) Duty payable under Notification No. 9/2001-CE (Now 9/2002-CE)

Under excise Notification No. 9/2001-CE, an SSI unit is required to pay 60% of normal duty (*i.e.* 6% duty) on first ₹ 100 lakhs and 10% on the balance. The assessee can avail Cenvat credit on all the inputs. Since the example gives gross sale turnover, it is first necessary to find net sales turnover.

In respect of first net turnover of ₹ 100 lakhs (₹ 1,00,00,000), excise duty will be ₹ 6,00,000. Sales tax @ 10% is payable on net turnover *plus* excise duty *i.e.* on ₹ 1,06,00,000, sales tax @ 10% will be 10,60,000.

Therefore, balance gross sale turnover will be ₹ 74,80,000 [₹ 1,91,400,00 – 1,16,60,000]. This includes excise duty at 10% and sales tax @ 10%.

Sales tax is payable on cum duty price. If Net turnover for excise purposes is 'Z', the gross sale turnover will be as follows :

Net Turnover	= Z
Duty @ 10%	= 0.10 × Z
Sub-Total	= 1.10 × Z
Add : Sales Tax @ 10%	= 0.11 × Z
Total price (*i.e.* inclusive of duty and sales tax)	= 1.21 × Z

Now :

1.21 × Z = ₹ 74,80,000.00

Hence, Z = ₹ 61,81,818.18

This can be checked as follows:

Net turnover = ₹ 61,81,818.18

Excise duty @ 10% = ₹ 6,18,181.82

Sub-Total = ₹ 68,00,000.00

Add: Sales Tax @ 10% = ₹ 6,80,000.00

Gross Selling Price = ₹ 74,80,000.00

Therefore, —

Excise duty paid on first net turnover of ₹ 1,00,00,000	= ₹ 6,00,000
Excise duty on subsequent Turnover of ₹ 6,18,181.18	= ₹ 6,18,181.82
Total excise duty paid	= ₹ 12,18,181.82
This can be checked as follows :	
Total Net turnover	= ₹ 1,61,81,818.18
Total Excise Duty	= ₹ 12,18,181.82
Sales tax @ 10% on Net turnover plus Excise duty (*i.e.* on ₹ 1,74,00,000) [1,61,81,818.18 + 12,18,181.82]	= ₹ 17,40,000
Therefore, Gross sales turnover	= ₹ 1,91,40,000

(B) Duty payable under Notification No. 8/2001-CE (Now 8/2002-CE)

Under excise Notification No. 8/2001-CE, an SSI unit is exempt from duty on first ₹ 100 lakhs and duty payable on balance amount is 10%. The assessee can avail Cenvat credit on inputs after it crosses turnover of ₹ 100 lakhs. Since the example gives gross sale turnover, it is first necessary to find net sales turnover.

In respect of first net turnover of ₹ 100 lakhs (₹ 1,00,00,000), excise duty will be Nil. Sales tax @ 10% will be payable on net turnover on ₹ 1,10,00,000. Sales tax @ 10% will be 10,00,000.

Accordingly, gross sale turnover in respect of first net turnover of 100 lakhs (where excise duty is not paid) will be ₹ 1,10,00,000.

Therefore, balance gross sale turnover will be ₹ 81,40,000 [₹ 1,91,40,000 – 1,10,00,000]. This includes excise duty at 10% and sales tax @ 10%.

Sales tax is payable on cum duty price. If Net turnover for excise purposes is 'Z', the gross sale turnover will be as follows :

Net Turnover	= Z
Duty @ 10%	= 0.10 × Z
Sub-Total	= 1.10 × Z
Add: Sales Tax @10%	= 0.11 × Z
Total price (*i.e.* inclusive of duty and sales tax)	= 1.21 × Z

Now :

1.21 × Z = ₹ 81,40,000.00

Hence, Z = ₹ 67,27,272.73

This can be checked as follows:

Net turnover = ₹ 67,27,272.73

Excise duty @ 10% = ₹ 6,72,727.27

Sub-Total = ₹ 74,00,000.00

Add: Sales Tax @ 10% = ₹ 7,40,000.00

Gross Selling Price = ₹ 81,40,000.00

Hence,—

Excise duty paid on first net turnover of ₹ 1,00,00,000	= Nil
Excise duty on subsequent of ₹ 67,27,272.73	= ₹ 6,72,727.27
Total excise duty paid	= ₹ 6,72,727.27
This can be checked as follows:	
Total Net turnover	= ₹ 1,67,27,272.73
Total Excise Duty	= ₹ 6,72,727.27
Sales tax @ 10% on Net turnover *plus* Excise duty *i.e.* on ₹ 1,74,00,000 (1,67,27,272.73 + 6,72,727.27)	= ₹ 17,40,000.
Hence, Gross sales turnover [1,74,00,000 + 17,40,000].	= ₹ 1,91,40,000

Problem 16.

B Ltd. manufactures two products namely, Eye Ointment and Skin Ointment. Skin Ointment is a specified product under section 4A of Central Excise Act, 1944. The sales prices of both the products are at ₹ 43/unit and ₹ 33/unit respectively. The sales price of both products included 10% excise duty as BED and 8% excise duty as SED. It also includes CST of 2%. Additional information is as follows –

Units cleared: Eye Ointment: 1,00,000 units

Skin Ointment: 1,50,000 units

Deduction permissible under section 4A: 40%

Calculate the total excise duty liability of B Ltd., on both the products.—

Answer :

Duty on eye ointment and skin ointment is required to be calculated separately.

Duty on Eye ointment :

Let us assume that Assessable Value of Eye Ointment is Z.

Assessable Value	=	Z
Duty @ 18.54% [Basic 10% + Special 8% + Education Cess 3%]	=	0.1854 × Z
Sub-Total	=	1.1854 × Z
Add: Central Sales Tax @ 2%	=	0.0237 × Z
Total price (*i.e.,* inclusive of duty and sales tax)	=	1.2091 × Z

Now:

1.2091 × Z = ₹ 43.00

Hence, Z = ₹ 35.56

This may be checked as follows:

Assessable Value per unit	=	₹	35.56
Excise duty @ 18.54%	=	₹	6.59
Sub-Total	=	₹	42.15
Add: Sales Tax @ 2%	=	₹	0.843
Total price	=	₹	43.00

Excise duty payable per unit of eye ointment is ₹ 6.59

Total quantity cleared is 1,00,000.

Hence, total excise duty on eye ointment will be ₹ 6,59,000.

Duty on skin ointment

Since the product is covered under section 4A, Assessable Value is required to be calculated after deducting abatement @ 40%.

The MRP is ₹ 33 and abatement is 40%.

Therefore, Assessable Value (after allowing deduction @40%) will be ₹ 19.80

Excise duty payable per unit @ 18.54% will be ₹ 3.67.

Total quantity cleared is 1,50,000 units.

Accordingly, total duty payable on skin ointment (basic plus special) will be ₹ 5,50,638

Problem 17.

Determine the value on which Excise duty is payable in the following instances. Quote the relevant section/ rules of Central Excise Law.

(a) A. Ltd. sold goods to B Ltd., at a value of ₹ 100 per unit, In turn, B Ltd. sold the same to C Ltd. at a value of ₹ 110 per unit. A Ltd. and B Ltd. are related, whereas B Ltd. and C Ltd. are unrelated.

(b) A Ltd. and B. Ltd. are inter-connected undertakings, under section 2(g) of MRTP Act. A Ltd. sells goods to B Ltd. at a value of ₹ 100 per unit and to C Ltd. at ₹ 110 per unit, who is an independent buyer.

(c) A Ltd. sells goods to B Ltd. at a value of ₹ 100 per unit. The said goods are captively consumed by B Ltd. in its factory. A Ltd. and B Ltd. are unrelated. The cost of production of the goods to A Ltd. is ₹ 120 per unit.

(d) A Ltd. sells motor spirit to B Ltd. at a value of ₹ 31 per litre. But motor spirit has administered price of ₹ 30 per litre, fixed by the Central Government.

(e) A Ltd. sells to B Ltd. at a value of ₹ 100 per unit. B Ltd. sells the goods in retail market at a value of ₹ 120 per unit. The sale price of ₹ 100 per unit is wholesale price of A Ltd. Also, A Ltd. and b Ltd. are related.

(f) Depot price of a company are –

Place of removal	Price at depot on 1-1-2012	Price at depot on 31-1-2012	Actual sale price at depot on 1-2-2012
Amritsar Depot	₹ 100 per unit	₹ 105 per unit	₹ 115 per unit
Bhopal Depot	₹ 120 per unit	₹ 115 per unit	₹ 125 per unit
Cuttack Depot	₹ 130 per unit	₹ 125 per unit	₹ 135 per unit

Additional information : (i) Quantity cleared to Amritsar Depot – 100 units (ii) Quantity cleared to Bhopal Depot – 200 units (iii) Quantity cleared to Cuttack Depot – 200 units (iv) The goods were cleared to respective depots on 1-1-2009 and actually sold at the depots on 1-2-2009.

Answer 17 :

(a) Transaction value ₹ 110 per unit (Rule 9 of Transaction value Rules). [Sale to unrelated party].

(b) Transaction value ₹ 100 per unit for sale to B and ₹ 110 for sale to C – Rule 10 read with Rule 4 [Note that inter connected undertaking will be treated as 'related persons' for purpose of excise valuation only if they are 'holding and subsidiary' or are 'related person' as per any other part of the definition of 'related person'. Note that A is selling directly to C as per the question, and not through B Ltd].

(c) Transaction value will be ₹ 100. – section 4(1)—Incase of sale to unrelated person, question of cost of production does not arise.

(d) Transaction value ₹ 31. – section 4. – Since the goods are actually sold at this price, administered price is not considered.

(e) Transaction value ₹ 120 per unit – Rule 9 read with section 4 of Central Excise Act. Sale to an unrelated buyer. [Under new rules, there is no concept of 'wholesale price and retail price']

(f) Under Rule 7, the price prevailing at the Depot on the date of clearance from the factory will be the relevant value to pay Excise duty.

Therefore –

(i) Clearance to Amritsar depot will attract duty based on the price as on 1-1-2012. Transaction value ₹ 110 × 100 units = ₹ 11,000

(ii) Clearance to Bhopal depot. Depot price on 1-1-2012. Transaction value ₹ 120 × 200 units = 24,000

(iii) Clearance to Cuttack Depot. Depot price on 1-1-2012. Transaction value ₹ 130 × 200 units = ₹ 26,000. Note The relevant date is 1-1-2012, since the goods were cleared to the depots on that date. No additional duty is payable even if goods are later sold from depot at higher price.

Problem 18.

Determine the transaction value and the Excise duty payable from the following information : (i) Total Invoice Price ₹ 18,000; (ii) The Invoice Price includes the following :

(a)	Sales-tax	₹ 1000
(b)	Surcharge on ST	₹ 100
(c)	Octroi	₹ 100
(d)	Insurance from Factory to depot	₹ 100
(e)	Freight from factory to depot	₹ 700
(f)	Rate of Basic Excise duty	10% ad valorem
(g)	Rate of Special excise duty	24% ad valorem

Answer :

Let us assume that the Invoice Price of ₹ 18,000 is depot price. Thus, deduction of insurance and transport charges from factory to depot will not be available.

The deductions available will be :

- Sales Tax ₹ 1,000.
- Surcharge on Sales Tax ₹ 100 and
- Octroi ₹ 100

Thus, net price excluding taxes on final product (but inclusive of excise duty) will be ₹ 16,800.

The rate of excise duty is 35.02% [10% basic plus 24% special plus 3% Education Cess].

Hence, duty payable is as follows –

$$\frac{16,800 \times 35.02}{135.02} = 4,357$$

Assessable Value = 16,800 – 4,357 = ₹ 12,443

Check : Excise duty payable (basic plus special) is 35.02% of ₹12,443 i.e. ₹4,357.

Problem 19.

Having regard to the provisions of section 4 of the Central Excise Act, 1944, compute/derive the assessable value of excisable goods, for levy of duty of excise, given the following information :

	₹
Cum-duty wholesale price including sales tax of ₹ 2,500	15,000
Normal secondary packing cost	1,000
Cost of special secondary packing	1,500
Cost of durable and returnable packing	1,500
Freight	1,250
Insurance on freight	200
Trade discount (normal practice)	1,500
Rate of C.E. duty as per C.E. Tariff	10% Advalorem

State in the footnote to your answer, reasons for the admissibility or otherwise of the Deductions.

Answer :

The assessable value from cum-duty price can be worked out by the under-mentioned formula.

$$\text{Assessable value} = \frac{(\text{Cum - duty price - Permissible deductions}) \times 100}{100 + \text{rate of duty}}$$

Computation of Assessable value

		₹	₹
	Cum-duty price		15,000
Less :	Deductions (See Notes)		
	Sales tax	2,500	
	Durable & returnable-packing	1,500	
	Freight	1,250	
	Insurance	200	
	Trade-Discount	1,500	6,950
			8,050
	Less: Central Excise Duty thereon @ 10.30% Advalorem		
	8,050 × 10.30/110.30		751.72
	Assessable value		7,298.28

***Notes* :**

1. The transaction value does not include Excise duty, Sales tax and other taxes.
2. The Excise duty is to be charged on the net price, hence trade discount is allowed as deduction.
3. With regards to packing, all kinds of packing except durable and returnable packing is included in the assessable value. The durable and returnable packing is not included as the such packing is not sold and is durable in nature.
4. Freight and insurance on freight will be allowed as deduction only if the amount charged is actual and it is shown separately in the invoice as per Rule 5 of the Central Excise Valuation Rules, 2000.

Problem 20.

Explain whether the following items can be included in/excluded from the transaction value under section 4 of the Central Excise Act, 1944.

(1) Collection expenses incurred in respect of empty bottles for filling aerated waters from the premises of buyers to the manufacturers.
(2) Delivery and collection charges of gas cylinders and collection of empty cylinders.
(3) Interest notional or real accruing on deposits for sale/return of gas cylinders as well as rentals.
(4) Cash discount known at the time of clearance of goods but not availed by the customer.
(5) Value of system software in case of computers.

Answer :

(1) Transaction value includes any amount charged in addition to the price of the goods by reason of or in connection with the sale. Since collection expenses are incurred by reason of or in connection with the sale, it would be included in the transaction value.
(2) CBEC has vide Circular No. 643/34/2002, dated 1-7-2002 clarified that delivery and collection charges of gas cylinders are by reason of or in connection with the sale of goods and therefore, the same would be included in the transaction value.
(3) The interest on advances taken from the customers would not be included in the assessable value, unless the receipt of such advance had no effect of depressing the wholesale price.

In *VST Industries Ltd. v C.C.Ex, Hyderabad* 1998 (97) ELT 395(SC), where interest free deposits were taken because of commercial consideration of covering the risk of credit sales, no special consideration flowing from the assessee to the buyer keeping the deposit was found and the Supreme Court held that notional interest cannot be included in the assessable value.

(4) However, in such case, the burden of proof lies on the Department to prove a nuxus between the fact of advance taken and the depression in the value.
(5) The transaction value is the price actually paid or payable for the goods. In the given situation, as the case of cash discount has not been passed on to tile customer, it will not be allowed as deduction.

As per tile CBEC & Circular No. 644/35/2002-CX, dated 12-7-2002 the Software can be of the following types –

Systems software/Operating software – which is designed to control the operation of the computer system.

Application software – Which is developed for specific applications only.

Valuation of goods is done in the form in which it is cleared. Therefore, computer *systems* will be valued by including the value of the software loaded on the hard disc. No distinction is to be made between an 'operating software' and an 'application software'.

Problem 21.

Thunder TV Ltd is engaged in the manufacture of colour television sets having its factories at Bangalore and Pune. At Bangalore the company manufactures picture tube; which are stock transferred to Pune factory where it is consumed to produce television sets. Determine the Excise duty liability of the captively consumed picture tubes from the following information :

Direct material cost (per unit)	₹ 600
Indirect material	₹ 50
Direct Labour	₹ 100
Indirect Labour	₹ 50
Direct Expenses	₹ 100
Indirect Expenses	₹ 50
Administrative overheads	₹ 50
Selling and Distribution overheads	₹ 100

Additional Information :

1. Profit margin as per the Annual Report for the company for 2008-2009 was 15% before income tax.
2. Material cost includes Excise duty paid ₹ 100.
3. Excise duty rate applicable is 10.30%.

Answer :

As per Rule 8 of The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the valuation of captively consumed goods is 110% of the cost of production. The cost of production of goods would include cost of material, labour cost and overheads including administration cost and depreciation etc.

The cost of material would be net of excise duty if CENVAT credit is availed in respect of such inputs.

Accordingly, the assessable value will be determined as follows :

Raw materials Cost (net of excise duty)	₹	500
Indirect material	₹	50
Direct Labour	₹	100
Indirect Labour	₹	50
Direct Expenses	₹	100
Indirect Expenses	₹	50
Administrative overheads	₹	50
Total cost of production	₹	900
Assessable value	₹	990
(*i.e.* 110% of the cost of production)		
Excise duty @ 10%	₹	99
Education Cess @ 2%	₹	1.98
SHEC @ 1%	Re.	0.99

∴ Total Duty Liability = ₹ (99 + 1.98 + 0.99) = ₹ 101.97

The raw material cost has been taken at ₹ 500 after deducting the duty element assuming that the CENVAT credit has been availed.

Problem 22.

Mrs. E fails to pay Excise Duty of ₹ 60,000 on the goods cleared in February by 5th March of 2009. The assessee, Mrs. E, is owner of a SSI unit. What is the interest payable under Rule 8 of Central excise Rules, 2002 if the duty was actually paid on 10th May of 2009?

Answer :

The default period is 2 months and 5 days. It is for 64 days (26 days of March, 30 days of April and 10 days of May 2009). The interest payable is 2% for every month or ₹ 1,000 per day, whichever is more, subject to maximum of duty payable.

(A) Interest @ 2% per month on ₹ 60,000 will be ₹ 1,200. Since default is for 2 months and 5 days, *i.e.* 2.161 months [2 + 5/31], interest will be ₹ 2,593.20.

(B) Minimum interest @ ₹ 1000 per day of default will be ₹ 64,000.

Greater of (A) & (B) = ₹ 64,000

However this is subject to maximum of duty which is ₹ 60,000.

Hence interest payable will be ₹ 60,000.

Problem 23.

From the following data, determine the CENVAT allowable if the goods are produced or manufactured in a FTZ or by a 100% EOU and used in any other place in India.

Assessable value : ₹ 770 per unit,

Quantity cleared 77,770 units,

BCD— 10%,

CVD – 10%

Answer :

As per Rule 3 of CENVAT Credit Rules, 2002 the following formula is to be used if a unit in DTA purchases goods from EOU –

CENVAT = 50% of Assessable value × {[1 + BCD/100] × CVD/100}

Hence, CENVAT Available per unit is as follows –

CENVAT = 0.50 × 770 x {[1 + 10/100] × 10/100}

= 385 {1.10 × .10}

= 385 × 0.11 = ₹ 42.35 per unit

Hence, CENVAT allowable on 77,770 units = 77,770 × 42.35 = ₹ 32,93,559.50

Problem 24.

H Ltd. purchased a Boring-Drilling machine at a cum-duty price of ₹ 32,14,476. The Excise duty rate charged on the said machine was @ 10.30%. The machine was purchased on 1-4-2010 and disposed of on 30-9-2011 for a price of ₹ 12 lakhs. The company was claiming depreciation @ 25% following Straight Line Method.

Using the said information, answer the following questions :

(i) What is the Excise duty paid on the machine?

(ii) What is the Cenvat credit allowable under Cenvat Rules?

(iii) What is the amount of Cenvat credit reversible or duty payable at the time of clearance of the said machinery?

Answer :

Cum-duty price ₹ 32,14,476

Hence, Basic Price *i.e.* Assessable value = 32,14,476 × 100/110.30 = ₹ 29,14,303

Excise duty paid = ₹ 3,00,173, *i.e.* 10.30% of ₹ 29,14,303.

As per Cenvat Rules, 50% Cenvat credit can be availed in current financial year an balance 50% of Cenvat is allowable only in following financial year, if the capital Goods are in possession and use.

Since the Capital goods were in use for six months in the year 2011-12, Cenvat of balance 50% is allowable. Cenvat allowable in the year 2010-11 ₹ 1,50,086.50 and Cenvat allowable in the year 2010-11 ₹ 1,50,086.50

As per Cenvat Credit Rules (as applicable upto 28-2-2003), an 'amount' equal to duty payable at the rate and value as applicable on the date of removal is payable.

Hence, 'amount' payable at the time of disposal on 30-9-2011 is ₹ 12,00,000 × 10/100 *i.e.* ₹ 1,20,000.

It may be noted that w.e.f. 1-3-2003, the Cenvat Credit Rules had been amended, and an 'amount' equal to Cenvat credit availed on goods is payable. Hence, in this case, an amount of ₹ 3,00,173 would have been payable, if clearance was after 1-3-2003.

Problem 25.

Prepare a Cenvat account in the books of A Ltd., and determine the balance as on 30-9-2011 from the following data :-

Opening balance as on 1-4-2011 ₹ 47,000.

Inputs received on 04-04-2011 involving excise duty paid ₹ 14,747

Purchased a lathe for ₹ 1,16,000-cum duty price @ excise duty rate of 10% on 5-4-2011 and received the lathe into the factory on 5-12-2011.

On 6-4-2011 paid excise duty on final products @ 10% through Cenvat A/c (cum duty price of the goods ₹ 2,32,000).

Inputs cleared as such to a job worker on 1-4-2011 not returned in 180 days, quantity 1,000 Kgs; Asssessable value ₹ 2 lacs; ED @ 10% of the above, 50% of the inputs were received on 1-10-2011.

Common inputs were used in a product, which was exempted from payment of duty cleared at a price of ₹ 100/ unit, which included taxes of ₹ 20/unit ; quantity cleared 1,000 units.

On 7-4-2011 duty paid on inputs amounting to ₹ 17,867 was taken credit for in the Cenvat A/c as ₹ 17,687.

Answer :.

CENVAT Credit Receivable Account in the Books of A Ltd., as on 30-9-2011

Date	Particulars	Debit(₹)	Credit(₹)
1-4-2011	To Opening Balance	47,000	
4-4-2011	To Sundry Creditors	14,747	
6-4-2011	By Excise duty paid on Final product		21,091
7-4-2011	To Sundry Creditors	17,687	
30-9-2011	To Sundry Creditors (Credit short taken on 7-4-2011)	180	
30-9-2011	By Reversal of Cenvat Account (8% Amount on Exempted goods)		6,400
30-9-2011	By Reversal of Cenvat Account (Amount equal to duty on inputs not returned within 180 days)		20,000
	By Balance Carry Forward		32,123

Notes :

(i) Since capital goods (lathe) was received only on 5-12-2011, the credit is permissible only on 5-12-2011 and not before that date.

(ii) When 50% of inputs are received on 1-10-2011 (sent on job work), the credit is allowable for 50% only on 1-10-2011.

(iii) Where goods are exempted, an 'amount' is payable @ 8% on sale price less taxes.

(iv) For wrong amount of credit, rectification entry is passed.

(v) The 'amount' paid on 30-9-2011 is reversal of Cenvat credit. It is not 'excise duty'. Hence, a separate account 'Reversal of Cenvat Account' or "Payment of 'Amount' under Central Excise Rules" may be opened. At the year end, the balance may be transferred to expenses account. Strictly legally, it is not 'excise duty' paid.

Problem 26.

M/s Tips and Toes Ltd., manufactures four types of "Nail Polishes", namely Sweetly, Pretty, Beauty, Tweety. The company has availed CENVAT credit of ₹ 4,00,000 on the common inputs used in the manufacture of 'Nail Polishes'. During the financial year 2011-2012, the company manufactured 1000 litres of each type of 'Nail Polishes". The CENVAT availed input was used in equal proportion in all the four types of the products. Calculate the CENVAT credit amount not available or amount payable under CENVAT Rules 57AA read with 57AD of CENVAT Rules of Central Excise, using the following additional data :

Product	Nature of Sale	Sale price excluding Sales Tax & other local taxes
Sweety	Sale to Home Consumption	₹ 30 per 20 ml bottle
Pretty	Sold to a 100% EOU	₹ 40 per 20 ml bottle
Beauty	Fully exported	₹ 50 per 20 ml bottle
Tweety	Supplied to Defence Canteen under exemption	₹ 60 per 20 ml bottle

Answer :

Cenvat credit is available in respect of the products Sweety (Home Consumption), Pretty (sale to EOU) and Beauty (Goods exported). However, Cenvat credit is not available in respect of goods cleared for home consumption under exemption notification. Thus, Cenvat credit is not available in respect to 'Tweety' *i.e.* goods supplied to defence canteen under exemption.

Assessee has two options –

(a) Maintain separate records right from receipt stage in respect of inputs used in 'Tweety'.

(b) If this is not possible, pay an amount of 8% on the exempted goods.

In this case, since the inputs are common, it is assumed that assessee was not in a position to maintain separate records. The price of goods is ₹ 60 per 20 ml bottle *i.e.*₹ 300 per 100 ml, *i.e.* ₹ 3,000 per 1000 ml, *i.e.* ₹ 3,000 per litre. Thus, total value of goods is 1,000 liters x 3,000 *i.e.* ₹ 30,00,000.

Therefore, he is required to pay 8% of ₹ 30,00,000 *i.e.* ₹ 2,40,000.

Problem 27.

A manufacturer brings some inputs valued at ₹ 25,000 on which duty of ₹ 5,000 has been paid @ 20%. Subsequently, the manufacturer sold the input as such, which goods he sold for ₹ 30,000. What is the duty payable by the manufacturer if –

1. Rate of duty on the date of clearance on inputs was 25%.
2. Rate of duty on the date of clearance on input was 10%.

Answer :

CENVAT Credit Rules, 2002, provide that in case the inputs are removed as such then the removal of such goods will be under cover of Invoice and the manufacturer will have to pay duty as if the inputs are manufactured in his premises.

Hence, in –

Case 1 : The duty payable by the manufacturer will be 25% of ₹ 30,000 = ₹ 7,500

Case 2 : The duty payable by the manufacturer will be 10% of ₹ 30,000 = ₹ 3,000

However, the Finance Bill, 2003 has amended CENVAT credit Rules, 2002. As per the amended Rule 3(4), now if the inputs are removed as such, the manufacturer will have to pay excise duty equal to the credit availed in respect of such inputs.

Therefore, as per the amendment the duty payable in both the above cases will be ₹ 5,000.

Problem 28.

ABC and Co. are manufacturing the products specified below from excise duty paid high density polyethylene granules. Part of the goods are captively consumed and other part of the goods cleared for home consumption in India and for export to Bhutan and United Kingdom. The effective rate of duty, and the value of clearances during the preceding year 2010-11, and the current assessment period 2011-2012 are as follows –

1. Rate of duty —

   Product 'A' – 10%. Product 'B' – 10%. Product 'C' (Waste & Scrap) – Exempt from duty.

2. Value clearances in 2010-11 –

Product 'A' –

(a) Clearance for home consumption – ₹ 130 Lakhs.

(b) For captive consumption in the manufacture of excisable goods – ₹ 135 lakhs.

(c) Exports to Bhutan – ₹ 35 lakhs

(d) Exports to UK under bond – ₹ 100 lakhs

Product 'B' —

(a) Clearance for home consumption – ₹ 80 lakhs

(b) For captive consumption in the manufacture of excisable goods – Nil

(c) Exports to Bhutan – ₹ 50 lakhs.

(d) Exports to UK under bond – ₹ 200 lakhs.

Product 'C' –

(a) Clearance for home consumption – ₹ 40 lakhs

(b) For captive consumption in the manufacture of excisable goods – ₹ 20 lakhs.

(c) Exports to Bhutan – Nil

(d) Exports to UK – Nil

3. Value of clearances during current year *i.e.* 2011-12 —

Product 'A' –

(a) Clearance for home consumption – ₹ 50 lakhs.

(b) For captive consumption in the manufacture of excisable goods – ₹ 40 lakhs

(c) exports to Bhutan – Nil

(d) Exports to UK under bond – ₹ 50 lakhs.

Product 'B' –

(a) Clearance for home consumption – ₹ 80 lakhs

(b) For captive consumption in the manufacture of excisable goods – Nil

(c) Exports to Bhutan – ₹ 50 lakhs.

(d) Exports to UK under bond – ₹ 100 lakhs.

Product 'C' –

(a) Clearance for home consumption – ₹ 50 lakhs.

(b) For captive consumption in the manufacture of excisable goods – Nil

(c) Exports to Bhutan – ₹ 50 lakhs.

(d) Exports to UK under bond – ₹ 100 lakhs.

Advise the manufacturers as to whether they are entitled to small scale exemption and the amount of excise duty payable for their clearances during 2011-12, if the assessee intends to avail Cenvat credit.

Answer :

Turnover in 2010-11 for purpose of considering SSI exemption limit is as follows –

Product A – ₹ 165 lakhs [130 + 35]

Product B – ₹ 130 lakhs [80 + 50]

Product C – ₹ 20 lakhs.

If final product is exempt from duty, the goods used for captive consumption are liable to duty.

Therefore, total turnover during 2010-11 is ₹ 315 lakhs.

Since total turnover exceeds ₹ 300 lakhs, the assessee is not entitled to any exemption in 2011-12 and has to pay full normal duty @ 10%.

Whether assessee avails or does not avail Cenvat credit does not affect the turnover limit of ₹ 300 lakhs.

Problem 29.

The value of excisable goods viz. Iron and Steel articles manufactured by M/s. Alpha Ltd., was ₹ 120 lakhs during the financial year 2011-12. The goods attract 10% ad valorem duty. Determine the excise duty liability when the assessee opts for 'CENVAT' and 'opts for not to avail CENVAT' under SSI exemption notifications respectively.

Answer :

If the assessee does not avail Cenvat, duty will payable will be ₹ 3.2 lakhs. [Nil for first 100 lakhs and ₹ 2.00 lakhs for subsequent ₹ 20 lakhs]. If assessee avails Cenvat credit, duty payable will be ₹ 11.8 lakhs (₹ 6.00 lakhs on first ₹ 100 lakhs and ₹ 2.00 lakhs on balance ₹ 20 lakhs)

Problem 30.

M/s NML, a unit registered as a small scale unit, manufactures coloured television sets under the brand name "SONY" in India, which brand name is owned by a Foreign Company. M/s NML has the exclusive right to use the Brand name "SONY" in India.

Explain briefly with reference to Notifications governing Small Scale Industrial Undertakings under the Central Excise Act, 1944 and the Rules, whether the manufacturer in this case M/s NML is entitled to the benefit of the exemption as applicable to small scale industrial undertakings.

Answer :

The benefit of SSI exemption is not applicable incase an SSI unit is manufacturing under the brand name or trade name of another person whether registered or not.

In the present case, since NML is manufacturing the TV sets under the brand name of "Sony", it will not be entitled for the benefit of SSI exemption.

Case in support is *Namtech Systems Ltd. v C.C.Ex, (Tribunal).*

Problem 31.

M/S RPL has three units situated in Bangalore, Delhi and Pune. The total clearances from all these three Small Scale units of excisable goods was ₹ 350 lakhs during the financial year, 2010-2011. However, the value of individual clearances of excisable goods from each of the said units was Bangalore Unit ₹ 150 lakhs; Delhi Unit ₹ 100 lakhs; and Pune Unit ₹ 1000 lakhs.

Discuss briefly with reference to the Notifications governing small scale industrial undertakings under the Central Excise Act, 1944 whether the benefit of exemption would be available to M/s RPL for the financial year, 2011-2012.

Answer :

Any SSI unit whose turnover was less than ₹ 3 crore in the previous year is entitled for exemption irrespective of their investment in plant & machinery or number of employees.

Where the manufacturer has more than one factory, the turnover of all factories will have to be clubbed together for the purpose of calculating the SSI exemption limit of ₹ 300 lakhs.

Since in the above case, the total value of clearances during the preceding financial year 2010-2011 is 350 lakhs, hence it will not be entitled for the SSI benefit.

Problem 32.

An assessee has factory in Kolkata. As a sales policy, he has fixed uniform price of ₹ 2,000 per piece (excluding taxes) for sale anywhere in India. Freight is not shown separately in his invoice. During F.Y. 2011-12, he made following sales – (i) Sale at factory gate in Kolkata – 1,200 pieces – no transport charges (ii) Sale to buyers in Gujarat – 600 pieces –actual transport charges incurred – ₹ 28,000 (iii) Sale to buyers in Bihar – 400 pieces – actual transport charges incurred – ₹ 18,000 (iv) Sale to buyers in Kerala – 1,000 pieces – Actual transport charges – ₹ 54,800. Find assessable value.

Answer :

The total pieces sold are 3,200 (1,200 + 600 + 400 + 1000). The actual total transport charges incurred are ₹ 1,00,800 (Nil + 28,000 + 18,000 + 54,800). Thus, equalized (averaged) transport charges per piece are ₹ 31.50. Hence assessable value will be ₹ 1968.50 (₹ 2,000 – ₹ 31.50). This will apply to all 3,200 pieces sold by the manufacturer.

STUDY NOTE - 2

CENVAT CREDIT

This Study Note includes

- Background of Cenvat Credit
- Highlights of Cenvat Credit Scheme
- Reversal of Cenvat if Final Product or Output Service Subsequently Exempt
- Cenvat Credit is Indefeasible
- Overview of Cenvat Credit Rules, 2004
- Significant Issues Relating to Cenvat Credit
- Input Service for Cenvat
- Capital Goods for Cenvat
- Input Service Distributor
- Reversal of Cenvat
- Documents for Availing Cenvat Credit
- Exempted Goods/Output Services
- Removal of Input, Capital Goods and Waste
- Other Provisions of Cenvat
- Accounting Treatment of Inputs in Cenvat
- Documents and Accounts
- Other Provision
- Practical Examples

2.1 BACKGROUND OF CENVAT CREDIT

Excise and Service tax are central taxes, expected to be consumption based taxes to the extent practicable. Till the goods or service is finally consumed, the burden of excise duty and service tax is passed on to next buyer, who gets credit of the tax and excise duty paid by the supplier/ service provider. Thus, effectively, tax is paid on value added at each stage, as illustrated in following example.

	Transaction without VAT		Transaction With VAT	
Details	A	B	A	B
Purchases	—	110	—	100
Value	100	40	100	40
Added				
Sub–Total	100	150	100	140
Add Tax 10%	10	15	10	14
Total	110	165	110	154

'B' is purchasing goods from 'A'. In second case i.e. under Vat, his purchase price is ₹ 100/- as he is entitled to Cenvat credit of ₹ 10/- i.e. tax paid on purchases. His invoice shows tax paid as ₹ 14. However, since he has got credit of ₹ 10/-, effectively he is paying only ₹ 4/- as tax, which is 10% of ₹ 40/-, i.e. 10% of 'value added' by him. Cenvat (Central Value Added Tax) scheme is used to achieve the aim of levying tax only on 'value added' at each stage.

2.2 HIGHLIGHTS OF CENVAT CREDIT SCHEME

General highlights of the scheme are as follows :

2.2.1 Credit of duty paid on input and input services

The Cenvat scheme is principally based on system of granting credit of duty paid on inputs and input services. A manufacturer or service provider has to pay excise duty and service tax as per normal procedure on the basis of 'Assessable Value' (which is mainly based on selling price). However, he gets credit of duty paid on inputs and service tax paid on input services. Thus, he actually pays amount equal to duty/ service tax as shown in invoice less the Cenvat credit available to him.

2.2.2 Input goods eligible for Cenvat to manufacturer

Credit will be available of excise duty paid on (*a*) raw materials *(excluding few items)* (*b*) material used in or in relation to manufacture like consumables etc. (*c*) Paints, packing materials, fuel etc. used for any purpose. The input may be used directly or indirectly in or in relation to manufacture. The input need not be present in the final product. Inputs need not be used within the factory. However, duty paid on high speed diesel oil (HSD), Light Diesel Oil (LDO) and motor spirit (petrol) is not available as Cenvat credit, *even if these are used as raw materials or as fuel.* [rule 2(k)(i) of Cenvat Credit Rules]

2.2.3 Input goods eligible for Cenvat to service provider

In case of service providers, only inputs used directly for providing output service are eligible for Cenvat credit. However, high speed diesel oil (HSD), Light Diesel Oil (LDO) and motor spirit (petrol) are not eligible as 'inputs'. [rule 2(k)(ii) of Cenvat Credit Rules]

As per notification No. 12/2003-ST dated 20-6-2003, a service provider is not required to pay service tax on goods and materials used by him for providing output services. Normally, service tax is not payable on goods where property is transferred to buyer. Hence, Cenvat credit will be available mainly in respect of consumables.

2.2.4 Inputs can be sent to job worker

Inputs can be sent to job worker for processing. These should be returned within 180 days [rule 4(5)(a)]. Final product can be cleared directly from premises of job worker on obtaining permission of AC/DC [rule 4(6) of Cenvat Credit Rules]

2.2.5 Wide definition of 'input service'

A manufacturer/service provider will be entitled to credit of service tax paid by him which are used by him directly or indirectly in or in relation to manufacture of final product/provision of output services. This would include even services which are received prior to commencement of manufacture/provision of output services. Even input services relating to setting up a factory will be eligible. In addition to this, services like advertising, activities relating to business like accounting, auditing, storage, transport etc., which are not directly related to manufacture/provision of out put services but are related to the sale of manufactured goods/provision of output services would also be permitted for credit. *In fact, all input services relating to all activities relating to business are eligible for Cenvat credit.* [rule 2(l) of Cenvat Credit Rules]

2.2.6 Services Billed/received at Head Office/Regional Offices

In some cases, the bill/invoice is raised in the name of head office/regional office etc., but services are actually received in the factory (or factories) or premises of service provider. In addition, the Head Office/Regional Offices receive services which are not specific for any factory/premises or service provider, such as advertising, market research, management consultancy etc. Bills in respect of such services would be received only in these offices. To enable the manufacturer/service provider to avail credit of such input services, a concept of "input service distributor" has been introduced [rule 2(m) of Cenvat Credit Rules]

The HO/Regional Office will have to register as 'Input Service Distributor' with Excise department. The HO/ Regional Office will have to issue Invoice to the factory/office providing service. The factory/service provider can avail credit on basis of such invoice. It would be left to the assessee to decide as to how he distributes the credit among various factories or service providing units. He has to ensure that the total credit allowed does not exceed the eligible credit amount. Such offices which distribute the credit would have to obtain service tax registration [rule 7 of Cenvat Credit Rules].

2.2.7 Credit of duty paid on capital goods

Capital goods (machinery, plant, spare parts of machinery, tools, dies, etc.) as defined in rule 2(a), used for manufacture of final product and/or used for providing taxable output service will be available. Capital goods should be used in the factory. 50% credit is available in current year and balance in subsequent financial year or years [rule 4(2)(a) of Cenvat Credit Rules]. Assessee should not claim depreciation on duty portion on which he has availed Cenvat credit [rule 4(4) of Cenvat Credit Rules]. A service provider can take out capital goods from his premises, provided that he brings them back within 180 days. This period can be extended [second *proviso* to Rule 3(5) of Cenvat Credit Rules].

2.2.8 Removal of used capital goods as scrap

If capital goods are cleared after use as scrap, an 'amount' equal to duty on scrap value of capital goods is payable [rule 4(5A)]. If capital goods are removed after use (not as scarp), an 'amount' is payable equal to Cenvat credit taken on the capital goods, reduced by 2.5% for each quarter of a year or part thereof, from date of taking credit.

2.2.9 Credit on motor vehicles used to provide output service

Motor vehicles are not 'capital goods' for purpose of 'manufacture', but credit on motor vehicles would be allowed as 'capital goods' only to the service providers of courier, tour operator, rent-a-cab scheme operator,

cargo handling agency, outdoor caterer, pandal and shamiana operator and goods transport agency [rule 2(a)(B) of Cenvat Credit Rules]. Motor vehicle will not be treated as 'capital goods' for manufacturers or other service providers.

2.2.10 Credit on basis of specified documents

Credit is to be availed only on the basis of specified documents as proof of payment of duty on inputs or tax on input services. These include Invoice of manufacturer or registered dealer, Bill of Entry, Supplementary Invoice etc. [rule 9(1) of Cenvat Credit Rules]. If there is any defect in duty paying document, specific permission of AC/ DC is required [rule 9(2) of Cenvat Credit Rules]

2.2.11 Credit available instantly in case of inputs

Credit of duty on inputs can be taken up instantly, i.e. as soon as inputs reach the factory or premises of service provider [rule 4(1) of Cenvat Credit Rules].

2.2.12 Cenvat credit of service tax only after bill amount plus service tax paid - In case of input services, credit is available only after the amount of Bill value with service tax is paid to the service provider [rule 4(7) of Cenvat Credit Rules].

2.2.13 Cenvat to manufacturer available only if there is 'manufacture' - Cenvat on inputs or input services is available only if the process is 'manufacture'. Otherwise, Cenvat is not available [rule 3(1) of Cenvat Credit Rules]. [In fact, in such cases, no duty is payable on the final product and question of Cenvat does not arise at all].

2.2.14 Utilisation of Cenvat Credit - All taxes and duties specified in rule 3(1) of Cenvat Credit Rules form a 'pool'. This credit can be utilised by manufacturer of excisable goods or provider of taxable service, for payment of any tax or duty as specified in rule 3(4) of Cenvat Credit Rules.

One-to-one correlation not required - Cenvat Credit Rules do not require input-output correlation to be established.

2.2.15 No input credit if final product/output service exempt from duty/ service tax

No credit is available if final product is exempt from duty or final service is exempt from service tax [rule 6(1) of Cenvat Credit Rules]. If a manufacturer manufactures more than one product, it may happen that some of the products are exempt from duty. Similarly, in case of service provider, some services may be taxable while some services may not be covered. In such cases, duty paid on inputs and service tax paid on input services used for manufacture of exempted products/services cannot be used for payment of duty or tax on other final products/services which are not exempt from duty/tax. If the manufacturer/service provider uses common inputs and input services both for exempted as well as un-exempted goods/services, he should maintain separate records for inputs/input services used for manufacture of exempted final products and should not avail Cenvat on such inputs/input services [rule 6(2) of Cenvat Credit Rules].

2.2.17 Partial manufacture/provision of exempted products/services

Cenvat credit of inputs and input services is not available if final product/output service is exempt from excise duty/ service tax. In case of manufacturer manufacturing both exempt and dutiable goods (or service provider providing taxable as well as exempt services), it may happen that same inputs/input services are used partly for manufacture of dutiable goods/taxable services and partly for exempted goods/services.

In such cases, the manufacturer/service provider has following three options (w.e.f. 1-4-2008)

(a) Maintain separate inventory and accounts of receipt and use of inputs and input services used for exempted goods/exempted output services – Rule 6(2) of Cenvat Credit Rules.

(b) Pay amount equal to 5% of value of exempted goods (if he is 'manufacturer) and/or 6% of value of exempted services (if he is service provider) if he does not maintain separate inventory and records, if he is a manufacturer – Rule 6(3)(i) w.e.f. 1-4-2008.

(c) Pay an 'amount' equal to proportionate Cenvat credit attributable to exempted final product/ exempted output services – Rule 6(3)(ii) w.e.f. 1-4-2008.

2.2.18 Full credit in case of specified input services

In case of specified services such as construction, erection/ commissioning/ installation etc. credit would be disallowed only when they are used *exclusively* in relation to manufacture of exempted goods/ services. Otherwise full credit would be allowed [rule 6(5) of Cenvat Credit Rules]

2.2.19 No cash Refund, except in case of export

In some cases, it may happen that duty paid on inputs and service tax paid on input services may be more than duty payable on final products. In such cases, though the Cenvat credit will be available to the manufacturer/ service provider, he cannot use the same and the same will lapse. There is no provision for refund of the excess Cenvat credit. *However, the only exception is in case of exports where duty paid on input material or services used for exported goods is refundable* . [rule 5 of Cenvat Credit Rules].

Other exception is Tribunal can order refund when Cenvat credit could not be availed due to fault / wrong action of the department. Refund may also be granted if assessee could not utilise credit for some other reason.

2.3 REVERSAL OF CENVAT IF FINAL PRODUCT OR OUTPUT SERVICE SUBSEQUENTLY EXEMPT

Cenvat Credit is availed as soon as inputs are received. If subsequently the final product or output service is exempt, there might be some inputs lying in stock on date of exemption. Such inputs will then be used for manufacture of exempted final products. In such case, Cenvat credit on such inputs will have to be reversed or equivalent amount paid, if Cenvat credit was already utilised [rules 11(3) and 11(4) of Cenvat Credit Rules of Cenvat Credit Rules].

2.4 CENVAT CREDIT IS INDEFEASIBLE

In *CCE* v. *Dai Ichi Karkaria Ltd.* 1999(112) ELT 353 = 1999 AIR SCW 3205 = (1999) 7 SCC 448 = AIR 1999 SC 3234 (SC 3 member bench), it was held that Cenvat credit validly taken is indefeasible. It was also observed that co-relation between final product and raw materials is not required in Cenvat scheme. — However, Cenvat credit balance at the year end is not income of assessee – *CIT* v. *Indo Nippon Chemicals* (2003) 130 Taxman 179 = 155 ELT 452 = 261 ITR 275 (SC).

2.5 OVERVIEW OF CENVAT CREDIT RULES, 2004

Rule No.	Brief Contents
Proviso to rule 1(2)	Provisions relating to availment and utilisation of credit of service tax shall not apply to State of J&K.
2(a)	**'Capital goods' means – (A) The following goods, namely:- (i) all goods falling under chapter 82, chapter 84, chapter 85, chapter 90, heading No.6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to Excise Tariff Act (ii) Pollution control equipment.(iii) Components, spares and accessories of the goods specified at (i) and (ii) above (iv) Moulds and dies, jigs and fixtures. (v) Refractories and refractory material. (vi) Tubes, pipes and fittings thereof and (vii) Storage Tank. Used – (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or (2) for providing output service** (B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act, 1994

Rule No.	Brief Contents
2(d)	**'Exempted goods' means goods which are exempt from whole of duty of excise leviable thereon and includes goods which are chargeable to 'Nil' rate of duty.**
2(e)	"Exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of Finance Act.
2(h)	'Final Product' means excisable goods manufactured or produced from inputs, or using input service.
2(k)	"Input" means – (i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not ***and includes*** lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production; (ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service. *Explanation 1.* The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever. *Explanation 2* . Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer
2(l)	"Input service" means any service – (i) used by a provider of taxable service for providing an output service; or (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products *upto* the place of removal (The words were 'from the place of removal' upto 31-3-2008) ***and includes*** services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, ***activities relating to business, such as*** accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal
2(n)	Job Work means processing or working upon of raw materials or semi-finished goods supplied to job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.
2(p)	"Output service" means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions 'provider' and 'provided' shall be construed accordingly.
3(1)	Cenvat Credit is a 'pool' consisting of following duties and taxes, paid on input or capital goods or input service • Basic excise duty on indigenous inputs [Paid on goods specified in First Schedule to CETA]. Corresponding CVD on imported goods is allowable. • Education cess on manufactured excisable goods and CVD equal to education cess on imported goods. This credit can be utilised only for payment of education cess on final product or output services • SAH (Secondary and Higher Education) Cess manufactured excisable goods and CVD equal to SAH education cess on imported goods. This credit can be utilized only for payment of SAH education cess on final product or output services. • Service tax on input services paid u/s 66 of Finance Act.

Rule No.	Brief Contents
	• Education cess paid on service tax. This credit can be utilised only for payment of education cess on final product or output services. • SAH Education cess paid on service tax. This credit can be utilised only for payment of SAH education cess on final product or output services. • Additional Customs Duty paid u/s 3(5) of Customs Tariff Act w.e.f. 1-3-2005 (SAD or Special CVD). This credit will not be available to service providers [This duty is perceived as in lieu of sales tax. It is payable @ 4%. on most of the products, with few exceptions.] • National Calamity Contingent Duty (NCCD) leviable under section 136 of Finance Act, 2001 and corresponding CVD paid on imported goods. This credit can be used for payment of NCCD on outputs only and not for any other duty. • Additional Excise Duty paid under section 85 of Finance Act, 2005. This duty is payable w.e.f. 1-3-2005 on pan masala and certain tobacco products, as specified in Seventh Schedule to Finance Act, 2005 [Credit of Additional Excise Duty paid under section 85 of Finance Act can be used for payment of this duty. Any other credit cannot be utilised and balance amount is required to be paid in cash only].
3(2)	Manufacturer can take Cenvat credit of goods in stock on day when the final product ceases to be exempted goods or becomes excisable.
3(4)	Pool of 'Cenvat Credit' [as defined in rule 3(1)] can be utilised for any of the following – • ***Any*** duty on *any* final product manufactured by manufacturer [Rule 3(4)(a)] • Payment of 'amount' if inputs are removed as such or after partial processing [Rule 3(4)(b)] • Payment of 'amount' on capital goods if they are removed as such [Rule 3(4)(c)] • Payment of 'amount', if goods are cleared after repairs under rule 16(2) of Central Excise Rules [Rule 3(4)(d)] • Service tax on output service [Rule 3(4)(e)] • Payment under Cenvat Credit Rule 6 of 10% 'amount' on exempted goods or reversal of credit on inputs when common inputs or common input services are used for exempted as well as dutiable final products – *Explanation 1.* to Cenvat Credit Rule 6(3) • Reversal of Cenvat credit, if assessee opts out of Cenvat – Rule 11(2) • Payment of 'amount' if goods sent for job work are not returned within 180 days – Rule 4(5)(a).
First proviso to rule 3(4)	Even if duty/tax is payable by 5th /6th /15th /16th of following month, credit can be taken only as available on last day of the current month
Second proviso to rule 3(4)	Restrictions on some credits [summarised above under rule 3(1)]
3(5)	'Amount' equal to Cenvat credit a vailed to be paid if capital goods or inputs removed 'as such' from the factory.
First proviso to Rule 3(5)]	A service provider cannot avail Cenvat credit of special CVD of 4% paid u/s 3(5) of Customs tariff Act.
Second proviso to Rule 3(5)].	If capital goods are removed after use (but not as waste and scrap), an 'amount' equal to Cenvat credit taken on the capital goods, reduced by 2.5% for each quarter of a year or part thereof, from date of taking credit.

Rule No.	Brief Contents
3(5A)	'Amount' equal to duty on scrap va lue payable if capital goods are cleared as waste and scrap. This 'amount' is eligible as Cenvat Credit, as per rule 3(6)
3(5B)	If (i) inputs or (ii) capital goods before being put to use, are written off in boks or provision made in books, 'amount' to be paid equal to Cenvat availed
3(5C)	If duty on final products is remitted under rule 21 of Central Excise, Cenvat credit of duty paid on inputs used in manufacture or such goods shall be reversed.
3(6)	'Amount' paid under rule 3(5) and 3(5A) is eligible as Cenvat credit to the buyer
3(7)(a)	Cenvat credit of duty paid by EOU as per formula
3(7)(b)	NCCD, Education cess, SAH cess and additional duty under section 157 of FA 2003 or 85 of FA 2005 can be used for respective duties only. Education cess of excise and service tax inter-changeable. Similarly, SAH Education cess of excise
4(1)	Cenvat credit can be taken immediately on receipt of goods in factory or premises of service provider
4(2)	Capital goods – Cenvat Credit Upto 50% in first financial year and balance in subsequent years, if they are in possession of manufacturer.
4(3)	Cenvat credit available if capital goods taken on leas, hire or loan agreement
4(4)	Depreciation on capital goods should not be availed on the excise duty portion of value of capital goods
4(5)(a)	Inputs and capital goods can be sent to job worker and should be brought back in 180 days
4(5)(b)	Restriction of 180 days does not apply to tools, dies, jigs and fixtures can be sent to job worker
4(6)	Final product can be cleared directly from place of job worker on obtaining permission from AC/DC, valid for a financial year
4(7)	Credit of input services can be availed only after the output service provider makes payment of value of input services and the service tax payable on it, as shown in invoice of input service provider.
5	Refund if final product is exported.
5A	Refund in case of Exports by exempted units in North-East Region and Sikkim
6(1)	Cenvat credit is not admissible on such quantity of input or input service which is used in manufacture of exempted goods or exempted services, except as provided in rule 6(2)
6(2)	Manufacturer manufacturing both exempt and dutiable goods (or service provider providing taxable as well as exempt services), may maintain separate inventory and accounts of receipt and use of inputs and input services used for exempted goods/exempted output services. In such cases, he should not avail Cenvat credit of the inputs and input services which are used in exempted final services at all.
6(3)(i)	If the manufacturer/service provider opts not to maintain such separate accounts, he has to pay an amount equal to 10% of the value of such exempted goods/ 8% of value of exempted services. Such payment can be made by debit to Cenvat credit account or PLA [E*xplanation* II to rule 6(3A) [amendment w.e.f. 1-4-2008. Earlier, in few cases as specified in rule 6(3)(a), the manufacturer had to reverse Cenvat credit. Earlier, a service provider of exempted and non-exempted services not maintaining separate accounts was eligible to utilise Cenvat credit only to the extent of 20% of service tax payable on output services, under erstwhile rule 6(3)(c) existing upto 31-3-2008].

Rule No.	Brief Contents
6(3)(ii)	Alternatively, the manufacturer/service provider can opt to pay an 'amount' which is proportional to Cenvat credit availed on exempted final product/exempted output services [amendment w.e.f. 1-4-2008]
Explanation I to Rule 6(3)	Such option [rule 6(3)(i) or rule 6(3)(ii)] has to be exercised in respect of all exempted goods manufactured and all exempted output services provided. The option once exercised shall not be changed in remaining part of financial year
6(3A)(a)	The assessee exercising option under rule 6(3)(ii) should inform prescribed details to Superintendent, while exercising the option.
6(3A)(b)	The manufacturer of goods or the provider of output service shall determine and pay, provisionally, for every month amount of Cenvat credit attributable to input services used in relation to manufacture of exempted product or provision of exempt services, on the basis of ratios of previous year
6(3A)(c)	At the year end, the manufacturer of goods or the provider of output service shall determine finally amount of Cenvat attributable to input services used in relation to manufacture of exempted product or provision of exempt services, on basis of finalised accounts.
6(3A)(d)	If amount is found to be short paid, the difference should be paid by 30 th June of succeeding year.
6(3A)(e)	In addition to the amount short-paid, the assessee will be liable to pay interest at the rate of twenty-four per cent per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date.
6(3A)(f)	If at the year end, it is found that the amount provisionally paid was more than the amount finally determined, the manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount.
6(3A)(g)	The manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, the prescribed particulars.
6(3A)(h)	If assessee does not manufacture dutiable final products or taxable output service, he can take credit but is not required to pay proportionate amount on provisional basis as provided in rule 6(3A)(b). However, at year end, he should pay amount on proportionate before 30th June.
Explanation I to rule 6(3A)	"Value" for the purpose of rules 6(3) and 6(3A) shall have the same meaning assigned to it under section 67 of the Finance Act, 1994 read with rules made thereunder or, as the case may be, the value determined under section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder
Explanation II to rule 63(A)	The amount under rule 6(3) or 6(3A) shall be paid by 5th of following month (except in March, where it is payable by 31st March.
6(4)	Capital goods used exclusively for manufacture of exempted goods or providing exempt service are not eligible for Cenvat credit.
6(5)	In case of 16 specified services, full Cenvat credit available even if service partly used for exempted goods or exempted service.
6(6)	If excisable goods are removed to SEZ, EOU, EHTP, STP, UN agencies or for exports or removal of gold or silver arising in manufacture of copper or zinc by smelting, rules 6(1) to 6(4) do not apply i.e. payment of 10% 'amount' or proportionate reversal is not required.

Rule No.	Brief Contents
7	The 'Input Service Distributor' [as defined in rule 2(m)] may distribute Cenvat Credit in respect of service tax, among its manufacturing units or providing output service. The credit distributed should not be more than the service tax paid.
7A	The office of service provider where inputs were received can distribute the credit of duty paid on such inputs and capital goods to the service provider by issuing an invoice. Such office will have to be registered with Central Excise and submit returns etc. similar to first stage dealer andsecond stage dealer.
8	Inputs can be stored outside the factory, with permission of AC/DC
9(1)	Cenvat Credit can be taken on the basis of – • Invoice of manufacturer from factory • Invoice of manufacturer from his depot or premises of consignment agent • Invoice issued by registered importer • Invoice issued by importer from his premises or consignment registered with Central Excise • Invoice issued by registered first stage or second stage dealer • Supplementary Invoice by manufacturer • Bill of Entry • Certificate issued by an appraiser of customs in respect of goods imported through foreign post office • TR-6 or GAR-7 Challan of payment of tax where service tax is payable by other than input service provider • Invoice, bill or challan issued by provider of input service on or after 10-9-2004 • Invoice, Bill or Challan issued by input service provider under rule 4A of Service Tax Rules.
Proviso to rule 9(1)	**If a first stage or second stage dealer mentions in his invoice that Cenvat credit of the special CVD paid u/s 3(5) of Customs Tariff Act is not admissible, buyer cannot avail the Cenvat credit.**
9(2)	**Cenvat credit can be taken only if *all* the particulars as prescribed in Central Excise Rules, 2002 or Service Tax Rules, 1994 are contained in the eligible duty paying document. Otherwise, permission of AC/DC is required.**
9(4)	First stage dealer and second stage dealer to maintain proper records and pass on duty on '*pro rata*' basis.
9(5)	Manufacturer and provider of output service to maintain proper records. Burden of proof of admissibility of Cenvat credit is on him.
9(8)	First stage dealer and second stage dealer to submit quarterly return within 15 days from end of quarter.
9(10)	Input service distributor to submit half yearly return within one month
9(11)	Revised return of Cenvat credit by provider of output service within 60 days.
9A(1)	Information relating to Principal Inputs to be submitted annually by 30th April of each Financial Year by specified manufacturers other than SSI, in form ER-5. Change also to be informed within 15 days
9A(3)	Monthly return of receipts and consumption of Principal Inputs by specified manufacturers of excisable goods in form ER-6

Rule No.	Brief Contents
10	transfer of unutilised Cenvat credit, if a manufacturer shifts his factory orprovider of output services shifts his business or a manufacturer/service provider transfers his factory/business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of factory to a joint venture.
11(2)	Reversal of credit at the time of opting out by SSI unit by paying an 'amount' equivalent to Cenvat credit on such inputs lying in stock orinputs contained in final products. Balance Cenvat credit, if any, will lapse.
11(3)	If final product is exempt subsequent to receipt of inputs, Cenvat credit on inputs lying in stock as on date of such exemption to be reversed by payment of 'amount'.
12	Full credit available in case of goods obtained from North Eastern States, J&K, Sikkim and Kutch district, even if the manufacturer is exempt from duty
12A	Procedures applicable to LTU14 Recovery of Cenvat wrongly availed with interest
15	Confiscation and penalty for contravention of provisions
15A	General penalty of ₹ 5,000 for contravention of rules when no penalty is provided in rules.

2.6 SIGNIFICANT ISSUES RELATING TO CENVAT CREDIT

2.6.1 Inputs be used in the factory – The words 'within the factory of production' appear at the end of the definition. The question is whether those words apply only to second part of the definition or both parts of the definition. These words appear much after the words 'and includes' which separate first part from second part of definition. Moreover, these words are preceded by ',' and not ';'. Thus, these words form part of only second part of the definition.

However, in CCE v. JK Udaipur Udyog Ltd. 171 ELT 289 = 2004 AIR SCW 4986, Supreme Court has held that Cenvat is available only if the inputs are used within the factory. Mine situated at a distance from factory cannot be considered as part of factory merely because it is connected with a ropeway, when no manufacturing process is carried on in the mine. Hence, explosives used in mine will not be eligible for Cenvat credit, even if limestone extracted from the mine is used for manufacture of cement in the factory. [The aspect whether 'within factory of production' applies to second part or both the parts of definition was not argued at all. However, now, the judgment is binding, unless someone is able to convince Supreme Court to review the decision.]

Department has expressed an opinion that in view of specific definition of 'input' in new Cenvat Credit Rules, Cenvat credit will be available only if inputs/capital goods are used within the factory. CBE&C circular No. 637/28/2002-CX dated 8=5=2002.

Factory has been defined in section 2(e) of CEA and it covers any premises, including precincts thereof, where manufacturing process is ordinarily carried out.

2.6.2 Capital goods must be used within the factory – Definition of 'capital goods' in Rule 2(a) of Cenvat Credit Rules specifies that the inputs/capital goods must be used within the factory of production. Even in that case, a view is possible that capital goods can be sent outside to job worker for any purpose.

Cenvat credit on electric cables used for feeder line from electricity sub-station to factory is not allowable as the assessee is not owner of land between the plant and electricity sub-station – National Organic Chemicals v. CCE (2004) 172 ELT 366 (CESTAT).

Fuel used in the factory – Definition of 'input' covers fuel used in factory in or in relation to manufacture of final products or for any other purpose. Thus, 'fuel' will be eligible for Cenvat credit even if electricity/steam generated is utilized/sold outside the factory. As explained above, the words used are 'for any other purpose'.

However, HSD, LDO and petrol have been specifically excluded from definition of 'input', even if used in or in

relation to manufacture. In Vam Organics v. State of UP(2003) 132 STC 8 (All HC DB), it has been held that diesel oil used in generating set is 'used in manufacture' followed in Goraya Straw Board v. State of UP(2005) 139 STC 156 (Uttaranchal HC DB). Thus, HSD, LDO and petrol is 'used in relation to manufacture', but Cenvat is not available in view of specific exclusion.

Inputs eligible for Cenvat under first part of definition

The definition of 'input' covers following –

- All goods [except High Speed Diesel Oil (HSD), Light Diesel Oil (LDO) and petrol] used, in or in relation to, the manufacture of the final products. The input may be used directly or indirectly in or in relation to manufacture of final product. The input need not be present in the final product (first part of the definition)
- Input includes lubricating oils, greases, cutting oils and coolants accessories of final products cleared along with the final product. Goods used as paint, Packing material, Fuel, Goods used for generation of electricity or steam used in or in relation to manufacture of final products or for any purpose. These can be used 'for any purpose'. (Second part of the definition)
- Input also includes goods used in manufacture of capital goods which are further used in the factory of manufacturer (Explanation 2 to the definition).

2.6.3 INPUTS SHOULD BE 'USED' – Mere intention to use is not sufficient – Rule 2(k)(i) which defines 'inputs' for manufacturer states that these should be 'used in the factory'. Thus, mere intention to use is not sufficient to avail Cenvat credit.

2.6.4 No time limit for utilization of inputs – In Bharat Heavy Electricals v. CCE(2002) 50 RLT 208 (CEGAT), it was held that there is no time limit for consumption of inputs. [In this case, it was held that when goods are lying in stock in factory premises, Cenvat credit is not to be reversed even though value has been written off in accounts.]

2.6.5 Cenvat credit of capital goods used/manufactured in factory – Cenvat credit is available in respect of duty paid in 'capital goods' also. It may be noted that 'capital goods' can also be covered in definition of 'inputs' as these are obviously used 'in or in relation to manufacture'. Some provisions are common in respect of Cenvat on inputs and capital goods. However, there are some differences too. These are discussed later.

2.6.6 CAPTIAL GOODS MANUFACTURED WITHIN THE FACTORY– As per Explanation 2 to rule 2(k), 'input' includes goods used in manufacture of capital goods which are further used in the factory of manufacturer. Thus, if a manufacturer manufactures some capital goods within the factory, goods used to manufacture such capital goods will be eligible as 'inputs'. [i.e. 100% Cenvat credit will be available in the same financial year].

2.6.7 In or in relation to manufacture of final product – The input must be used in or in relation to the manufacture of final product, in respect of inputs which are not covered in second part of the definition of 'inputs'. Thus, if an input is used 'in the manufacture' or 'in relation to the manufacture', it is eligible for claiming Cenvat credit.

'In the manufacture' means the input is actually used in the manufacture of finished product, either directly or indirectly. It may be present in the 'final product' in same or similar or identifiable form or it might have got converted during process and may not be seen or identified in the final product. 'In relation to the manufacture' means, the input has been used during a process while manufacturing the product like consumable. The input need not form part of final product. Thus, the term 'in relation to manufacture' is a very wide term and covers all inputs which have direct nexus with the manufacturing process. 'Manufacture' includes all processes incidental or ancillary to manufacture. Thus, the term 'inputs' is much more wider than mere 'raw materials'.

2.6.8 Input relating to integrally connected processes eligible – In J K Cotton Spining and Weaving Mills v. STO, Kanpur 1965(16) STC 563 = (1965)] 1 SCR 900 = AIR 1965 SC 1310 = 1997(91) ELT 34 (SC), Supreme Court has held that if the process is integrally connected with the ultimate such process, all inputs for such process will fall within the expression 'in the manufacture of goods'. [In this case, it was held that 'designing' is a part of process of manufacture. However, building material cannot be said to be used 'in the manufacture of goods]. In CCE v. Rajasthan State Chemical Works – 1991(55) ELT 444 (SC) = AIRE 1991 SC 2222 = 1991 AIR SCW 2548 = (1991) 4 SCC 473 = 36 ECR 465 (3 member bench), it was held as follows :

"Process in manufacture or in relation to manufacture implies not only production but the various processes through which the raw materials are subjected to change by various operations. Manufacture is the cumulative effect of various processes to which raw material is subjected. Therefore, each step towards such production would be a process in relation to manufacture. Where any process is so integrally connected with ultimate production of goods that but for the process, manufacture or processing of goods would be impossible or commercially inexpedient, the process is one in relation to the manufacture."

2.6.9 Inputs captively produced and used

The absence of a specific provision in the CENVAT Scheme with regard to inputs captively produced and used cannot be construed to mean that such inputs do not fall under the eligible category. After all, even captively produced inputs do not come out of nothing. Some raw materials would be required to produce those inputs, and if such raw materials are duty-paid, there is no reason why input credit should be denied. It may be noted in this context that inputs captively produced (other than light diesel oil, high speed diesel oil and petrol) and used in or in relation to the manufacture of final products (other than matches) are exempt from duty under *Notification No. 67/95—C.E, dated 16-3-1995.*

Where duty-paid textured yarn was used to manufacture exempted polyester dyed yarn, and later on the date of withdrawal of exemption, stock of such dyed yarn was cleared without payment of duty, it was held that Notification No. 67/95 would not apply. Since dyed yarn had already been manufactured before withdrawal of exemption, credit on textured yarn could not be refused on ground of benefit of exemption taken – Recron Synthetics Ltd. v. CCE 2004 (174) ELT 326 (New Delhi – Cestat).

In the case of Dhampur Sugar Mills Ltd. v. CCE 2001 (129) ELT 73 (New Delhi- CEGAT), the Tribunal held that, where the factory premises of the appellants had different plants manufacturing different excisable goods and those plants had been registered as separate units under the central excise law, they should be treated as constituting one factory, and that, under a consequence, the benefit of notification No. 67/95 could not be denied to that factory. A civil appeal filed by the Revenue against this decision has been dismissed by the Supreme Court – 2007 (216) ELT A23. The Supreme Court observed that, apart from the reasons given by the Tribunal in its decision, it was noticed that the show-cause notice issued by the department itself proceeded on the basis that the assessee had only a single factory consisting of separate units, and that there was no allegation in the show-cause notice to the effect that there were three factories as submitted by the department. The Supreme Court therefore held that there was no merit in the appeal filed by the Revenue.

2.6.10 Light Diesel Oil/High Speed Diesel Oil/Petrol

To place the matter beyond any doubt, Explanation1 to rule 2(k) makes it clear that light diesel oil, high speed diesel oil and motor spirit (petrol) will not be deemed to be 'input' for any purpose whatsoever. Thus, even if these items are used as fuel, or for generation of electricity or steam, they will not be treated as eligible inputs. It must however be noted that the prohibition operates only for treating light diesel oil, high speed diesel oil and motor spirit as eligible inputs, which means that, if they are used in or in relation to the manufacture of any final product, no Cenvat credit is admissible. However, inputs used in or in relation to the manufacture of light diesel oil, high speed diesel oil or motor spirit will be eligible inputs for purposes of taking Cenvat credit. In respect of high speed diesel oil, it is immaterial whether its quality is High Flash or Low Flash. Both are not eligible inputs for any purpose - [*Shayona Petrochem Ltd. v. CCE* 2004 (172) ELT 111 (Mum. – CESTAT).

Whether Cixon and SBPS are excluded – In one case, the question arose as to whether Cixon and Special Boiling Point Spirit (SBPS) would be covered under the expression 'motor spirit commonly known as petrol', so as to be ineligible for credit. The Tribunal noted that no material evidence in the form of test report, etc., had been brought on record by Revenue to show that these two inputs were commonly known as petrol in the market and held that, in the absence of any such material/evidence, the two inputs could not be treated as excluded, and that the assessee was eligible to avail credit of duty paid on these inputs – *Tuftween Petrochemicals v. CCE 2005*(185) ELT 203 (New Delhi – CESTAT).

2.6.11 Inputs contained in waste/refuse/by-product, or used in intermediate product

The department has clarified the "CENVAT credit is also admissible in respect of the amount of inputs contained in any of the waste, refuse or by-product. Similarly, CENVAT is not to be denied if the inputs are used in any

intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that CENVAT credit is admissible so long as the inputs are used in or in relation to the manufacture of final products, and whether directly or indirectly". See decision of the High Court in the case of Asahi India Safety Class Ltd. v. Union of India 2005 (180) ELT 5 (Delhi), which was later followed by the Tribunal in the case of Foil Pack India (P.) Ltd. v. CCE 2007 (216) (New Delhi – CESTAT).

2.6.12 Inputs used in capital goods which are used captively

Under Explanation 2 rule 2(k), goods used in the manufacture of capital goods which are further used in the factory of the manufacturer have also been brought under the definition of 'input'.

The use must be in the 'manufacture' of capital goods. Inputs used for other purposes, like repair, maintenance, and/or installation of capital goods are not covered under the Explanation. Upper Ganges Sugar & Inds. Ltd. 2004 (178) ELT 325 (New Delhi – CESTAT).

In the case of Hira Power & Steel Ltd. v. CCE 2008 (229) ELT 408 (New Delhi – Cestat), credit availed by the appellants on inputs used in fabrication of captive power plant was disallowed on the ground that the power plant was located outside the factory of production. The Tribunal held that credit was not disallowable since the power plant was situated at the land adjacent to the said factory, and the plant was meant for captive use only. For arriving at this view, the Tribunal relied upon the Supreme Court decision in the case of Vikram Cement v. CCE 2006 (197) ELT 145, according to which capital goods used in captive mines were held to be eligible for credit.

In Hindalco Industries Ltd. v. CCE 2008 (230) ELT 649 (Bang.- Cestat), it was held that steel plates and strips used for fabrication of tanks will qualify to be treated as inputs used in the manufacture of capital goods for captive use, and were hence eligible for credit.

Items excluded – Explanation II has been amended with effect from 7-7-2009 to provide that cement, angels, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods will not be eligible as 'input'.

2.6.13 Design and development charges

Where the assessee, a manufacturer of moulds, had sub-contracted designing to another unit and had also included the design and development charges in the assessable value, it was held that, since the design and development charges are not 'excisable goods' and since the said unit was not required to pay any duty thereon, the credit availed by the assessee on such charges was disallowable – CCE v. NTTE Industries Ltd. 2004 (169) ELT 92 (Beng. – CESTAT).

2.6.14 Inputs used for effluent treatment of plant

In the case of *Indian Farmers & Fertilizers Co-op. Ltd. v. CCE* 1996 (86) ELT 177, the Supreme Court had inter alia observed that "it is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant". Relying on these observations, the Tribunal held in one case that hydrochloric acid used for effluent treatment of plant was an eligible input on which credit was allowable – *Fertilizers & Chemicals Travancore Ltd. v. CCE* 2002 (148) ELT 896 (Beng. – CESTAT). Similarly, in another case, hydrocholoric acid and aquachem used in effluent treatment of plant were held as eligible inputs – *Chemplsat Sanmar Ltd. v. CCE* 2004 (176) ELT 412 (Chennai – CESTAT). In yet another case, it was held that urea used in the manufacture of oxalic acid was eligible for credit, since it was a technical necessity, especially where the manufacturer had no separate effluent treatment, and the use of urea in the absorption column for pollution control of absorption of unwanted gases was necessary for the emergence of oxalic acid as a commercially feasible product – *Star Oxochem (P.) Ltd. v. CCE* 2004 (167) ELT 74 (Mum. – CESTAT).

2.6.15 Inputs issued for research

Inputs used for research do not result in the emergence of any article and are hence not eligible for credit. In one case, a manufacturer of three wheeler vehicles claimed credit on components of three wheeler vehicles utilized in the R&D department, and contended that goods used for research today would one day resulting the

emergence of some goods which would ultimately be used in the manufacture of final products. The Tribunal dismissed the contention as 'verges on the absurb', and held that credit on the said components was not admissible – Bajaj Auto Ltd. v. CCE 2004 (176) ELT 162 (Mum. – Cestat). In the case of Krebs Biochemicals and Industries Ltd. v. CCE 2007 (220) ELT 170 (Bang. – CESTAT), the Tribunal held that the finding of the lower authorities that credit on inputs used in R&D could not be extended was correct and proper, as it was held that inputs used for testing the quality of inputs prior to putting them in the manufacturing stream was held as eligible inputs, since testing of inputs was a standard practice in manufacture, and that the fact that the testing took place in the R&D Wing would make no difference- ITI Ltd. v. CCE 2005(179) ELT 321 (New Delhi – Cestat).

2.6.16 Inputs sent for job work and then exported

In the case of Brakes India Ltd. v. CCE 2007 (214) ELT 380 (Chennai –CESTAT), the appellants received various inputs such as steel scrap, pig iron, chemicals, etc., and manufactured casting out of them. These castings were sent to a job worker for machining them into automotive parts. Thereafter, they were sent to another job worker for painting. The appellants paid duty for the clearance of these goods by the job workers, and availed credit. Thereafter, the appellants conducted certain tests on the product, packed them, and exported them under bond. The department disallowed credit availed by the appellants, on the ground that the product was exported in the same form in which they were received from the job workers, without any further process which amounted to 'manufacture'. The Tribunal observed that the appellants did not procure the inputs and then exported them as such, but had actually undertaken major part of the manufacturing activity of casting as well as the finishing process, and that the arguments of the appellants that the processes undertaken by them after receipt from the job workers amounted to 'manufacture' carried considerable force. The Tribunal therefore held that the impugned goods became fully manufactured goods only in the premises of the appellants before they were exported, and that hence credit availed by them was not disallowable.

2.6.17 Inputs used for repairs

Where the appellants undertook repair of the goods using cenvatted inputs, and then cleared them on payment of duty, they would not be eligible for credit on the inputs used, since repair cannot be treated as a manufacturing activity – *Markfed HDPE Sacks Plant v. CCE* 2007 (217) ELT 32 (New Delhi – CESTAT).

2.6.18 Inputs used in combination packs

In the case of *Lottee India Corporation Ltd. v. CCE* 2008 (224) ELT 102 (Chennai-Cestat), the appellants manufactured 'Coffee Bite', and sold them in a combination pack along with butter scotch purchased by them. They paid duty on the MRP indicated in the combination pack. The department took the view that butter scotch could not be treated as an 'input', and disallowed credit availed on it. The Tribunal observed that, in view of section 2(f)(iii) of the Central Excise Act, there could not be any doubt that the combipack was a manufactured product, and held that the appellants were eligible for input credit on the butter scotch purchased.

2.6.19 *Inputs used indirectly or got consumed in process also eligible* -

In Eastern Electro Chemical Industries v. CCE 2005 (181) ELT 295 (SC 3 member bench), it was held that there were four kinds of inputs which could be said to be ingredients – (i) those which retain their dominant individual identity and character throughout the process and also in the end-product (ii) those which, as a result of interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end-product (iii) those which like catalytic agents, while influencing and accelerating the chemical reactions, themselves remain uninfluenced and unaltered and remain independent of and outside the end products and (iv) those which might be burnt up or consumed in the chemical reactions – relying on CCE v. Ballarpur Industries Ltd. 43 ELT 804=1989 (1) SCR 323=AIR 1990 SC 196=1989(4) SCC 566=77 STC 282.

2.6.20 One to one correlation not necessary

Rule 3(4)(a) states that Cenvat credit may be utilized for payment of any duty of excise on any final product. Thus, there is no requirement of establishing relation between inputs/input service and final product.

There is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related – CCE v. Dai Ichi Karkaria Ltd. 112 ELT 353=AIR 1999 SC 3234=1994 AIR SCW 3205=(1999) 7 SCC 448 (SC 3 member bench).

2.6.21 Credit on any input can be used for any final product –

Credit of input can be used in any of the final product. An illustration will clarify. Assume that there are two inputs I-1 and I-2, used in two final products F-1 and F-2 respectively. Excise duty paid on inputs is ₹ 350 on I-1 and ₹ 150 on I-2. Manufacturer can avail credit of this duty paid. Duty payable on final product is ₹ 200 on F-1, and ₹ 400 on F-2. Thus, Cenvat credit on I-1 is ₹ 350 while duty payable on F-1 is only ₹ 200. Thus, even after utilizing the full Cenvat credit, a balance of ₹ 150 is left to the credit of manufacturer. Normally, this credit would lapse as there is no provision in Cenvat to grant refund of such excess credit. However, Rule 3(3) of Cenvat Credit Rules provides that Cenvat credit can be utilized for payment of duty of excise on any final product manufactured by the manufacturer. Thus, the balance left on payment of duty on F-1 can be used while paying duty of F – 2, on F-2, duty payable is ₹ 400, while credit available on I-2 is only ₹ 150. Thus, normally, the manufacturer will have to pay balance amount of ₹ 250 by cash (through PLA). However, since the manufacturer has credit balance of ₹ 150, he can utilize the same and pay only ₹ 100 by cash (i.e. through PLA), - confirmed in Mahindra & Mahindra v. CCE 2001(127) ELT 247 (CEGAT).

2.6.22 Inputs used in exempted final products not eligible –

If a manufacturer manufactures more than one products, it may happen that some of the products are exempt from duty. In such cases, duty paid on inputs used for manufacture of exempted products cannot be used for payment of duty on other products which are not exempt from duty. – Rule 6(1) of Cenvat Credit Rules. Thus, this is an exception to above rule.

As per Rule 6 of Cenvat Credit Rules, if the manufacturer is engaged in manufacture of both dutiable and exempt final products, he should maintain separate accounts of these inputs. However, if this is not possible, an 'amount' equal to specified % of 'price' of such exempted products' should be paid.

2.6.23 Process losses and handling loss are allowable – There will be some loss of inputs during manufacturing process. Cenvat is available on entire quantity of input even if part of input goes in process loss, since all inputs are 'used' in the manufacture of final product, even if it is not reflected in final product – Multimetals Ltd. v. ACCE 57 ELT 209(SC)=1992 (1) SCC 715= AIR 1992 SC 1532=1992 AIR SCW 1644 – quoted with approval in UOI v. Indian Aluminium Co. Ltd. – 1995(77) ELT 268 (SC – 3 member bench order). Where it was held that exact mathematical equation between quantity of raw material purchased and the raw material found in finished product is not possible, and should not be looked for. [This judgment is in respect of Proforma Credit, but its ratio is fully applicable to Cenvat.]

2.6.24 Defective final product is 'input' for purpose of availing Cenvat credit –

Often goods are dispatched to customer by paying duty. The customer may reject the same if these are found defective. These are then returned to manufacturer. The manufacturer may like to rectify or recondition them. In such case, as per Rule 16 of Central Excise Rules, assessee can avail Cenvat credit of duty paid on such returned goods. While returning the goods after repairs/rectification/refining, if the process carried out was manufacture, duty will be payable at rate and value as on date of removal. If the process did not amount to manufacture, an 'amount' equal to Cenvat credit availed will be paid at the time of removal.

2.6.25 Credit if goods lost/destroyed in process but no credit inputs are lost or destroyed in store room or pilfered –

Since credit on inputs is available only for inputs used in or in relation to manufacture of final products, if the inputs are lost or destroyed in the store room, credit to duty paid on such inputs will not be available, as it cannot be said that they are used 'in or in relation to manufacture'.

If waste is before actual manufacturing starts, such waste is not 'during manufacture' and in such case, Cenvat will have to be reversed .- Monica Electronics Ltd. v. CCE – 1995(75) ELT 440 (CEGAT) (e.g. waste when inputs are in stores, or while issuing components to shop floor).

2.6.26 Loss due to leakage during process –

Cenvat credit is available even if there is loss of input due to leakage in storage tank during process – Doaba Alco Chemicals v. CCE 2005(179) ELT 434 (CESTAT SMB).

2.6.27 Fire During Process –

If the goods are damaged during production, Cenvat will be available. – eligible if inputs are destroyed by fire during the process.

2.6.28 Damage By Flood –

In CCE v. Colour Chmicals Ltd. 9(113) ELT 132 (CEGAT), it was held that Cenvat credit availed on inputs is eligible even if semi-finished goods and finished goods made out of inputs were washed away by flood water and lost.

2.6.29 Shortages In Stock Of Inputs –

If inputs are found short in stock taking, they are not used in or in relation to manufacture of finished goods. Hence, Cenvat credit is not admissible – K-Three Electronics Pvt. Ltd. v. CCE 2004(173) ELT 432 (CESTAT).

Obsolete goods written off - CBE&C in its circular No. 645/36/2002-CX dated 16-7-2002 has clarified that if unused inputs or unused capital goods are written off in the books of account, Cenvat credit should be reversed. However, if value of inputs is partially written off/reduced in accounts but the inputs are capable and available for use, there would be no question of payment of Cenvat credit availed.In Bharat Heavy Electricals v. CCE (2002) 50 RLT 208 (CEGAT), it was held that when goods are lying in stock in factory premises, Cenvat credit is not to be reversed even though value has been written off in accounts, as there is no time limit for consumption of inputs.

In RPG Cables v. CCE 2003 (157) ELT 273 (CEGAT), it was held that if obsolete stock of inputs is written off and is not physically available, Cenvat credit is required to be written off.

2.6.30 Loss/shortage in transit during receipt of goods –

There may be short receipt of goods. In such cases, no credit is available in case of shortages. However, if such shortage is due to natural causes, full Cenvat is available.

2.6.31 Capital goods not defined as 'capital goods' will be eligible as 'inputs' -

In CCE v. Tata Engineering & Locomotives Co. Ltd. 2003 (158) ELT 130 (SC), it has been held that fork lift trucks, lifting tackles, trolleys, conveyors and measuring instruments are 'inputs' used in or in relation to manufacture of final products. Thus, unless they are excluded by an exclusion clause, they will be eligible as 'inputs' [Decision under different notification, but principle is fully applicable here, as wording is similar].

If certain capital goods are not covered under definition of 'capital goods' as per rule 57AA(a) [Now rule 2(b) of Cenvat Credit Rules], these may be eligible as 'input' if used in or in relation to manufacture, as per ratio of decision of Union Carbide of India v. CCE – 1996(86) ELT 613=66 ECR 172=1996(15) RLT 144 (CEGAT – 3 member bench 2 v. 1 order).

2.6.32 Inputs eligible for Cenvat credit even if intermediate product exempt -

CBE&C had clarified vide para 5 of circular No B4/7/2000- TRU dated 3-4-2000, that Cenvat credit should not be denied if the inputs are used in any intermediate of final product, even if such intermediate product is exempt from payment of duty. The idea is that Cenvat credit is available so long as the inputs are used in or in relation to manufacture of final product, and whether directly or indirectly – view reiterated in Chapter 5 Para 3.9 of CBE&C's Manual, 2001.

2.6.33 Accessories eligible for Cenvat -

Accessories are eligible for Cenvat if these are cleared along with the final product. – Rule 2(k)(i) of Cenvat Credit Rules. Note that the rules do not require that value of accessories should be included in assessable value of final product. Dropper supplied paediatric drops is an attachable component of the bottle. Its value is included in Maximum Retail price of the drug. Hence, Cenvat credit on duty paid on dropper is admissible – Heal well Pharmaceuticals v. CCE 1994(72) ELT 446 (CEGAT).

2.6.34 Cenvat on Paints — Paints used in factory are eligible. As explained above, the extended definition of input says that paints can be used 'for any purpose'. Thus, all paints used in the factory are eligible, for whatever purpose they are used.

2.6.35 Cenvat available on packaging material – Cenvat is available on packing material as per definition of input contained in Rule 2(k)(i) of Cenvat Credit Rules.

2.7 INPUT SERVICE FOR CENVAT

2.7.1 Input Service

Manufacturer as well as service provider will be eligible to get Cenvat credit of 'input services'. Rule 2(1) of Cenvat Credit Rules reads as follows –

(i) Insofar as a service provider is concerned, the term 'input service' means any service used by a provider of taxable service for providing an output service. In other words, if a provider of taxable service avails the services of another service provider, the services provided by such 'other service provider' will fall under the definition of 'input service', provided those services have been availed of by the provider of taxable service exclusively for the purpose of providing output service to the ultimate consumer (client, customer etc.)

(ii) Insofar as a manufacturer is concerned, the term 'input service' means (a) any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and (b) clearance of final products from the place of removal (upto 31-3-2008) or clearance of final products upto the place of removal (from 1-4-2008).

In either case, the service in question can be 'any service' and not necessarily be a 'taxable service' as defined in provisions relating to service tax.

(iii) Certain services are specifically included, both in respect of manufacturer and provider of taxable service.

2.7.2 Wide coverage of input services –

The words used in the definition in relation to manufacturer are 'in relation to'. 'In relation' expands the scope of coverage. It is not restrictive. Service need not be received in factory or premises from where output service provided – In case of inputs and capital goods, Cenvat credit is eligible to manufacturer only if these are received in the factory. However, in case of input service, there is no such requirement. Input service need not be received in factory or premises of service provider. In case of service provider, even there is no requirement that inputs and capital goods should be received in premises of service provider, Input service should have relation to 'manufacture'. Definition of 'input service' is very wide. Any service in relation to business is input service. So far, there was no resistance from industry for service tax, since they had a feeling that they will be able to avail Cenvat credit of service tax paid by them on all their input services. However, in recent Tribunal decisions, a restrictive view is being taken that 'input service' should have relation with manufacture. In Colgate Palmolive P Ltd. v. CCE (2008) 12 STT 269 = 7 STR 294 (CESTAT), a prima facie view was expressed that credit of input services which are common to manufactured as well as exempted/traded goods is not available. A prima facie view was also expressed that even services in the inclusive part of definition should be in relation to manufacture. In Coca Cola India v. CCE (2007) 7 STR 529 (CESTAT), assessee was manufacturing concentrate for cold drinks. He was incurring expenditure for advertisement of aerated water and not concentrate. It was held that advertisement expenses is not his 'input service' since it is not related to manufacture of 'concentrate' but related to sale of aerated waters. The reason given was that such advertisement expenses are not includible in assessable value of base essence [Really, the issue is highly arguable. Aspect of valuation is independent of aspect of eligibility of Cenvat credit]. In Gujarat Ambuja Cement Ltd. v. CCE (2007) 8 STT 122 = 212 ELT 410 = 6 STR 249 (CESTAT). Hon. Tribunal in para 12 of the decision has observed, 'Crucial point to be noted in regard to Cenvat Credit is that credit availability is in regard to 'inputs'. The credit covers duty paid on input materials as well as tax paid on services, used in or in relation to the manufacture of the 'final product'. Therefore, extending the credit beyond the point of duty paid removal of the final product, would be contrary to the Scheme of Cenvat Credit Rules'.

2.7.3 Clearance –

This word has specific meaning in Central Excise, where 'clearance' means removal from the factory. Thus, expenses incurred for removal of final product from factory like loading final products in vehicles will get covered. Place of removal – The words are not defined in Cenvat Credit Rules, but are defined in section 4(3)(c) of Central Excise Act as follows –

2.7.4 "Place of removal" means—

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory from where such goods are removed. In Mangalam Cement v. CCE (2007) 8 STR 639 (CESTAT), strong prima facie view was held that if services relate upto the depot, service tax credit will be available. Port/airport is place of removal in case of export - In case of exports, the place of removal isport where export documents are presented to customs office – Kuntal Granites v. CCE (2007)

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215 ELT 515 = 2007 TIOL 930 (CESTAT) – quoted and followed in Rajasthan Spinning & Weaving Mills v. CCE (2007) 8 STR 575 (CESTAT).

2.7.5 Hence, all expenses upto that place should be considered as 'input service'. Activities relating to business All services relating to business will be eligible for service tax credit. The words used are 'activities relating to business, such as - - - - - '. The activities specifically mentioned are as follows –

- Accounting, auditing, financing
- Recruitment and quality control
- Coaching and training
- Computer networking
- Credit rating
- Share registry
- Security
- Inward transportation of inputs or capital goods and
- Outward transportation upto the place of removal.

However, these are only illustrations, as the words used are 'such as'. The illustrations do not mean that only these services are covered under 'activities relating to business'. For example, the words used are 'outward transportation upto the place of removal'. It does not mean out-ward freight after place of removal is excluded.

Meaning of 'such as' - The words 'such as' are used only to illustrate the scope. It is not restrictive.

2.7.6 The input services relating to business can be used for any purpose whatsoever - As per inclusive definition of 'input service' [rule 2(l)], all services used for activities relating to business' are 'input services'. The definition does not say 'activities relating to business pertaining to manufacture or provision of output services'. Thus, all input services used in activities relating to business are 'input services', whatever may be its purpose.

Any expenditure incurred on ground of commercial expediency is for purpose of business – In SA Builders Ltd. v. CIT (Appeals) (2007) 158 Taxman 74 = 288 ITR 1 (SC), it was held that any expenditure incurred on ground of commercial expediency is allowable as business expenditure. 'For the purpose of business' is wider in scope than the expression 'for the purpose of earning income, profits or gains'. 'Commercial expediency' is an expression of wide import and includes such expenditure as a prudent businessman incurs for purpose of business. The expenditure may not have been incurred under legal obligation, yet it is allowable if it was incurred on grounds of commercial expediency – relying on Madhav Prasad Jatin v. CIT AIR 1979 SC 1291.

2.7.7 Mobile phones eligible for Cenvat Credit –

Earlier Service Tax Rules required 'installation' of telephones in the business premises. Hence, CBE&C had clarified vide circular No. 59/8/2003ST dated 20-6-2003 that Cenvat credit will not be available in case of mobile phones. Now there is no such requirement. Hence, service tax paid on mobile phones will be eligible for Cenvat credit w.e.f. 10-9-2004, so long as these are used for 'activity relating to business' – view confirmed in Indian Rayon v. CCE 2007 (6) STT 328 = 4 STR 79 (CESTAT SMB).

2.7.8 Internet services eligible –

Cenvat credit is available in respect of internet services, as it is utilised for information relating to manufacture, sale and despatch – Universal Cables Ltd. v. CCE (2007) 7 STR 310 (CESTAT).

Outward freight after place of removal is not 'input service'?– One of the illustrations given in inclusive part of definition of 'activities relating to business' is 'outward freight upto place of removal'. Hence, a doubt is expressed that freight paid after place of removal is not 'input service'. This is not correct. As already explained, 'such as' means what follows are only illustrations. These are not limitations. It does not mean outward freight after place of removal is excluded from definition of 'input service'. It should be eligible if it is in relation to activities of business. In CCE v. KTMS Engineering (2007) 7 STR 274 (CESTAT), a prima facie view was expressed that service tax paid on outward freight from place of removal is eligible for Cenvat credit – same view in Gujarat Sidhee Cement v. CCE (2007) 7 STR 571 (CESTAT).

However, this view has not been accepted by Tribunal. In Gujarat Ambuja Cement Ltd. v. CCE (2007) 8 STT 122 = 212 ELT 410 = 6 STR 249 (CESTAT), it has been held that outward freight is not an input service. Service tax paid on the cost of transportation from the factory/depots to the buyers' premises, would not be available as credit – followed in India Japan Lighting P Ltd. v. CCE (2007) 11 STT 498 = 8 STR 124 = 218 ELT 103 (CESTAT) – same prima facie view in stay petition in Ultratech Cement v. CCE (2007) 8 STT 152 = 6 STR 364 (CESTAT).

Credit only after payment is made to service provider Credit of input services can be availed only after the output service provider makes payment of value of input services and the service tax payable on it, as shown in invoice of input service provider. [Rule 4(7) of Cenvat Credit Rules]. [In case of excise duty, credit is available as soon as goods are received in the factory. There is no condition that credit can be availed only after payment is made to supplier of goods].

2.7.8 Mere payment of service tax to service provider is not sufficient –

Suppose the invoice is for ₹ 100 and service tax is ₹ 12.36, can you avail Cenvat credit if you pay only ₹ 12.36 to the input service provider? The answer is no, as the words used are 'value of input services *and* the service tax payable on it'.

2.7.9 The specifically included services

The following services are specifically included in the definition of 'input service' :

Services used in relation to :

(i) setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,

(ii) advertisement or sales promotion,

(iii) market research,

(iv) storage upto the place of removal,

(v) procurement of inputs,

(vi) activities relating to business, such as accounting, auditing, financing, recruitment and quality control,

(vii) coaching and training,

(viii) computer networking,

(ix) credit rating,

(x) share registry,

(xi) security,

(xii) inward transportation of inputs or capital goods; and

(xiii) outward transportation upto the place of removal.

Scope of 'activities relating of business' –

It is clear that in view of the use of words 'such as', any input service relating to business will be eligible for service tax credit. This is also clear from the fact that service tax paid at head office/regional offices will be available as credit on the basis of invoice/challan/Bill issued by 'input service distributor'.

Some of the input services which may get covered under this head are as follows – (a) Telephone (b) Security Services (c) Travel Agents (d) Audit (e) Banking and financial services (f) Business Auxiliary Services (g) Commercial training (h) consulting Engineer (i) CHA services (j) Management consultant (k) Manpower recruitment (l) Rent-a-cab (m) Storage and warehousing (n) Technical inspection and testing (o) Goods Transport Agency.

2.7.10 Credit only after payment is made to service provider

Credit of input services can be availed only after the output service provider makes payment of value of input services and the service tax payable on it, as shown in invoice of input service provider. [Rule 4(7)]. [In case of excise duty, credit is available as soon as goods are received in the factory. There is no condition that credit can be availed only after payment is made to supplier of goods].

This peculiar provision has a specific purpose. The reason for this provision is that as per Service Tax Rules, the service tax is payable only after the amount is actually received by the service provider. Thus, the service provider of input services will be liable to pay service tax only when the person who has availed the service (output service provider in this case) pays the amount of his invoice.

It may happen that the output service provider may avail credit of service tax on input services on the basis of Invoice raised by provider of input services. However, he may not actually pay the amount of Invoice to the input service provider. If such thing happens, the service provider of output services will avail credit of service tax, while service provider of input services will not be paying the service tax, as he has not received the payment. Hence, it is provided that service provider of output services can avail credit of service tax only when he makes payment of invoice of input service tax provider, including service tax charged by the input service tax provider.

2.7.11 Relevance of CAS-4 Standard -

In the case of CCE v. GTC Industries Ltd. [2008] 17 STT 63 (Mum. – Cestat), a three-member Bench of the Tribunal cited reference to a Press Note dated 12-8-2004 issued at the time of the draft rules in which it was stated that 'in principle, credit of tax on those taxable services would be allowed that to form a part of the assessable value on which excise duty is charged'. Based on this assurance, the Tribunal took the view that CAS-4 Standards in which 'cost of production' is defined will be relevant for determining whether any taxable service will qualify to be treated as an 'input service' or not.

2.7.12 Services used for procurement of imported service –

In the case of CST v. Convergys India (P.) Ltd. (2009) 21 STT 67 (New Delhi – CESTAT), the show-cause notice alleged that the respondent had used imported input services and in connection with procurement of such services, they had also used certain other input services by using telephone, telex, fax, e-mail etc. and that such services used for procuring such input services could not be treated as input services. The Tribunal did not agree. The Tribunal held that using telephone, telex, fax, e-mail etc. could not be treated as output services provided by the respondent and that, therefore, such input services used in connection with procurement of other input services had to be treated necessarily as input services.

2.7.13 Output service

Who is 'input service distributor' - As per rule 2(m), "input service distributor" means an office managing the business of manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill

or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

Rule 2(p) defines an 'output service' as a service which satisfies the following requirements :

- It must be a taxable service. Section 65(105) of the Service Tax Act spells out the taxable services. The service in question must fall under the category of one of those specified taxable services.
- With effect from 1-3-2008, it excludes transport of goods by road service.
- It must be rendered by the 'provider of taxable service' to a customer, client, subscriber, policy holder, subscriber or any other person as the case may be. In contrast to an 'input service' which is rendered only to a manufacturer or another service provider; an 'output service' must be one that is rendered to other persons for final consumption.

2.7.14 Document Eligible For Cevat Credit –

As per rule 9(1)(g); 'invoice, bill or challan' issued by an 'input service distributor' under rule 4A of Service Tax Credit Rules is an eligible document for purpose of taking Cenvat credit.

2.8 CAPITAL GOODS FOR CENVAT

2.8.1 Eligible 'Capital Goods'

Cenvat credit is available on inputs as well as capital goods. Some provisions are common while there are some specific provisions in respect of Cenvat on capital goods. General provisions applicable to both inputs and capital goods are discussed in other chapter. The specific provisions in respect of capital goods are discussed here.

Capital Goods eligible to a manufacturer or service provider - Manufacturers and service providers are eligible to avail Cenvat credit of capital goods used by them.

2.8.2 Use of Capital Goods –

The capital goods should be used – (a) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or (2) for providing output service.

2.8.3 Installation of capital goods is not required –

Installation/use of capital goods is not a pre-requisite for taking Cenvat credit. First 50%of Cenvat credit taken in respect of capital goods before their installation or use cannot be denied – Goyal MG Gases v. CCE (2004) 168 ELT 369 (CESTAT).

This is correct as rule 3(1) states that Cenvat credit of capital goods can be taken of duty paid on capital goods received in the factory or premises of provider of output service. The rules do not require its installation or commissioning for 'taking' credit.

2.8.4 Capital Goods Eligible even if used for short duration –

Definition of 'capital goods' as per rule 2(b)(a) states that capital goods should be 'used' in the factory/providing output services. Duration is not specified. Hence, even if the capital goods are used for one day, Cenvat eligibility of capital goods is established, as they are 'used'.

2.8.5 Purpose for which Capital Goods used by Manufacturer is immaterial –

The Capital goods can be used within factory for any purpose.

2.8.6 Capital goods used exclusively for exempted final products and output services not eligible -

Capital goods used exclusively for manufacture of exempted goods or providing exempt service are not eligible [rule 6(4)]. [Thus, partial use of capital goods for manufacture of exempted goods or provision of exempt output services is permissible, i.e. in such case, Cenvat credit on capital goods will be allowed].

2.8.7 Capital goods does not cover equipment or appliance used in office for manufacture –

Rule 2(a)(A)(1) clarifies that equipment or appliances used in an office will not be eligible as 'capital goods'. This restriction is only for manufacturer and not for service provider.

2.8.8 Capital goods on hire purchase/lease/loan eligible –

Capital goods obtained on hire purchase, lease or loan agreement from a financing company are eligible for Cenvat – Rule 4(3) of Cenvat Credit Rules. – Though no procedure has been prescribed, it is advisable that the invoice issued by manufacturer of capital goods shows name of the manufacturer as consignee, though the invoice of manufacturer will be in name of the financing company.

2.8.9 Goods imported under project imports –

Goods (mainly machinery) imported under 'project imports' is classified under chapter 98.01 for Customs purposes. Actually, the machinery/goods may be classifiable under differently.

2.8.10 Capital goods manufactured within the factory

As per *Explanation* 2 to rule 2(k) of Cenvat Credit Rules, 'input' includes goods used in manufacture of capital goods which are further used in the factory of manufacturer. Thus, if a manufacturer manufactures some capital goods within the factory, goods used to manufacture such capital goods will be eligible as 'inputs'. [i.e. 100% Cenvat credit will be available in the same financial year]. – It may be noted that capital goods manufactured within the factory and used within the factory are exempt from excise duty vide notification No. 67/95-CE dated 16-3-1995.

2.8.11 Capital goods used by Service provider

A service provider is eligible for Cenvat credit on capital goods, if these are used for providing output service. The definition does not say 'exclusively used'. It also does not specify the period for which the capital goods should be used. Legally, even if they are used for one day, they are 'used', Thus, even if capital goods are used partially for providing output service or they are used only for limited period, Cenvat credit of excise duty paid on capital goods will be available.

2.8.12 Sending out of capital goods by service provider –

Service provider can send out capital goods for providing output service, but these should be brought back within 180 days [second proviso to Rule 3(5)]. Extension can be obtained from Assistant/Deputy Commissioner.

This provision is in conflict with definition of 'capital goods' for service providers, as there is no requirement under rule 2(a) that the capital goods should be brought in the premises of service provider. In case of conflict, basic definition of 'capital goods' should prevail, as rule 3(5) is mainly a procedural provision, while rule 2(a) is a substantive provision.

2.8.13 Depreciation can be taken on 50% of Cenvat credit in first year?

In the first year, the assessee avails credit of only 50% of excise duty. The restriction in rule 4(4) regarding depreciation is only in respect of duty of which Cenvat credit has been taken. Hence, in *Suprajit Engineering Ltd.* v. *CCE* (2007) 6 STR 170 = 212 ELT 394 (CESTAT), it has been held that there is no violation of rule if assessee claims depreciation on the balance 50% of duty, since he has not availed credit of that amount in first year – followed in *Roots Cast* v. *CCE* (2007) 216 ELT 448 (CESTAT SMB).

2.8.14 Sending out of capital goods by service provider –

Service provider can send out capital goods for providing output service. There is no requirement that these should be brought back within 180 days.

Following are the 'capital goods', vide rule 2(a)(i) of Cenvat Credit Rules –

(i) Tools, hand tools, knives etc. failing under chapter 82, Machinery covered under chapter 84, Electrical machinery under chapter 85, Measuring, checking and testing machines etc, falling under chapter 90,

Grinding wheels and the like goods falling under sub-heading No. 6801.10, Abrasive powder or grain on a base of textile material, falling under chapter heading 68,02.

(ii) Pollution control equipment.

(iii) Components, spares and accessories of the goods specified above.

(iv) Moulds and dies.

(v) Refractories and refractory material.

(vi) Tubes, pipes and fittings thereof, used in the factory.

(vii) Storage Tank.

2.9 INPUT SERVICE DISTRIBUTOR

A manufacturer or service provider may have head office/regional office at different place/s. The services may be received at head office/regional office, but ultimately, these will be indirectly used for manufacture or providing output service. Provision has been made to avail Cenvat credit of services received and paid for at head office/regional office. Such head office/ regional office can be registered with Central Excise as 'Input Service Distributor' and it can issue invoice on the anufacturer or producer or service provider.

2.9.1 Who is 'input service distributor' - As per rule 2(m) of Cenvat Credit Rules, "input service distributor" means (a) an office managing the business of manufacturer or producer of final products or provider of output service, (b) which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services ***and*** (c) issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. An office of assessee (manufacturer or service provider) is 'Input Service Distributor' if it satisfies all the three aforesaid requirements. It is not that each and every office of assessee is 'Input Service Distributor' and must register. The office should be registered as 'Input Service Distributor' only if it wants to distribute. There is no law that 'distribution' is the only way of availing Cenvat credit of services received at office of assessee. There are various documents eligible for availing Cenvat credit. Invoice/challan issued by 'Input Service Distributor' is only one of the specified document.

2.9.2 Document eligible for Cenvat credit - As per rule 9(1)(g); 'invoice, bill or challan' issued by an 'input service distributor' under rule 4A of Service Tax Credit Rules is an eligible document for purpose of taking Cenvat credit.

2.9.3 Concept of Input Service Distributor is a facility – not compulsion – Sometimes, an assessee has offices at various places but accounting is done centrally in the factory. Sometimes, there are various factories of assessee but accounting is done in main factory. In such cases, in my opinion, the main factory can directly take Cenvat credit of service tax on the basis of documents. The reason is that 'Input Service Distributor' is a facility. It is nowhere stated that the utilisation should be only through mechanism of Input Service Distributor. There is no law that 'distribution' is the only way of availing Cenvat credit of services received at office of assessee. A facility cannot be a compulsion.Law does not even specify that there must be distribution of Cenvat credit or that the distribution should be in some specified ratio. If no 'distribution' is necessary, there should not be any need of 'Input Service Distributor'.

2.9.4 Distribution of credit by input service distributor – The 'Input Service Distributor' may distribute Cenvat Credit in respect of service tax, among its manufacturing units or providing output service. The credit distributed should not be more than the service tax paid. If an input service is attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing exempted services, the credit of such credit of service tax shall not be distributed [rule 7].

The 'input service distributor' should issue a 'Invoice, Bill or Challan' on monthly basis after consolidating the service tax paid on services received during the month.

2.9.5 UTILISATION OF CENVAT CREDIT

- 'Cenvat Credit' is a pool of duties and taxes paid on inputs, capital goods and input services specified in rule 3(1) of Cenvat Credit Rules.
- The credit in this pool can be utilised for payment of any excide duty on excisable final product and service tax on taxable output service. The credit can also be used for payment of certain 'amounts'.
- Credit of various duties is inter-changeable, subject to few exceptions.
- Credit can be availed only of inputs and input services received upto end of the month.
- Cenvat credit will have to be reversed if the final product is subsequently exempt. The basic conditions for taking Cenvat Credit are as follows –
- There should be 'manufacture' or provision of taxable output service
- Inputs (goods) should be used in or in relation to manufacture of final product or for provision of output service
- Input service should be utilised for manufacture of final product or provision of taxable output service

2.9.6 ISSUES RELATING TO CENVAT

- Cenvat credit is available for duties and taxes specified in rule 3(1), paid on input, input services and capital goods, subject to restrictions as specified
- No credit is available if final product is exempt from duty or output service is not taxable
- Credit is available on the basis of specified documents only The conditions for allowing Cenvat Credit, as specified in rule 4 are as follows –
- Cenvat credit on inputs is available as soon as inputs are received in the factory of manufacturer or premises of the provider of output service [rule 4(1)].
- Cenvat credit of capital goods can be taken upto 50% in the financial year in which capital goods are received and balance in subsequent year/s [rule 4(2)]
- Cenvat credit of capital goods is allowable even if the capital goods are acquired on lease, hire purchase or loan [rule 4(3)]. However, assessee should not claim depreciation on the excise portion of value of capital goods [rule 4(4)]
- Inputs and capital goods can be sent outside for job work but should be brought back within 180 days [rule 4(5)]
- Cenvat credit is available on jigs, fixtures, moulds and dies even if sent to job worker for production of goods on behalf of manufacturer [rule 4(6)]
- Cenvat credit of input service is allowed only after payment towards value of service and service tax is made [rule 4(7)]

2.9.7 Duties eligible for Cenvat credit - Assessee can avail credit of duty/ service tax paid on inputs and input services. This credit is known as 'Cenvat Credit'. This is a 'pool' which is available for utilisation for payment of duty on any final product or output services, subject to certain restrictions and limitations.

2.9.8 Payment of NCCD on mobile phones can be only by Cenvat credit of NCCD and not any other Credit – As per fourth *proviso* to Cenvat Credit Rule 3(4) inserted w.e.f. 1-3-2008, only credit of NCCD can be utilised for payment of NCCD on mobile phones. Any other credit cannot be used. This restriction is only for mobile phones.

2.9.9 One to one correlation not necessary in Cenvat – Rule 3(4)(a) states that Cenvat credit may be utilised for payment of *any* duty of excise on *any* final product or service tax on output service.

Thus, there is no requirement of establishing relation between inputs/input services and final product/output services. One to one relation is not required.

There is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related - *CCE*

v. *Dai Ichi Karkaria Ltd.* 112 ELT 353 = AIR 1999 SC 3234 = 1999 AIR SCW 3205 = (1999) 7 SCC 448 (SC 3 member bench) – quoted with approval in *CCE* v. *Bombay Dyeing* (2007) 10 STT 286 (SC).

2.9.10 Full credit even if seller gave trade discount or price reduction later – Even if manufacturerseller gave trade discount later, full credit of excise duty paid by him is available to buyer so long as duty paid at supplier's end is not changed – *CCE* v. *Tirumala Fine Texturiser P Ltd.* (2007) 217 ELT 85 (CESTAT SMB) – same view in *Evergreen Engineering Co.* v. *CCE* (2007) 215 ELT 134 (CESTAT SMB) * *Brown Kraft Indus. Ltd.* v. *CCE* (2007) 212 ELT 369 (CESTAT) – same view in *Force Motors* v. *CCE* (2007) 213 ELT 302 (CESTAT), where it was held that credit available is of duty 'paid' and not duty 'payable'.

2.9.11Restriction on Cenvat credit of goods supplied by EOU - From following data, determine the Cenvat allowable if the goods are produced or manufactured in a FTZ or by a 100% EOU and used in any other place in India. Assessable value : ₹ 770 per unit, Quantity cleared 1,000 units, BCD – 10%, CVD – 14%, plus education cess as applicable.

Answer - As per Rule 3(7)(a) of Cenvat Credit Rules, 2004 the following formula is to be used if a unit in DTA purchases goods from EOU, for clearances on or after 1-3-2006 – Assessable value x{[1+BCD/400] X CVD/100}

Hence, Cenvat Available per unit is as follows –

Total Cenvat allowable on 1,000 units = 1,000 x 113.81 = ₹ 1,13,81,000

2.10 REVERSAL OF CENVAT

Cenvat credit is taken as soon as inputs are received in factory or input services are paid for. In some cases, Cenvat credit may have to be reversed.

2.10.1 Reversal under rule 6 - If a manufacturer manufactures exempted as well as taxable goods and/or a service provider provides taxable as well as exempt services, he (manufacturer/service provider) is required to either pay 'amount' or reverse proportionate Cenvat credit. The issue is discussed in a later chapter.

2.10.2 Reversal if finished goods cleared at concessional rate of duty - Finished products can be sent under bond under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 without payment of duty. If such goods are sent, Cenvat credit will have to be reversed. If common inputs and input services were used on which Cenvat was availed, payment of 'amount' as per rule 6(3)(b) will be required. Case law discussed in another chapter.

2.10.3 Reversal if remission obtained on duty payable on final product - If final product is destroyed or becomes unfit for consumption, when the goods were in store room, duty on such final product can be remitted under rule 21 of Central Excise Rules. Rule 3(5C) of Cenvat Credit Rules (as inserted w.e.f. 7-9-2007) provides that if duty on final products is remitted under rule 21 of Central Excise, Cenvat credit of duty paid on inputs used in manufacture or such goods shall be reversed.

Cenvat = 770 × {[1 + 10/400] × 14.42/100}

= 770 × {1.025 × 0.1442}

= 770 × 0.147805 = ₹ 113.81 per unit

2.10.4 Reversal of Cenvat credit in respect of obsolete goods written off - As per rule 3(5B) of Cenvat Credit Rules (inserted w.e.f. 11-5-2007), if (i) inputs or (ii) capital goods before being put to use, are written of fully or provision is made in books of account to write off fully, the manufacturer is equired to pay an 'amount' equal to Cenvat credit taken in respect of such inputs or capital goods. If these are subsequently used in manufacture of final products, manufacturer can take Cenvat credit of amount which was paid earlier.

2.10.5 Reversal if final product subsequently exempt – Cenvat Credit is taken as soon as goods enter factory premises. Final product may be cleared later. It may happen that the final product may be subsequently exempt (conditionally or unconditionally). At that time, some inputs (on which Cenvat has been availed) will be in stock. These inputs will be used for manufacture of exempted final product, if he decides to avail the exemption (in case of conditional exemption. In case of unconditional exemption, it is mandatory for him to avail exemption. In such case, basic principle is that Cenvat is available only if duty is paid on final product. According to this principle, the Cenvat credit availed on stock is required to be reversed.

Rule 11(3) as inserted w.e.f. 1-3-2007 provides that in such case, the manufacturer will have to pay an amount equivalent to Cenvat credit availed by him in respect of inputs received for such final productand lying in stock or in process or contained in final product. Similar provision has been made in respect of services exempt subsequent to availment of Cenvat credit on inputs availed in rule 11(4). Though the words used are 'pay such amount' in later para of rule 11(3)(ii) and in rule 11(4), it is stated that the said amount should be deducted from balance of Cenvat credit and balance will lapse. Thus, reasonable interpretation is that such amount should be first paid out of Cenvat credit available (if any) and balance should be paid through cash. The rule makes provision only in respect of reversal of Cenvat credit on inputs and not in respect of input services and capital goods.

In *Ashok Iron & Steel v.CCE(2002)* 140 ELT 277 = 100 ECR 431 (CEGAT 5 member bench), it has been held that if CENVAT credit availed on inputs and duty on final product is subsequently exempt, CENVAT credit on inputs lying in stock or inputs contained in final products as on date of exemption need not be reversed, as there is no provision for reversal of such credit – followed in *Raghuvar v. CCE2002(140) ELT 280* (CEGAT 5 member bench).

2.10.6 Reversal if remission obtained on duty payable on final product ? - If final product is destroyed by fire accident, when the goods were in store room, duty on such final product is remitted. There is dispute whether Cenvat is to be reversed in such cases. See under 'remission of duty' in another chapter.

2.10.7 No Cenvat reversal in certain cases

In following cases, Cenvat credit is not required to be reversed.

No reversal in case of export/deemed export of final product – Cenvat credit is not required to be reversed, if final product is exported or supplied to UN Agencies, or to EOU/STP/EHTP. Supplies to SEZ are 'exports'. This aspect has been discussed at other place in the book.

No reversal if intermediate product supplied and final product exported – If intermediate product is cleared without payment of duty under bond for manufacture of final product which is to be exported, Cenvat on inputs used in manufacture of intermediate product is not required to be reversed. This aspect has been discussed at other place in the book.

No reversal if input subsequently become ineligible for Cenvat – It may happen that an input may be eligible for availing Cenvat when it was received in the factory and Cenvat may be availed on it. However, later, the input may be removed from list of inputs eligible for Cenvat. In such cases, even if some inputs were lying in stock on the date of such withdrawal, Cenvat credit already availed need not be reversed – Dhar Cement Ltd. v. CCE 1996(86) ELT 515 (CEGAT) following Amrit Banaspati v. UOI1990(50) ELT 64 (P & HHC) and Dipak Vegetables v. UOI 1991(52) ELT 222 (Guj HC).

No reversal if supplier gives reduction in price after clearance - Excise duty is payable on the basis of price at the time of clearance. Thus, assessable value does not change if supplier gives credit of duty after removal of goods. In view of this, credit is not to be reversed only because the supplier of inputs has given some reduction in prices after removal of goods. In CCE v. Kinetic Engg1997(95) ELT 396 (CEGAT), it was held that classification of goods made at the supplier's end cannot be altered at the manufacturer's end. Same principle will apply to valuation also.

2.10.8 Full Credit Available Even If Price Subsequently Reducted –

Full credit is available even if supplier subsequently gives price reduction. In CCE v. Trinetra Texturisers 2004 (166) ELT 384 (CESTAT), supplier of inputs gave reduction in price subsequent to clearance of goods. It was held

that the buyer is eligible to avail full Cevat credit of duty paid, unless the duty liability of supplier was reduced. [Thus, even if supplier of input gives rice reduction, Cenvat Credit is available of full duty paid]. In MRF Ltd. v. CCE 1997(92) ELT 309 (SC), it was held that any fluctuation in price subsequent to removal of goods has no relevance whatsoever to the liability of excise duty.

2.10.9 No reversal on mere instructions of excise officers –

Cenvat credit should not be reversed on instructions or insistence of excise authorities, if assessee is not agreeable to legal validity of such instructions, unless an appealable order is issued. In Punjab Concast Steels v. CCE 2001(127) ELT 559 (CEGAT SMB), it was held that if Cenvat credit is reversed as per directions of excise authorities, the amount cannot be claimed as refund. The order asking reversal should be appealed against.

2.11 DOCUMENTS FOR AVAILING CENVAT CREDIT

Rule 9(1) of Cenvat Credit Rules prescribes that Cenvat Credit can be taken on the basis of -

- Invoice of manufacturer from factory
- Invoice of manufacturer from his depot or premises of consignment agent
- Invoice issued by registered importer
- Invoice issued by importer from his premises or consignment registered with Central Excise
- Invoice issued by registered first stage or second stage dealer
- Supplementary Invoice by manufacturer
- Bill of Entry
- Certificate issued by an appraiser of customs in respect of goods imported through foreign post office
- TR-6 or GAR-7 Challan of payment of tax where service tax is payable by other than input service provider
- Invoice, bill or challan issued by provider of input service on or after 10-9-2004
- Invoice, Bill or Challan issued by input service distributor under rule 4A of Service Tax Rules.

Credit in case of defects in duty paying document only with permission of AC/DC – Cenvat credit is available on basis of proof of duty paying document like Invoice or Bill of Entry. Sometimes, there are some minor defects in the duty paying document, which are technical in nature. However, fact of duty payment is not in doubt.

Rule 9(2) as amended w.e.f. 1-3-2007 provides that Cenvat credit can be taken only if ***all*** the particulars as prescribed in Central Excise Rules, 2002 or Service Tax Rules, 1994 are contained in the eligible duty paying document.

As per *proviso* to rule 9(2), if all prescribed details are not available in duty paying document, at least following minimum details should be available - (a) Details of duty or service tax payable (b) description of goods or taxable service (c) assessable value (d) Central Excise or Service Tax Registration Number and (e) name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service.

If all prescribed details are not available in duty paying document (but minimum details as prescribed above are available) and if Jurisdictional Assistant / Deputy Commissioner is satisfied that such goods or services covered by the document have been received and accounted for in books of account of receiver, he may allow Cenvat credit.

Thus, even if there is minor defect or omission in duty paying document, the assessee will have to make application to AC/DC and seek his permission to avail Cenvat credit

Provisions when dealer of imported goods is claiming refund of Special CVD of Customs – A dealer who imports goods and sales them in India after paying Vat/sales tax can claim refund of special CVD of 4% paid u/s 3(5) of Customs Tariff Act, as per Notification No. 102/2007-Cus dated 14-9-2007. If he intends to claim refund, he is required to make mention in his invoice to buyer that no credit of such additional duty shall be admissible (to buyer).

If a first stage or second stage dealer receives goods under an invoice which mentions that Cenvat credit of the special CVD paid u/s 3(5) of Customs Tariff Act is not admissible, he should make similar endorsement in his invoice to buyer. – *proviso* to rule 11(7) of Central Excise Rules. If such remark is there, the buyer cannot avail Cenvat credit of such special CVD *proviso* to rule 9(1) inserted w.e.f. 14-9-2007.

2.12 EXEMPTED GOODS/OUTPUT SERVICES

- Cenvat credit is available only if final product is dutiable.
- If assessee is manufacturing exempted as well as dutiable goods in same factory, he should maintain separate records.
- If common inputs/input services are utilised for exempted as well as taxable final product, assessee is required to pay 5% of value of exempted goods (if he is 'manufacturer) and/or 6% 'amount' on exempted final product.

Partial manufacture/provision of exempted products/services – Cenvat credit of inputs and input services is not available if final product/output service is exempt from excise duty/service tax. In case of manufacturer manufacturing both exempt and dutiable goods (or service provider providing taxable as well as exempt services), it may happen that same inputs/input services are used partly for manufacture of dutiable goods/ taxable services and partly for exempted goods/services.

In such cases, the manufacturer/service provider has following three options (w.e.f. 1-4-2008) –

(a) Maintain separate inventory and accounts of receipt and use of inputs and input services used for exempted goods/exempted output services – Rule 6(2) of Cenvat Credit Rules.

(b) Pay amount equal to 5% of value of exempted goods (if he is 'manufacturer) and/or 6% of value of exempted services (if he is service provider) if he does not maintain separate inventory and records – Rule 6(3)(i) w.e.f. 7-7-2009.

(c) Pay an 'amount' equal to proportionate Cenvat credit attributable to exempted final product/ exempted output services – Rule 6(3)(ii) w.e.f. 1-4-2008.

Cenvat credit on capital goods – If capital goods are partly used for exempted goods and party for dutiable final products, entire Cenvat credit of duty paid on capital goods is available. Cenvat credit of duty on capital goods is not allowable only when it is *exclusively* used for manufacture of final products [rule 6(4)]

No reversal or payment of amount in certain cases – If excisable goods are removed to SEZ, EOU, EHTP, STP, UN agencies or for exports or removal of gold or silver arising in manufacture of copper or zinc by smelting, payment of 10% 'amount' is not required [rule 6(6)].

Cenvat credit of service tax in case of supplies made by DTA to EOU - Supplies from DTA to EOU are entitled to Cenvat credit of service tax paid – para 6.11(v) of FTP.

2.12.1 Options available to manufacturer manufacturing both dutiable and exempt goods and service provider providing taxable as well as exempt services

The manufacturer/service provider has three options –

Maintain separate inventory and accounts - Maintain separate inventory and accounts of receipt and use of inputs and input services used for exempted goods/exempted output services. In such cases, he should not avail Cenvat credit of the inputs and input services which are used in exempted final services at all – Rule 6(2) of Cenvat Credit Rules.

Pay 5% 'amount' on value of exempted goods or 6% 'amount' on value of exempted services if separate inventory and records not maintained - If the manufacturer/service provider opts not to maintain such separate accounts, he has to pay an amount equal to 5% of the 'value' of such exempted goods or 6% of the value of 'exempted

services' [Rule 6(3)(i) w.e.f. 7-7-2009 (Such payment can be made by debit to Cenvat credit account or PLA [*explanation* II to rule 6(3A)].

He cannot utilise Cenvat credit of inputs/input services utilised exclusively for manufacture or exempted final product or exempted output services, as is clarified in Explanation II to rule 6(3) inserted w.e.f. 1-4-2008.

Thus, he cannot utilise Cenvat credit in respect of inputs/input services utilised exclusively for manufacture of exempted final products or exempted taxable services. In addition, he has to pay 5%/6% amount. Thus, the option of payment of 5%/6% amount is not likely to be very attractive in most of the cases.

Such option has to be exercised in respect of all exempted goods manufactured and all exempted output services provided. The option once exercised shall not be changed in remaining part of financial year – *Explanation* I to Rule 6(3) inserted w.e.f. 1-4-2008.

Education cess and SAH education cess is payable only on 'duties of excise'. 'Amount' is not 'duty'. Hence, education cess or SAH education cess is not payable on such 'amount'.

Pay proportionate amount attributable to Cenvat credit utilised for exempted final product/ exempted output services – The manufacturer/service provider can opt to pay an 'amount' which is proportional to Cenvat credit availed on exempted final product/exempted output services [rule 6(3)(ii) w.e.f. 1-4-2008]

He cannot utilise Cenvat credit of inputs/input services utilised exclusively for manufacture or exempted final product or exempted output services, as is clarified in Explanation II to rule 6(3) inserted w.e.f. 1-4-2008.

Thus, he cannot utilise Cenvat credit in respect of inputs/input services utilised exclusively for manufacture of exempted final products or exempted taxable services. In addition, he has to pay proportionate amount relating to exempted final products/exempted output services.

This option seems to be much better than payment of 6%/5%.

If he wants to exercise this option, he has to inform details as prescribed in rule 6(3A) of Cenvat Credit Rules to Superintendent of Central Excise.

Such option has to be exercised in respect of all exempted goods manufactured and all exempted output services provided. The option once exercised shall not be changed in remaining part of financial year – *Explanation* I to Rule 6(3) inserted w.e.f. 1-4-2008.

Education cess and SAH education cess is payable only on 'duties of excise'. 'Amount' is not 'duty'. Hence, education cess or SAH education cess is not payable on such 'amount'.

2.12.2 Determination of Cenvat credit attributable to exempted final product/exempted services

If assessee intends to pay amount on proportionate basis, the 'amount' is to be calculated as provided in rule 6(3A) of Cenvat Credit Rules. He has to pay 'amount' provisionally on monthly basis. At the yearend, he has to calculate exact amount and pay difference if any or adjust excess amount paid.

Principle behind the calculations – The mode of calculation is as follows –

Assessee should first take entire Cenvat credit of inputs and input services used in exempted as well as taxable final products and exempted as well as taxable services. Then, at the end of month, he should calculate Cenvat credit attributable to exempted final products and exempted services on provisional basis, as follows –

Inputs used for exempted final products (Based on his own Input/Output ratio, even in case of common inputs like consumables etc.) + Inputs used for exempted services (On proportionate basis, based on ratio of previous year) + Input services used for exempted final products and exempted services (On proportionate basis based on ratio of previous year).

This amount should be reversed after end of each month.

At end of the year, assessee should calculate the ratios on actual basis and make fresh calculations and pay difference, if any, before 30th June. If it is found that he had paid excess amount based on provisional ratio, he can adjust the difference himself by taking credit.

In the first year of production or provision of services, ratios of previous year are not available. In that case, the calculations need not be made for the whole year. However, calculations should be made after the year is over and amount attributable to Cenvat credit on exempted final products and exempted services should be calculated and paid.

The basic idea behind the mode of calculations is sound and correct as per Vat principles. However, calculations are not easy and are prone to litigation.

There is no provision to calculate input services used exclusively for exempted services. This has to be done on ratio basis only.

Payment of 'amount' when intermediate product captively consumed in manufacture of another final product – In *CCE* v. *Texmo Industries* (2007) 213 ELT 615 (CESTAT), assessee used common inputs to manufacture rough castings. Some castings were sold while about 20% castings were captively consumed for manufacture of pumps. The pumps were also exempt from duty. It was held that 10% 'amount' is payable on value of castings and not on value of pumps. 'Casting' is the 'final product' and not 'pumps' – same view in *Texmo Industries* v. *CCE* (2007) 208 ELT 338 (CESTAT 3 member bench).

2.13 REMOVAL OF INPUT, CAPITAL GOODS AND WASTE

- Inputs and capital goods on which Cenvat credit was taken can be removed 'as such' on payment of 'amount' equal to Cenvat credit availed.
- If capital goods are sold as scrap after use, an 'amount' equal to duty on scrap value is payable.
- Inputs on which Cenvat was availed can be sent outside for job work. These should come back within 180 days.
- Direct despatch from place of job worker can be done with permission.
- Waste is final product for excise purposes and duty is payable as if final product is being cleared.
- If a particular waste is not mentioned in Central Excise tariff, neither any amount nor duty is payable at the time of clearance.

Removal of capital goods after use

Provisions of rule 3(5) apply when inputs or capital goods are removed 'as such'. Rule 2(a)(A) of Cenvat Credit Rules states that capital goods should be 'used'. Duration is not specified. Hence, even if the capital goods are used for one day, Cenvat eligibility of capital goods is established. After use, the capital goods can be removed either as scrap or as second hand capital goods.

Removal of capital goods as waste and scrap – *As per rule 3(5A) (inserted w.e.f. 16-5-2005), if capital goods are removed as scrap, the manufacturer shall pay an 'amount' equal to duty payable on transaction value. In other words, an 'amount' equal to duty on scrap value should be paid. It should be shown as 'amount' in the invoice and not 'duty'. Rule 3(6) makes it clear that the buyer can avail Cenvat credit of the 'amount'.*

Removal of capital goods as second hand goods – *It is not that manufacturer will remove old capital goods only as scrap. He can as well sell it as second hand capital goods, if he does not need them. The machinery may be in working condition or could be brought in working condition after some expenditure.*

*In such case, if capital goods are removed after use, the manufacturer or output service provider shall pay an 'amount' (not 'excise duty') equal to Cenvat credit taken on the said capital goods, reduced by 2.5% for each quarter of a year or part thereof from the date of taking the Cenvat credit [*second proviso *to rule 3(5) of Cenvat Credit Rules, inserted w.e.f. 13-11-2007].*

For example, if capital goods are received in July 2007 (duty paid ₹1,00,000), 50% i.e. ₹50,000 credit was taken in November 2007, balance 50% credit was taken in April 2008, capital goods were installed in January 2008 and were sold after use in July 2009, the 'quarters' involved are 8 (2007 – 1, 2008-4, 2009 – 3) for first 50% and 6 for balance 50%.

Thus, assessee can get deduction of 20% of first ₹50,000 (₹10,000) and 15% of balance ₹50,000 (₹7,500). He has to pay 'amount' of ₹82,500 (1,00,000 – 10,000 – 7,500).

The buyer can avail Cenvat credit of this 'amount' as made clear in rule 3(6) of Cenvat Credit Rules. Hence, seller should clear the second hand capital goods under 'invoice' charging 'amount' in invoice (not excise duty).

Example :

H Ltd. purchased a Boring-Drilling machine at a cum-duty price of ₹ 32,14,476. The Excise duty rate charged on the said machine was @ 10% plus education cess of 2% plus SAH education cess of 1%. The machine was purchased on 01.04.2008 and disposed of on 30.09.2009 for a price of ₹ 12 lakhs in working condition as second hand machinery. The company was claiming depreciation @ 25% following Straight Line Method. Using the said information, answer the following questions: (i) What is the Excise duty paid on the machine? (ii) What is the Cenvat credit allowable under Cenvat Rules? (iii) What is the amount of Cenvat credit reversible or duty payable at the time of clearance of the said machinery?

Cum-duty price ₹ 32,14,476. Hence, Basic Price i.e. Assessable value = 32,14,476 * 100/110.30 = ₹ 29,14,302.81
Total duty paid = Cum Duty Price – Assessable Value

= ₹ (32,14,476 – 29,14,302.81) = ₹ 3,00,173.19

As per Cenvat Credit Rules, 50% Cenvat credit can be availed in current financial year and balance 50% of Cenvat is allowable only in following financial year, if the capital Goods are in possession and use. Hence, 50% Cenvat credit can be taken on 1-4-2008. Since the Capital goods were in use for six months in the year 2008-09, Cenvat of balance 50% is allowable on 1-4-2009.

As per second proviso to rule 3(5) of Cenvat Credit Rules, if capital goods are removed after use, the manufacturer or output service provider shall pay an 'amount' (not 'excise duty') equal to Cenvat credit taken on the said capital goods, reduced by 2.5% for each quarter of a year or part thereof from the date of taking the Cenvat credit. It is assumed that assessee took credit on 1-4-2008. Since machinery was disposed of on 30-9-2009, reduction for 6 quarters @ 2.5% per quarter i.e. 15% will be available. Thus, assessee is required to pay 'amount' equal to 85% of ₹ 3,00,173.19 i.e. ₹ 2,55,147.21.

2.14 OTHER PROVISIONS OF CENVAT

Refund of service tax paid in respect of certain services utilised for exports – A manufacturer exporter can avail Cenvat credit of certain input services utilized in relation to export. However, according to Government press release dated 6-10-2007 – 10 STT 25 (St), press note dated 17-9-2007 – 10 STT 14 (St), press release dated 29-11-2007 – 11 STT 55 (St), some services utilised for exports do not fall within the definition of input services [In my view, they do fall within the definition of 'input service' for a manufacturer. The reason is that exports are invariably on FOB basis and hence port is the 'place of removal'. Another reason is the wide definition of 'input service']. Similarly, a merchant exporter utilises various input services for export of goods which he cannot avail any Cenvat credit. In respect of following such services, an exporter can claim refund of service tax paid on such services, under Notification No. 41/2007-ST dated 6-10-2007.

These services are – (a) General Insurance Services (b) Technical testing and analysis (c) Technical inspection and certification (d) Port and other port (e) Transport of export goods by road or by rail (f) Cleaning activity (g) Storage and warehousing (h) Courier services (i) Transport of goods by road from place of removal (j) Transport of goods by container from place of removal (k) CHA service (l) Banking and financial services (m) Services of commission agent.

(No refund is available in respect of other input services utilised for export)

Transfer of credit of duty paid on material lying at place of job worker permissible - In *CCE* v. *Vaishali India* (2008) 224 ELT 247 (CESTAT SMB), assessee was shifting factory to new premises and sought permission for transfer of credit of duty paid on inputs lying at the premises of job worker. It was held that such credit cannot be denied.

Cash Refund if Cenvat cannot be utilised by exporter - If the credit cannot be used for payment of duty on any other final goods or service tax on other services, manufacturer or service provider can get cash refund of the

same, if final products or output services were exported without payment of duty (either under bond or after giving Letter of undertaking), or if these were used in the intermediate product cleared for export. Refund is not admissible if exporter has availed duty drawback or has claimed rebate of duty in respect of such duties or has claimed rebate of service tax under Export of Service Rules - Rule 5 of Cenvat Credit Rules.

This provision is only for physical exports and not for deemed exports or home clearances.

The rule 5 states that no drawback should be claimed. Actually, duty drawback of customs portion should be allowable, since refund of Cenvat credit is only in respect of excise portion of duty drawback. Unfortunately, the way rule 5 is worded, this does not seem possible.

Para 2.48.1 of Foreign Trade Policy (as amended w.e.f. 7-4-2006), reads as follows, 'For all goods and services which are exported from units in DTA (Domestic Tariff Area) and units in EOU/EHTP/STP/BTP, remission of service tax shall be allowed'.

Para 6.11(c)(v) of Foreign Trade Policy (as amended w.e.f. 7-4-2006) states that EOU/EHTP/STP/BTP units shall be entitled to Cenvat Credit of service tax paid.

Rule 5 of Cenvat Credit Rules has been amended w.e.f. 14-3-2006 to provide for refund of Cenvat credit when final products or output service is exported.

Procedure for claiming refund of service tax paid on input services and excise duty on inputs has been specified in notification No. 5/2006-CE(NT) dated 14-3-2006.

Penalty for violation of Cenvat Credit Rules – Penalty upto ₹ 5,000 can be imposed for violation of Cenvat Credit Rules [rule 15A of Cenvat Credit Rules inserted w.e.f. 1-3-2008].

2.15 ACCOUNTING TREATMENT OF INPUTS IN CENVAT

Accounting for Cenvat in books of account of assessee needs following considerations

(a) Since credit is available of excise duty/service tax paid while obtaining inputs/input services, duty/service tax paid on inputs while purchase is not an expense but an asset.

(b) Unavailed Cenvat is not available as refund (except when it is a case of exports). This may happen when duty/service tax paid on inputs is more than duty payable on final product.

(c) Cenvat is available instantly on receipt of inputs/ payment of input service and Cenvat credit may be utilised even before inputs/input services on which Cenvat is availed are actually used in production.

(d) Rule 4(4) of Cenvat Credit Rules provides that depreciation should not be claimed on Cenvat credit availed.

(e) Credit on inputs and capital goods can be taken as soon as goods are received in the factory.

(f) In case of service tax, credit can be availed only after payment of Bill is made to the person who had provided input service.

(g) Credit of education Cess and NCCD can be utilised for payment of education Cess and NCCD only.

(h) Valuation of stock of inputs, WIP and finished goods also needs consideration.

Conflict between AS-2 and section 145A - As per section 145A of Income Tax Act, stock valuation should be inclusive of any tax, duty, cess or fee actually paid by assessee to bring the goods to the place of its location and condition as on date of valuation, even if such tax or duty is refundable. Thus, duty paid on inputs will have to be added while valuing stock, even if Cenvat credit is availed of such duty paid. In respect of finished stock, excise duty payable should be added to the inventory valuation even if not paid as goods are still lying in the factory. Both opening as well as closing stock should be valued on same basis.

However, as per Accounting Standard of ICAI (AS-2), inventory cost should comprise of all cost of purchases, cost of conversion and other costs incurred in bringing the inventories to the present location and condition. Cost of purchase consists of purchase price including duties and taxes (other than those subsequently recoverable by the enterprise from the taxing authorities), freight inwards and other expenditure directly attributable to such acquisition. Trade discounts, rebates, duty drawbacks and other similar items are deducted in determining

the costs of purchase. Cost of purchases should be exclusive of duties which are recoverable from the taxing authorities. (e.g. Cenvat). Inventory should be valued at lower of cost or net realisable value. Inventory should be valued on FIFO (First in First Out) method or weighted average method. [LIFO is not permitted].

If Cenvat credit of duty paid on inputs is not available for any reason, the closing stock should be valued inclusive of duty paid on inputs. [Refer Guidance Note of ICAI on Accounting Treatment of Modvat / Cenvat].

Thus, for purposes of Income Tax, inventory is required to be valued inclusive of excise duty, even if assessee is entitled to get Cenvat credit of duty. However, for purposes of balance sheet as per Companies Act, inventory should be valued exclusive of excise duty, if assessee is entitled to get Cenvat credit of duty paid on inputs.

Illustration of entries in respect of Cenvat on inputs - The Guidance Note of ICAI gives an illustration of entries. The illustration is on the assumption that there is opening stock of 10 units purchased at ₹ 20 per unit plus ₹ 4 excise duty, aggregating to ₹ 22. 200 units of raw materials are purchased at ₹ 20 per unit, plus ₹ 2 for excise duty, aggregating to ₹ 22. Out of these, 130 units are consumed in process involving manufacture of 130 items of final product. These 130 units of final product are sold @ ₹ 30 per unit, inclusive of excise duty of ₹ 2.73 per unit. The Cenvat credit has been utilised fully for payment of duty on final products. The entries will be as follows :

Particulars		**Amount** ₹	**Amount** ₹
Purchase A/c [200 units × ₹ 20]	Dr	4,000	
Cenvat Credit Receivable A/c [200 units × ₹ 2]	Dr	400	
To Sundry Creditors A/c			4,400
(Being 200 units of Raw materials purchased)			
Excise Duty Paid on final products (130 × 2.73)	Dr	354.90	
To Cenvat Credit Receivable Account		354.90	
(Utilisation of Cenvat Credit)			

The P&L Account will be as follows :

Particulars	**Unit** ₹	**Rate** ₹	**Total** ₹
Opening Stock of Raw materials	20	20	400.00
Add : Purchases	200	20	4,000.00
	220		4,400.00
Less : Closing Stock	90		1,800.00
Net Consumption	130		2,600.00
(A) **Cenvat Credit Receivable**			
(i) on Opening stock	20	2.00	40.00
(ii) on Purchases	200	2.00	400.00
	220		440.00
(B) Excise Duty Payable on Final Product	130	2.73	354.90
(C) Cenvat Credit Receivable (Balance) (A – B)			85.10

Thus closoing debit balance will be ₹ 85.10 in the Cenvat Credit Receivable acccount will be shown as asset under 'Loan and Advances'. So, the total value of Stock of Raw Material (excluding Cenvat Credit Reveivable) will be ₹ 1,800 (= 90 × 20).

Similar entries will be required to be made for education cess, NCCD, AED(GSI) also.

2.16 DOCUMENTS AND ACCOUNTS

The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :

2.16.1(a) an invoice issued by -

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(i) an importer;

(ii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iii) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

2.16.2 (b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short –levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

2.16.3 (c) a bill of entry; or

2.16.4 (d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

2.16.5 (e) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii) and (iv) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

2.16.6 (f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

2.16.7 (g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

2.16.8 The CENVAT credit shall not be denied on the grounds that any of the documents mentioned Above does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty or service tax, description of the goods or taxable service, assessable value, name and address of the factory or warehouse or provider of input service: Provided that the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer or provider of output service intending to take CENVAT credit, or the input service distributor distributing CENVAT credit on input service, is satisfied that the duty of excise or service tax due on the input or input service has been paid and such input or input service has actually been used or is to

be used in the manufacture of final products or in providing output service, then, such Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, shall record the reasons for not denying the credit in each case.

2.16.9 The manufacturer or producer of excisable goods or provider of output service taking CENVAT credit on input or capital goods or input service, or the input service distributor distributing CENVAT credit on input service shall take all reasonable steps to ensure that the input or capital goods or input service in respect of which he has taken the CENVAT credit are goods or services on which the appropriate duty of excise or service tax as indicated in the documents accompanying the goods or relating to input service, has been paid.

Explanation – The manufacturer or producer of excisable goods or provider of output service taking CENVAT credit on input or capital goods or input service or the input service distributor distributing CENVAT credit on input service on the basis of, invoice, bill or, as the case may be, challan received by him for distribution of input service credit shall be deemed to have taken reasonable steps if he satisfies himself about the identity and address of the manufacturer or supplier or provider of input service, as the case may be, issuing the documents as specified, evidencing the payment of excise duty or the additional duty of customs or service tax, as the case may be, either-

(a) from his personal knowledge; or

(b) on the basis of a certificate given by a person with whose handwriting or signature he is familiar; or

(c) on the basis of a certificate issued to the manufacturer or the supplier or, as the case may be, the provider of input service by the Superintendent of Central Excise within whose jurisdiction such manufacturer has his factory or such supplier or provider of output service has his place of business or where the provider of input service has paid the service tax, and where the identity and address of the manufacturer or the supplier or the provider of input service is satisfied on the basis of a certificate, the manufacturer or producer or provider of output service taking the CENVAT credit or input service distributor distributing CENVAT credit shall retain such certificate for production before the Central Excise Officer on demand.

2.16.10 The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

2.16.11 The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

2.16.12 The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

2.16.13 The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board:

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within twenty days after the close of the quarter to which the return relates.

(8) A first stage dealer or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board.

The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

The input service distributor, shall submit a half yearly Statement, giving the details of credit received and distributed during the said half year to the Superintendent of Central Excise, by the end of the month following the half year.

2.17 OTHER PROVISIONS

2.17.1 Transfer of CENVAT Credit (Rule 10) – If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.

The transfer of the CENVAT credit under sub-rules as stated above shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim —

Notwithstanding anything contained in these rules, where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99- Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99- Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No.56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002]or No.57/2002- Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R.717 (E), dated the 9th September, 2003, the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

2.17.2 Power of Central Government to notify goods for deemed CENVAT credit (Rule 13) — Notwithstanding anything contained in rule 3, the Central Government may, by notification, declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of taxable service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the taxable service.

2.17.3 Recovery of CENVAT credit wrongly taken or erroneously refunded (Rule 14) –Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be

recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.

2.17.4 Confiscation and penalty (Rule 15) – (1) If any person takes Cenvat Credit for inputs or capital goods wrongly or without ensuring that appropriate duty on them has been paid or he contravenes any provisions of the Cenvat Credit Rules in respect of any inputs or capital goods, then, all such goods shall be liable to confiscation and such person shall also be liable for penalty not exceeding the duty on such goods or ₹ 10,000/ - whichever is greater.

(2) If Cenvat Credit is taken/utilised wrongly by fraud, wilful misstatement, collusion or suppres-sion of facts etc., with intent to evade payment of duty, the manufacturer shall also be liable for penalty under Section llAC of the Excise Act.

(3) Similar penal provisions would apply in respect of input services. In a case, where the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion, willful mis-statement, suppression of facts, or contravention of any of the provisions of the Finance Act or of the rules made there under with intention to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of section 78 of the Finance Act.

(4) Any order of confiscation or penalty under Rule 15, shall be issued following the principles of natural justice.

2.17.5 Supplementary provision (Rule 16) – Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excise or the Commissioner of Central Excise, and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules, i.e Cenvat Credit Rules 2004.

2.18 PRACTICAL PROBLEMS

Problem 1.

An assessee cleared various manufactured final products during June 2011. The duty payable for June 2011 on his final products was as follows – Basic – ₹ 2,00,000 Education Cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows – Basic duty – ₹ 50,000, Education Cess – ₹ 1,000, SAH education Cess ₹ 500. Excise duty paid on capital goods received during the month was as follows – Basic duty – ₹ 12,000. Education Cess - ₹ 240. SAH education cess - ₹ 120. Service tax paid on input services was as follows – Service Tax – ₹ 10,000. Education cess – ₹ 200 SAH Education Cess - ₹ 100. How much duty the assessee will be required to pay by GAR-7 challan for the month of June 2011, if assessee had no opening balance in his PLA account?

What is last date for payment?

Answer :

Education Cess payable on final products is ₹ 4,000 (2% of ₹ 2,00,000). SAH education cess payable is ₹ 2,000.

The Cenvat credit available for June 2011 is as follows –

Description	Basic duty	Service Tax	Education Cess	SAH Education Cess
Inputs	50,000		1,000	500
Capital Goods (50% will be eligible and balance next year)	6,000		120	60
Input Service		10,000	200	100
Total	**56,000**	**10,000**	**1,320**	**660**

Credit of ₹ 66,000 (56,000 + 10,000) can be utilised for basic duty Credit of education cess and SAH education cess can be utilised only for payment of education cess and SAH education cess on final product only.

Hence, duty payable through GAR-7 challan for June 2009 is as follows –

	Basic Duty ₹	Education Cess ₹	SAH Education Cess ₹
(A) Duty payable	2,00,000	4,000	2,000
(b) Cenvat Credit	66,000	1,320	660
Net amount payable (A-B) Last date for payment is 5th July, 2011.	1,34,000	2,680	1,340

Problem 2.

In aforesaid example, calculate duty payable by GAR-7 challan if assessee had following balance in his PLA account on 6-6-2011 (after debiting utilised amount for payment of duty for May 2011) - Basic duty - ₹ 1,70,000, Service tax - ₹ 30,000. Education Cess - ₹ 4,000. SAH education Cess - Nil.

Answer :

If credit was available on 1-6-2011, the total Cenvat credit available for June 2011 is as follows :

Description	Basic duty ₹	Service Tax ₹	Education Cess ₹	SAH Education Cess ₹
Inputs	1,70,000	30,000	4,000	Nil
Capital Goods (50% will be eligible and balance next year)	6,000		120	60
Input Service		10,000	200	100
Total	**2,26,000**	**40,000**	**5,320**	**660**

The duty payable will be as follows :-

Hence, duty payable through GAR-7 challan for June 2011 is as follows –

	Basic Duty ₹	Education Cess ₹	SAH Education Cess ₹
(A) Duty payable	2,00,000	4,000	2,000
(b) Cenvat Credit	2,66,000	5,320	660
Net amount payable (A-B)	(–66,000)	(–1,120)	1,340

The credit of education cess of ₹ 1,120 is to be carried forward since the credit cannot be utilised for payment of any other duty. Credit of basic duty can be utilised for payment of SAH education cess. Hence, the balance left in basic duty account will be ₹ 64,660.

Thus, no excise duty is required to be paid for the month of June 2011. Balance carried forward will be as follows - (a) Basic duty - ₹ 64,660 (b) Education Cess - ₹ 1,120.

Problem 3.

An assessee cleared his manufactured final products during December 2011. The duty payable for the month on his final products was as follows: Basic duty – ₹ 44,000, NCCD – ₹ 2,000, Education cesses – As applicable.

During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows - Basic duty – ₹ 40,000 plus applicable education cess. Service tax paid on input services was as follows: Service tax – ₹ 8,000. Education cess – ₹ 160. There is no opening balance in his PLA account. How much duty the assessee will be required to pay through account current for the month of December 2011?

Answer :

Education Cess payable on final products is ₹ 920 (2% of ₹ 46,000). SAH education cess payable on final products is ₹ 460.

Education cess on his inputs is ₹ 800 (2% of ₹ 40,000) > SAH education cess on inputs is ₹ 400. The Cenvat credit available for the month of December 20119 is as follows –

Description	**Basic duty** ₹	**Service Tax** ₹	**Education Cess** ₹	**SAH Education Cess** ₹
Inputs	40,000		800	400
Input Service		8,000	160	80
Total	**40,000**	**8,000**	**960**	**480**

Credit of ₹ 48,000 (40,000 + 8,000) can be utilised for payment of any duty.

Credit of education cess of ₹ 960 can be utilised only for payment of education cess on final product.

Credit of SAH education cess of ₹ 960 can be utilised only for payment of education cess on final product.

	Basic Duty ₹	**NCCD** ₹	**Education Cess** ₹	**SAH Education Cess** ₹
(A) Duty payable	44,000	2,000	920	460
(b) Cenvat Credit Credit (basic plus service tax)	48,000		960	480
Net amount payable (A-B)	(–4,000)		(–40)	(–20)

The credit of basic duty and service tax of ₹ 4,000 can be utilised for payment of NCCD of ₹ 2,000. Hence for the month of January, 2012, assessee is not required to pay any duty through PLA.

He will carry forward following balances for February 2012 - Basic duty - ₹ 2,000. Education Cess - ₹ 40. SAH education Cess - ₹ 20.

Problem 4.

Some spare parts of machinery failling under chapter 84 were received. The invoice indicated that the duty paid was ₹ 1,600. The Invoice was marked 'DUPLICATE FOR TRANSPORT'. State eligibility of Cenvat credit.

Answer :

Cenvat credit of ₹ 800 is available (since spare parts are 'capital goods').

Problem 5.

Some raw materials were received. Accompanying Invoice indicated that the duty paid was ₹ 4,500. The Invoice was marked 'DUPLICATE FOR TRANSPORT'. The Invoice did not contain time of removal from the factory. State eligibility of Cenvat credit.

Answer : If there is any defect in invoice, Cenvat credit can be availed only with permission of Assistant/Deputy Commissioner. Hence, application should be made.

Problem 6.

Some raw material was received. The Invoice was in the name of dealer from whom the goods were purchased. However, name of user-manufacturer was indicated as 'Consignee'. The invoice No. 543 dated 7the September 2011 was marked. 'ORIGINAL FOR BUYER' and excise duty paid was ₹ 15,000. State eligibility of Cenvat credit.

Answer : Credit credit of ₹ 15,000 is available.

Problem 7.

An inported consignment of raw materials was received vide Bill of Entry showing payment of following duties - Basic customs duty - ₹ 1,000, CVD - ₹ 1,760, Education Cess of Excise - ₹ 35.20, SAH Education Cess of excise - ₹ 17.60, Education Cess of Customs - ₹ 56.26, SAH education cess of customs - ₹ 28.13. Special CVD @ 4% - ₹ 515.89. State eligibility of Cenvat credit.

Answer :

Credit available - CVD - ₹ 1,760, Education Cess of Excise - ₹ 35.20, SAH Education Cess of excise - ₹ 17.60, Special CVD @ 4% - ₹ 515.89.

Problem 8.

M/s Tips & Toes Ltd., manufactures four types of "Nail Polishes", namely Sweety, Pretty, Beauty, Tweety. The company has availed CENVAT credit of ₹ 4,00,000 on the common inputs used in the manufacture of 'Nail Polishes'. During the financial year 2006-07, the company manufactured 1,000 litres of each type of 'Nail Polishes'. The CENVAT availed input was used in equal proportion in all the four types of the products. Calculate the Cenvat credit amount not available or amount payable under Cenvat Credit Rule, using the following additional data : * Sweety - Sale to Home Consumption @ ₹ 30 per 20 ml bottle Pretty - Sold to a 100% EOU @ ₹ 40 per 20 ml bottle * Beauty Fully exported @ ₹ 50 per 20 ml bottle ' Tweety Supplied to Defence Canteen under exemption @ ₹ 60 per 20 ml bottle. Ignore effect of education cess.

Answer :

Cenvat credit is available in respect of the products Sweety (Home Consumption), Pretty (Sale to EOU) and Beauty (Goods exported). However, Cenvat credit is not available in respect of goods cleared for home consumption under exemption notification. Thus, Cenvat credit is not available in respect of 'Tweety' i.e. goods supplied to defence canteen under exemption. Assessee can follow any one of the options as provided in rule 6 of Cenvat Credit Rules, which is suitable to him.

STUDY NOTE - 3
OVERVIEW OF CUSTOMS LAW

This Study Note includes

- Introduction
- Type of Custom Duties
- Valuation in Customs
- Procedures for Import
- Procedures for Exporter
- Baggage, Courier and Import Through Post
- Other Provisions in Customs
- Value for Prupose of Customs Act
- Valuation of Export Goods
- Provisional Assessment of Duty
- Relevant Date for Rate and Valuation of Import Duty
- Drawback

3.1 INTRODUCTION

Customs duty is on imports into India and export out of India. Section 12 of Customs Act, often called *charging section*, provides that duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', or any other law for the time being in force, *on goods imported into, or exported from, India*.

- There are many common provisions in Central Excise and Customs Law
- In case of imports, taxable event occurs when goods mix with landmass of India - *Kiran Spinning Mills* v. *CC* 1999(113) ELT 753 = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench).
- In case of warehoused goods, the goods continue to be in customs bond. Hence, 'import' takes place only when goods are cleared from the warehouse - confirmed in *UOI* v. *Apar P Ltd.* 1999 AIR SCW 2676 = 112 ELT 3 = 1999(6) SCC 118 = AIR 1999 SC 2515 (SC 3 member bench).- followed in *Kiran Spinning Mills* v. *CC* 1999(113) ELT 753 = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench).
- In case of exports, taxable event occurs when goods cross territorial waters of India – *UOI* v. *Rajindra Dyeing and Printing Mills* 2005 (180) ELT 433 (SC)
- Territorial waters of India extend upto 12 nautical miles inside sea from baseline on coast of India and include any bay, gulf, harbour, creek or tidal river. (1 nautical mile = 1.1515 miles = 1.853 Kms). Sovereignty of India extends to the territorial waters and to the seabed and subsoil underlying and the air space over the waters.
- Indian Customs waters extend upto 12 nautical miles beyond territorial waters. Powers of customs officers extend upto 12 nautical miles beyond territorial waters.
- '*Exclusive economic zone*' extends to 200 nautical miles from the base-line.

3.1.2 Common aspects of Customs and Central Excise

There are many common links between Customs and Central Excise.

- Both are Central Acts and derive power of levy from list I - Union List - of the Seventh Schedule to Constitution.
- Both are under administrative control of one Board (Central Board of Excise and Customs) under Ministry of Finance.
- Organizational hierarchy is same from top upto Assistant Commissioner level. Transfers from customs to excise and *vice versa* are not uncommon.

- Chief Commissioner in charge of each Zone is same for excise and customs at many places.
- In the interior areas, Excise officers also work as customs officers.
- Classification Tariffs of both acts are based on HSN and principles of classification are identical.
- Principles of deciding 'Assessable Value' have some similarities i.e. both are principally based on 'transaction value'. Concept of 'related person' appears in Customs as well as Excise valuation.
- Provisions of refund, including principle of 'unjust enrichment' are similar. Provisions for interest for delayed payment are also identical.
- Provisions of raising demand for short levy, non-levy or erroneous refund are similar. Provisions in respect of recovery, mandatory penalty etc. are also similar.
- Provisions for granting exemptions from duty - partial or full - conditional or unconditional are identical.
- Powers of search, confiscation etc. are quite similar in many respects. In fact, some of provisions of Customs Act have been made applicable to Central Excise with suitable modifications.
- Provisions in respect of Settlement Commission and Authority for Advance Ruling are identical.
- Appeal provisions are identical.
- Appellate Tribunal (CESTAT) is same. Hence, procedures of appeal to Tribunal are identical.

3.2 TYPE OF CUSTOM DUTIES

3.2.1 Basic customs duty levied u/s 12 of Customs Act.

- The rate of basic customs duty is specified in Customs Tariff Act, read with relevant exemption notification. Generally, basic customs duty is 10% of non-agricultural goods.
- CVD equal to excise duty is payable on imported goods u/s 3(1) of Customs Tariff Act. General excise duty rate is 10.30% (10% basic plus 2% education cess and SAH Education cess of 1%)
- Special CVD (SAD) is payable @ 4% on imported goods u/s 3(5) of Customs Tariff Act. This is in lieu of Vat/ sales tax to provide level playing field to Indian goods.
- Education cess of customs @ 2% and SAH Education cess of 1% is payable.
- Total import duty considering all duties plus education cess on non-agricultural goods is generally 26.85% w.e.f 27-2-2010
- NCCD has been imposed on a few articles. In addition, on certain goods, anti-dumping duty, safeguard duty, protective duty etc. can be imposed.

3.2.2 Additional Customs Duty u/s 3(1) (CVD)

- CVD (Countervailing Duty) is payable on imported goods u/s 3(1) of Customs Tariff Act to counterbalance impact of excise duty on indigenous manufactures, to ensure level paying field.
- CVD is payable equal to excise duty payable on like articles if produced in India. It is payable at effective rate of excise duty, which is generally 10.30%.
- CVD is payable on assessable value plus basic customs duty. In case of products covered under MRP provisions, CV duty is payable on MRP basis as per section 4A of Central Excise.
- CVD can be levied only if there is 'manufacture'.
- CVD is neither excise duty nor basic customs duty levied under Customs Act. However, all provisions of Customs Act apply to CVD. Calculation of duty payable is as follows -

3.2.3 Computing Customs Value

Customs Value ₹ 10,000; Basic Customs Duty @ 10%. If the goods were produced in India, excise duty payable in India would have ben 10%. Education & SHE Cess is as applicable. Special CVD is payable at appropriate rates. Compute Customs Duty payable. How much CENVAT can be availed, if he is a manufacturer?

Computation of Duty Payable is as follows :

	Rate of Duty %	Amount ₹	Total Duty ₹
(1) Assessable Value	—	10,000.00	—
(2) Basic Customs Duty	10	1,000.00	1,000.00
(3) Sub-Total for calculating CVD '(1+2)'		11,000.00	
(4) CVD = (3) × Rate of Excise Duty	10	1,100.00	1,100.00
(5) Education Cess of Excise @ 2% of (4)	2	22.00	22.00
(6) SAHE of Excise @ 1% of (4)	1	11.00	11.00
(7) Sub-Total for Education Cess on Customs (2+4+5+6)	—	2,133.00	—
(8) Education Cess of Customs @ 2% of (7)	2	42.66	42.66
(9) SAHE @ 1% of (7)	1	21.33	21.33
(10) Sub-Total for Special CVD (=3+4+5+6+8+9)	—	12,196.99	—
(11) Special CVD u/s 3(5) @ 4% on (10)	4	487.88	487.88
(12) Total Duty Payable (2+4+5+6+8+9)	—	—	**2,684.87**
(13) Total Duty Payable rounded off	—	—	2,685

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above

3.2.4 Additional Duty under section 3(5) (Special CVD - SAD)

Section 3(5) of Customs Tariff Act empowers Central Government to impose additional duty. This is in addition to Additional Duty leviable u/ss 3(1) and 3(5) of Customs Tariff Act. Provision for this duty has been made w.e.f. 1-3-2005. Purpose of the Additional Duty is to counter balance sales tax, VAT, local tax or other charges leviable on articles on its sale, purchase or transaction in India.

The obvious intention is to provide level playing field to manufacturers in India who are manufacturing similar goods. Hence, it is termed as 'Special CVD" or 'SAD' (Special Additional Duty).

Exemption from SAD - Some categories of imports have been exempted from this special CVD (SAD), vide customs notification No. 20/2006-Custom dated 1-3-2006. The main among these are: Articles of jewellery attracts a lower rate of special CVD at 1%.

Departmental clarifications - Department has clarified as follows, vide MF(DR) circular No. 18/2006-Cus dated 5-6-2006 –

- Special CVD of 4% is not leviable in case of imports under advance authorisation, EOU, EPCZ and SEZ schemes
- In case of export promotion schemes like DEPB, target plus, service from India, DFCE and Vishesh Krishi and Gram Udyog Yojana, 4% Special CVD is required to be debited to the duty scrip/entitlement certificate.
- In case of DFRC scheme, 4% special CVD is payable.
- Duty debited through DEPB, DFCE, target plus scheme etc. will be eligible for Cenvat credit or duty drawback.

3.2.5 Refund of Special CVD to traders – Traders selling imported goods in India after charging sales tax/Vat can claim refund of special CVD from customs department – Notification No. 102/ 2007-Cus dated 14-9-2007.

3.2.6 Anti-Dumping Duty

- Anti dumping duty is leviable u/s 9A of Customs Tariff Act when foreign exporter exports his good at low prices compared to prices normally prevalent in the exporting country.

- Dumping is unfair trade practice and the anti-dumping duty is levied to protect Indian manufacturers from unfair competition.
- Margin of dumping is the difference between normal value (i.e. his sale price in his country) and export price(price at which he is exporting the goods).
- Price of similar products in India is not relevant to determine 'margin of dumping'.
- 'Injury margin' means difference between fair selling price of domestic industry and landed cost of imported products. Dumping duty will be lower of dumping margin or injury margin.
- Benefits accruing to local industry due to availability of cheap foreign inputs is not considered. This is a drawback.
- CVD is not payable on antidumping duty. Education cess and SAH education cess is not payable on anti-dumping duty · In case of imports from WTO countries, antidumping duty can be imposed only if it cause material injury to domestic industry in India.
- Dumping duty is decided by Designated Authority after enquiry and imposed by Central Government by notification. Provisional antidumping duty can be imposed.
- Appeal against antidumping duty can be made to CESTAT.

3.3 VALUATION IN CUSTOMS

3.3.1 Customs duty is payable as a percentage of 'Value' often called '*Assessable Value*' or '*Customs Value*'. The **Value** may be either (*a*) 'Value' as defined in section 14(1) of Customs Act or (*b*) Tariff value prescribed under section 14(2) of Customs Act (section amended w.e.f.10-10-2007)

- Transaction value at the time and place of importation or exportation, when price is sole consideration and buyer and sellers are unrelated is the basic criteria for 'value' u/s 14(1) of Customs Act. Thus, CIF value in case of imports and FOB value in case of exports is relevant.
- In case of high sea sale, price charged by importer to assessee would form the assessable value and not the invoice issued to the importer by foreign supplier. – *National Wire* v. *CC* 2000(122) ELT 810 (CEGAT) * *Godavari Fertilizers* v. *CC* (1996) 81 ELT 535 (CEGAT).
- Rate of exchange will be as determined by CBE&C or ascertained in manner determined by CBE&C.
- Valuation for customs is required to be done as per provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
- CIF value of goods plus 1% landing charges is the basis for deciding 'Assessable Value'.
- Commission to local agents, packing cost, value of goods and toolings supplied by buyer, royalty relating to imported goods are addible.
- Interest on deferred payment, demurrage and value of computer software loaded is not to be added.
- Old machinery and old cars are often valued on basis of depreciated value, though such method has no sanction of law.

3.3.2 Additions to 'Customs Value'

Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Rule 9 upto 10-10-2007] provide that following cost and services are to be added, *if these are not already included in the invoice price*. –

- Commission and brokerage, except buying Commission, if not already included in the invoice price [rule 10(1)(a)(i)].
- Cost of container which are treated as being one with the goods for customs purposes, if not already included in the invoice price [rule 10(1)(a)(ii)].
- Cost of packing whether labour or materials, if not already included in the invoice price [rule 10(1)(a)(iii)].
- Materials, components, tools, dies, moulds, and consumables used in production of imported goods, supplied by buyer directly or indirectly, free of charge or at reduced cost, to the extent not already included in price [rule 10(1)(b)(i), (ii) and (iii)]

- Engineering, development, art work, design work, plans and sketches undertaken elsewhere than in India and necessary for production of imported goods, to the extent not already included in price [rule 10(1)(b)(iv)].
- Royalties and license fees relating to imported goods that buyer is required to pay, directly or indirectly, as a condition of sale of goods being valued [rule 10(1)(c)]
- Value of proceeds of subsequent resale, disposal or use of goods that accrues directly or indirectly to seller (i.e. to foreign exporter) [rule 10(1)(d)]
- All other payments made as condition of sale of goods being valued made directly or to third party to satisfy obligation of seller, to the extent not included in the price [rule 10(1)(e)]
- Cost of transport upto place of importation [rule 10(2)(a)]
- Loading, unloading and handling charges associated with delivery of imported goods at place of importation [These are termed as landing charges and are to be taken as 1%] [rule 10(2)(b)]
- Cost of insurance [rule 10(2)(c)]

The additions should be on the basis of objective and quantifiable data [rule 10(3) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9(3)].

3.3.3 Services / documents / technical know-how supplied by Buyer - Cost of engineering, development, art work, design work and plans and sketches undertaken by buyer which is necessary for production of imported goods is includible, ***only if*** such work is undertaken *outside India.* [Rule 10(1) (b) (iv) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9)] The addition should be done on objective and quantifiable data. Data available with importer should be used as far as possible. If the services are purchased or leased by importer, such purchase/lease cost should be added. If the importer has himself done the work abroad, its cost should be added on basis of structure and management practices of importer and his accounting methods (in other words, if development work, plans, sketches etc. is done by importer himself *outside India,* its cost should be calculated based on normal accounting practices - like apportionment of overheads, apportionment over various jobs if the same development work, design work etc. is used for more than one jobs etc.) [Interpretative Note to rule 10(1)(b)(iv) of Customs Valuation Rules].

3.3.4 Technical know how related to imported machinery - In *CC* v. *Essar Gujarat Ltd.* (1997) 9 SCC 738 = 88 ELT 609 = 17 RLT 588 (SC 3 member bench), it was held that payment of licence fee and transfer of technology, without which the imported plant could not function, will have t o be added to the value of imported plant. However, training charges cannot be included. —wrongly followed in *CC* v. *Himson Textile Engg. Ltd.* 1997(93) ELT 301 (CEGAT).

3.3.5 Royalties and licence fee - Royalties and license fees related to imported goods that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable, are required to be added in assessable value. [Rule 10(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9)].

3.3.6 Royalty payment un-connected with imported goods not to be added - Often, a lump-sum payment of royalty is made to foreign collaborators for technical know-how. In addition, components / parts/ CKD packs are procured from foreign collaborators. Customs department normally holds that the price of parts/CKD packs should be loaded, on assumption that the part of price of component parts/CKD packs has been paid as 'royalty payment'.

3.3.7 Charges for reproduction of goods in India not to be added - Interpretative Note to rule 10(1)(c) of Customs Valuation Rules makes it clear that charges for right to reproduce the imported goods in India shall not be added.

3.3.8 Barge/lighterage charges includible – In some cases, the ship is not brought upto jetty. Goods are discharged at outer anchorage. This may be for various reasons, e.g. (a) deep draught at port (b) Ports are busy (c) Odd dimensional or heavy lifts or hazardous cargo discharged at anchorage. Charges for brining the goods from outer anchorage are known as 'barging/lighterage charges'.

As per *explanation* to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [inserted w.e.f. 10-10-2007], ship demurrage charges on chartered vessels, lighterage or barge charges are includible. Mode of computation of freight of time chartered/daughter vessel has been specified in MF(DR) circular No. 4/2006-Cus dated 12-1-2006.

3.3.9 Landing charges to be added - Cost of unloading and handling associated with delivery of imported goods in port (*called landing charges*) shall be added. These will be calculated @ 1% of CIF value, i.e. FOB price plus freight plus insurance. [Rule 10(2)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 – earlier rule 9].

3.3.10 Cost of Transport upto port should be added - Cost of transport from exporting country to India is to be added in 'Assessable Value'. [Rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9).] In other words, CIF value is the basis for valuation. If the goods are imported by air, the air freight will be very high. Hence, in case air freight is higher than 20% of FOB price of goods, only 20% of FOB price will be added for Customs Valuation purposes.

If cost of transport is not ascertainable, it will be taken as 20% of FOB valu of goods. However, cost of transport within India is not to be considered.

3.3.11 Insurance cost should be added - Insurance charges on goods are to be added. [Rule 10(2)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]. If these are not ascertainable, these will be calculated @ 1.125% of FOB Value of goods.

3.3.12 Exclusions from Assessable Value

Interpretative Note to rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007provide that following charges shall be excluded :

(a) Charges for construction, erection, assembly, maintenance or technical assistance undertaken *after* importation of plant, machinery or equipment

(b) Cost of transport *after* importation

(c) Duties and taxes in India

Other payments from buyer to seller *that do not relate* to imported goods are not part of the customs value. Demurrage charges payable to port trust authorities for delay in clearing goods are not to be added. - *Deepak Fertilisers* v. *CC* 1989(41) ELT 550 (CEGAT) * *Hindustan Lever* v. *UOI* 2002(142) ELT 33 (Cal HC). [However, ship demurrage is includible w.e.f. 10-10-2007].

Ship demurrage includible w.e.f. 10-10-2007 - explanation to rule 10(2)

3.3.13 Methods of Valuation

The methods of valuation for customs methods are as follows -

- Transaction Value of Imported goods [Section 14(1) and Rule 3(1)]
- Transaction Value of Identical Goods [Rule 4]
- Transaction Value of Similar Goods [Rule 5]
- Deductive Value which is based on identical or similar ***imported*** goods sold in India [Rule 7]
- Computed value which is based on cost of manufacture of goods plus profits [Rule 8]
- Residual method based on reasonable means and data available [Rule 9]

3.3.14 Methods to be applied sequentially - These methods are to be applied in sequential order, i.e. if method one cannot be applied, then method two comes into force and when method two also cannot be applied, method three should be used and so on. The only exception is that the 'computed value' method may be used before 'deductive value' method, if the importer requests and Assessing Officer permits.

3.3.15 Rejection of' Value' -

Importer has to declare 'value' of goods. If the assessing officer has reason to doubt about truth or accuracy of the value declared by the importer, he can ask the importer to submit further information and evidence. If the

customs officer still has *reasonable doubt,* he can reject the 'value' as declared by the importer. [rule 12(1) w.e.f. 10-10-2007 – earlier rule 10A(1) of Customs Valuation Rules added w.e.f. 19-2-1998]. If the importer requests, the assessing officer has to give reasons for doubting the truth or accuracy of value declared by importer. [rule 12(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 – earlier rule 10A(2) of Customs Valuation Rules upto 10-10-2007].

3.3.16 Rule 12 is only mechanism to reject the declared value – As per *explanation* (1)(i) to rule 12, the Rule 12 does not provide any method for determination of value. It only provides mechanism to reject declared value, where there is reasonable doubt. If transaction value is rejected, valuation has to be done as per rule 4 to 9 [*Explanation* (1)(i) to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

3.3.17 Export Goods - Valuation for Assessment

Customs value of export goods is to be determined under section 14 of Customs Act, read with Customs Valuation (Determination of Value of Export Goods), Rules, 2007. Transaction value at the time and place of exportation, when price is sole consideration and buyer and sellers are unrelated is the basic criteria If there is no sale or buyer or seller are related or price is not the sole consideration, value of the goods will be determined as per Valuation Rules [Clause (ii) of second proviso to section 14(1)].

3.3.18 Valuation when buyer and seller are related – Definition of related person as per rule 2(2) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 is same as per definition of rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

As per rule 3(2) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007, the transaction value, the transaction value will be accepted as 'value' even if buyer and seller are 'related', if the relationship has not influenced price.

3.3.19 Valuation if value cannot be determined on basis of transaction value – If valuation is not possible on basis of transaction value, valuation will be done by proceeding sequentially through rules 4 to 6 [Rule 3(3) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007].

The methods are - Export value by comparison on the basis of transaction value of 'goods of like kind and quality' exported at or about the same time to other buyers in same destination country [Rule 4}, Computed value on basis of cost of production plus profit [Rule 5] and Residual method using reasonable means consistent with principles and general provisions of rules [Rule 6].

3.3.20 Rejection of value as declared by exporter - As per rule 7 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007, the exporter has to file declaration about full 'value' of goods. If the assessing officer has doubts about the truth and accuracy of 'value' as declared, he can ask exporter to submit further information, details and documents. If the doubt persists, the assessing officer can reject the value declared by importer. [rule 8(1) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007]. If the exporter requests, the assessing officer has to give reasons for doubting the value declared by exporter. [rule 8(2)].

3.3.21 Rule 8 is only mechanism to reject the declared value – As per *explanation* (1)(i) to rule 8, the Rule 8 does not provide any method for determination of value. It only provides mechanism to reject declared value, where there is reasonable doubt.

Declared value shall be accepted if assessing officer is satisfied about truth and accuracy of the declared value [Explanation (1)(ii) to rule 8 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007].

3.4 PROCEDURES FOR IMPORT

3.4.1 Goods should arrive at customs port/airport only.

- Person in charge of conveyance is required to submit Import Manifest or Export Manifest.
- Goods can be unloaded only after grant of 'Entry Inwards'.
- Importer has to submit Bill of Entry giving details of goods being imported, along with required documents. Electronic submission of documents is to be done in many ports.
- Goods are assessed to duty, examined and customs duty is paid. Bond is executed if required.

- Goods can be cleared from port after 'Out of Customs Charge' order is issued by customs officer.
- Self Assessment on basis of 'Risk Management System' (RNS) has been introduced in some ports in respect of specified goods and importers.
- Demurrage is payable if goods are not cleared within three days from port. Goods can be disposed of if not cleared within 30 days.

3.4.2 Overview of procedures for import - The broad procedures to be followed for assessment and clearance of imported goods are as follows –

- Importer to submit Bill of Entry giving details of goods to be cleared from customs
- Bill of Entry can be for home consumption (i.e. clearance after payment of duty) (white colour) or for warehousing (keeping in warehouse without payment of duty and later clearing on payment of duty when required) (yellow colour)
- Importer to submit other documents like Invoices, contracts, product literature, packing lists, import license etc. so that customs officer can assess the imported goods under clearance
- Noting of Bill of Entry by customs officer
- Examination of goods and assessment by customs officer (if first appraisement system) or assessment of goods on basis of documents (if second appraisement system)
- Pre-audit by customs department
- Customs Officer to approve assessment (valuation of goods) on the Bill of Entry and return to importer
- Importer to execute bond if clearance at concessional rate of duty subject to some conditions or clearance is under provisional assessment
- Importer to pay duty, if clearance is for home consumption or execute bond, if clearance is for warehousing
- Inspection of goods (if assessment was under second appraisement system)
- Out of customs charge order by customs officer
- Pay dues of port trust, pay demurrage (if applicable), pay other dues
- Transport the goods from customs

These procedures are for import by ship/air/road. There is separate procedure for goods imported as a baggage or by post.

3.4.3 Submission of Bill of Entry - Bill of Entry is a very vital and important document which every importer has to submit to customs officer in respect of imported goods other than goods intended for transit or transhipment. Bill of Entry should be in prescribed form. It can be either for home consumption or for warehousing [section 46(1)]. It should include all goods mentioned in Bill of Lading or other receipt given by carrier to consignor [section 46(2)]. Importer has to declare that c ontents of Bill of Entry are true [section 46(4)]

- White Bill of Entry is for home consumption. Imported goods are cleared on payment of customs duty.
- Yellow Bill of Entry is for warehousing. It is also termed as 'into bond Bill of Entry' as bond is executed. Duty is not paid and imported goods are transferred to warehouse where these are stored.
- Green Bill of Entry is for clearance from warehouse on payment of customs duty. It is for ex-bond clearance.

3.4.4 Documents to be submitted by Importer - Documents required by customs authorities are required to be submitted to enable them to (*a*) check the goods (*b*) decide value and classification of goods and (*c*) to ensure that the import is legally permitted. *The documents that are essentially required are* : (i) Invoice (ii) Packing List (iii) Bill of Lading / Delivery Order (iv) GATT declaration form duly filled in (v) Importers / CHAs declaration duly signed (vi) Import License or attested photocopy when clearance is under license (vii) Letter of Credit / Bank Draft wherever necessary (vii-a) Insurance memo or insurance policy (viii) Industrial License if required (ix) Certificate of country of origin, if preferential rate is claimed. (x) Technical literature. (xi) Test report in case of chemicals (xii) Advance License / DEPB in original, whereapplicable (xiii) Split up of value of spares, components and machinery (xiv) No commission declaration. – A declaration in prescribed form about correctness of information should be submitted. – *Chapter 3 Paras 6 and 7 of CBE&C's Customs Manual, 2001.*

3.4.5 Electronic submission under EDI system – Customs work at many ports has been computerised. In that case, the Bill of Entry has to be filed electronically, i.e. through Customs EDI system through computerisation of work. Procedure for the same has been prescribed vide Bill of Entry (Electronic Declaration) Regulations, 1995.

The broad procedures to be followed for exports are as follows –

- Submit Shipping Bill for export to customs authorities
- Submit invoice, packing lists, contracts, export license (if applicable) and other related documents
- Submit necessary declarations for export. Submit * GR/SDF/SOFTEX form as required under FEMA * Excise ARE-1 form
- Noting of Shipping Bill by customs officer
- Assessment i.e. valuation and classification of goods. Checking of Advance License, if applicable
- Custom check whether export is restricted/prohibited
- Examination of goods by customs officer
- Pay export duty, if applicable
- Stuffing of container, if not already done
- 'Let export' Order by customs officer
- Obtain ARE-1 form duly signed by customs officer. Obtain Bill of Lading from shipping company. Submit proof of export to excise authorities.
- Complete formalities relating to claim of duty drawback.

3.4.6 Prior submission of Bill of Entry – After the goods are unloaded, these have to be cleared within stipulated time - usually three working days. If these are not so removed, demurrage is charged by port trust/airport authorities, which is very high. Hence, importer wants to complete as many formalities as possible before ship arives. *Proviso* to section 46(3) of Customs Act allows importer to present bill of entry upto 30 days before *expected date of arrival* of vessel. In such case, duty will be payable at the rate applicable on the date on which 'Entry Inward' is granted to vessel and not the date of presentation of Bill of Entry, *but rate of exchange will be as prevalent on date of submission of bill of entry.* - confirmed in CC, New Delhi circular No 64/96 dated 10.12.1996 and CBE&C circular No. 22/97-Cus dated 4.7.1997.

Department has clarified that if vessel does not arrive within 30 days, filing of fresh bill of entry will be necessary and in such cases, date of filing fresh Bill of Entry will be considered for calculating rate of exchange.

3.5 PROCEDURES FOR EXPORT

The broad procedures to be followed for exports are as follows —

- Submit Shipping Bill for export to customs authorities
- Submit invoice, packing lists, contracts, exports authorisation (if applicable) and other related documents
- Submit necessary declarations for export. Submit* GG/SDF/SOFTEX form as required under FEMA* Excise ARE-1 form
- The 'Export Value Declaration' should be in form given in Annexure A to MF(DR) circular No. 37/2007-Cus dated 9-10-2007.
- Noting of Shipping Bill by customs officer.
- Assessment i.e. valuation and classification of goods. Checking of Advance Authorisation, if applicable.
- Custom check whether export is restricted/prohibited
- Examination of goods by customs officer
- Pay export duty, if applicable
- Stuffing of container, if not already done.
- 'Let export' Order by customs officer.
- Obtain ARE-1 form duly signed by customs officer. Obtain Bill of Landing from shipping company. Submit proof of export to excise authorities.
- Complete formalities realting to claim of duty drawback.

3.5.1 Every exporter should take following initial steps -

- Obtain BIN (Business Identification Number) from DGFT. It is a PAN based number
- Open current account with designated bank for credit of duty drawback claims
- Register licenses/advance license/DEPB etc. at the customs station, if exports are under Export Promotion Schemes.

3.6.2 RCMC certificate from Export Promotion Council - Various Export Promotion Councils have been set up to promote and develop exports (e.g. Engineering Export Promotion Council, Apparel Export Promotion Council, etc.) Exporter has to become member of the concerned Export Promotion Council and obtain RCMC - Registration cum membership Certificate. Exporter should apply for registration with EPC that relates to his main line of business. However, exporter can take membership of any other EPC in addition – DGFT circular No. 2/2004-09 dated 6-10-2004.

3.5.3 Third party exports - Third party exports means exports made by an Exporter or Manufacturer on behalf of another exporter/s. The Shipping Bill shall indicate the names of both the exporter/ manufacturer and exporter. The BRC, GR declaration, export order and the Invoice shall be in name of the third party exporter [para 9.62 of FTP]

SEZ unit can export goods or software through a merchant exporter/status holder.

Merchant Exporter - Merchant Exporter means a person engaged in trading activity and exporting or intending to export goods.

3.6 BAGGAGE, COURIER AND IMPORT THROUGH POST

3.6.1 Baggage includes unaccompanied baggage but does not include motor vehicles [section 2(3)]

- Indians going out can take out any amount of foreign currency as long as it is obtained from authorised foreign exchange dealer. He can take out and bring in Indian currency only upto ₹ 1,000.
- Baggage includes all dutiable articles imported by passenger or crew but does not include motor vehicles, alcoholic drinks (beyond limits) and goods imported through courier.
- Incoming passenger with no dutiable goods can pass through green channel.
- General rate of duty on import of baggage is 36.05% (35% basic customs duty plus 2% education cess plus 1% SAH education cess). One laptop computer is exempt.
- *Bona fide* luggage including used personal effects are exempt from customs duty. In addition to bona fide luggage and one laptop computer, Indian resident or foreigner residing in India over 12 years of age is allowed general free allowance (GFA) of ₹ 25,000, after stay abroad for more than three days. GFA is lower when passenger comes from some countries like Nepal, Bhutan, Myanmar or China.
- Besides GFA, one laptop can be imported free of customs duty.
- GFA cannot be clubbed with other person.
- If a person comes after 6 months of stay, he can bring gold upto 10 Kg on payment of customs duty @ ₹ 250 per 10 gms (plus education cess) and silver upto 100 Kg on payment of customs duty @ ₹ 500 per Kg (plus education cess)
- Commercial samples can be brought in or taken out within prescribed limits.
- Additional concession is available if a person transfers his residence after stay abroad for two years. He is eligible for concessional rate of 15% duty (plus 2% education cess) of goods upto ₹ 5 lakhs. In case of some goods, duty is Nil. He is also entitled to GFA.
- In case of mini TR (i.e. person returning after 365 days), used personal effects and household articles upto ₹ 75,000 can be brought duty free, in addition to GFA. However, items specified in Annex I, II and III as specified in Baggage Rules are not allowed duty free.

- Foreign tourists can bring personal effects and travel souvenirs free of duty. Articles upto ₹ 8,000 can be brought as gifts duty free.
- If value of foreign currency notes exceeds US $ 5,000 or aggregate value of foreign exchange (in the form of currency note, bank notes, traveller cheques etc.) exceeds US $ 10,000, the passenger has to make declaration in Currency Declaration Form (CDF).
- Unaccompanied baggage can be brought. GFA is not allowed on unaccompanied baggage.

3.6.2 Import and export through Courier –

Imports and export through couriers are treated as imports or exports as any other mode. It is not treated as 'baggage'. There is no restriction on value of goods that can be brought through courier. The duty payable is normal duty as applicable to all other goods normally imported by ship or air transport. Duty concessions, if any, are also permissible. Courier Imports and exports (Clearance) Regulations, 1998 specify the procedures, which are summarised in Chapter 17 of CBE&C's Customs Manual, 2001.

3.6.3 Import through post

- Label/declaration on postal article is treated as 'Entry'. Separate Bill of Entry is not required.
- Postal articles are sent to Foreign parcel Department of Post Office. The list is handed over to Principal Appraiser of Customs.
- He will inspect mail. Packets suspected of dutiable articles will be opened and examined by him . He will assess the goods and then seal the parcel.
- Goods will be handed by postmaster to addressee only on receipt of customs duty paya ble on the goods.
- Gifts upto ₹ 10,000 are free. Post parcel is exempt if customs duty is upto ₹ 100.

3.7 OTHER PROVISIONS IN CUSTOMS

3.7.1 Exemptions and remission

- Exemption can be granted by Government by issuing a notification.
- Capital goods and spares can be imported under project imports at concessional rate of customs duty.
- Remission can be obtained on goods lost/pilfered in port
- Title of imported goods can be relinquished and then no customs duty will be payable.
- Goods exported can be re-imported. Concessional customs duty is payable in most of such re-imports.

3.7.2 Warehousing in customs

- Imported goods can be kept in customs warehouse without payment of customs duty.
- Goods can be kept in warehouse awaiting receipt of import authorisation.
- Goods can be kept in warehouse upto one year, but interest is payable beyond 90 days, @ 15%.
- Goods can be manufactured in warehouse and exported without payment of customs duty. This facility is useful to EOU.
- Warehoused goods cane be (a) Cleared on payment of duty (b) Cleared for export without payment of duty or (c) transferred to another warehouse without payment of duty.

3.7.3 Penalties under Customs Act

- Smuggling in relation to goods is an act or omission which will make the goods liable to confiscation.
- Penalty can be imposed for improper imports or improper exports.
- Monetary penalty upto value of goods or ₹ 5,000 whichever is higher can be imposed.

- Goods can be confiscated. Permission can be granted for re-export of offending goods..
- In case of goods covered under section 123 of Customs Act, burden of proof that the goods are not smuggled goods is on the accused.

3.7.4 REFUND OF SPECIAL CVD OF CUSTOMS TO TRADERS

Traders selling imported goods in India after charging sales tax/Vat can claim refund of special CVD of 4% from customs department – Notification No. 102/2007-Cus dated 14-9-2007. The dealer (trader) (if he is registered with Central Excise and is issuing Cenvatable Invoice) selling such imported goods must mention in his invoice that the buyer will not be able to avail Cenvat credit of such duty. This is required if he is claiming refund of the special CVD. If he is not claiming refund, obviously, such remark is not required. A manufacturer using these goods in his manufacture can avail Cenvat credit of this duty. Thus, he gets credit through central excise route.

3.7.5 ANTI DUMPING DUTY ON DUMPED ARTICLES

Often, large manufacturer from abroad may export goods at very low prices compared to prices normally prevalent in export market. Such dumping may be with intention to cripple domestic industry ***or*** to dispose of their excess stock. This is called 'dumping' and is an unfair trade practice. In order to avoid such dumping and to protect domestic industry, Central Government can impose, under section 9A of Customs Tariff Act, anti-dumping duty, if the goods are being sold at less than its normal value. Levy of such anti-dumping duty is permissible as per WTO agreement. Anti dumping action can be taken only when there is an Indian industry producing 'like articles'. In *Shenyang Mastusushita* v. *Exide Batteries* 2005 (181) ELT 320 (SC 3 member bench), it was observed, 'Principle behind anti-dumping laws is to protect the domestic industry from being adversely affected by import of goods at export prices which are below the normal value of the goods in the domestic market of the exporter. The duty is calculated on the margin of dumping which is the difference between the export price and the normal value'.

In *SS Enterprise* v. *Designated Authority* AIR 2005 SC 1527 = 181 ELT 375 (SC 3 member bench), it was held that purpose being imposition of anti-dumping duty is to curb unfair trade practices resorted to by exporters of a particular country of flooding the domestic markets at rates which are lower than the rate at which the exporters normally sell the same or like goods in their own countries, so as to cause or be likely to cause injury to the domestic market. The levy of dumping duty is a method recognised by GATT (*should be WTO*) which seeks to remedy the injury and at the same time balances the rights of exporters from other countries to sell their products within the country with the interest of domestic markets. Thus the factors to constitute 'dumping' is (i) an import at prices which are lower than the normal value of goods in exporting country (ii) the exports must be sufficient to cause injury to domestic industry.

However, negligible quantity of imports would not be sufficient to cause such injury.

Presently, countries like China, Taiwan are said to be involved in dumping. Even Indian steel exporters are facing charges of dumping goods in USA.

3.7.6 Provisional anti-dumping duty - Pending determination of margin of dumping, duty can be imposed on provisional basis. After dumping duty is finally determined, Central Government can reduce such duty and refund duty extra collected than that finally calculated. Such duty can be imposed upto 90 days prior to date of notification, if there is history of dumping which importer was aware or where serious injury is caused due to dumping.

3.7.7 No CVD on anti dumping duty - Anti Dumping Duty and Safeguard Duty is not required to be considered while calculating CVD – view confirmed in *Tonira Pharma* v. *CCE* (2007) 208 ELT 38(CESTAT 2 v. 1 order).

3.7.8 No education cess and SAHE cess on anti-dumping duty – Education cess and SAH education cess is not payable on anti-dumping duty.

3.7.9 No anti dumping duty in case of imports by EOU and SEZ - Anti-dumping duty is not applicable for imports by EOU or SEZ units, unless it is specifically made applicable in the notificationimposing anti-dumping duty. [section 9A(2A) of Customs Tariff Act]

3.7.10 Margin of Dumping - '*Margin of dumping*' means the difference between normal value and export price (i.e. the price at which these goods are exported). [section 9A(1)(a)].

'*Normal Value*' means comparable price in ordinary course in trade, for like article, when destined for consumption in the exporting country or territory. If such price is not available or not comparable (a) comparable representative price of like article exported from exporting country or territory to appropriate third country or (b) cost of production plus reasonable profit, can be considered [section 9A(1)(c) of Customs Tariff Act]. The 'normal value' is to be determined as per rules.

In *Reliance Industries Ltd.* v. *Designated Authority* 2006 (202) ELT 23 (SC), it was held that 'normal value' are not exporter specific but exporting country specific. Once dumping of specific goods from a country is established, dumping duty can be imposed on all exports of those goods from that country in India, irrespective of the exporter. Rate of duty may vary from exporter to exporter depending upon the export price.

'*Export Price*' means the price at which goods are exported. If the export price is unreliable due to association or compensatory arrangement between exporter and importer or a third party, export price can be constructed (revised) on the basis of price at which the imported articles are first sold to independent buyer or according to rules made for determining margin of dumping. [section 9A(1)(b)].

Margin of dumping is determined on basis of weighted average of 'normal value' and the 'export price' of product under consideration.

3.7.11 Quantum of dumping duty - The anti-dumping duty will be dumping margin or injury margin, *whichever is lower*. 'Injury margin' means difference between fair selling price of domestic industry and landed cost of imported product. The landed cost will include landing charges of 1% and basic customs duty. Thus, only anti-dumping duty enough to remove injury to domestic industry can be levied.

For example, if normal value in exporting country is ₹ 11 and export price is ₹ 8, dumping margin is ₹ 3. If landed cost is ₹ 9 and fair selling price of domestic industry is ₹ 10, then injury margin is Re 1/-. Hence, anti-dumping duty of only Re 1 can be imposed.

In *Reliance Industries Ltd.* v. *Designated Authority* 2006 (202) ELT 23 (SC), it was held that noninjurious price (NIP) has to be calculated for domestic industry as a whole and not in respect of any particular company or enterprise. [Hence, even if product is captively consumed by Indian manufacturer, transfer price (market value) of inputs is to be considered and not actual cost of captive consumption]. It was observed that there has to be a single NIP for a product and not several NIP for the same product. NIP is not exporter specific.

In *Alkali Manufacturers Association of India* v. *Designated Authority* 2006 (194) ELT 161 (CESTAT). Designated Authority had calculated domestic price on basis of profit of 22% of investment. It was held that this is reasonable.

3.7.12 Dumping duty for WTO countries - Section 9B of Customs Tariff Act provides restrictions on imposing dumping duties in case of imports from WTO countries or countries given 'Most Favoured Nation' by an agreement. Dumping duty can be levied on import from such countries, only if Central Government declares that import of such articles in India causes material injury to industry established in India or materially retards establishment of industry in India.

[WTO agreement permits levy of anti-dumping duty when it causes injury to domestic industry as a result of specific unfair trade practice by foreign producer, by selling below normal value].

'Injury to domestic industry' will be considered on basis of volume effect and price effect on Indian industry. There must be a 'casual link' between material injury being suffered by dumped articles and the dumped imports.

3.7.13 Rules for deciding subsidy or dumping margin - Central Government has been empowered to make rules for determining (*a*) subsidy or bounty in case of bounty fed goods (*b*) the normal value and export price to determine margin of dumping in case of dumping. Accordingly, Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for determination of Injury) Rules, 1995 [*Customs Notification No. 2/95 (N.T.) dated 1-1-95*] provide detailed procedure for determining the injury in case of dumped articles.

3.7.14 Procedure for fixing anti dumping duty - After the 'designated authority' is satisfied about *prima facie* case, he will give notice to Governments of exporting countries. Opportunity to inspection of documents and making representations will be given to interested parties who are likely to be affected. Designated Authority will first give preliminary finding and then final finding within one year. Provisional duty can be imposed on basis of preliminary finding which can continue upto 6 months, extendable to 9 months. Additional duty may be imposed on basis of the final finding.

As per rule 18 of Anti-Dumping Duty Rules, Central Government has to issue a notification fixing anti-dumping duty within three months from date of notification issued by designated authority.

3.7.15 Appeal against order determining dumping duty - Appeal against the order determining the duty can be made to CESTAT. The appeal will be heard by at least three member bench consisting of President, one judicial member and one technical member [section 9C of Customs Tariff Act].

3.7.16 No appeal against order of Tribunal – Section 9C does not provide for statutory appeal against order of Tribunal. Hence, only remedy is either writ in High Court or SLP in Supreme Court.

3.7.17 High Court should not exercise writ jurisdiction – In view of appeal provisions, High Court should not entertain writ petitions and grant interim relief. Otherwise, the provisions of appeal would be rendered otiose – *Association of Synthetic Fibre Industry* v. *J K Industries* 2006 (199) ELT 196 (SC) * *Nitco Tiles* v. *Gujarat Ceramic Floor Tiles Mfg Association* 2006 (199) ELT 198 (SC).

3.7.18 Mid-term review – Mid-term review of anti-dumping duty is permissible under rule 23 of Anti-Dumping Duty Rules. In *Rishiroop Polymers* v. *Designated Authority* 2006 (196) ELT 385 (SC), it was held that scope of review enquiry by Designated Authority is limited to the satisfaction as to whether there is justification for continuing imposition of anti-dumping duty. The inquiry is limited to change in various parameters like normal value, export value, dumping margin, fixation of non-injury price and injury to domestic industry. Only changed parameters should be considered.

3.7.19 New Shipper Review – After imposing of anti-dumping duty, a new exporter may want to export same goods to India. As per rule 22, if he had not exported earlier, he can ask for review of anti-dumping duty. During the period of review, Government may resort to provisional assessment and may allow imports on submission of guarantee, pending review. If anti-dumping duty is determined, it will be payable retrospectively from date of initiation of review. Such review is termed as 'new Shipper Review'.

3.7.20 Discontinuation of anti-dumping duty i.e. sunset review - Anti dumping duty ceases on the expiry of five years from date of imposition. However, Central Government can extend the anti-dumping duty, if it is of the opinion that cessation is likely to lead to continuation or recurrence of dumping and injury.

3.7.21 Illustration on anti-dumping duty – An importer imported Description of goods: Mulberry Raw Silk (not thrown) (HS Code 5002 00) from People's Republic of China. CIF value was US $ 20,000 and quantity 1,000 Kgs. Exchange rate was 1 US $ = ₹ 44 on date of presentation of Bill of Entry. Customs Duty rates are – (i) Basic Customs Duty 10% (ii) Education Cess 2% (iii) SAH Education cess - 1%. There is no excise duty payable on these goods if manufactured in India. As per Notification No. 106/2003-Cus dated 10-7-2003, anti-dumping duty has been imposed on these goods imported from China, manufactured by any producer in People's Republic of China. The anti-dumping duty will be equal to difference between amount calculated @ US $ 31.69 per Kg and 'landed value' of goods. Compute Customs Duty liability & anti-dumping liability.

Answer :

(a)	Computation of Customs duty :	
	Total CIF Price	US $ 20,000
	CIF @ ₹ 44 per 1 US $	₹ 8,80,000.00
	Add – Landing charges @ 1%	₹ 8,800.00
	Assessable Value	₹ 8,88,800.00
	Basic duty @ 10%	₹ 88,880.00
	Education Cess @ 2% on 88,880.00	₹ 1,777.60
	SAH education Cess 1%	888.80
	Total Customs Duty payable (Basic + Education Cess)	₹ 91,546.40
	Rounded off	₹ 91,546.40
(b)	Computation of landed value	
	Assessable Value Under Customs Act	₹ 8,88,800.00
	Add: All Duties of Customs	₹ 91,546.40
	Landed Value as per Anti-Dumping Notification	₹ 9,80,346.00
(c)	Computation of anti-dumping duty	
	Rate of Silk Yarn as per Anti-Dumping Notification	
	(US $ 31.69 per kg) × 1000 kgs =	US $ 31,690
	Value @ ₹ 44 per US $ =	₹ 13,94,360
	Less : Landed value as per Anti-Dumping =	₹ 9,80,346
	Anti-Dumping Duty Payable	₹ 4,14,014

3.8 VALUE FOR PURPOSE OF CUSTOMS ACT

3.8.1 Customs duty is payable as a percentage of 'Value' often called '*Assessable Value*' or '*CustomsValue*'. The **Value** may be either (*a*) 'Value' as defined in section 14(1) of Customs Act or (*b*)Tariff value prescribed under section 14(2) of Customs Act. The provisions relating to customs valuation have been completely revamped by introducing new section 14 w.e.f. 10-10-2007.

3.8.2 ***Tariff Value*** **-** Tariff Value can be fixed by CBE&C (Board) for any class of imported goods or export goods. CBE&C should consider trend of value of such or like goods while fixing tariff value. Once so fixed, duty is payable as percentage of this value. (The percentage applicable is as prescribed in Customs Tariff Act). Fixing tariff value is not permitted under GATT convention. However, the provision of fixing tariff values has been retained.

Tariff value for crude palm oil, RBD Palmolein, palm oil, crude soyabean oil and brass scrap has been fixed by notification No. 36/2001-Cus (NT) dated 3-8-2001.

3.8.3 Essential Ingredients of Valuation Section 14

The essential ingredients of section 14 may be analysed as under :

(a) Section 14 would be applicable only when customs duty is chargeable on goods based on their value either under the Customs Tariff Act, 1975 or under any other law for the time being in force.

(b) The value of goods under section 14(1) is deemed value.

(c) The assessable value will be price at which like goods are ordinarily sold.

(d) Where there is no sale price, the value shall be the price at which such or like goods are ordinarily offered for sale.

(e) The terms of the price should be for delivery at the time and place of importation or exportation, as the case may be.

(f) The sale or offer for sale should be in the course of international trade.

(g) There should be no mutuality of interest between the seller and the buyer.

(h) Price should be the sole consideration for sale or offer for sale.

Analysis in the Light of Judicial Decisions

The above ingredients may be further explained with the help of judicial rulings as under :

(a) Assessable Value is Deemed Value

Section 14(1)(a) brings about the concept of deemed value, which is a fictional value that relates to the concept of intrinsic value of goods, which it may fetch in the international market.

In the case of *Union of India v Glaxo Laboratories Ltd.*, the Court observed that the assessable value as per section 14(1), need not as a matter of fact, be the invoice price or the price that is agreed between the parties. It may be deemed value.

(b) Price

In N *Gulabair D Parekh v Union of India,* it was observed that the invoice

price based on the prevailing price list, should be accepted in terms of section 14(1)(a) of the Customs Act.

A declared price list can be used for the purpose or arriving at the value but there is no hard and fast rule and the invoice may supercede the price list as held by the Supreme Court in *Mirah Exprots Pvt. Ltd. v CC.*

In *Rajkumar Knitting Mills P Ltd. v CC*, a three member bench of Supreme Court held that for valuation purposes, 'ordinary' price at the time of importation is relevant and *not* the price prevalent on the date of contract.

(c) At which such or like goods are ordinarily sold

In *Chander Prakash & Co v Collector of Customs,* it was held that when the invoice price was very low and when the prices of comparable goods were available, it would not be appropriate to adopt the invoice price.

(d) Where there is no sale price, the 'offer for sale' price will be applicable

In case a sale price is not available, the offer for sale price may be construed as the basis determining the assessable value. For example, in case a price list is available, such price list is the quotation as well.

(e) Ordinarily sold

In *Collector of Customs, Bombay v Maruti Udyog Limited* (1987),

Maruti Udyog Limited, which had collaboration with Suzuke Motor Co, Limited was the only buyer of Suzuki SKD/CKD packs and complete vehicles. A controversy arose so to whether the price charges by Suzuki could be considered as one at which goods were ordinarily sold or offered for sale. In this case, the court held that the price charged by the Suzuki was a commercial price. Also, it was held that there was nothing to prove that the transaction between the two companies were not at arms length.

(f) In the course of international trade

In *Satellite Engineering Limited v Union of India* (1983), the assessee, who were manufacturers of fluorescent starter switches imported lead glass tubing at rate of 0.15 pounds per kg. However, the customs department which was of the opinion that the value was low, obtained two more quotations which were 0.430 pounds per kg. And 0.429 pounds per kg. respectively. It was held that the price indicated in the two quotations were in the course of international trade and hence that rate will form the basis for determining the assessable value.

(g) Price being the sole consideration

In *Sanjay Chandiram v Collector of Customs,* the court held that as there is no proof of comparable goods being imported at a higher rate and as it cannot be shown that the importer had paid to the supplier, an amount more than that required to be paid, there is no ground for rejection of the transaction value.

3.8.4 Method of valuation

The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, based on WTO Valuation Agreement (earlier GATT Valuation Code), consist of rules providing six methods of valuation.

The methods of valuation for customs methods are as follows —

- Transaction Value of Imported goods [Section 14(1) and Rule 3(1)].
- Transaction Value of Identical Goods [Rule 4]
- Transaction Value of Similar Goods [Rule 5]
- Deductive Vaue which is based on identical or similar **imported** goods sold in India [Rule 7]
- Computed value which is based on cost of manufacture of goods plus profits [Rule 8]
- Residual method based on reasonable means and data available [Rule 9]

Methods to be applied sequentially — These methods are to be applied in sequential order, i.e. if method one cannot be applied, then method two comes into force and when method two also cannot be applied, method three should be used and so on. The only exception is that the 'computed value' method may be used before 'deductive value' method, if the importer requests and Assessing Officer permits.

3.8.5 Transaction Value of Imported Goods

As per rule 3(1), value of imported goods shall be transaction value adjusted in accordance with provisions of rule 10 [Rules effective from 10.10.2007].

As per rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, various additions like sales commission, cost of containers, cost of packing; cost of materials, components etc. or services supplied by buyer; royalties payable, transport charges, insurance etc. are includible, *if these do not already form part of transaction value*.

Rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is subject to rule 12, which means that provisions of rule 12 overrides provisions of rule 3. As per rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value as declared by importer can be rejected by Assessing Officer, if he has doubts about truth or accuracy of the value as declared. However, the Assessing Officer has to give reasons for his doubts in writing and provide opportunity of personal hearing. Thus, it is not obligatory on customs officer to accept the transaction value if he has reasons to doubt the truth or accuracy of the same.

Transaction value can be rejected either for special circumstances as per section 14(1) or conditions as specified in rule 3(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Special circumstances as per section 14(1) - The 'special circumstances' in section 14(1) are (*a*) Buyer and seller should not be related ***and*** (b) Price should be the sole consideration for the sale. If these 'special circumstances' are not satisfied, transaction value can be rejected. Any other 'special circumstances' cannot be considered.

Conditions as per rule 3(2) - As per rule 3(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Earlier rule 4(2) of Customs Valuation Rules], transaction value can be accepted only if following requirements are satisfied –

No restriction on buyer for disposal of goods - There are no restriction on buyer on disposition or use of goods *except* the following: (*a*) restrictions prescribed by public authorities in India (*b*) restriction on geographical area within which goods may be resold e.g. goods should not be sold outside particular State or outside India *or* (*c*) restriction that does not materially affect value of goods - e.g. exporter puts a condition to importer of automobile that car should not be exhibited before a particular date – illustration given in Interpretative Note to rule 3(2)(a)(iii). [rule 3(2)(a)] [earlier rule 4(2)(e) upto 10-10-2007]

Sale not subject to conditions of which value cannot be determined - The sale or price should not be subject to a condition or consideration for which value cannot be determined. Examples given in interpretative note to rule 3(2)(b) are – (a) Price is subject to condition that buyer buys some other goods in specified quantities from seller (b) price is dependant on price at which buyer of imported goods sells other goods to seller (c) Price is based on form of payment extraneous the imported goods. However, (i) buyer furnishing engineering and plans undertaken in India to seller (ii) Buyer undertaking activities of marketing of imported goods in India will not form part of value of imported goods [rule 3(2)(b)] [earlier rule 4(2)(f) upto 10-10-2007].

No further consideration to seller of which adjustment cannot be made - Seller should not be entitled to further consideration like part of subsequent resale, disposal or use of goods by the buyer will accrue directly or indirectly to seller, unless proper adjustment in value terms can be made as per rule 10 e.g. if the importer is a trader and the condition is that after he sells the goods in India, the foreign exporter will get a fixed amount after the sale, that extra amount can be added for Customs Valuation [rule 3(2)(c)] [earlier rule 4(2)(g)]

Unrelated buyer and seller, except when price acceptable under rule 3(3) - Buyer and seller are not be related, unless the transaction value is acceptable under rule 3(3) [rule 3(2)(d)] [earlier rule 4(2)(h) upto 10-10-2007]. *If any of the aforesaid requirement is not satisfied, 'transaction value' cannot be accepted for valuation purposes.*

3.8.6 Transaction Value of Identical Goods

Rule 4(l)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules 2007 of Customs Valuation Rules provide that if valuation on the basis of 'transaction value' is not possible, the 'Assessable value' will be decided on basis of transaction value of identical goods sold for export to India and imported at or about the same time.

Rule 4(1)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that transaction value of identical goods at the same commercial level and in substantially same quantity as the goods being valued shall be used to determine value of imported goods.

If transaction value at different commercial level or in different quantities *or both* is available, suitable adjustments can be made to take into account the difference.

Identical goods' are defined under Rule 2(1)(d) of Custom Valuation (Determination of value of Imported Goods) Rules, 2007 as those goods which fulfil all following conditions i.e. *(i)* the goods should be same in all respects, including physical characteristics, quality and reputation; except for minor differences in appearance that do not affect value of goods. *(ii)* the goods should have been produced in the same country in which the goods being valued were produced. *(iii)* they should be produced by same manufacturer who has manufactured goods under valuation - if price of such goods are *not* available, price of goods produced by another manufacturer in the same country. — However, if engineering, development work, art work, design work, plan or sketch undertaken in India were completed by the buyer on these imported goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, these will not be 'identical goods'.

3.8.7 Transaction Value of Similar Goods

If first method of transaction value of the goods or second method of transaction value of identical goods cannot be used, rule 5 (earlier rule 6) provide for valuation on basis of 'Transaction value of similar goods imported at or about the same time'.

What are Similar goods - Rule 2(1)(f) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [earlier rule 2(1)(e) upto 10-10-2007] define 'similar goods' as *(a)* alike in all respects, have like characteristics and like components and perform same functions. These should be commercially inter-changeable with goods being valued as regards quality, reputation and trade mark. *(b)* the goods should have been produced in the same country in which the goods being valued were produced. *(c)* they should be produced by same manufacturer who has manufactured goods under valuation - if price of such goods are not available, price of goods produced by another manufacturer in the same country can be considered. -. However, if engineering, development work, art work, design work, plan or sketch under-taken in India were completed by the buyer on these imported

goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, these will not be 'similar goods'.

3.8.8 Deductive Value Method

Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provide for the next i.e. fourth alternative method, which is called 'deductive method'.

This method should be applied if transaction value of identical goods or similar goods is not available; but these products are sold in India. The assumption made in this method is that identical or similar imported goods are sold in India and its selling price in India is available. *The sale should be in the same condition as they are imported*. Assessable Value is calculated by reducing post-importation costs and expenses from this selling price. This is called 'deductive value' because assessable value has to be arrived at by method of deduction.

3.8.9 Computed Value Method

If valuation is not possible by deductive method, the same can be done by computing the value under rule 8 of Customs Valuation (Determination of Valuation of Imported Goods) Rules, 2007, which is the fifth method.

In this method, value is the sum of (*a*) Cost of value of materials and fabrication or other processing employed in producing the imported goods (*b*) an amount for profit and general expenses equal to that usually reflected in sale of goods of the same class or kind, which are made in the country of exportation for export to India. (*c*) The cost of value of all other expenses under rule 10(2) i.e. transport, insurance, loading, unloading and handling charges.

3.8.10 Residual Method

The sixth and the last method is called "residual method". It is also often termed as 'fallback method'. This is similar to 'best judgment method' of the Central Excise, Income Tax and Sales Tax. This method is used in cases where 'Assessable Value' cannot be determined by any of the preceding methods. While deciding Assessable Value under this method, reasonable means consistent with general provisions of these rules should be the basis and valuation should be on basis of data available in India. [Rule 9(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

The value cannot exceed normal price - The value so determined cannot be more than the 'normal price' i.e. price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in course of International Trade, when seller and buyer have no interest in the business of each other or one of them has no interest in the other and price should be sole consideration for sale or offer for sale [proviso to rule 9(1). There was no parallel proviso in earlier rule 8(1)].

3.8.11 Inclusions/Exclusions in Customs Value

- Valuation for customs is required to be done as per provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- CIF value of goods plus 1% landing charges is the basis for deciding 'Assessable Value'.
- Commission to local agents, packing cost, value of goods and toolings supplied by uyer, royalty relating to imported goods are addible.
- Interest on deferred payment, demurrage at port is not required to be added
- Value of computer software loaded on machine is to be added to value of machinery.
- Old machinery and old cars are valued on basis of depreciated value, though such method has no sanction of law.

No other additions - No other addition shall be made to price paid or payable, except as provided for in rule 10 [rule 10(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (earlier rule 9(4)]. Interpretative Note to rule 3 (earlier rule 4) also clarifies that activities undertaken by buyer other than those for which adjustments are provided in rule 10 (earlier rule 9) are not to be added, even though it may be regarded as benefit to the seller.

3.8.12 Practical Problems of computing Customs Value

Problem 1: **An importer imports some goods @ 10,000 US $ on CIF basis. Following dollar rates are available on the date of presentation of bill of entry : (*a*) RBI Floor rate : ₹ 43.21 (*b*) Inter-bank closing rate : ₹ 43.23 (*c*) Rate notified by CBE&C under section 14 (3) (a) (i) of Customs Act : ₹ 44.66 (*d*) Rate at which bank has realised the payment from importer : ₹ 44.02. Find the assessable value for customs purposes.**

Answer : The relevant exchange rate is ₹ 44.66. Thus, CIF Value of goods is ₹ 4,46,000. Landing charges [rule 9 (2) of Customs Valuation Rules] @1% of CIF Value are to be added - i.e. ₹ 4,460. Thus, Customs Value or Assessable Value is ₹ 4,50,460.

Problem 2: **A consignment is imported by air. CIF price is 4,000 US Dollars. Freight is 2800 US $. Insurance cost was $ 140. Exchange rate is same as above. Find Value for customs purposes.**

Answer :

CIF Price	$ 4,000
(–) Freight	$ 1,280
(–) Insurance	$ 140
FOB Price	$ 2,580
(+) Freight @ 20% on FOB	$ 516
(+) Insurance	$ 140
CIF Value for Customs	$ 3,236
Equivalent INR VSD 3,236 × 44.66 =	₹ 1,44,519.76
(+) Landing charges @ 1% =	₹ 1,445.20
	₹ 1,45,964.96

Problem 3: **FOB Cost of a consignment is 6,000 UK Pounds. Insurance and transport costs are not available. What is Customs Value ? On the date of filing of bill of entry, Reserve Bank of India reference rate of US $ was 43.37 and inter-bank closing rates were : ₹ 43.38 per US $ and ₹ 69.38 per UK Pound. Exchange rate announced by Board (CBE&C) by customs notification was ₹ 69.78 per British Pound. T T buying rate was 69.70 and T T selling rate was ₹ 69.61 per UK pound.**

Answer :

FOB Price	$ 6,000
Add : Freight @ 20%	$ 1,200
Add : Insurance @ 1.125% on FOB	$ 67.50
CIF	$ 7,267.50
Exchange Rate	₹ 69.78 per $
∴ CIF Value (in ₹) ($ 7,267.50×69.78)	₹ 5,07,126.15
Add : Landing charges @ 1% on CIF Value =	₹ 5,071.26
Assessable Value for Customs	₹ 5,12,197.41

Problem 4: **Customs value (Assessable Value) of imported goods is ₹ 4,00,000. Basic Customs duty payable is 10%. If the goods were produced in India, excise duty payable would have been 10%. Education cess is as applicable. Special CVD is payable at appropriate rates. Find the Customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?**

Answer :

		Duty %	Amount	Total Duty
(A)	Assessable Value		4,00,000.00	
(B)	Basic Customs Duty	10	40,000.00	40,000.00
(C)	Sub-Total for calculating CVD '(A+B)'		4,40,000.00	
(D)	CVD 'C' × excise duty rate	10	44,000.00	44,000.00
(E)	Education cess of excise – 2% of 'D'	2	880.00	880.00
(F)	SAH Education cess of excise – 1% of 'D'	1	440.00	440.00
(G)	Sub-total for edu cess on customs 'B+D+E+F'		85,320.00	
(H)	Edu Cess of Customs – 2% of 'G'	2	1,706.40	1,706.40
(I)	SAH Education Cess of Customs – 1% of 'G'	1	853.20	853.20
(J)	Sub-total for Spl CVD 'C+D+E+F+H+I'		4,87,879.60	
(K)	Special CVD u/s 3(5) – 4% of 'J'	4	19,515.18	19,515.18
(L)	Total Duty			1,07,394.78
(M)	Total duty rounded off			1,07,395.00

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Problem 5: An importer imported some goods for subsequent sale in India at $ 24,000 on CIF basis. Relevant exchange rate as notified by the Central Government and RBI was ₹ 45 and ₹ 45.50 respectively. The item imported attracts basic duty at 10% and education cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 12% plus education cess of 2%. Spl CVD is payable at applicable rates. Arrive at the Assessable value and the total duty payable thereon. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

[Note : For the purpose of determination of spl. CVD rate, Excise Duty is considered to be 12%, though existing rate is 10%]

Answer:

CIF Value = 24,000 US $	
Total CIF in ₹ @ 45.00 per US $ =	₹ 10,80,000
Add : Landing Charges @ 1% of CIF =	₹ 10,800
(A) Assessable Value =	₹ 10,90,800

Calculation of duty payable is as follows :

		Duty %	Amount	Total Duty
(A)	Assessable Value		10,90,800.00	
(B)	Basic Customs Duty	10	1,09,080.00	1,09,080.00
(C)	Sub-Total for calculating CVD '(A+B)'		11,99,880.00	
(D)	CVD 'C' × excise duty rate	12	1,43,985.60	1,43,985.60
(E)	Education cess of excise – 2% of 'D'	2	2,879.71	2,879.71
(F)	SAH Education cess of excise – 1% of 'D'	1	1,439.86	1,439.86
(G)	Sub-total for edu cess on customs 'B+D+E+F'		2,57,385.17	
(H)	Edu Cess of Customs – 2% of 'G'	2	5,147.70	5,147.70
(I)	SAH Education Cess of Customs – 1% of 'G'	1	2,573.85	2,573.85
(J)	Sub-total for Spl CVD 'C+D+E+F+H+I'		13,55,906.72	
(K)	Special CVD u/s 3(5) – 4% of 'J'	4	54,236.27	54,236.27
(L)	Total Duty			3,19,342.99
(M)	Total duty rounded off			3,19,343

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Problem 6: An actual user imports following goods from England per Mr. Harimohan : (1) Second hand numerically controlled horizontal lathe machine - Tariff heading – 84.5811, Value FOB - 1,000/- Pound Sterling (2). A. C. motors - Tariff heading – 85.0110, Value FOB - 500/- Pound Sterling. - - Other relevant data are: - Exchange rate 1 UK Pound = ₹ 65, Freight – 150 UK Pounds, Insurance – 25 UK Pounds. - - Rate of duty : Basic customs duty - 10%, CVD - 10%, Education Cess and Spl CVD at applicable rates. - - It is found that the lathe machine is undervalued. It is proposed to load the FOB value of the lathe machine by 25%. Party does not want show cause notice and personal hearing. Compute – (i) Assessable value; (ii) Total duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Answer - Since FOB value of lathe machine is being loaded by 25% for under-valuation, the FOB Value of lathe machine for purpose of assessment is 1250 UK Pounds. Value of AC Motors is 500 UK Pounds. Thus, total FOB value for purposes of customs valuation is 1,750 UK Pounds. — Total insurance and freight is 175 UK Pounds [freight is 150 UK Pounds and insurance is 25 UK Pounds]. This will be allocated on lathe machine and AC motors in proportion to value (as no other basis is available).

	A/C Motors	Lathe Machine
FOB Value (UK $)	500.00	1250.00
Add : Allocated Total freight & insurance [@ 500 : 1250] $ 175	50.00	125.00
CIF Value	$ 550.00	$ 1,375.00
Exchange Rate per $	₹ 65.00	₹ 65.00
∴ CIF Value in INR	₹ 35,750.00	₹ 89,375.00
Add : Landing carhges @ 1%	₹ 357.50	₹ 893.75
Assessable Value	₹ 36,107.50	₹ 90,268.75
Rounded off	₹ 36,107.00	₹ 90,269.00

Calculation of duty payable is as follows :

		On Lathe Machine		On A/C Motor	
	Duty %	Amount	Total Duty	Amount	Total Duty
(A) Assessable Value ₹ 10,000		90,269.00	—	36,107.00	—
(B) Basic Customs Duty	10	9,026.90	9,026.90	3,610.70	3,610.70
(C) Sub-Total for calculating CVD '(A+B)'		99,295.90	—	39,717.70	—
(D) CVD 'C' × excise duty rate	10	9,929.50	9,929.50	3,971.77	3,971.77
(E) Education cess of excise – 2% of 'D'	2	198.59	198.59	79.44	79.44
(F) SAH Education cess of excise – 1% of 'D'	1	99.29	99.29	39.72	39.72
(G) Sub-total for edu cess on customs 'B+D+E+F'		19,254.28	—	7,701.62	—
(H) Edu Cess of Customs – 2% of 'G'	2	385.09	385.09	154.03	154.03
(I) SAH Education Cess of Customs – 1% of 'G'	1	192.54	192.54	77.02	77.02
(J) Sub-total for Spl CVD 'C+D+E+F+H+I'		1,10,100.91	—	44,039.67	—
(K) Special CVD u/s 3(5) – 4% of 'J'	4	4,404.04	4,404.04	1,761.59	1,761.59
(L) Total Duty			24,235.95		9,694.26
(M) Total duty rounded off			24,236.00		9,694.00

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above..

Problem 7: An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds. Other details are as follows :

- **(*a*) Freight from UK to Indian port was 700 pounds.**
- **(*b*) Insurance was paid to insurer in India : ₹ 6,000**
- **(*c*) Design and development charges of 2,000 UK pounds were paid to a consultancy firm in UK**
- **(*d*) The importer also spent an amount of ₹ 50,000 in India for development work connected with the machinery.**
- **(*e*) ₹ 10,000 were spent in transporting the machinery from Indian port to the factory of importer.**
- **(*f*) Rate of exchange as announced by RBI was : ₹ 68.82 = one UK Pound**
- **(*g*) Rate of exchange as announced by CBE&C (Board) by notification under section 14(3)(a)(i) : ₹ 68.70 = One UK pound**

(*h*) Rate at which bank recovered the amount from importer : ₹ 68.35 = One UK Pound.

(*i*) Foreign exporters have an Agent in India. Commission is payable to the agent in Indian Rupees @ 5% of FOB price.

Customs duty payable was 10%. If similar goods were produced in India, excise duty payable as per tariff is 24%. There is an excise exemption notification which exempts the duty as is in excess of 10%. Education cess is as applicable Spl CVD is payable at applicable rates.

Find customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Answer :

FOB Value	$ 10,000.00
Add : Design & Development Charges	$ 2,000.00
Add : Ocean freight	$ 700.00
Total C & F	$ 12,700.00
Equvalent C&F @ ₹ 68.70 per UK Pound =	₹ 8,72,490.00
Add : Insurance	₹ 6,000.00
Add : Local Agency commission 500 $	
@ ₹ 68.70 per pound =	₹ 34,350.00
Total CIF Price	₹ 9,12,840.00
Add : Landing Charges @ 1% of CIF	₹ 9,128.40
Assessable Value	₹ 9,21,968.40
Assessable Value (rounded to)	₹ 9,21.968.00

Calculation of duty payable is as follows :

		Duty %	Amount	Total Duty
(A)	Assessable Value		921,968.00	
(B)	Basic Customs Duty	10	92,196.80	92,196.80
(C)	Sub-Total for calculating CVD '(A+B)'		1,014,164.80	
(D)	CVD 'C' × excise duty rate	10	101,416.48	101,416.48
(E)	Education cess of excise – 2% of 'D'	2	2,028.33	2,028.33
(F)	SAH Education cess of excise – 1% of 'D'	1	1,044.16	1,044.16
(G)	Sub-total for edu cess on customs 'B+D+E+F'		196,655.77	
(H)	Edu Cess of Customs – 2% of 'G'	2	3,933.12	3,933.12
(I)	SAH Education Cess of Customs – 1% of 'G'	1	1,966.56	1,966.56
(J)	Sub-total for Spl CVD 'C+D+E+F+H+I'		1,124,523.45	
(K)	Special CVD u/s 3(5) – 4% of 'J'	4	44,980.94	44,980.94
(L)	Total Duty			247,536.39
(M)	Total duty rounded off			247,536.00

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Note : (1) Design and development work done in India and transport costs within India are not to be considered for purposes of 'Customs Value'. (2) Excise duty rate has to be considered after considering excise exemption notification. (3) Assessable Value and Final duty payable should be rounded off to nearest Rupee.

Duty payable is same whether the importer is manufacturer or a trader.

Problem 8: Mrs. & Mr. Kapoor visited Germany and brought following goods while returning to India on 8th June, 2010. (i) Their personal effects like clothes, etc., valued at ₹ 35,000. (ii) A personal computer bought for ₹ 36,000. (iii) A laptop computer bought for ₹ 95,000. (iv) Two litres of liquor bought for ₹ 1,600. (v) A new camera bought for ₹ 37,400. What is the amount of customs duty payable?

Answer : Under Rule 3 of the Baggage Rules, 1998, Mrs. & Mr. Kapoor, being more than 10 years of age with stay of more than 3 days, is eligible for the following general free allowance :

(1) Uesd personal effects of any amount; and

(2) Other articles, other than those mentioned in Annexure 1, upto a value of ₹ 25,000.

Personal effects and one laptop are exempt from customs duty. Two liters of liquor can be accommodated in General free Allowance. Hence, Mr. Kapoor can bring one personal computer and two litres of liquor on his account. Total value is ₹ 37,600 (PC ₹ 36,000 plus liquor ₹ 1,600). He will get General Free Allowance of ₹ 25,000 and duty payable will be on ₹ 12,600. Customs Duty @ 35% of ₹ 12,600 will be ₹ 4,410 plus education cess of ₹ 88.20 @ 2% of customs duty and SAH education cess of ₹ 44.10 @ 1% of customs duty.

Mrs. Kapoor can bring one camera on her account. Total value is ₹ 37,400. She will get General Free Allowance of ₹ 25,000 and duty payable will be on ₹ 17,400. Customs Duty @ 35% of ₹ 17,400 will be ₹ 6,090 plus education cess of ₹ 121.80 @ 2% of customs duty and ₹ 60.90 as SAH education cess.

3.9 VALUATION OF EXPORT GOODS

3.9.1 SELF ASSESSMENT ON BASIS OF 'RISK MANAGEMENT SYSTEM' (RMS)

One major step is being taken to move in the direction of implementing international best practices in customs clearance. A 'Risk Management System' for customs clearance of import and export cargo has been introduced. The details of scheme are contained in MF(DR) circular No. 43/2005-Cus dated 24-11-2005 – see also CC, Bangalore-I PN 88/2006 dated 31-7-2006 (201 ELT T5). Initially, the scheme will be introduced in Air Cargo Complex, Sahar Mumbai and then it will be introduced in other customs houses in phases. Under Risk Management System (RMS), only high risk cargo is selected for examination. Thesystem provides for special customs clearance for Accredited Clients having good track record and meet specified criteria.

The scheme proposes to do away with existing system of routine assessments and concurrent audit. Goods will be normally cleared on basis of self assessment of importer. Bill of Entry submitted electronically will be transmitted to RMS. The RMS will process the data and produce an electronic output. This output will determine whether the Bill of Entry will be taken up for appraisement/examination or be cleared after payment of duty without any assessment and examination. Any change is system will require prior approval of Commissioner of Customs and after recording reasons. Focus will be on quality assessment, examination and post clearance audit of Bills of Entry selected by the Risk Concurrent audit will be replaced by Post Clearance Audit on Bill of Entry selected by the Risk Management System. Subsequently, demand can be raised even if goods have been cleared from customs.

3.9.2 No change in Custom Act and Rules - The scheme is being introduced without making any change in Customs Act or Rules, the basic procedures of sanctions and approvals remain unaltered and hence is not similar to scheme of self-assessment under Central Excise, where clearances are effected by assessee without supervision or presence of excise inspectors. Scope of the scheme is also very limited.

3.9.3 Scheme open only to 'Accredited Clients' - The scheme is limited to only 'Accredited Clients' as defined in MF(DR) circular No. 42/2005-Cus dated 24-11-2005. They should have imported goods valued at ₹ 10 crores in previous financial year or paid duty more than ₹ one crore. In case of importers who are central excise, they should have paid at least ₹ one crore of duty through PLA in previous financial year. They should have filed at least 25 Bills of Entry in the previous financial year.

3.9.4 Person who had received any show cause notice in last three financial years is ineligible – In order to ensure that scope of the scheme remains limited (and the scheme fails), it is provided that no case should be pending against them. Even show cause notice invoking penal provisions should not have been issued against them is last three financial years. Such importers can be probably counted on fingers. If this condition is insisted upon, the scheme is stillborn and will be a non-starter.

3.9.5 Application for getting accreditation - Importers desirous of availing the facility of 'Accredited Client' has to make application for registration in form given in MF(DR) circular No. 42/2005-Cus dated 24-11-2005. Application has to be accompanied by a CA certificate that the accounting system of applicant is as per accounting standards prescribed by ICAI.

3.9.6 Decision regarding ACP status within 30 days - In case of status holders, Customs will communicate decision on conferring ACP status Accredited Client under Risk Management System of customs clearance, within 30 days from receipt of application by customs.

Risk management division in systems directorate – A risk management division has been created in Systems Directorate. Risk Management Committees will be constituted at National level and Local level – MF(DR) circular No. 23/2007-Cus dated 28-6-2007.

3.10 PROVISIONAL ASSESSMENT OF DUTY [SECTION 18]

(1) Notwithstanding anything contained in this Act, but without prejudice to the provisions contained in section 46 —

(a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or

(c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty, the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally, if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

3.11 RELEVANT DATE FOR RATE AND VALUATION OF IMPORT DUTY

Section 15 of Customs Act prescribes that rate of duty and tariff valuation applicable to imported goods shall be the rate and valuation in force at one of the following dates (*a*) if the goods are entered for home consumption, the date on which bill of entry is presented (*b*) in case of warehoused goods, when Bill of Entry for home consumption is presented u/s 68 for clearance from warehouse and (*c*) in other cases, date of payment of duty.

3.12 DRAWBACK

In 'duty drawback', the excise duty and customs duty paid on inputs and service tax paid on input services is given back to the exporter of finished product by way of 'duty drawback'.

It may be noted that duty drawback under section 75 is granted when imported materials are used in the manufacture of goods which are then exported, while duty drawback under section 74 is applicable when imported goods are re-exported as it is, and article is easily identifiable.

Duty drawback rates are of following types - (a) All Industry Rate (b) Brand Rate and (c) Special Brand Rate.

Duty drawback rates can be fixed with retrospective effect [rule 5(2) of Drawback Rules, 1995].

All Industry Drawback Rates – All Industry Drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Govt. of India, Jeevan Deep, Parliament Street, New Delhi-110 001. The rates are perodically revised-normally on 1st June every year. The All Industry Drawback Rate is fixed under rule 3 of Drawback Rules by considering average quantity and value of each class of inputs imported or manufactured in India.

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006).

Brand Rate of Duty Drawback – It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, *brand rate* is fixed under rule 6. The manufacturer has to be submit application with all details to Commissioner, Central Excise. Such application must be made within 60 days of export.

Upper limit of drawback rate - Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006).

Special Brand Rate of duty drawback

All Industry rate is fixed on average basis. Thus, a particular manufacturer or exporter may find that the actual excise/customs duty paid on inputs or input services is higher than All Industry Rate fixed for his product. In such case, he can apply under rule 7 of Drawback Rules for fixation of Special Brand Rate, within 30 days from export.

The conditions of eligibility are (*a*) the All Industry Rate fixed should be lees than 80% of the duties paid by him (*b*) rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than ₹ 500 (*c*) export value is not less than the value of imported material used in them - i.e. there should not be '*negative value addition*'.

Duty Drawback on Re-Export – Section 74 of Customs Act, 1962 provide for drawback if the goods are re-exported as such or after use. This may happen in case like import for exhibitions, goods rejected or wrong shipment etc. The re-exported goods should be identifiable as having been imported and should be re-exported within two years from date of payment of duty when they were imported. This period (of two years) can be extended by CBE&C on sufficient cause being shown. These should be declared and inspected by Customs Officer. Original shipping bill under which the goods were imported should be produced. The goods can be exported as cargo by air or sea, or as baggage or by post -. -. - After inspection, export and submission of application with full details, 98% of the customs duty paid while importing the goods is repaid as drawback.

PRACTICAL PROBLEMS RELATED TO CUSTOMS DUTY

Problem 1 :

Nircom lcecream Company imported under one single order a consignment of plant and machinery namely continuous ice cream freezer with accessories such as electric dozer, can filter, fruit feeder and ripple machine wittily spare parts. According to Nircom the main function of the machine is to make ice cream. The ice freezer is stated to be refrigerating equipment classifiable under Heading 84.18 of the Customs Tariff Act, 1975. None of the aforesaid accessories can function independently as each of them has been specifically made to be connected to work along with the ice cream freezer. It is the department's view that the can filter, fruit feeder and ripple machine are independent, machines and not accessories. State with reasons as to how you would decide the issue with reference to the "General Rules for Interpretation" under First Schedule-Import Tariff to the Customs Tariff Act, 1975.

Answer :

Rule 2(a) of the Interpretation rules of Customs Tariff Act, 1975 states that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.

In the given case the ice cream freezer is an independent ready assembled unit having universal movement and does not require erection at the site, then it has to be classified according to its function independently. The mere fact that the machines called accessories can be connected with freezers would not charge their character of being independent machines. The accessories if they are intended to give better production of ice cream only still could be classified as independent machines. It cannot be said that but for those machine the freezer cannot be utilized for the purpose of manufacture of ice cream.

Problem 2 :

'V' steels imported various items for its captive power plant with technical knowhow from, 'N' Engineering U.S.A. the relevant drawings of the turbine shaft and layout of the turbine with other items were also supplied. One of the items which was a turbine shaft was in a semi-finished condition. Before fitting, this turbine shaft had to be further ground and finished as per the dimensions of the shaft indicated in the layout drawing. "VI' steels paid US $ 2000 for the layout drawing and did not pay any customs duty on this amount. The Customs Department has claimed that this amount of US $ 2000 forms part of the transaction value under Rule 9(1) of the Customs Valuation Rules, 1988. "V" steel claims that the drawing indicating the dimensions of the turbine shaft was merely a layout drawing of the turbine shaft was merely a layout drawing of the turbine with other items of the turbine room.

Explain with reference to the provisions of Rule 9 of the Customs Valuation Rules, 1988.

Answer :

As per the terms of Rule 9(1)(*e*) of the Customs Valuation Rules, 1988, in determination of the transaction value, any payment made by the buyer as a condition of sale of the goods will be included in the value of the goods.

In the given case, the turbine shaft was imported in a semi-finished condition and has to be fitted and finished as per the indications in the layout drawing. Thus, this drawing is necessary for further finishing of the imported turbine shaft i.e. in the final production of the imported item before it is fitted. Therefore, as the payment of US $ 2000 is made for layout drawing without which the plant cannot be installed and hence the value of such layout drawing will be included ill the value of the goods.

In view of the above, it is a drawing necessary for the production of the imported item and therefore has to be included in the transaction value of the imported item.

Problem 3 :

A has imported from U.S.A. by Air under-mentioned goods at Mumbai :

Tariff Heading – 85-01, (1) Description – Micro motors – Value in FOB – US $ 10,000 (2) Soldering irons and guns – Value in FOB — $ 5000 – Other relevant data are : Air freight $ 400, Insurance actual $ 200, Local agent's commission ₹ 5,000, Rate of exchange 1 $ =₹ 50, Customs duty – 10% Ad-valorem, CVD – 10% Ad-valorem, SAD – 4% Ad-valorem. Effective Rate of duty on soldering irons and guns through a customs notification is 8%. Compute assessable value of each item and relative total customs duty and aggregate customs duty payable.

Answer :

Details	Micro Motor		Soldering Iron	
	Amount	Total Duty	Amount	Total Duty
FOB US $	10,000.00		5,000.00	
Air Freight & Insurance (Pro-rata)	400.00		200.00	
CIF USD	10,400.00		5,200.00	
Total CIF in ₹ @ ₹ 50 per 1 USD	520,000.00		260,000.00	
Agency Commission on pro-rata basis in ₹	3,333.33		1,666.67	
Total Value	523,333.33		261,666.67	
ADD - Landing Charges @ 1%	5,233.33		2,616.67	
(A) Assessable Value	528,566.66		264,283.34	
(B) Basic Customs Duty @ 10% for micor motors				
and 8% for soldering iron	52,856.67	52,856.67	21,142.67	21,142.67
(C) Sub Total for calculating CVD (A+B)	581,423.33		285,426.00	
(D) CVD "C" x Excise Duty rate	58,142.33	58,142.33	28,542.60	28,542.60
(E) Education cess of excise - 2% of D	1,162.85	1,162.85	570.85	570.85
(F) SAH Education cess of excise - 1% of 'D'	581.42	581.42	285.43	285.43
(G) Sub-total for education cess on customs 'B+D+E+F'	112,743.27		50,541.55	
(H) Education cess of customs - 2% of 'G'	2,254.87	2,254.87	1,010.83	1,010.83
(I) SAH Education cess of customs - 1% of 'G'	1,127.43	1,127.43	505.42	505.42
(J) Sub - total for Spl CVD 'C+D+E+F+H+I'	644,692.23		316,341.13	
(K) Special CVD - 4% of 'J'	25,787.69	25,787.69	12,653.65	12,653.65
(L) Total Duty		141,913.26		64,711.44
(M) Total duty rounded off		141,913.00		64,711.00

Problem 4 :

Compute (keeping in mind the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975), the total customs duty payable by an importer on goods 'X' imported by sea into India, from the following details. You may, wherever appropriate, make suitable assumption. FOB Value 1,000 (Dollars) * Weight of Goods 1,000 Kg * Freight Charges $ 100 (Dollars) * Insurance Charges $ 20 (Dollars) * Handling Charges ₹ 200 * Exchange Rate 4 Dollars =₹ 100 * Date of Presentation of Bill of Entry – 4.5.2010 * Date of Entry Inwards of Vessel – 1.5.2010 Rates of Customs Duty on 1.5.2010 - * Basic 100% Adv. * SAD – 4% * Additional (CVD) 15% * Rates of Customs Duty on 4.5.2010 - * Basic 110% Adv. * SAD 4% * Additional (CVD) 15%.- . – Note : No other particulars are relevant.

Answer :

CIF Value is US $ 1,120 [1,000 + 100 + 20].

Converted into Rupees, it will be ₹ 28,000 @ ₹ 25 per dollar.

Add handling charges of ₹ 200.

Presuming that these are 'landing charges' and hence separate landing charges are not added, the Customs Value (Assessable Value) will be ₹ 28,200.

	Amount	Total Duty
(A) Assessable Value	28,200.00	
(B) Basic Customs Duty @ 110%	31,020.00	31,020.00
(C) Sub Total for calculating CVD (A+B)	59,220.00	
(D) CVD "C" × Excise Duty rate	8,883.00	8,883.00
(E) Education cess of excise - 2% of D	177.66	177.66
(F) SAH Education cess of excise - 1% of 'D'	88.83	88.83
(G) Sub-total for education cess on customs 'B+D+E+F'	40,169.49	
(H) Education cess of customs - 2% of 'G'	803.39	803.39
(I) SAH Education cess of customs - 1 % of 'G'	401.69	401.69
(J) Sub - total for Spl CVD 'C+D+E+F+H+I'	69,574.57	
(K) Special CVD - 4% of 'J'	2,782.98	2,782.98
(L) Total Duty		44,157.56
(M) Total duty rounded off		44,158.00

Problem 5 :

Zing Yong of China exports Lithium Cell to India, the FOB price of which is one Dollar for 30 cells; however the details of Fright & Insurance were not made available. Investigation reveals that the goods are imported into India at an increased quantity. Similar cells are manufactured in India, the cost of sales per cell of which indicates the following break-up :

Direct Material	₹ 2.00
Direct Labour	₹ 0.25
Direct Expenses	₹ 0.25
Indirect Expenses	₹ 0.50
Indirect Labour	₹ 0.25
Indirect Expenses	₹ 0.25
Administrative Overheads	₹ 0.50
Selling and distribution overheads	₹ 0.50
Profit Margin	₹ 0.50

The exchange rate 1 $ = ₹ 50. Is there any case to impose Safeguard Duty? If yes, what is the duty leviable?

Answer :

	Amount	Total Duty
FOB US $ for 30 cells	1.00	
Freight @ 20% of FOB	0.20	
Insurance @ 1.125% of FOB	0.011	
CIF USD	1.21	
Total CIF in ₹ @ ₹ 50 per 1 USD	60.56	
ADD - Landing Charges @ 1%	0.61	
(A) Assessable Value	61.17	
(B) Basic Customs Duty @ 10%	6.12	6.12
(C) Sub Total for calculating CVD (A+B)	67.28	
(D) CVD "C" × Excise Duty rate (10%)	6.73	6.73
(E) Education cess of excise - 2% of D	0.13	0.13
(F) SAH Education cess of excise - 1% of 'D'	0.07	0.07
(G) Sub-total for education cess on customs 'B+D+E+F'	13.05	
(H) Education cess of customs - 2% of 'G'	0.26	0.26
(I) SAH Education cess of customs - 1% of 'G'	0.13	0.13
(J) Sub - total for Spl CVD 'C+D+E+F+H+I'	74.61	
(K) Special CVD - 4% of 'J'	2.98	2.98
(L) Total Duty		16.42

Hence, landed cost of 30 cells is Rs. 77.59 (₹ 61.17 + ₹ 16.42 as duty)

Accordingly, the landed cost will be ₹ 2.59 per cell

In case of Indian manufacturer, his total cost will be as follows –

Prime Cost (Direct Material + Direct Labour + Direct Expenses)	₹ 2.50
Cost of Production (Prime Cost + Indirect Material + Indirect Labour + Indirect Expenses)	₹ 3.50
Cost of Sales (Cost of production + Administration Overheads + Selling and Distribution Overheads).	₹ 4.50
Selling price (Cost of Sales plus profit).	₹ 5.00

Thus, landed cost of imported article will be ₹ 2.59 and selling price of Indian manufacturer will be ₹ 5,00 per cell. Accordingly, there is a case for imposition of product Specific Safeguard Duty on imports from China u/s 8C of Customs Tariff Act.
Maximum safeguard duty that can be imposed is ₹ 2.41 per cell.

Problem 6 :

Determine the total Customs Duty payable from the following data –

Quantity imported: 100 MTs,
FOB value: Swiss Franc: 10000,
AIR Fright: Swiss Franc: 2500,
Insurance: Data not available,
Exchange rate: 1 Swiss Franc = ₹ 34,
Rate of BCD 10%,
Rate of Cenvat under First Schedule to CETA: 10%,
Rate of SED under Second Schedule to CETA: 10%,
Rate of AED(GSI) under Additional Duties of Excise (GSI) Act: ₹ 10/kg.
Rate of SAD 4%

Answer :

Given FOB price is 10,000.00 Swiss Francs.

Since airfreight is more than 20% of FOB, freight is required to be limited to 20% of FOB *i.e.* 2,000 SF (Swiss Francs).

Since insurance data is not available, insurance cost is to be taken @ 1.125% on FOB, *i.e.* 112.50 SF.

Accordingly, —

• CIF value is 12,112.50 SF (FOB 10,000 + Freight 2,000 + Insurance 112.50 SF).	12,112.50
Add : Landing charges of 1% of CIF	121.13
	SF 12,233.63
Assessable Value = SF 12,233.63 × ₹ 34	₹ 4,15,943.42
AV Rounded off	₹ 4,15,943.00

	Amount	Total Duty
(A) Assessable Value	415,943.00	
(B) Basic Customs Duty @ 10%	41,594.30	41,594.30
(C) Sub Total for calculating CVD (A+B)	457,537.30	
(D) CVD "C" × Excise Duty rate (20%)	91,507.46	91,507.46
(E) AED (GSI) @ Rs. 10 per Kg., Hence for 100 MT	1,000,000.00	1,000,000.00
(F) Sub-total for Education cess of excise	1,091,507.46	
(G) Education cess of excise - 2% of F	21,830.15	21,830.15
(H) SAH Education cess of excise - 1% of 'F'	10,915.07	10,915.07
(I) Sub-total for education cess on customs 'B+D+E+G+H'	1,165,846.98	
(J) Education cess of customs - 2% of 'I'	23,316.94	23,316.94
(K) SAH Education cess of customs - 1% of 'I'	11,658.47	11,658.47
(L) Sub - total for Spl CVD 'C+D+E+G+H+J+K'	1,616,765.39	
(M) Special CVD - 4% of 'J'	64,670.62	64,670.62
(L) Total Duty		1,265,493.01
(M) Total duty rounded off		1,265,493.00

Notes :

(1) Basic Excise Duty (Cenvat) is 10% and Special Excise Duty (SED) is 10%. Hence, CVD, which is equal to excise duty will be 20%.

(2) As per section 3A(5) of Customs Tariff Act, SAD is not payable if an article is liable to AED(GSI). However, since the question specifies SAD @ 4%, it has been calculated. If SAD is payable, it will be calculated on Assessable Value plus Basic Customs Duty plus CVD plus AED (GSI).

Problem 7 :

Discuss briefly with reference to decided case laws as to how the 'value' shall be determined under section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 1988 in the following cases :

(i) Goods are offered at specially reduced price to buyer and the buyer is asked not to disclose the specially reduced price to any other party in India.

(ii) There has been a price rise between the date of contract and the date of importation. The contract was over 6 months before the date of shipment.

(iii) The sale involves special discounts limited to exclusive agents.

(iv) The goods are purchased on High seas.

Answer :

(i) Where sales are made to buyers at specially reduced prices, the prices so offered cannot be said to be the ordinary prices. In *Padia Sales Corporation v Collector of Customs* (1993) 66 ELT 35 (SC) the Supreme Court held that where the goods are offered to the buyers is asked not to disclose the specially reduced price to any other party, then the said price will not be acceptable.

(ii) Where there is a price rise at the time when the goods are imported in comparison to the price when the contract was made then, the price at the time of importation will be taken to be the value of the goods. In *Rajkumar Knitting Mills Pvt. Ltd. v Collector of Customs* (1998) 98 ELT 292 (SC), the Supreme Court held that the contract price may have bearing while determining the value of the goods, but he value is to be determined at the time of importation of the goods.

(iii) In *Eicher Tractors Ltd. v Commissioner of Customs, Mumbai* (2000) 122 ELT 321 (SC) the Supreme Court held that the price paid by the importer to the vendor in the ordinary course of commerce shall be taken to be the value of imported goods. Since the buyer and the seller are not related and the price is the sole consideration for sale, the discounted price was taken as the assessable value. However this decision has been nullified by the Customs Valuation Price of Imported Goods Rules, 2002 and consequently, where the sale involves special discounts limited to exclusive agents, such discounted price shall not be accepted as the assessable value.

(iv) Where high sea sales are made, the price charged by the importer from the assessee will be taken to be the value of the goods. Similar view was expressed by the Tribunal in *Godavari Fertilizers v C.C.Ex.* (1996) 81 ELT 535 (Tri.).

Problem 8 :

'A' imports by air from USA a Gear cutting machine complete with accessories and spares. Its HS classification is 84.610 and Value US $ f.o.b. 20,000.

Other relevant data/information : (1) At the request of importer, US $ 1,000 have been incurred for improving the design, etc. of machine, but is not reflected in the invoice, but will be paid by the party, (2) Freight – US $ 6,000. (3) Goods are insured but premium is not shown/available in invoice. (4) Commission to be paid to local agent in India ₹ 4,500. (5) Freight and insurance from airport to factory is ₹ 4,500. (6) Exchange rate is US $ 1 = ₹ 45. (7) Duties of Customs : Basic – 10% CVD – 10% SAD – 4%. – Compute (i) Assessable value (ii) Customs duty.

Answer :

(i) Computation of Assessable Value –

FOB Value of Machine	= $ 20,000
Add : Expenditure for improving design	= $ 1,000
Add – Freight limited to 20% of FOB [Rule 9(2)]	= $ 4,000
Insurance @ 1.125% of FOB [Rule 9(2)c(iii)]	= $ 225
Sub-Total	= $ 25,225
Sub-Total In ₹ @ ₹ 45 per Rupee	= ₹ 11,35,125
Add – Agents Commission [Rule 9(1)(i)]	= ₹ 4,500
Total CIF Value	= ₹ 11,39,625
Add – Landing charges 1% of CIF	= ₹ 11,396
Assessable Value	= ₹ 11,51,021

Duty payable will be as follows –

(ii) Gear cutting machine Complete with accessories and spares

	Amount	Total Duty
(A) Assessable Value	1,151,021.00	
(B) Basic Customs Duty @ 10%	115,102.10	115,102.10
(C) Sub Total for calculating CVD (A+B)	1,266,123.10	
(D) CVD "C" × Excise Duty rate (10%)	126,612.31	126,612.31
(E) Education cess of excise - 2% of 0	2,532.25	2,532.25
(F) SAH Education cess of excise - 1% of 'D'	1,266.12	1,266.12
(G) Sub-total for education cess on customs 'B+D+E+F'	245,512.78	
(H) Education cess of customs - 2% of 'G'	4,910.26	4,910.26
(I) SAH Education cess of customs - 1% of 'G'	2,455.13	2,455.13
(J) Sub - total for Spl CVD 'C+D+E+F+H+I'	1,403,899.16	
(K) Special CVD - 4% of 'J'	56,155.97	56,155.97
(L) Total Duty		309,034.13
(M) Total duty rounded off		309,034.00

Problem 9 :

Determine the assessable value and customs duty amount from the following data :

Name of the raw material X

FOB value Euro 1 million

Ocean freight Actual data not available

Ocean Insurance Actual data not available

Freight from sea port to godown paid in India ₹ 10,000

Transit insurance in India ₹ 2,000

Selling commission paid to agent in India 5%

Royalty on manufacture and sale of final product to foreign collaborator 5%

Interest payable on raw material imported at 180 days credit (on FOB value) 12% p.a.

Dividend paid to the foreign supplier of raw material on their equity participation for the year 2009-10 ₹ 2 per share on 1 million shares of face value ₹ 10/share

Importer supplied design and drawings worth Euro 10,000 to the foreign raw material supplier. # Landing charges as per Customs provisions

Customs duty rates : BCD – 10%, ACD – 10%, SAD – 4%

Exchange rate : 1 Euro = ₹ 42.

Answer :

Since ocean freight is not available, it has to be taken at 20% of FOB. Insurance will have to be taken @ 1.125% of FOB Value.

Royalty on manufacture and sale of final products payable to foreign collaborators has no relation to goods imported. Hence, it it not includible in Assessable Value for customs. Similarly, dividend paid to foreign supplier has no relation with supply of raw materials. It is not includible in Assessable Value.

Interest payable for credit is not includible in assessable value for customs purposes, as it is not part of 'transaction value'.

Freight from seaport to godown and transit insurance in India are post-importation costs and are not includible.

It is assumed that selling commission to selling agent in India is payable on basis of CIF Value of goods including cost of drawings supplied by buyer.

As per rule 9(1)*(b)(iv)* of Customs Valuation Rules, cost of engineering drawings is includible only if work was undertaken outside India. Since, payment has been made in Euro, it is assumed that the design and drawing work was done outside India.

Landing charges will be 1% of CIF Value, as per Customs Valuation Rules.

Hence, calculation of customs duty will as follows –

	Amount	Total Duty
FOB in EURO	1,000,000.00	
Freight @ 20 % of FOB	200,000.00	
Insurance @ 1.125% of FOB	11,250.000	
CIF in EURO	1,211,250.00	
Design and drawing charges	10,000.00	
Total CIF Value	1,221,250.00	
Total ClF Value in ₹	51,292,500.00	
Local agency commission @ 5%	2,564,625.00	
Total Value	53,857,125.00	
ADD - Landing Charges @ 1%	538,571.25	
(A) Assessable Value	54,395,696.25	
(B) Basic Customs Duty @ 10%	5,439,569.63	5,439,569.63
(C) Sub Total for calculating CVD (A+B)	59,835,265.88	
(D) CVD "C" x Excise Duty rate (10%)	5,983,526.59	5,983,526.59
(E) Education cess of excise - 2% of D	119,670.53	119,670.53
(F) SAH Education cess of excise - 1% of 'D'	59,835.27	59,835.27
(G) Sub-total for education cess on customs 'B+D+E+F'	11,602,602.01	
(H) Education cess of customs - 2% of 'G'	232,052.04	232,052.04
(I) SAH Education cess of customs - 1% of 'G'	116,026.02	116,026.02
(J) Sub - total for Spl CVD 'C+D+E+F+H+I'	66,346,376.32	
(K) Special CVD - 4% of 'J'	2,653,855.05	2,653,855.05
(L) Total Duty		14,604,535.12
(M) Total duty rounded off		14,604,535.00

Problem 10 :

Compute the Customs duty from the following data :

	US Dollars
Machinery imported from USA by Air (FOB)	8,000
Accessories compulsorily supplied with Machine (Electric Motor & others) (FOB)	2,000
Air Freight	3,000
Insurance	100

Local agents' commission to be paid in Indian Rupees is ₹ 4,500 (say equivalent to US Dollars 100), The exchange rate is 1 US Dollars = Indian Rupees 45., Customs duty on Machinery – 10% ad valorem, Customs duty on Accessory (normal rate 15% ad valorem), Surcharge on Customs duty – 10%, CVD – 10% (Effective Rate is 8% by a notification), SAD – 4%.

Answer :

As per Accessories (Conditions) Rules, 1963, accessories and spare parts compulsorily supplied with main implements are chargeable at the same rate as applicable to main machine. Thus, in case of accessories also, rate applicable will be 10%. Thus, customs duty on both machinery and accessory is 10%.

Total FOB value of machinery (including compulsory accessories) is US $ 10,000. Though actual air freight is 3,000 US $, it is limited to 20% as per rule 9(2) of Customs Valuation Rules. The freight to be considered for customs valuation is 20% of FOB i.e. 2,000 US $. Insurance (actual as given) is US $ 100. Thus, CIF Price (excluding agency commission) is 12,100 US $, *i.e.* ₹ 5,44,500 (@ ₹ 45 per US $).

Agency Commission is ₹ 4,500. Thus, total CIF price is ₹ 5,49,000. [Note that Agency Commission is really part of price of product and hence is includible in CIF Price]. Add landing charges of 1%) ₹ 5,490) to arrive at 'Assessable Value' or 'Customs Value' of ₹ 5,54,490.

	Amount	**Total Duty**
(A) Assessable Value	554,490.00	
(B) Basic Customs Duty @ 10%	55,449.00	55,449.00
(C) Sub Total for calculating CVD (A+B)	609,939.00	
(D) CVD "C" x Excise Duty rate (10%)	60,993.90	60,993.90
(E) Education cess of excise - 2% of D	1,219.88	1,219.88
(F) SAH Education cess of excise - 1% of 'D'	609.94	609.94
(G) Sub-total for education cess on customs 'B+D+E+F'	118,272.72	
(H) Education cess of customs - 2% of 'G'	2,365.45	2,365.45
(I) SAH Education cess of customs - 1% of 'G'	1,182.73	1,182.73
(J) Sub - total for Spl CVD 'C+D+E+F+H+I'	676,310.90	
(K) Special CVD - 4% of 'J'	27,052.44	27,052.44
(L) Total Duty		148,873:33
(M) Total duty rounded off		148,873.00

Note :

(a) If different rates of customs duty have to be applied to main machinery and accessories, freight, agency commission and insurance will have to be allocated on pro-rata basis.

(b) If insurance charges are not given, these will have to be taken as 1.125% of FOB.

(c) Surcharge of 10% has now been removed. Special duty has also been removed w.e.f. 1-3-2001. Thus, now, surcharge or special duty is not applicable w.e.f. 1-3-2001

Problem 11 :

Compute the Customs duty liability as per the provisions of the Customs Act, 1962, from the following information. Make suitable assumptions and indicate the same in your answer :

- Product Imported – 'X'
- Total FOB Value of the goods – US $ 74000
- Quantity Imported – 100 MTs.
- Ocean freight – US $ 10000
- Insurance – US $ 740
- Landing charges – 1% of CIF value
- Exchange rate – 1 US $ = ₹ 37
- Date of presentation of Bill of Entry – 28.02.10
- Date of Entry Inwards of the Vessel – 03.03.10
- Customs duty Rates on 28.02.10 –
  (a) Basic Customs Duty 15%
  (b) Special Additional Duty 4%
  (c) Countervailing Duty (Additional Duty) 10%.
- Customs duty rates on 3.3.10 –
  (i) Basic Customs Duty 10%
  (ii) Special Additional Duty 4%
  (iii) Countervailing Duty (Additional Duty) 8%

Will your answer change if the actual cost of Freight and Insurance is not available?

Answer :

Although the Bill of Entry is stated to be presented earlier, entry inward was granted later. Therefore, relevant rate of customs duty will be as on 3-3-2010 *i.e.* Basic 10%, Special – 4% and CVD 8%.

	Amount	Total Duty
FOB in USD	74,000.00	
Ocean Freight	10,000.00	
Insurance charges	740.000	
ClF in USD	84,740.00	
Total CIF Value in ₹	3,135,380.00	
ADD - Landing Charges @ 1%	31,353.80	
(A) Assessable Value	3,166,733.80	
(B) Basic Customs Duty @ 10%	316,673.38	316,673.38
(C) Sub Total for calculating CVD (A+B)	3,483,407.18	
(D) CVD "C" × Excise Duty rate (8%)	278,672.57	278,672.57
(E) Education cess of excise - 2% of D	5,573.45	5,573.45
(F) SAH Education cess of excise - 1% of 'D'	2,786.73	2,786.73
(G) Sub-total for education cess on customs 'B+D+E+F'	603,706.13	
(H) Education cess of customs - 2% of 'G'	12,074.12	12,074.12
(I) SAH Education cess of customs - 1% of 'G'	6,037.06	6,037.06
(J) Sub - total for Spl CVD 'C+D+E+F+H+I'	3,788,551.12	
(K) Special CVD - 4% of 'J'	151,542.04	151,542.04
(L) Total Duty		773,359.36
(M) Total duty rounded off		773,359.00

If Actual Cost of Freight & Insurance is not available :-

Since actual cost of freight and insurance is not given, it is taken as 20% of FOB and 1.125% of FOB respectively. Accordingly, the freight will be US $ 14,800 and insurance US $ 832.50.

CIF value will, thus, be US $ 89,632.50.

The total amount of Customs duty payable on that basis will be to ₹ 8,18,009.59 (Rounded off to ₹ 8,18,010).

Notes : The students may note that when the question was set, there was not Special Additional Duty (SAD), but there was special customs duty of 2%, which was chargeable on basic customs duty. However, now special customs duty is removed and SAD has been introduced, the example has been calculated considering 4% SAD.

Problem 12 :

An importer has imported a machine from Japan at FOB cost of 9,00,000 Yens. Other details are as follows :

(a) Freight from Japan to Indian port was 18,000 Yens.

(b) Transit insurance charges were 1% of FOB value.

(c) Design and development charges of 90,000 Yens were paid to a consultancy firm in Japan for design of machinery.

(d) Packing charges of 22,000 Yen were charged extra.

(e) ₹ 20,000 were spent in design cost on machine in India.

(f) An amount of 98,500 Yen was payable to Japanese manufacturer towards charges for installation and commissioning the machine in India.

(i) Rate of exchange as announced by RBI was: 1 yen = ₹ 0.309

(ii) Rate of exchange as announced by Central Government by notification under section 14(3)(a)(i) : 1 Yen = 0.302 ₹

(iii) Customs duty was 10% and special additional duty was 4%. Excise duty on similar machinery in India would be 10%.

Find the customs duty payable.

Answer :

Design charges of ₹ 20,000 are not includible in Assessable Value, but design charges paid abroad are includible. Erection and commissioning charges are not includible. Relevant rate of exchange is 1 Yen = ₹ 0.302. Hence, duty payable is calculated as follows –

	Amount	Total Duty
FOB in Yen	900,000.00	
Ocean freight	18,000.00	
Insurance charges	9,000.000	
Design and consultancy charges	90,000.000	
Packing charges	22,000.000	
CIF in Yen	1,039,000.00	
Total CIF Value in ₹	313,778.00	
ADD - Landing Charges @ 1%	3,137.78	
(A) Assessable Value	316,915.78	
(B) Basic Customs Duty @ 10%	31,691.58	31,691.58
(C) Sub Total for calculating CVD (A+B)	348,607.36	
(D) CVD "C" × Excise Duty rate (10%)	34,860.74	34,860.74
(E) Education cess of excise - 2% of D	697.21	697.21
(F) SAH Education cess of excise - 1% of 'D'	348.61	348.61
(G) Sub-total for education cess on customs 'B+D+E+F'	67,598.14	
(H) Education cess of customs - 2% of 'G'	1,351.96	1,351.96
(I) SAH Education cess of customs - 1% of 'G'	675.98	675.98
(J) Sub - total for Spl CVD 'C+D+E+F+H+I'	386,541.86	
(K) Special CVD - 4% of 'J'	15,461.67	15,461.67
(L) Total Duty		85,087.75
(M) Total duty rounded off		85,088.00

Problem 13 :

A consignment of 800 metric tons of skimmed milk powder of US origin was imported by a Non-profit making Organisation for free distribution of milk to the children in a tribal area under a World Health Programme. This being a special transaction a nominal price of US $ 10 per metric ton was charged for the consignment to cover freight and insurance charges. The customs department found out at or about the time of importation of this gift consignment there were the following imports of the skimmed milk poweder of US origin :

S.No.	Quantity imported Unit	
	In Metric tons	Price in US $ (C.I.F.)
1.	20	260
2.	100	220
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US $ = ₹ 46

Briefly explain how the assessable value for purposes of customs duty will be arrived at into his case under the Customs Act, 1962 and the Customs Valuation Rules, 1988.

Answer :

In the given case only a nominal value of US $ 10 per metric ton is charges to cover the freight and insurance and no amount is paid or payable towards the cost of the goods. Therefore the transaction value will have to be determined considering the transaction value of the identical goods under Rule 5 of the Customs Valuation Rules, 1988.

As per Rule 5, the contemporaneous imports at the same commercial level and in substantially the same quantity as the goods being valued will be considered.

In absence of any specific information, it is presumed that the transactions are at the same commercial level. Considering that the quantity, the consignments of 20 and 100 metric tons cannot be accepted, while the remaining 4 consignments can be considered to be of substantially the same quantity. As the unit prices are different, we have to resort to Rule 5(3) which stipulate that if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of the imported goods. Accordingly, the unit price of the consignment under valuation shall be US $ 1 60 per metric tonne.

Particulars	Value
CIF value of 800 metric tones @ US $ 160 per m.t	1,28,000
Rate of exchange	1 US $ = ₹ 46
CIF value in Indian Rupees (1)	₹ 58,88,000
Add landing charges @ 1% of CIF value (2)	₹ 58,880
Assessable value (1) + (2)	₹ 5946880

Problem 14 :

Anukool imported several consignments of goods under proper license valid up to 31st December, 2009. A consignment was imported per "S.S.Vaishali" on 29th December, 2009. Before the goods were unloaded, strike broke out and goods could not be unloaded. Ship was forced to leave the port. The strike ended on 7th January, 2010. The ship Re-entered the port on 9th January, 2010 and the goods were unloaded. Anukool claims that the leaving or the port by the ship was involuntary and to save the goods. Anukool also claims that since the vessel has entered the territorial waters earlier, import was complete. Could the goods be cleared in the same license?

Answer :

India has sovereign rights in territorial waters, which are 12 nautical miles insides the sea. Thus, once goods enter territorial waters, the goods can be said to have entered into 'India'. In this case, since the goods had entered territorial waters before 31st December, 2009, the 'import' was complete.

Problem 15 :

A ship carrying the goods for XYZ Ltd. entered the territorial waters of India from a foreign country on November 25, 2009. The goods were exempted from payment of customs duty under the Customs Act, 1962 on the that day under a notification issued in terms of the said Act by the Central Government the goods were warehoused in a warehouse under Chapter IX of the Customs Act, 1962 on November 26, 2009. The goods were removed from the warehouse on December 15, 2009 by which time the earlier notification exempting the goods from payment of customs duty stood rescinded. The importer has sought your advice whether he could resist the claim for duty on the goods made upon him by the Department on the ground that when the goods entered the territorial waters on November 25, 2009 no duty was payable and the taxable event had occurred in terms of Section 12 of the Customs Act, 1962.

Answer :

The facts of the case are similar to that of *UOI v Apar Pvt. Ltd.* (1999) 112 ELT 3 (SC), in which the Supreme Court held that the crucial date for rate of duty applicable to any imported goods is the date determined in accordance with section 15(1) of the Customs Act, 1962, viz.

(a) in case of goods cleared for home consumption, the date of presentation of bill of entry under section 46 or the date of grant of entry inwards to the vessel which ever is later; and

(b) in the case of goods removed from a bonded warehouse, the date of actual removal of goods from the warehouse. The date when the vessel entered territorial waters of India is irrelevant.

Similarly, in *Garden Silk Mills Ltd v UOI* (1999) 113 ELT 58 (SC), the Supreme Court held that the import of goods commences when the goods cross the territorial waters of India, but it is completed when it becomes part of the mass of the goods within the country. Taxable event is reached when the goods reach the customs barrier and the bill of entry for home consumption is filed.

In view of these judicial decision, XYZ Ltd. are liable to pay customs duty at the rate in force on the date of removal of the goods from the warehouse.

Problem 16 :

Hero Alloys imported during October, 2009 by sea, a consignment of metal scrap weighing 3000 metric tones from U.K. They filed a Bill of Entry for Home consumption and the Assistant Commissioner passed an order for clearance of goods and the applicable duty was also paid. The importer thereafter found on taking delivery from the Port Trust Authorities, that only 2,500 metric tones of scrap were available at the docks although they had paid duty for the entire 3000 metric tones since there was no short landing of cargo. The short delivery of 500 metric tones was also substantiated by the Port Trust Authorities, who gave a weighment certificate to the importer to that effect.

Upon a representation to the Customs Department the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs the importer's claim for restoration of duty paid on the quantity of 500 metric tones scrap not delivered by the Port Trust.

Examine the issues involved and briefly discuss the same with reference to the provisions of the Customs Act, 1962.

Answer :

The issue for consideration here is whether the importer shall be entitled to remission of duty, when goods are lost at the port.

As per section 23 provides that where the imported goods have been lost without pilferage or destroyed at any time before clearance for home consumption, duty on such goods would be remitted. Here "loss" means that the loss is forever and there is no possibility of tracing it or recovering it.

In the given case, 500 metric tones of goods has been lost in the custody of the Port Trust after the order for clearance was passed and duty payment was made. The weighment certificate of the port Trust Authorities substantiates the same.

Therefore, the importer can claim the remission of the duty on the lost goods *i.e.* 500 metric tones under section 23 of the Customs Act, 1962.

Problem 17 :

The shipping bill in respect of an export consignment was presented to the customs Authority on August 8, 2009. The Customs Authority granted "entry outwards" to the ship on August 11, 2009, the loading of the goods in the ship had commenced only after August 17, 2009. A notification was issued under the Customs Act, 1962 exempting the export item from customs duty on August 17, 2009. The assessee contends that since the loading of the goods in the ship had commenced after August 17, 2009, the export consignment is eligible for the benefit of the exemption notification. Discuss with reasons whether the assesee's contention is tenable in law.

Answer :

The issue for consideration in the present case is whether the respondents are entitled to avail the benefit of the exemption from customs duty granted under Notification.

As stated, the shipping bill in respect of the said export was presented to the Customs on August 8, 2009, the Customs authorities granted entry outwards to the ship on March 11, 2009. The loading of the goods had not commenced till August 17, 2009.

The facts of the case are similar to that of *Principal Appraiser (Exports), Collectorate of Customs and Central Excise v Esajee "Tayabally, Kapasi, Calicut* (1995) 80 ELT 3 (SC), wherein the Supreme Court held that the relevant rate of customs duty in connection with the export o goods would be the rate which prevailed when the 'entry outwards' for the vessel, which ultimately exported the goods was effected and subsequent change in the rate of duty would be irrelevant.

In view of above, the assessee would not be entitled to seek exemption from duty under the Notification dated 17-8-2009, since the entry outwards has been made on 11-8-2009.

Problem 18.

K Power Corporation (KP) are the promoters of Naptha based short gestation 355 M.W. combined cycle power plant. For setting up the power plant KP entered into a power purchase agreement with the State Electricity Board. With a view to implement the project on schedule and to avail the concessional customs duty provided under the Project Import Regulations, 1986 the contract between KP and the foreign suppliers of power equipment based in Korea was registered with the Customs House. The project equipment was off loaded after filing necessary documents relating to clearance of goods vide Bill of Entry No. 109, Dated 20-5-2009. The Customs Authorities in terms of the contract registered under the Project Import Regulations assessed the customs duty on the project equipment amounting to ₹ 2.15 crores provisionally. The duty was paid as per the provisionally assessed bill of entry. The cargo was discharged between 21-5-2009 and 24-5-2009.

As the project equipment imported at the port was more than 200 M.T. in weight and the equipments were in assembled condition it was felt that the equipment could not be transferred by road from the port to the project site. Therefore it was decided to transport the equipment by sea in a costal barge to another nearby place (M) and then to move them by road to the project site. The said equipment, which was oversized cargo was therefore transferred to the barge to be towed by a tug to place (M). All the packages containing the said equipment were discharged to Trailers/barges. The barge set out on Costal Voyage on 1-6-2009 after taking necessary permission from various authorities. Unfortunately the barge capsized during the Voyage on 2-6-2009 and finally overturned resulting in total loss of all packages containing the said equipment.

The importers have sought for remission of duty and refund of duty already paid on provisional basis in *terms of* Section 23 of the Customs Act, 1962.

Write a brief note on the validity of the claim made by the importers.

Answer :

Section 23 of the Customs Act, 1962 provides that in case any goods have been lost or destroyed before clearance of goods for home consumption, then, the importer shall not be liable to pay the duty. However, in

this case, the Bill of Entry was assessed provisionally and the goods were allowed to be cleared out of the customs area. The loss occurred when the goods have been physically removed *i.e.* while in transit. Hence, the benefit of section 23 of the Customs Act, 1962, will not be available.

Problem 19 :

A big ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships.

Examine whether such consumption of stores attracts customs duty, quote relevant section and case law, if any.

Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to drawback?

Answer :

'Stores' means goods for use in a vessel and includes diesel and spare parts and other articles and equipment. Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel are exempt from import duty under section 87.
Since the ship is ocean going, stores consumed on board will not attract customs duty. Regarding the smaller ships which are employed to unload the cargo from the mother ship, there are termed as 'Tran shippers'.
These are also treated as ocean going vessels, as was decided in *UOI v V M Salgaoncar* AIR 1998 SC 1367: 99 ELT 3(SC).
Hence, Stores consumed by small vessels would also be exempt from customs duty.
Stores supplied to will be treated as export as per section 89 of Customs Act and hence will be eligible for duty drawback.

Problem 20 :

Mr. B, an Indian resident, aged 52 years, returned to India after visiting England on 31.10.2009. He had been to England on 10.10.2009. On his way back to India he brought following goods with him –

(a) His personal effect like clothes etc. valued at ₹ 40,000.
(b) 1 litre of Wine worth ₹ 1,000.
(c) A video cassette recorder worth ₹ 1,000
(d) A microwave oven worth ₹ 20,000.

What is the customs duty payable?

Answer :

As per Rule 3 of the baggage Rules, 1998 passengers above 10 years of age and returning after stay abroad of more than 3 days are eligible for the following general free allowance :

(i) Used personal effect of any amount;
(ii) Articles other than those mentioned in Annex, I upto a value of ₹ 25,000 if these are carried on the person or in the accompanied baggage of the passenger;

Therefore, in the instant case, the total customs duty payable by the passenger will be as follows :

Articles	Duty
1. Used personal effects	No Duty
2. Wine upto 1 Ltr. Can be accommodated in General Free Allowance	₹ 1,000
3. Video cassette recorder is dutiable	₹ 11,000
4. A microwave oven	₹ 20,000
Total Dutiable goods imported (that can be accommodated in General Free Allowance)	₹ 32,000
Total General Free allowance (As per rule 3 of the Baggage Rules)	₹ 25,000
Balance Goods on which duty is payable	₹ 7,000
Duty payable @ 36.05% [35% + 2% of 35% + 1 % of 35% = 36.05%]	₹ 2,523.50

Problem 21 :

An exporter has exported under-mentioned goods under draw-back claim:

Sub. S. No. of DBK Table	Description	FOB Value ₹	Rate of Drawback
74.24	1000 Kg handicrafts of bras @ ₹ 200 per kg	2,00,000	16.5% of FOB Value subject to maximum of ₹ 33 per kg of brass content
74.27	1000 kg of Artware of copper @ ₹ 300 per kg	3,00,000	₹ 33 per kgs
85.81	20,000 pc GLS Lamps @ ₹ 5 per piece	1,00,000	1% of FOB

Note – 1. On examination it is found that brass content in brass artware is 80%.
2. Artware has copper content of weight 950 kg.

Compute the amount of drawback admissible taking into account the above facts.

Answer :

Description	Calculation of Duty Drawback	Duty Drawback Available ₹
1000 kg handi-crafts of brass @ ₹ 200 per kg	16.5% FOB value is ₹33,000. However, maximum is ₹ 33 per Kg of brass content. Brass content in brassware @ 80% is 800 Kg. Hence, Maximum permissible drawback is ₹ 26,400	₹ 26,400
1000 kg of Artware of copper @ ₹ 300 per kg 20,000 pc GLS Lamps @ ₹ 5 per piece	Actual weight is 950 Kg. Hence, drawback will be 950 Kg × ₹ 33 per Kg	₹ 31,350
	1% of FOB *i.e.* 1% of ₹ 1,00,000	₹ 1,000
Total		₹ 58,750

Problem 22 :

'A' has exported under-mentioned goods under drawback claim –

S. No. of DBK Table	Description of goods & quantity exported	Value FOB ₹	Rate of Drawback
64.01	Leather footware Boots 200 nos. @ ₹ 1,000 per pair	2,00,000	11% of FOB subject to maximum of ₹ 85 per pair
64.11	Leather chappals 2000 no. @ ₹ 50 per pair	1,00,000	3% of FOB subject to maximum of ₹ 5 per pair.
71.01	Brass Jewellery 200 kgs. @ ₹ 200 per kg		₹ 22.50 per kg of Brass content
71.05	Plastic bangles with embellishment 200 kgs @ ₹ 100 per kg		₹ 5.00 per kg of plastic content.

On examination it is found that brass jewellery is 50% of weight and in plastic bangles the plastic content is 50% but the total weight comes to 190 kgs only.

Compute drawback on each item and total drawback.

Answer :

Description	FOB Value ₹	Rate of Drawback	Drawback in ₹
Leather footwear Boots – 200 pairs @ ₹ 1,000 per pair	2,00,000	11% of FOB subject to max of ₹ 85 per pair	17,000
Leather chappals – 2,000 pairs @ ₹ 50 per pair	1,00,000	3% of FOB subject to Max ₹ 5 per pair	3,000
Brass jewellery 200 Kgs @ ₹ 200 per Kg – Brass content 50% of weight Plastic bangles with embellishment 200 Kgs – Plastic content 50%. Actual weight 190 Kgs only		22.50 per Kg of Brass content	2,250
		₹ 5 per Kg of Plastic content	475
		Total Duty Drawback	22,725

Problem 23 :

'A' exported a consignment under drawback claim consisting of the following items :

Particulars Serial/Sub-serial FOB value Drawback rate –

(1) 200 pieces of pressure stoves mainly of brass @ ₹ 80/piece 74.04 ₹ 16,000 4% of FOB

(2) 200 kg Brass utensils @ ₹ 200 per kg. 74.13 ₹ 40,000 ₹ 24/kg

(3) 200 kg Artware of brass @ ₹ 300/Kg 74.22 ₹ 60,000 17.50% of FOB subject to a maximum of ₹ 38/per kg.

On examination in docks, weight of brass artware was found to be 190 Kgs and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.

Answer :

Duty drawback available in each case is as follows –

	Particulars	*Duty Drawback in ₹*
1.	200 pieces of pressure stoves	640 [4% of ₹ 16,000]
2.	200 kgs brass utensils	4,800 [200 × 24]
3.	200 kgs of artware	7,220 [190 × 38]

Thus, drawback on individual clearances ₹ 640, ₹ 480 and ₹ 7,220.

Total drawback ₹ 12,660.

Note – In case of artware, the drawback on FOB value @ 17.5%, is ₹ 10,500. The condition is that maximum drawback will be ₹ 38/kg. Hence, on 190 kgs. works to ₹ 7,720.

Problem 24.

Sun Industries Ltd sent certain good by a ship from Kolkata to Colombo in Sri Lanka under claim for drawback on the said goods under Section 75 of the Customs Act, 1962 against shipping bill. The ship had passed beyond the territorial waters of India and the engine developed trouble while the ship was in the high seas failing within the ambit of expression 'taking out to a place outside India'. The ship returned back and ran aground in Indian territorial waters at the port of Paradeep. The fittings, stores and cargo was salvaged. Discuss the admissibility of claim for drawback by the company.

Answer :

Section 75 provides that the duty drawback is permissible on the goods which have 'entered for export' and in respect of which an order permitting the clearance and loading thereof is granted by the proper officer.

Therefore, the admissibility of the claim for drawback will not depend on the fact whether the goods have reached the destination or no.

The facts of the given problems are similar to that of *Sun Industries v Collector of Customs, Kolkata* 1988(35) ELT 241(SC), wherein the Supreme Court held that export is complete on loading after clearance and accordingly allowed the drawback claim where the ship carrying goods ran aground after crossing territorial waters due to engine trouble and the goods in question were neither salvaged nor re-landed; it further held that off-loading of goods at foreign port is not an essential requirement for export to take place.

Problem 25 :

GEOTECH has imported 5 main frame computer systems from USA in August, 2009 paying customs duty of ₹ 60 lakhs.

Due to some technical snags that developed in the system in November, 2009 the supplier sent his technicians to India to resolve the same. No solution was found. In July, 1999 INFOTECH decided to re-ship/return the goods to the foreign supplier.

You are the Finance Manager of GEOTECH and have been approached for advice whether import duty already paid can be got back from the Central Government, when the goods are reshipped/returned.

Briefly examine with reference to the provisions of Customs Act, 1962.

Answer :

As per the provisions of section 74 of the Customs Act, 1962, which deals with the drawback of Customs duty on articles which are imported, duty paid, then re-exported. This Section was basically introduced to allow the drawback of duty to the party in case the goods are as such re-exported say where these were received as defective goods, or wrong shipments were made by the suppliers abroad or after use within the country these are being sent back. However, the article should be easily identifiable.

The conditions to be, fulfilled to claim the drawback under section 74 are as:

1. The goods must have been originally imported into India and import duty must have been paid thereon.
2. The goods must be capable of being easily identified
3. The export of the goods should be under the cover of the drawback Shipping Bill.

If these conditions are fulfilled, the proper officer will make an order permitting clearance of the goods for exportation and the duty paid is repaid as drawback at the industry rates as prescribed by the Central Government. However, if the goods are not put to use at all, then 98% of the duty will be repaid as drawback.

However, in order to claim drawback under this Section, the goods are to be entered for export within two years from the date of payment of duty on the importation thereof.

In the instant case, the goods were imported in August, 2009 on payment of the customs duty and the company now seeks to re-export the same. If the goods entered for export before August 2011 (2 years from the date of payment of duty), the company will be eligible for the drawback claim under Section 74 either at industry rates (in case the goods are put to any use) or at the rate of 98% of the duty (where the goods are not put to use at all).

Problem 26 :

An officer of the Customs has reason to believe that a person has secreted gold/diamonds or documents about his person liable to confiscation. He wants to search him. The person requests the officer to take him to a Gazetted Officer or Magistrate. Should his request be acceded to? What precautions should be taken in such a search?

Answer :

The relevant section are 100,101 and 102 of Customs Act.

Section 100 empowers Customs Officer to search a person if he has reason to believe that smuggled goods or document are secreted in his person. Section 102(2) of Customs Act lays down that the person being searched can request that the search should be carried out before a gazetted officer or magistrate. If such request is made, the person should be taken to the nearest gazatted officer of Customs or a Magistrate. The Gazetted officer or magistrate will decide whether the search should be done or to discharge the person. If search to be conducted, two persons should be brought as witnesses. The search is conducted before the 'panchas' and the seized articles are listed and signed. Female should be searched by a female only.

Problem 27 :

A person make an unauthorized import of 1000 pieces of ophthalmic rough blanks CIF priced at $ 1 per piece by air from USA (Tariff heading 70.1510). The consignment is liable to be confiscated. Import is adjudicated. AC gives to the party an option to pay fine in lieu of confiscation. It is proposed to impose fine equal to 50% of margin of profit. The market price is ₹ 100 per piece of ophthalmic rough blank. The rates of duty are – Basic customs – 10%, CVD – nil, SAD – 4%, Exchange rate is - $ 1 = ₹ 45.

Compute : (i) Amount of fine; (ii) Total payment to be made by party to clear the consignment. What is the maximum amount of fine that can be imposed in this case? Quote section.

Answer :

As the declared CIF value of goods is $ 1 per piece and price for consignment of 1000 pieces will be $ 1000 (CIF). Rate of exchange is $ 1 = ₹ 45. Hence, CIF value is ₹ 45,000. Add landing charges @ 1%. Therefore, total Assessable Value in Rupees will be ₹ 45,450 [₹ 45,000 CIF plus 450 landing charges]

Basic duty @ 10% will be ₹ 4,545 (10% of ₹ 45,450). There is no CVD. So no cess of excise to be paid. But, Education & SAH Education of customs to be paid on Basic Customs Duty @ 3%. Total cess will be ₹ 136.35 (3% of ₹ 4,545). SAD @ 4% is payable on AV + Basic + Education Cess i.e. on ₹ 50,131.35 (45,450 + 4,545 +136.35). Thus SAD is ₹ 2005.25.

Therefore, total duty payable is ₹ 6,686.60 (4,545.00 + 136.35 + 2005.25)

Total Duty rounded off to ₹ 6,687.

Total cost to the importer is price plus duty, i.e. ₹ 45,450 plus ₹ 6,687. Thus, total cost to the importer is ₹ 52,137. The market value is ₹ 100 per piece, i.e. ₹ 1,00,000 for the consignment. Therefore, his margin of profit is ₹ 47,863. Fine equal to 50% of Margin of profit will be ₹ 23,932.

Therefore, total amount payable will be –

Duty	₹ 6,687
Fine	₹ 23,932
Total	₹ 30,619

The maximum amount of fine that can be imposed as per proviso to Sec. 125 will be the market value of goods less amount of duty.

Thus, the maximum fine that can be imposed in ₹ 93,313 (Market price ₹ 1,00,000 less amount of duty ₹ 6,687).

Problem 28 :

An importer imported some goods in February, 2012 and the goods were cleared from Mumbai port for warehousing on 8th February, 2012 after assessment. Assessable value was ₹ 4,86,000 (US $ 10,000 at the rate of exchange ₹ 48.60 per US $). The rate of duty on that date was 20% (assume that no additional duty is payable). The goods were warehoused at Pune and were cleared from Pune warehouse on 4th March, 2012, when rate of duty was 15% and exchange rate was ₹ 48.75 = 1 US $. What is the duty payable while removing the goods from Pune on 4th March, 2012?

Answer : For purpose of exchange rate, relevant date is the date on which Bill of Entry for warehousing is submitted. Hence, the rate of exchange will be ₹ 48.60 per US $ assessable value will be ₹ 4,86,000 (US $ 10,000 at ₹ 48.60 per US $), even if goods are removed from warehouse later. However, rate of duty will be as on date of removal from warehouse i.e. 15%. Hence, customs duty payable will be ₹ 72,900.

Problem 29 :

Mr. Hari imported goods on 14.1.2011, Bill of entry was presented on 15.1.2011, Assessable value (in Euro) 60,000. Goods were removed to warehouse. Order permitting the deposit of goods in bonded warehouse issued on 19.1.2011. Mr. Bhar neither obtained permission of time for the warehousing period, nor cleared the goods within the permitted warehousing period of 18.4.2011. Only after a notice was issued under section 72 demanding duty and other charges, Mr. Bhar removed the goods from the warehouse, on 15th May, 2011. Assuming that no additional duty or SAD is payable, on the basis of following information, compute the amount of duty payable by Mr. Bhar while removing the goods (i) Rate of exchange (1 Euro =) 65 (on 15.1.2011), 66 (on 18.4.2011) and 67 (on 15.5.2011) (ii) Basic customs duty 12% (on 15.1.2011), 15% (on 18.4.2011) and 18% (on 15.5.2011)

Answer :

In *Kesoram Rayon* v. *CC (1996)* 86 ELT 464 (SC), it has been held that goods which are not removed from warehouse within the permissible period, are deemed to be improperly removed on the day it should have been removed. Thus, duty applicable on such date (i.e. last date on which the goods should have been removed) is applicable, and not the date on which goods were actually removed.

Hence, rate of duty applicable is 15%. Exchange rate as applicable at the time of submission of Bill of Entry for warehousing is relevant for valuation. Subsequent change in foreign exchange rate is not relevant. Hence, exchange rate relevant is 1 Euro = ₹ 65.

Hence, Assessable Value is ₹ 39,00,000 (60,000 × 65). Basic customs duty @ 15% is ₹ 5,85,500. Education cess @ 2% is ₹ 11,700 and SAHE cess @ 1% is ₹ 5,850.

Problem 30 :

Certain goods were imported in February 2012. "Into bond" bill of entry was presented on 14th February, 2012 and goods were cleared from the port for warehousing. Assessable value was $ 3,00,000. Customs officer issued the order under section 60 permitting the deposit of the goods in warehouse on 21st February, 2012 for 3 months. Goods were not cleared even after warehousing period was over, i.e., 21st May, 2012 and extension of time was also not obtained. Customs officer issued notice under section 72 demanding duty and other charges. Goods were cleared by importer on 28th June, 2012. What is the amount of duty payable while removing the goods? Compute on the basis of following information (assume that no additional duty or special additional duty is payable)

	14.02.2012	**21.05.2012**	**28.06.2012**
Rate of Exchange per US$	₹ 48.20	₹ 48.40	₹ 48.50
Basic customs duty	35%	30%	25%

Answer :

Rate of duty applicable is 30%. Exchange rate as applicable at the time of submission of Bill of Entry for warehousing is relevant for valuation. Subsequent change in foreign exchange rate is not relevant. Hence, exchange rate relevant is 1 US $ = ₹ 48.20.

Hence, Assessable Value is ₹ 1,44,60,000 (US $ 3,00,000 × ₹ 48.20). Customs duty @ 30% will be ₹ 43,38,000.

Mode of calculation of excise duty when goods cleared by EOU in DTA

As per *proviso* to section 3 of Central Excise Act, excise duty payable is equal to customs duty on like articles imported into India. As per Sr. No. 2 of notification No. 23/2003-CE dated 31-3-2003 (as amended), the duty payable is to be calculated as if (a) customs duty is reduced to 50% and (b) Special duty of 4% u/s 3(5) of Customs Tariff Act is not payable. However, if goods cleared in DTA are exempt from Vat, this special additional duty will be payable.

Mode of calculation of duty payable - If Assessable value = ₹ 20,000, Basic customs duty = 10%; basic excise duty = 10%, education cess is 2%, secondary and higher education cess is 1%, the duty calculation will be as follows -

		Duty %	Amount ₹	Total Duty ₹
(A)	Assessable Value		20,000.00	
(B)	Basic Customs Duty	10	2,000.00	2,000.00
(C)	Sub-Total for calculating CVD '(A+B)'		22,000.00	
(D)	CVD 'C' X excise duty rate	10	2,200.00	2,200.00
(E)	Education cess of excise - 2% of D'	2	44.00	44.00
(E-1)	SAH Education cess of excise - 1% of 'D'	1	21.00	21.00
(F)	Total CVD (D+E+E1)		2,265.00	
(G)	Sub-total for edu cess on customs 'B+D+E+E1'		4,265.00	
(H)	Edu Cess of Customs - 2% of 'G'	2	85.30	85.30
(I)	SAH Education Cess of Customs - 1% of 'G'	1	42.65	42.65
(J)	Sub-total for Spl. CVD 'C+D+E+E1+H+I'		26,392.95	
(K)	Special CVD u/ s 3(5) - 4% of 'J' (Nil if State Vat paid)		1,055.72	1,055.72
(L)	Total Basic Duty as per section 2 of CE Act			**5,448.67**

Cenvat Credit will be available to DTA unit of D and K above. As regards credit of E and E-1, there is dispute.

The above mode of calculation has been held as correct in *Sarla Performance Fibres* v. *CCE* (2010) 253 ELT 203 (CESTAT).

STUDY NOTE - 4
BASICS OF SERVICE TAX

This Study Note includes

- Introduction
- Basics of Service Tax
- Value of Taxable Service
- Exemptions from Service Tax
- Classification of Service
- Procedures of Service Tax
- Invoice by Service Provider
- Payment of Service Tax
- Returns
- Adjudication and Appeals
- Appeals
- Penalties
- Export of Services
- Import of Services
- Taxable Services
- Point of Taxation Rules, 2011

4.1 INTRODUCTION

India stands out for the size and dynamism of its services sector. The contribution of the services sector to the Indian economy has been manifold : a 55.2 per cent share in gross domestic product (GDP), growing by 10 per cent annually, contributing to about a quarter of total employment, accounting for a high share in foreign direct investment (FDI) inflows and over one-third of total exports, and recording very fast (27.4 per cent) export growth through the first half of 2010-11. The share of services in India's GDP at factor cost (at current prices) increased rapidly : from 30.5 per cent in 1950-51 to 55.2 per cent in 2009-10. If constrcution is also included, then the share increases to 63.4 per cent in 2009-10. [Economic Survey 2010-11]

Service tax was imposed on three services w.e.f. 1-7-1994 and its scope is being widened every year. Highlights of the service tax are as follows –

- Service tax is imposed under Finance Act, 1994 as amended from time to time. There is no Service Tax Act.
- Service Tax @ 5% was introduced from 1-7-1994. The service tax rate was increased to 8% w.e.f. 14-5-2003. It was increased to 10% (plus 2% education cess, total 10.2%) w.e.f 10-9-2004. The service tax rate was increased to 12% (plus education cess of 2% i.e. total 12.24%) w.e.f 18-4-2006. In Finance Act, 2007, SAH (Secondary and Higher Education Cess) of 1% has been introduced w.e.f. 11-5-2007. Thus, total tax is 12.36% w.e.f. 11-5-2007. Service tax rate has been reduced to 10.30% w.e.f. 24-2-2009.
- Service tax is payable on taxable services as defined in various clauses of section 65(105) of Finance Act, 1994. Presently, about 117 services are taxable.
- Service tax is payable on gross amount charged for taxable service provided or to be provided [Section 67]. If consideration is partly not in money, valuation is required to be done as per Valuation Rules. Tax is payable when advance is received.
- Small service providers upto ten lakhs are exempt. Export of service is exempt from service tax under Notification No. 6/2005-ST dated 1-3-2005. Services provided in J&K are not taxable [section 64(1)]
- Cenvat credit is available of inputs, input services and capital goods used for providing taxable output services.
- In some cases, receiver of service is liable to pay service tax. This is termed as 'reverse charge' [Section 68(2)].

4.2 BASICS OF SERVICE TAX

- Every provider of taxable service should apply for registration in form ST-1 within 30 days from date of levy (in case of new services) and date of commencement of business of providing taxable service In case of existing services [Rule 4(1)]. Registration will be deemed to have been granted if not received within seven days [Rule 4(5)].
- Assessee providing service from various premises can have centralised registration [Rule 4(2)]
- Service provider is required to prepare the invoice within 14 days from the date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.
- Tax should be paid by 5th of following month (6th in case of e-payment). If assessee is individual or proprietary or partnership firm, tax is payable on quarterly basis. This facility is not available to HUF. In March, tax is payable by 31st March [Rule 6].
- If payment of tax is delayed, interest is payable @ 18% p. a. [Section 75]
- Assessee has to submit half yearly return in form ST-3 in triplicate within 25 days of close of half year [Rule 7]
- Penalty is payable for non-registration, late payment of tax, non-submission of returns etc. Mandatory penalty is payable for suppression of facts, willful misstatement, fraud or collusion [sections 76 to 80]
- Penalty provisions relating to fraud, suppression, etc. has been fixed on 100%. However, if transaction is captured in the book of accounts, 50% of penalty is liable. If the same has been paid alongwith interest and panalty within 30 days, penalty @ 25% shall be leviable.
- u/s 73(4A) Concessional rate of panalty @ 25% or 1% p.m., where the tax is paid before issuance of Show Couse Notice, which was detected by the department while conducting audit/verification /investigation is being further reduced to 1% p.m. of the tax amount for the duration of default with an upper ceiling of 25% of the tax amount.
- The tax is administered by excise department. Adjudication order is issued by excise officer.
- First appeal lies with Commissioner (Appeals) [section 85] and second appeal with Appellate Tribunal (Customs, Excise and Service Tax Appellate Tribunal) [Section 86]. Further appeal lies with High Court and Supreme Court.
- Procecution enforceable only with the approval of Chief Commissioner of Central Excise. However, there is no provision for pre-arrest power.
- Search could be conducted by the Superintendent with the approval of Joint Commissioner, where as earlier Assistant Commissioner/Deputy Commissioner was authorised to conduct the search with the approval of Commissioner.

4.2.1 Nature of levy of Service Tax - Service tax is levied under Entry No. 97 of List I of Seventh Schedule to Constitution of India. The entry reads as follows – 'Any other matter not included in List II, List III and any tax not mentioned in list II or list III'. *(These are called 'Residual Powers'.)*

As per section 65(95) of Finance Act, 1994, 'service tax' means tax leviable under the provisions of this Chapter (i.e. Chapter V of Finance Act, 1994). Section 66 (charging section) provides that there shall be levied a tax (service tax) @ 10% of the value of taxable service referred to in various clauses of section 65(105). It will be collected in a manner as may be prescribed.

4.2.2 Taxable Service - As per section 66 of Finance Act, 1994, service tax is payable on 'taxable service'. Various clauses of section 65(105) of Finance Act, 1994 define each type of 'taxable service'. The definition is different for each class of services, e.g. as per section 65(105)(a), any service provided by stock broker to any person in connection with sale or purchase of securities listed on a recognised stock exchange will be 'taxable service'.

4.2.3 Service tax is destination-based consumption tax - Service tax is a destination based consumption tax, as per CBE&C Circular No. 56/5/2003 dated 25-4-2003.

4.2.4 Service implies existence of two parties - Service tax is attracted when there are two parties. One cannot give service to himself.

4.2.5 Cenvat Credit–Assessee is entitled to avail Cenvat credit of excise duty and service tax paid on his inputs, input services and capital goods. This aspect has been discussed in another chapter.

4.2.6 Rate of Service Tax

This tax was first time introduced with effect from 1-7-1994 on three services. The rate was 5%. It was subsequently increased to 8% w.e.f. 14-5-2003. It was 10% plus education cess of 2% w.e.f. 10-9-2004 (total 10.2%) during 10-9-2004 to 17-4-2006. Service tax rate was 12% plus education cess of 2% (total 12.24%) during 18-4-2006 till 10-5-2007.

Presently, service tax is payable @ 10% of value of taxable services referred in section 65(105) of Finance Act, 1994. In addition, education cess of 2% and SAH education cess of 1% is payable. Thus, total service tax is 10.30%.

4.2.7 Service tax, education cess and SAH education cess to be shown separately in invoice – You have to show service tax, education cess and SAH education cess *separately* in invoice. You cannot just charge 10.30% as 'service tax'.

4.2.8 Taxable Event in Service Tax

Section 66 (which is a charging section), reads, 'There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten percent of value of taxable services referred to in subclauses (a), (b), (zzzzc) and (zzzzd) of clause (105) of section 65 and collected in such manner as may be prescribed. Opening sentence of section 65(105) as amended w.e.f. 16-6-2005 reads as follows, 'taxable service' means any service provided or 'to be provided'. Thus, following are taxable events -

(*a*) *Entering into contract for service* - Entering into contract for providing service. Once you enter into a contract, it is certainly '*service to be provided*'. (Service tax is actually payable after payment is received, but receipt of advance is not a taxable event. It only defers the liability).

(*b*) *Provision of service* - This will happen in cases where contract for providing service was entered into *before* the service became taxable, but service was provided *after* the service became a 'taxable service'.

4.2.9 Person liable to pay Service tax

In most of the cases, service provider, i.e. person who is providing taxable service is liable to pay service tax. However, in few cases, exceptions have been made and service receiver is made liable to pay service tax. The provision that service receiver is liable to pay service tax is termed as 'Reverse Charge'. The exceptions are as follows -

4.2.10 Services provided to non-resident - In relation to taxable service provided or to be provided by any person from a country other than India and received by any person under section 66A of Finance Act, service tax is payable by recipient of service [Rule 2(1)(d)(iv)]

4.2.11 Services of insurance agents - In case of insurance auxiliary service by an insurance agent, the tax will be payable by insurance company (general insurance or life insurance as the case may be). The insurance agent is not liable to register and pay tax. [*However, the insurance agent is not entitled to avail exemption available to a small service provider*].

4.2.12 Consignor/consignee paying freight, in case of GTA services - In case of services of Goods Transport Agency (GTA), service tax is payable by consignor/consignee who is paying freight [rule 2(1)(d)(v)] [*However, the consignor/consignee is not entitled to avail exemption available to a small service provider*].

4.2.13 Services of Agents of mutual fund - In case of distributors/agents of mutual funds, the liability will be on the recipient of service, namely, mutual funds [Rule 2(1)(vi)] [*However, the mutual fund agent is not entitled to avail exemption available to a small service provider*].

4.2.14 Body corporate or firm located in India receiving sponsorship service - In case of Sponsorship service provided to a body corporate or firm located in India, the body corporate or firm receiving such sponsorship

service will be liable to pay service tax [rule 2(1)(d)(vii) inserted w.e.f. 1- 5-2006 and amended w.e.f. 1-4-2007]. If the recipient of sponsorship service is located outside India, service tax is required to be paid by the service provider and not by the recipient.

4.2.15 Cenvat credit of tax paid - The Body corporate or firm paying such service tax will be eligible to avail Cenvat credit of the service tax paid, on the basis of TR-6/GAR-7 challan by which the tax is paid [Rule 9(1)(e) of Cenvat Credit Rules, as amended w.e.f. 1-5-2006]. *It may be noted that when person receiving service is liable to pay service tax, he is not entitled to exemption which is available to a small service provider*.

4.2.16 Large Taxpayer Unit (LTU) - A concept of LTU has been introduced for large taxpayers of direct taxes and indirect taxes. In case of service tax, Large Taxpayer has meaning assigned to it in Central Excise Rules [rule 2(cccc) of Service Tax Rules]. LTU has started functioning in Bangalore w.e.f. 1-10-2006.

4.2.17 Service on sub-contract basis

CBE&C vide circular No. 999.03/23.8.07 has clarified that a sub-contractor is also a taxable service provider. His services are taxable even if these are used by main provider for completion of his work. The sub-contractor is liable even if the service is input service of the main contractor and main contractor is paying service tax on entire value of contract.

4.3 VALUE OF TAXABLE SERVICE

Section 67 of Finance Act, 1994 contains provisions for valuation of taxable services for charging service tax. The highlights of provisions of section 67 as effective from 18-4-2006 are as follows -

- Service tax is payable on gross amount charged by service provider for service provided or 'to be provided'. Thus, tax is payable as soon as advance is received.
- 'Value of taxable service' plus service tax payable is equal to 'gross amount charged' [section 67(2)].
- Where the consideration for providing services is entirely in money, gross amount charged by service provider of taxable service provided or to be provided by him will be relevant for 'valuation' [section 67(1)(i)].
- Where the consideration for providing services is not wholly or partly in terms of money, service tax is payable on amount of money, which with addition of tax service tax charged, is equivalent to the consideration [section 67(1)(ii)].
- Where consideration is not ascertainable, valuation will be on basis of Valuation Rules [section 67(1)(iii)]
- If gross amount charged by service provider is inclusive of service tax (i.e. service tax not charged separately in invoice), value of taxable service will be calculated by back calculations such that with addition of service tax payable, the total is equal to the gross amount charged [section 67(2)].
- Gross amount charged for taxable services can be before, during or after provision of service [section 67(3)].

4.3.1 Highlights of service tax valuation rules - In exercise of powers under section 67, Service tax (Determination of Value) Rules, 2006 have been issued w.e.f. 19-4-2006. The Service Tax Valuation Rules provide as follows -

- If consideration is not wholly or partly consisting of money, value will be determined by service provider in terms of rule 3.
- As per rule 3(a) of Service Tax Valuation Rules, valuation shall be on basis of gross amount charged by service provider for similar services.
- If value cannot be determined on basis of rule 3(a), valuation shall be on basis of equivalent money value of such consideration, which shall not be less than cost of provision of such services [rule 3(b) of Service Tax Valuation Rules]
- Central Excise Officer can reject 'value' determined by service provider and determine 'value' for purpose of service tax payment [rule 4].

- Rules 5 and 6 make provisions for certain specific inclusions and exclusions for valuation
- Payments made by service provider as 'pure agent' of service receiver and recovered from service receiver are excluded for purpose of valuation [rule 5(2)]
- In case of services provided from outside India, actual consideration received will be relevant for valuation [rule 7(1)].

4.3.2 Amount need not be 'charged' by service provider - money paid to third party may also be includible - It is not necessary that the money should be paid to service provider himself. Amount paid even to third party is includible in 'value' of service if it is for provision of service and at the instance of service provider.

4.3.3 Service tax payable on net amount excluding Vat/sales tax - Rule 2A(1)(i)(a) of Service Tax Valuation Rules and rule 3(1) of Works contract (Composition Scheme for Payment of Service Tax) Rules, 2007 make it clear that Vat/sales tax is not to be included in value for purpose of service tax. Thus, service tax is payable only on net amount excluding Vat/sales tax payable on the transaction.

4.3.4 Tax payable only on amount actually received - Rule 6(1) of Service Tax Rules makes it clear that service tax is payable on value of taxable services received. Thus, if service provider does not receive any payment from his customer, there is no liability of service tax. Service tax is payable only on 'value of taxable service' actually '*received*', and not on amount *'billed'*.

4.3.5 Calculation of service tax by back calculations

The gross amount charged can be taken as inclusive of service tax and the 'value' and 'service' tax is to be calculated by back calculations. For example, if Bill amount is ₹ 1,000 and service tax is not shown separately in Invoice, the tax payable calculated by a simple mathematical formula is as follows –

Assessable Value = (Cum tax price)/(1 + rate of tax)

Assume that Assessable Value (AV) is equal to 'Z'.

AV = 1.000 Z

Duty @ 10.30% = 0.1030 × Z

Sub-Total = 0.1030 × Z

Now :

1.1030 × Z = 1,000

Hence, 'Z' = 1,000/1.1030

i.e. Z = 906.62

Thus, 'Z', i.e. Assessable Value is ₹ 906.62 and service tax @ 10% will be ₹ 90.66. Education cess @ 2% of service tax will be ₹ 1.81. SAH education cess is ₹ 0.91 Thus, total tax will be ₹ 93.38.

4.3.6 Reimbursement of expenses or 'Out of pocket' expenses

The service provider often claims reimbursement of certain expenses incurred by him (like travelling, boarding and lodging, etc.) while providing a taxable service. These are often termed as 'out of pocket' expenses. These are really charges for taxable services and are includible.

4.3.7 Reimbursement of expenses incurred on behalf of service receiver not includible - Often, a service provider incurs some expenditure on behalf of service receiver and then recovers the amount from him. Such expenditure is not part of service provided by him to service receiver, but is incurred by him as per business practice or convenience. Following illustrations may clarify the provisions -

- Octroi/entry tax amount paid by Clearing & Forwarding Agent, CHA or Transporter on behalf of owner of goods/Principal.
- Customs duty, dock dues, demurrage, transport charges etc. paid by Customs House Agent on behalf of client.

- Advertisement charges paid by Advertising Agency to newspaper on behalf of clients.
- Ticket charges paid by Travel Agent and recovered from his customer.
- Reimbursement of godown, salary and loading/unloading expenses by Principal to C & F Agent.

These are not part of service provided and hence are not includible. Rule 5(2) provides that the expenditure or costs that a service provider incurs, as a pure agent of the client, shall be excluded from the value if such service provider fulfils prescribed conditions.

The principle is also discernible from various exclusions as contained in rule 6(2).

4.3.8 Valuation in case of indivisible contracts

In case of indivisible contracts involving sale of goods plus provision of service, it is difficult to identify service portion.

In *Bhatat Sanchar Nigam Ltd.* v. *UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 282 ITR 273 = 3 VST 95 = 145 STC 91 = 3 STT 245 = AIR 2006 SC 1383 (SC 3 member bench), it has been clearly held that price of goods cannot be included in value of services.

In *Imagic Creative Pvt. Ltd.* v. *CCT* (2008) 2 SCC 614 = 12 STT 392 = 12 VST 371 (SC), it has been held that service tax and Vat (sales tax) are mutually exclusive. In case of a composite contract, Vat cannot be imposed on portion relating to value of service.

As an obvious corollary, service tax cannot be imposed on value of material.

4.3.9 Exclusion of value of material - Notification No. 12/2003-ST dated 20-6-2003 provides that if the amount charged includes value of goods and materials sold, service tax will not be payable on value of goods and materials sold. There should be documentary evidence showing value of goods and materials sold. This exemption is available *only if* Cenvat credit of such material is not taken. If such credit was taken, assessee should pay amount equal to the credit. Such payment should be before sale of such goods and materials.

Many exemption notifications provide that exclusion under notification 12/2003-ST is allowable only when the service tax is paid at full rate and any abatement under any other exemption notification is not claimed. Hence, in such cases, notification No. 12/2003-ST is of no use.

In *Bharat Sanchar Nigam Ltd*. v. *UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 282 ITR 273 = 3 VST 95 = 145 STC 91 = 3 STT 245 = AIR 2006 SC 1383 = 2 STR 161 (SC 3 member bench), it has been clearly held that price of goods cannot be included in value of services. Conclusion (E) of the judgment (para 92 of SCC and para 81 of STT and Taxman) reads as follows, 'The aspect theory would not apply to enable the value of service to be included in the sale of goods or the price of goods in the value of service'.

4.3.10 All expenditure and costs relating to provision of service incurred by service provider are includible

- Rule 5(1) provides that where certain expenditure or costs are incurred by the service provider in the course of providing any taxable service, all such expenditure or costs shall be treated as consideration for the taxable services provided or to be provided and shall be included in the 'value' for purpose of charging of service tax on the said service.

This is a general rule which makes it clear that, even when such expenditure or costs are recovered separately by service provider from service receiver, such expenditure or costs must be included in the value of taxable service.

However, expenditure incurred by service provider as 'pure agent' of service receiver is not includible, as per rule 5(2).

4.4 EXEMPTIONS FROM SERVICE TAX

4.4.1 Central Government can grant partial or total exemption, by issuing an 'exemption notification'u/s 93 of Finance Act, 1994. Such exemption may be partial or total. Exemption may be conditional or unconditional. The only limitation is that exemption cannot be granted by Central Government with retrospective effect. There are following general exemptions -

4.4.2 Small service providers - Small units whose turnover less than ₹ ten lakhs per annum are exempt from service tax. Provisions are discussed a little later (The exemption limit was ₹ four lakhs upto 31-3-2007).

4.4.3 Export of Services - There is no service tax on export of services, if service is exported as per 'Export of Service Rules'.

4.4.4 Services to UN Agencies - Services provided to UN and International Agencies are exempt [Notification No. 16/2002-ST dated 2-8-2002].

4.4.5 Services provided within SEZ - Services provided to SEZ unit or SEZ developer for consumption within SEZ are exempt [Notification No. 4/2004-ST dated 31-3-2004 in respect of SEZ]. The wording of notification is such that services consumed within the zone are alone exempt. Thus services provided outside SEZ (e.g. customs clearance, transport etc.) are *not* exempt. Taxable services provided to a developer or a unit in SEZ are exempt from service tax [section 26(1)(e) of SEZ Act]. [rule 31 to SEZ Rules]

Services provided to foreign diplomatic missions, family members of diplomatic missions etc. **– Any taxable service provided to foreign diplomatic mission or consular post in India is exempt vide Notification No. 33/2007-ST dated 23-5-2007. Similarly, any taxable service provided for private use of family members of diplomatic agents or career consular offices posted in a foreign diplomatic mission or consular post in India is exempt vide Notification No. 34/ 2007-ST dated 23-5-2007.**

Services provided by RBI exempt - Exemption from service tax has been provided to all taxable services provided by Reserve Bank of India. Services where RBI is liable to pay service tax are also exempt (Notification No. 22/ 2006-ST dated 31-5-2006 – earlier Notification No. 7/2006-ST dated 1.3.2006).

4.4.6 General Exemption to small service providers

The small service providers whose turnover of taxable services from one or more premises did not exceed ₹ ten lakhs in 2007-08 will be exempt from service tax in next financial year i.e. in 2008-09 upto the turnover of ₹ ten lakhs. The provisions are prescribed in Notification No. 6/ 2005-ST dated 1-3-2005 (The exemption limit was ₹ four lakhs upto 31-3-2007). However, if value of taxable turnover exceeds ₹ 10 lakhs in 2008-09, there will be not exemption at all in 2009-10. For the purpose of determining eligibility in current year, what is relevant is that 'aggregate value of taxable services *rendered*' in previous financial year should not exceed ₹ ten lakhs, while for purpose of exemption upto first- ₹ ten lakhs in current year, service tax is exempt to the extent of 'aggregate value not exceeding ten lakhs', i.e. the sum total of first *consecutive payments received* during the current financial year.

The exemption to small service providers is available subject to following conditions -

- The provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services.
- Where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services.
- The taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; will not be eligible for exemption available to small service providers.
- Person providing taxable service in excess of ₹ nine lakhs per annum (but less than ₹ ten lakhs) will have to register with Superintendent of Central Excise under Service Tax provisions [Notification No. 26/2005-ST dated 7-6-2005], though they will be eligible for exemption if turnover is less than ₹ ten lakhs per annum.

4.4.7 Specific Exemptions

In case of some services e.g. catering services, mandap keeper services and construction Services, service tax is payable at lower rates, i.e. partial abatement is available from gross value, vide 1/2006-ST dated 1-3-2006. The lower rate is applicable if the service provider does not avail Cenvat credit of duty/tax on inputs, input services and capital goods. *Till 28-2-2006, he was entitled to avail Cenvat credit on input services*. W.e.f. 1-3-2006, he cannot avail any Cenvat credit, if he avails the partial abatement.

Some important exemptions are as follows –

Taxable Service	Partial abatement available
Accommodation booking service by tour operator	10% of gross amount
Air Travel Agent	Option to pay service tax at flat rate on 'basic fare' @ 0.60% in case of domestic booking and 1.2% in case of international booking [rule 6(7) of Cenvat Credit Rules]
Business Auxiliary Service in relation to processing of parts and accessories used in manufacture of cycle, cycle rickshaws and hand operated sweing machines	Tax on 70% of gross amount if gross amount is inclusive of cost of inputs and input services, whether or not supplied by the clinet (*Is it exemption or punishment?)*
Erection, Commissioning and installation contract for supply of plant, machinery, equipment or structures plus erection, commissioning and installation services	Tax on 33% of gross amount if gross amount includes value of material
Construction Service	Tax on 33% of gross amount if gross amount includes value of material
Goods Transport Agency (GTA)	Tax only on 25% amount in his invoice [Payment will be made by consignor/consignee who is actually paying freight]
Mandap keeper, hotels and convention services, providing full catering services	Tax on 60% gorss amount charged
Outdoor caterer	Tax on 50% amount if he provides full and substantial meal
Pandal and shamiana Service	70% of gross amount charged if full catering service provided
Rent-a-cab operator	Tax payable on 40% of gross amount charged
Tour opeator - Package tours ("package tour" means a tour wherein transportation, accommo-dation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour).	Tax is payable only on 25% of gross amount charged w.e.f. 23-8-2007 (till 22-8-2007, tax was payable on 40% of gross amount
Tour operator - providing services solely of arranging or booking accommodation for any person in relation to a tour (If Bill includes cost of accommodation)	Tax is payable only on 10% of gross amount charged
Tour operator - Other than pacakage tours and other than service of booking accommodation where Bill includes cost of accommodation	Tax is payable only on 10% of gross amount charged
Transport of goods in container by rail	Tax payable on 30% of gross amount charged

Taxable Service	Partial abatement available
Services provided by air-conditioned restaurants having a license to serve alcoholic beverages	70% when such services will be notified ∴ Effectively, service tax shall be liviable on 30% of such value.
Short-term accomodation provided in a hotel, inn, guest-house, club or camp-sites or any other similar establishment for a continuous period of less than three months.	50% when such service will be notified. ∴ Effectively service tax such be leviable on 50% of such value.

Exemption is provided to the following services :

(i) Value of air freight included in the asseable value of goods for charging customs duties is being excluded from taxable value for the purpose of levy of service tax under "Transport of Goods by air" service.

(ii) Services related to transportation of goods by road, rail or air when both the origin and the destination are located outside India is being exempted from service tax.

Withdrawal or amendments to exisiting exemptions :

(i) The rates of service tax on travel by air are being revised as follows :

(a) Domestic travel (Economy class) ₹ 150

(b) International travel (Economy Class) ₹ 750

(c) Domestic travel (other than economy class) 10% (std. rate)

(ii) Exemption to inter-bank transactions of purchase and sale of foreign currency is being extended to any bank, including a bank located outside India, or money changer, or by any other bank or money changer.

4.4.8 Services provided to EOU - Services provided to EOU/EHTP/STP/BTP are ***not*** exempt from service tax. Para 6.11(c)(v) of Foreign Trade Policy (as amended on 7-4-2006) states that EOU/EHTP/STP/BTP units can avail Cenvat credit of service tax paid. The EOU units can claim rebate of service tax paid on their input services vide rule 5 of Cenvat Credit Rules (as am ended on 14-3-2006). Procedure for claiming refund of service tax paid on input services and excise duty on inputs has been specified in notification No. 5/2006-CE(NT) dated 14-3-2006.

4.4.9 No service tax on service provided in J&K - Service tax provisions are not applicable in Jammu and Kashmir. Service tax will not be payable only if service is provided in J&K. If a person from J&K provides service outside J&K in any other part of India, that service will be taxable, as location where service is provided is relevant. Merely because office is situated in J&K does not mean that service is provided in J&K.

4.5 CLASSIFICATION OF SERVICE

There are various types of services on which service tax is payable. These are specified in various sub-clauses of section 65(105) of Finance Act, 1994. It is possible that a service may appear to be classifiable under more than one headings. It is necessary to specify the heading under which the service being provided is falling. This is termed as 'classification'. As per rule 4A(1) of Service Tax Rules, the invoice should indicate description and classification of service.

4.5.1 Principles of classification - The classification of services will be determined according to terms specified in various sub-clauses of section 65(105). [section 65A(1)]. If *prima facie*, a taxable service is classifiable under two or more sub-clauses of section 65(105), classification shall be effected as per following rules -

- The sub-clause which provides most specific description should be preferred over subclauses providing a more general description [section 65A(2)(a)]
- Classification should be as per essential character in case of composite services. Composite services are those consisting of combination of different services. In case of such services, if the service cannot be classified on the basis of specific description as per section 65A(2)(a) above, it shall be classified as if they consisted of a service which gives them their essential character [section 65A(2)(b)].
- Service which appears earlier in list, if service cannot be classified on above basis. If a service cannot be classified on basis of above provisions, the service should be classified under sub-clause which occurs first among the sub-clauses which equally merit consideration [section 65A(2)(c)].

4.5.2 Service which has been specifically excluded in definition of one service cannot be covered under another head **-** In *Dr. Lal Path Lab (P) Ltd.* v. *CCE* (2006) 5 STT 171 (CESTAT), it was held when there is a specific entry for an item in the tax code, same cannot be taxed under any other entry. If a service has been specifically excluded from definition of one service, it cannot be covered under another taxable service.

4.5.3 Introduction of new heading means earlier it was not taxable - In *Glaxo Smithkline Pharmaceuticals* v. *CCE* (2005) 1 STT 37 (CESTAT), it has been held that when an existing tariff definition remains same, introduction of new tariff entry would imply that the coverage under new Tariff was not covered by the earlier entry. When new category is introduced, it means that the service was not taxable under old category.

Service should be mainly or principally a taxable service - A composite contract cannot be vivisected and service portion cannot be subjected to tax – *Widia GMBH* v. *CCE* (2006) 5 STT 414 (CESTAT) * *Blue Star* v. *CCE* (2007) 7 STT 68 (CESTAT). In *Daelim Industrial Co.* v. *CCE* 2003 STT 438 = 7 STT 184 (CEGAT), it was held that a works contract cannot be vivisected and part of it subjected to tax.

4.6 PROCEDURES OF SERVICE TAX

Administration of service tax is under Central Excise department. The main procedures to be followed are - (a) Registration (b) Maintenance of records (c) Payment of service tax and (d)Half yearly return. There are no

prescribed form of records. The records maintained by assessee including computerised data maintained by assessee in accordance with various other laws are acceptable [rule 5(1)].

4.6.1 Registration under Service Tax

A 'person liable for paying service tax' has to register with Superintendent of Central Excise under whose jurisdiction your premises fall. He should register within 30 days from date of commencement of the business of providing taxable service. The person will have to apply for registration in form ST-1. If a person is providing more than one taxable service, he may make a single application. He should mention in the application all the taxable services provided by him. [rule 4(4)].

Applicant should submit following at the time of filing application for registration - (a) copy of PAN (b) proof of residence and (c) constitution of applicant. If application is signed by authorized person, power of attorney would be required.

Most important document that is required is copy of Income Tax PAN number. Copy of memorandum of association or partnership deed and a list of partners/directors should be submitted.

The registration certificate will be granted by Superintendent of Central Excise in seven days in form ST-2.

4.6.2 STC code i.e. registration number - Registration No., also known as 'Service Tax Code (STC)' is a fifteen digit PAN based number. First 10 digits of this number are the same as the PAN of such person. Next two digits are 'ST'. Next three digits are serial numbers indicating the number of registrations taken by the service taxpayer against a common PAN – para 2.6 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

4.6.3 Premises code - The registration certificate gives details of 'premises code' which is given on the basis of Commissionerate + Division + Range + Serial No. The number is given in the registration certificate ST-2 at Sl No. 5. This number is used for easy identification of location of registration of tax payer – para 2.6 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

4.6.4 Changes to be informed in form ST-1within 30 days - Rule 4(5A) is inserted w.e.f. 1-3-2006 provides that if there is any change in information and details submitted in form ST-1 at the time of registration, the same should be informed to jurisdictional AC/DC within thirty days of such changes. The form ST-1 is both for new registration as well as amendment to existing registration certificate.

4.6.5 Cancellation/surrender of registration - If the assessee ceases to carry on the activity for which he is registered, he should surrender the registration certificate to the Superintendent of Central Excise [Rule 4(7)]. Assessee should file up-to-date returns and apply for cancellation. Registration may not be cancelled if any demands are pending.

4.6.6 Centralised Registration - In some cases, a person liable for paying service tax on a taxable service - (i) provides *such* service from more than one premises or offices (e.g. providing banking service or maintenance service from various branches/offices); *or* (ii) receives *such* service in more than one premises or offices (e.g. GTA services, sponsorship services provided to body corporate or firm located in India, mutual fund agent's service, insurance agent's service etc. where he is liable under reverse charge method); *or*, (iii) is having more than one premises or offices, which are engaged in relation to *such* service in any other manner, making such person liable for paying service tax (e.g. import of services where person receiving service is liable u/s 66A).

In such cases, such person can obtain Centralised Registration**, *at his option*,** if (a) he has centralised billing system or centralised accounting system in respect of such service, *and* (b) such centralised billing or centralised accounting systems are located in one or more premises. He can register such premises or offices from where centralised billing or centralised accounting systems are located [Rule 4(2) as amended w.e.f. 2-11-2006].

More than one centralised registration of regional/zonal offices at various places is permissible as per MF(DR) circular No. B1/6/2005-TRU dated 27-7-2005 – confirmed in para 2.5 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Centralised Registration will be granted by Commissioner in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located [rule 4(3) as amended w.e.f. 2-11-2006].

4.7 INVOICE BY SERVICE PROVIDER

Assessee should prepare invoice in respect of his services. The Invoice should be prepared within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.

4.7.1 Details required to be shown in invoice/bill/challan - As per rule 4A(1), the invoice/challan/ Bill should be signed by authorised person of provider of input services, should be serially numbered and should contain following details -

(1) Name, address and registration number of person providing taxable service

(2) Name and address of person receiving taxable service

(3) Description, classification and value of taxable service provided or to be provided and

(4) Service tax payable on the taxable service

The rule does not make mention of date, but actually, date should be mentioned.

4.7.2 Education cess and SAH education cess to be shown separately - Education cess and SAH education cess to be shown separately in the Invoice for complying with requirements of Cenvat Credit Rules to facilitate availment of Cenvat credit by recipient – para 5.1 CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

4.7.3 Relaxation in case of banking and financial services - In case of banking and financial services provided by banking company, FI, NBFC or a commercial concern, the invoice/challan need not be serially numbered and name and address of person receiving taxable service need not be contained on the invoice/challan [*proviso* to rule 4A(1) of Service Tax Rules]. This facility is also available to input service distributors of such type of service providers – para 5.3 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

4.7.4 Invoice in case of continuous service - In some cases, service is provided continuously for successive periods of time and value of such taxable service is determined or payable periodically.

In such cases, the Invoice or challan shall be issued within 14 days from last date of the period [second proviso to rule 4A(1) of Service Tax Rules amended w.e.f. 16-6-2005].

Service like telephones or Annual Maintenance Services are provided on continuous basis. Billing is done periodically (usually monthly). In such case, invoice should be made within 14 days from close that period.

4.7.5 Invoice at end of billing period - In case of some services like services of commission agent, it is impractical to prepare invoice of commission for each sale. Billing is done at end of the agreed period (say month or quarter), which is termed as 'Billing Period'. In such cases, it can be argued that such services are provided on continuous basis and Billing at end of the period should be acceptable.

4.7.6 Rounding up of tax in each invoice not required – Section 37D of Central Excise Act, which is also made applicable to service tax, requires rounding up of tax. However, this is only while making monthly/quarterly payment to Government. Rounding up of duty in each Invoice is not envisaged in section 37D of Central Excise Act.

4.7.7 Advance payment from customers - After 13th May 2005, service tax will be payable as soon as advance is received, even if service is provided later. Thus, service tax is payable when advance is received. Invoice will have to be prepared.

4.7.8 Payment of tax

A person liable to pay tax shall pay the same in prescribed manner [section 68(1)]. The service tax is payable 5th (6th in case of e-payment) of the month following the month in which payments are received toward value of taxable services *except in March* [rule 6(1) of Service Tax Rules].

If the assessee is an individual or proprietary firm or partnership firm, the tax is payable on quarterly basis within 5 days (within 6 days if e-payment is made) at the end of quarter *except in March.* (rule 6). This facility is not available to HUF firm in view of clear wording of the provision.

Advance received before service was made taxable, but service was partly rendered after service became taxable - As per second *proviso* to rule 6(1) of Service Tax Rules, if advance was received, service tax will not be payable for part or whole value of services, which is attributable to services provided during the period when service was not taxable. Thus, service tax will be payable on *pro rata* basis in cases where advance was received prior to imposition of service tax and service was partly/fully provided after the service tax on that service became effective.

4.7.9 Exception in March - Exception has been made in case of March. Service tax on value of taxable services received during month of March or quarter of March is required to be paid by 31st March. Assessee may find it difficult to accurately estimate the amounts he is going to receive from his customers in last two days. Hence, he may pay excess amount upto ₹ 50,000; which can be adjusted in subsequent month/quarter, as per rule 6(4B) inserted w.e.f. 1-3-2007.

4.7.10 Payment of tax on amounts actually received - Rule 6(1) makes it clear that the liability is to pay service tax on payments towards value taxable services actually received. Thus, service tax is not payable on amounts charged in the bills/invoice, but on amounts actually received.

4.7.11 Self Adjustment of excess tax paid in earlier period

Facility of self-adjustment of excess service tax paid has been allowed to all assessees vide rule 6(4A) subject to the following conditions prescribed in rule 6(4B) of Service Tax Rules inserted w.e.f. 1-3-2007.

4.7.12 Self adjustment only in case of reasons like calculation mistake, exact amount not known etc.

Self-adjustment of excess credit is *not* allowed on account of reasons like interpretation of law, taxability, classification, valuation or applicability of any exemption notification[rule 6(4B)(i)]. In such cases, refund application should be filed and self adjustment is not permissible. Thus, self adjustment is possible only in cases like – (a) Excess payment since exact amount to be paid could not be calculated (b) when tax is to be paid by 31st March and calculation of exact amount is practically impossible (c) calculation mistakes.

4.7.13 Adjustment upto ₹ 2,00,000 only permissible - Excess amount paid and proposed to be adjusted should not exceed ₹ 2,00,000 for the relevant month or quarter [rule 6(4B)(iii)].

4.7.14 Adjustment in subsequent month/quarter - Adjustment can be made in the succeeding month or quarter [rule 6(4A)] [Rule does not say that adjustment can be made in subsequent month or quarter *only*. As per section 13 of General Clauses Act, unless there is anything repugnant to the subject or context, the word singular includes plural and vice versa. Hence, it can be argued that adjustment can be made in any subsequent month/s or quarter/s].

4.7.15 Inform details of adjustment within 15 days - The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of adjustment [rule 6(4B)(iv)] [[It can be argued that this is directory provision and not mandatory provision, since in many cases, it is impossible to inform in 15 days. In such cases, information at the time of filing return should be sufficient].

4.7.16 Adjustment in case of service tax on renting of immovable property - In case of service tax on renting of immovable property, abatement is available in case of property tax paid to local authorities. If such tax is paid at a later date, self-adjustment in service tax payable is permissible within one year from date of payment of tax, without any monetary limit. Assessee should inform Superintendent within 15 days of making adjustment [rule 6(4C) of Service tax Rules].

4.7.17 Assessees having centralized registration - Assessees who have centralised registration can adjust the excess service tax paid on their own without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices [rule 6(4B)(ii)].

4.7.18 Adjustment if service not provided partly or fully - If excess tax is paid, in respect of service which is not provided either wholly or partly for any reason, the excess service tax paid can be adjusted against service tax payable for subsequent period, if the value of services and tax thereon is refunded to the person from whom it was received. [rule 6(3)]. *Such adjustment is permissible only when refund is on account of services not provided.* Thus, if the person refunds on account of giving some discount to client, this provision does not apply.

4.8 PAYMENT OF SERVICE TAX

The service tax is payable 5th of the month following the month (6th in case of e-payment) in which payments are received toward value of taxable services [rule 6(1) of Service Tax Rules].
Thus, service tax is *not* payable on basis of amounts charged in the bills/invoice, but only on amounts *actually received* during the relevant period.

4.8.1 Payment from Cenvat credit plus/GAR-7 - Assessee should first utilise Cenvat credit available. Balance amount is payable in cash.

4.8.2 Account code - The tax is payable by a GAR-7 Challan in the bank where excise duty is accepted in that Commissionerate. The major account head is '044'. In addition, separate accounting code has been given to each service. See next chapter pages for account head for each type of service. TR-6 challan (in yellow colour in quadruplicate) is for payment in conventional mode while GAR-7 (one challan in yellow colour with counterfoil) is used when Bank is having 'EASIEST facility'. In both cases, payment is by cash or cheque. The tax paid should be rounded off in rupees. Education cess and SAH education cess should be shown separately under separate account head in TR-6/GAR-7 challan.

4.8.3 Presentation of cheque on or before due date is sufficient - Rule 6(2A) provides that cheque of proper amount should be deposited with bank on or before due date. It will be deemed to have been paid on due date, even if the cheque is realised later. However, if cheque is not realised, service tax will not be deemed to have been paid.

4.8.4 If last date is a holiday - If last day of payment and filing return is a public holiday, tax can be paid and return can be submitted on next working day - CBE&C circular No. 63/12/2003-ST dated 14-10-2003.

4.8.5 Electronic Accounting System In Excise and Service Tax (EASIEST) - 'Easiest' has been developed to make payment of tax easy. The facility is available with some 28 banks. The payment is made by GAR-7 challan. Assessee has to make one copy of challan and its counterfoil.

4.8.6 Mandatory e-payment if annual service tax payment exceeds ₹ 50 lakhs - 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 and Service Tax through Bank's Internet banking service. About 28 Banks are authorised for this purpose. Proviso to rule 6(2) of Service Tax Rules makes e-payment mandatory for payment of duty by all assessees who have paid Service tax of rupees 50 lakh or more in cash during the preceding financial year, w.e.f. 1-10-2006.

4.8.7 Mandatory interest for late payment of service tax - In case of delayed payment of service tax, there is mandatory payment of simple interest under section 75 for the period which the payment is delayed. The interest rate is 18% p.a. vide Notification No 14/2011 – Service Tax dt. 01.03.2011. Relief has been provided to service providers who have an annual turnover not exceeding ₹ 60 lakhs, in that interest payable by item shall be 15% p.a.

4.9 RETURNS

4.9.1 Every assessee has to submit half yearly return in form ST-3 in triplicate within 25 days of the end of the half-year. 'Half year' means 1st April to 30th September and 1st October to 31st March of financial year. The return should be accompanied by TR-6/GAR-7 challans, evidencing payment of duty. Details in respect of each service are to be provided separately. However, service tax payment details and Cenvat credit details are common and combined. There is no column to show excess amount paid, if any. Presumably, this will have to be intimated by a separate letter and/or given in the ST-3 form as a 'remark' or 'note'.

4.9.2 Last date for filing return is a bank holiday - If last day of payment and filing return is a public holiday, tax can be paid and return can be submitted on next working day - CBE&C circular No. 63/12/2003-ST dated 14-10-2003.

4.9.3 Revised return - Rule 7B of Service Tax Rules has been inserted w.e.f. 1-3-2007 to allow an assessee to rectify mistakes and file revised return within 90 days from the date of filing of the original return. Rule 9(11) of Cenvat Credit Rules (inserted w.e.f. 1-3-2007) allows an assessee to rectify mistakes and file revised return within 60 days from the date of filing of original return. This provision applies only to service providers and not to manufacturers.

4.9.4 What is to be done if mistake comes to notice after 90 days? – There is no provision for submission of revised return after 90 days. In such cases, if assessee finds that he has made some mistake, he should pay the amount by TR-6/GAR-7 challan and inform department suitably. If he has paid excess amount by mistake, he is required to file refund claim. He cannot adjust excess payment on his own, except in cases where it has been specifically permitted. If he has not taken Cenvat credit of certain inputs, input services or capital goods, he can avail it in subsequent period, since there is no time limit for availing Cenvat credit. This will be reflected in his return for that subsequent period, as in normal course.

4.9.5 Electronic filing of return - Department has introduced e-filing of service tax return on experimental basis from April, 2003. It is optional. The procedure has been described in CBE&C circular No. 52/1/2003-ST dated 11-3-2003. Guidelines are also issued in question answer form on CBE&C website. The facility is available to all service providers.

4.9.6 Late fee and penalty for filing late return - Section 70(1), as amended by Finance Act, 2007 w.e.f. 11-5-2007, makes provision for late filing of return with late fee which can be upto ₹ 20,000. Late fee payable will be prescribed by Central Government by issuing a notification. The late fee payable is as follows – (a) Delay Upto 15 days – ₹ 500 (b) Beyond 15 days and upto 30 days – ₹ 1,000 (b) Delay beyond 30 days – ₹ 1,000 plus ` 100 per day of delay beyond 30 days, from 31st day maximum ₹ 2,000- rule 7C inserted w.e.f. 12-5-2007.

4.9.7 Penalty can be waived if no tax was payable – Once a person is registered, he has to file return even if there is no tax liability. He should file Nil return if there was no service tax payable. However, if he does not file return, penalty can be waived/reduced if non-filing of return was for sufficient cause [Rule 7C]

4.9.8 Department is required to accept late return even if late fee is not paid – In case of returns filed late, the appropriate late fees should be paid at the time of filing the return, without waiting for any communication or notice from the department. Mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return – para 6.4 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

4.9.9 Provisional assessment

Assessee can make request in writing for provisional assessment to Assistant/Deputy Commissioner.Provisions of Central Excise Rules in respect of provisional assessment are applicable, but there is no requirement of any bond [rule 6(4)].Of course, reason has to be stated why he is not able to correctly determine his tax liability. After such request is made, assessee has to submit memorandum in form ST-3A showing difference between service tax collected and deposited. Application for provisional assessment should be made to Assistant/ Deputy Commissioner. Provisional assessment can be finalized by Assistant/Deputy Commissioner after calling further documents as may be necessary. -Rule 6(4), 6(5) and 6(6) of Service Tax Rules, 1994.

4.9.10 Self Assessment

Like Income tax and central excise, service tax assessment is basically self-assessment. There is no provision for compulsory assessment of assessee's return. Show cause cum demand notice can be issued within one year. Notice beyond one year can be issued only if there is fraud, suppression of facts, wilful misstatement or collusion.

Every person liable to pay tax shall himself assess the tax due on the services provided by him. A return in prescibed form will be submitted to Superintendent of Central Excise [section 70(1)]. The ST-3 return filed by assessee contains a 'Self-Assessment Memorandum'.

Provision relating to self adjustment of payment of tax has also been changed in view of the change in the payment of tax from "Cash basis" to "Accrual basis".

4.10 ADJUDICATION AND APPEALS

4.10.1 Central Excise Officers have been empowered to adjudicate in following -

(*a*) Demand of service tax and its recovery - section 73.

(*b*) Rectification of mistake by amending own order - section 74.

(*c*) Imposition of penalty - section 83A

(*d*) Refund of service tax - section 11B of Central Excise Act made applicable to Service Tax.

4.10.2 Time limit for issue of show cause notice - If it is found that assessee has paid less tax, department will issue a show cause notice cum demand.

If any service tax is not levied or not paid or short levied or short paid or erroneously refunded, Central Excise Officer shall issue a show cause notice for demand can be made within one year from 'relevant date' [section 73(1)].

If such short payment etc. was by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any provision of Finance Act, 1994 or rules, show cause notice can be issued within five years [*proviso* to section 73(1)]. After considering the representation, Central Excise Officer will determine the service tax payable. Such tax cannot be more than the amount specified in show cause notice. Thereupon, the person shall pay the amount so determined [section 73(2)].

4.10.3 Voluntary Payment before receipt of show cause notice - Assessee may pay such tax on the basis of his own ascertainment or on the basis of tax ascertained by Central Excise Officer, before issue of show cause notice. After payment of tax, assessee should inform the Central Excise Officer in writing about such payment, and

then the central excise officer shall not issue any show cause notice under section 73(1) in respect of service tax so paid [section 73(3)].

4.10.4 Rectification - The Central Excise Officer who has passed order (of assessment or demand or penalty) can rectify any mistake apparent from the record, within two years of the date in which the order was passed. The mistake must be 'apparent from the records'.

4.10.5 Revision - The Commissioner of Central Excise can revise the orders passed by adjudicating authority subordinate to him. The revision order can be passed any time within two years of the original order, but not afterwards. No revision can be made if appeal against such order is pending with Commissioner (Appeals) [section 84]. Appeal against the order of Commissioner (after revision) lies with CESTAT under section 86.

4.11 APPEALS

4.11.1 Appeal to Commissioner (Appeals) - Appeal to Commissioner (Appeals) can be made against order of any Central Excise Officer subordinate to Commissioner in respect of demand, interest or penalty or denial of refund of service tax. Appeal should be in prescribed form and duly verified. Appeal must be filed within three months from date of receipt of order. Delay upto three months can be condoned by Commissioner (Appeals). The procedures and powers will be similar to those under Central Excise. [section 85 of Finance Act, 1994].

4.11.2 Appeal to Tribunal - Appeal to CESTAT (Tribunal) can be made against order of Commissioner passed by him under section 73, 83A or 84 or order of Commissioner (Appeals) passed by him under section 85 [order in appeal from order of AC/DC] by assessee or the department. Appeal has to be filed within three months from date of receipt of order by assessee, Board or Commissioner as the case may be. [section 86 of Finance Act, 1996]. Tribunal can condone the delay in filing appeal on showing sufficient cause. Appeal has to be accompanied with prescribed fees, if appeal is by the assessee. Tribunal is final fact finding authority.

4.11.3 Appeals to HC/SC – If issue involves classification or valuation, appeal lies with Supreme Court. If issue does not involve classification or valuation dispute, appeal lies with High Court only on substantial question of law.

4.12 PENALTIES

The penalties can be imposed by Central Excise / Service Tax Officers. There is no provision for prosecution under the Act.

4.12.1 Penalty for non-payment or delayed payment of service tax - If service tax is not paid or belatedly paid, penalty shall be imposed, which will be minimum ₹ 100 per day during which such failure continues or @ 1% per month, whichever is higher, starting with the first day after due date till date of actual payment of outstanding amount. Mercifully, the penalty cannot exceed the service tax which was payable. In addition, of course, service tax and interest is payable. [section 76 of Finance Act, 1994]. As per section 80, this penalty can be waived or reduced if proper cause is shown.

4.12.2 Penalty for not obtaining registration - If a person who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules, he shall be liable to pay a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance [section 77(1)(a) of Finance Act, 1994].

4.12.3 Penalty for non-maintenace of books of account and documents - If a person fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, he shall be liable to a penalty which may extend to five thousand rupees [section 77(1)(b) of Finance Act, 1994].

4.12.4 Penalty for not furnishing information required - If a person fails to furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or fails to produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules, he shall be liable to pay a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance [section 77(1)(c)(i) and 77(1)(c)(ii) of Finance Act, 1994].

4.12.5 Penalty for non-appearance before officers **on** ***issue of summons*** - If a person fails to appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, he shall be liable to a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance [section 77(1)(c)(iii) of Finance Act, 1994].

4.12.6 Penalty for failure **to** ***pay tax electronically when required*** - If a person, who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to five thousand rupees [section 77(1)(d) of Finance Act, 1994].

4.12.7 Penalty for issuing incorrect invoice or not accounting invoices in his books of account - If a person issues invoice in accordance with the provisions of the Act or rules made thereunder with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to five thousand rupees [section 77(1)(e) of Finance Act, 1994].

4.12.8 Residual Penalty for contravention of Act or Rules - Penalty for contravention of any provision of the Chapter or Rules (of service tax) for which separate penalty has not been provided shall be upto ` 5,000 [section 77(2) of Finance Act, 1994].

4.12.9 Penalty in case of fraud, suppression of facts etc. - Where any tax is not levied or paid or erroneously refunded, the person shall be liable to pay penalty which shall not be less than amount of service tax but can be upto twice the amount of service tax amount of service tax not levied or not paid or erroneously refunded [section 78]. The penalty can be waived under section 80, if assessee proves that failure was due to reasonable cause. [The penalty will be reduced to 25%, if tax, interest and penalty is paid within 30 days from date of receipt of order of Central Excise Officer].

(a) Penalty provisions relating to fraud, suppression, etc. has been fixed on 100%. However, if transaction is captured in the book of accounts, 50% of penalty is liable. If the same has been paid alongwith interest and panalty within 30 days, penalty @ 25% shall be leviable.

(b) u/s 73(4A) Concessional rate of panalty @ 25% or 1% p.m., where the tax is paid before issuance of Show Couse Notice, which was detected by the department while conducting audit/verification /investigation is being further reduced to 1% p.m. of the tax amount for the duration of default with an upper ceiling of 25% of the tax amount.

4.13 EXPORT OF SERVICES

If service is exported, there is no service tax liability. If the service is exported, the Cenvat credit is not required to be reversed. Assessee can utilise credit for payment of service tax on other services. However, if this is not possible, he can get refund. Service tax is required to be exempted only if there is actual export of service. 'Export of Services Rules, 2005' have been notified w.e.f. 15-3-2005. However, these rules may be called the Export of Services (Second Amendment) Rules, 2011 and shall come into force on the 1st day of April, 2011. [Notification No. 22/2011 – Service Tax dated New Delhi, 31st March, 2011] The rules make it clear that exemption from services/rebate of service tax and excise duty paid is admissible only if there is 'export of service' as defined in these rules. Mere receipt of payment in free foreign exchange will not be sufficient to treat the service as 'export service'.

4.13.1 Exemption or Rebate of Service tax - Exporter of service has three options -

(*a*) Export without payment of service tax and utilise Cenvat Credit for payment of service tax on other services.

(*b*) Export without payment of service tax and claim rebate of service tax paid on input services and excise duty paid on inputs (or forget about rebate as procedure is too complicated and impractical)

(*c*) Pay service tax on exported services and claim rebate (by this, he can utilise his input credit)

4.13.2 Meaning of Export of taxable service - Following conditions are common in respect of *all* taxable services -

(a) The service should be provided from India and used outside India [rule 3(2)(a) of Export of Service Rules] and

(b) Payment for such service is received by the service provider in convertible foreign exchange [rule 3(2)(b) of Export of Service Rules].

In addition, further conditions apply to different categories of services. Rule 3 of Export of Service Rules classifies the taxable services in four categories –

(i) Immovable property should be situated abroad [rule 3(i)]

(ii) Service should be at least partly performed outside India [rule 3(ii)]

(iii) Service can be provided firm Indian but recipient should be located outside India and order should be received from outside India [rule 3(iii)]

(iv) Services which not be treated as 'export of services' under any situation.

Services falling under each category are given in next chapter.

4.13.3 Rebate of service tax paid on exported services or tax paid on inputs/input services - Subsequent to issue of Export of Service Rules, 2005; two notifications have been issued making provisions for rebate.

(*a*) Notification No. 11/2005-ST dated 19-4-2005, providing for rebate of service tax and education cess paid on taxable services exported i.e. tax paid on output services

(*b*) Notification No. 12/2005-ST dated 19-4-2005, providing for rebate of excise duty paid on inputs and service tax paid on input services, which are used in providing exported taxable services.

4.13.4 Refund of input service tax and duty under Cenvat Credit Rules - Rule 5 of Cenvat Credit Rules has been amended w.e.f. 14-3-2006 to provide for refund of Cenvat credit when output service is exported. Procedure for claiming refund of service tax paid on input services and excise duty on inputs has been specified in notification No. 5/2006-CE(NT) dated 14-3-2006. Application should be submitted in Form 'A' to Assistant/Deputy Commissioner. Application can be submitted every quarter. However, in following cases, refund can be claimed on monthly basis – (a) persons whose average export clearances are more than 50% of total clearances (b) EOU units. Refund of input service credit will be restricted to the extent of ratio of export turnover to the total turnover for the given period e.g. if total credit of input services is ₹ 100, total turnover is ₹ 500 and export turnover is ₹ 250, refund of input service tax credit will be only ₹ 50 (i.e. 50%, since export turnover is 50% of total turnover). The procedure seems to be simple. EOU is eligible to avail this procedure.

4.14 IMPORT OF SERVICES

The statutory provisions use the words 'Services provided from outside India and received in India'. However, generally, the tax is known as tax on 'Import of Services'. Section 66A(1) (effective from 18-4-2006) provides that where any service specified in section 65(105) of Finance Act, is,— (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and (b)

received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply.

4.14.1 Exemption to individual receiving the service - First *proviso* to section 66A(1) states that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply.

4.14.2 When service provider has establishment at more than one places - Second *proviso* to section 66A(1) states that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided. Thus, even if a service provider has office in India as well as in foreign country, the service will be treated as provided from foreign country, if service is provided from that country.

4.14.3 Two permanent establishments to be treated as two separate persons - As per section 66A(2),where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

4.14.4 Intention seems only to tax services received in India - Though section 66A is broadly worded and covers even services provided and consumed abroad, it appears that intention is to tax only services received in India. *If so, then only possible objection can be violation of DTA.*

4.14.5 Service provided from outside India and received in India - Though scope of section 66A is wide, it can be argued that service tax is payable only if the service falls within the definition of 'Service provided from Outside India and Received in India'.

4.14.6 Classification of services - The rules classify all taxable services in four categories, namely (i) Services in relation to immovable property – the property should be situated in India – rule 3(i) (ii) Services should be at least partly performed in India [rule 3(ii)] (iii) Services received by recipient located in India [rule 3(iii)] (iv) Services which will never be treated as import of service. The classification is same as per export of Service Rules.

4.14.7 Service receiver liable to pay service tax - As per rule 2(1)(d)(iv) of Service tax Rules, person liable for paying the service tax means - in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service.

Thus, person receiving service in India will be liable to pay service tax. He will have to register under Service tax provisions and submit returns. Service receiver was made liable to pay service tax on services provided by non-resident by amending rules on 16-8-2002. In cases prior to that, it was held that service receiver cannot be made liable to pay service tax in case of services provided by non-resident.

4.14.8 Tax to be paid in cash without Cenvat credit - Taxation of Services (Provided from outside India and Received in India) Rules, 2006 may be called the Taxation of Services (Provided from outside India and Received in India) [Third Amendment] Rules, 2011 and shall into force on 1st day of May, 2011. [Vide Notification No. 37/2011 – Service Tax, dated New Delhi, 25th April, 2011] Rule 5 clarifies that the taxable service will not be treated as output service of the recipient for purpose of availing of Cenvat credit of duty of excise paid on inputs or

service tax paid on any input services. Thus, the recipient of service has to pay the service tax in cash by TR-6/ GAR-7 challan. He cannot utilise his Cenvat credit for payment of this amount, as it is not his 'output service', though he is liable to pay service tax.

4.14.9 Service receiver avail Cenvat credit of service tax paid by him - Though the person receiving the service is liable to pay service tax, the service is his 'input service'. Para 4.2-13 of MF(DR) circular No. B1/4/2006-TRU, dated 19-4-2006 confirms as follows 'Where such service is used as an input for providing any taxable output, the service tax paid on such service can be taken as input credit' (The TRU letters have not been withdrawn even when all other circulars have been withdrawn on 23-8-2007. Hence, TRU letters are still valid) [There is some controversy on this issue]

4.15 TAXABLE SERVICES

Taxability of Various Kind of Services

Description of service	Coverage	Exclusions/Exemptions
Advertising agency	**Statutory coverage** •"advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual represen-tation made by means of light, sound, smoke or gas [Section 65(2)] •Service connected with the making, preparation, display or exhibition of advertisement taxable. •Services of advertising consultant.Taxable [Section 65(3)] **Case Law/Board Circulars** •Tax only on commission, not on advertisement charges paid to media or TV	**Exclusions** •Sale of space or time for advertisement taxable under different head. •Space selling taxable under BAS •Preparing sign board or hoardings not taxable. **Exemptions** Refer 4.4
Air transport of passengers Embarking for interna-tional travel	**Statutory coverage** •Service in relation to scheduled or non-scheduled air transport of such passenger embarking in India for international journey, in any class other than economy class. **Case Law/Board Circulars** •Tax is payable for entire journey even if there is stop over in between. •In case of round trip or return ticket, service tax is payable on total value of ticket.	**Exclusions** •Economy class passengers are excluded. **Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
• Airport Services	• **Statutory coverage** • Service by airports authority or any person authorised by it, in an airport or a civil enclave. • **Case Law/Board Circulars** • Services statutorily provided by AAI as stated in MF(DR) circular No.B2/8/ 2004-TRU dated 10-9-2004 are only taxable.	• **Exemptions** • See for general exemptions Study Note -7
• Air travel agent	• **Statutory coverage** • Service in relation to the booking of passage for travel by air. • **Case Law/Board Circulars** •Tax is payable only on commission and other charges but relating to booking of passage for air travel.	• **Exclusions** • Services of GSA (General SalesAgent) appointed by foreign airlines are taxable under' Business Auxiliary Service'and not under Air Travel Agent Service. • **Valuation** • Air travel agent has option to pay service tax @ 0.60% of basic fare in case of domestic booking and @ 1.20% of the basic fare incase of inter-national bookings, of passage for travel by air. In addition, education cess @ 2% and SAH education cess @ 1% will be payable. • **Exemptions** Refer 4.4
• Architect	• **Statutory coverage** • Services in the field of architecture. • **Case Law/Board Circulars** • Designing or planning of construction of buildings, bridges, dams etc. and its supervision	• **Exclusions** • Actual execution of work is not Architect's services. • Interior design may be covered only to the extent of architecture. • No tax on material, furniture and temporary structures • **Exemptions** Refer 4.4
Asset Management including Portfolio management	**Statutory coverage** _ Asset management including portfolio management and all forms of fund management. **Case Law/Board Circulars** _ Services provided by individual service providers especially to high net worth individuals taxable	**Exclusions** _ Services by banking company or a financial institution, NBFC or any other body corporate or commercial concern taxable under 'Banking and other Financial Services' **Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
ATM operations, main-tenance or management	**Statutory coverage** — Automated teller machine (ATM)operations, maintenance or management service, in any manner — Includes site selection, contracting of location, acquisition, financing, installation, certification, connection, maintenance, transaction processing, cash forecasting, replenishment, reconciliation and value-added services [section 65(9b)]	**Exclusions** — No service tax on cashwithdrawn from ATM. **Exemptions** Refer 4.4
Auctioneers' Service	**Statutory coverage** — Service in relation to auction of property, movable or immovable, tangible or intangible — Calling the auction or providing afacility, adver-tising or illustrating services, pre-auction price estimates, short-term storage services, repair or restoration services in relation to auction of property [section 65(7a)]	**Exclusions** — Auction of property under the directions or orders of a court of law or auction by the Government excluded. **Exemptions** Refer 4.4
Authorised servicestation (Motorcar/ Two wheelers/LMV)	**Statutory coverage** • Service by an authorised service station, in relation to any service, repair, reconditioning or restoration of motor cars, light motor vehicles or two wheeled motor vehicles, in any manner. • Light Motor Vehicle (LMV) meansany motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, *excluding* thedriver [section 65(62)] **Case Law/Board Circulars** • Free service to our customers for which reimbursement obtained from manufacturers is taxable. • Service tax payable on spare partsused during provision of service -Ref Code 036.03/23.8.07 of CBE&C Circular No. 96/7/2007-ST dated23-8-2007 [doubtful]	**Exclusions** • Service provided at the time of purchase of new vehicle is not liable to tax. • Service to transport vehicle, buses, trucks, omnibus, road-roller, tractor, or invalid carriage is not covered **Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Banking and Financial services	**Statutory coverage** • Service by a banking company or a financial institution including NBFC, or any other body corporate or *commercial concern*, is taxable. • Financial leasing services including equipment leasing and hire-purchase. • Merchant banking services •Securities and foreign ex-change (forex) broking; •Asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services	**Exclusions** • Hire purchase financenot taxable – *Bajaj Auto Finance* v. *CCE* (2007) 9STT 569 (CESTAT). • Money changers whobuys and sells foreign exchange without charging commission or brokerage is not liable -Ref Code 034.01/ 23.8.07 of CBE & C Circular No.96/ 7/2007-ST dated 23-8-2007.
	• Advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers andacquisitions and advice on corporate re-structuring and strategy • Provision and transfer of infor-mation and data processing; • Banker to an issue services • Other specified financial services [section65(12)] **Case Law/Board Circulars** • Cash management taxable • Business chit funds are taxable - CBE&C Ref Code 034.04/23.8.07 of CBE&C Circular No. 96/7/2007-ST dated 23-8-2007	• Stock Exchanges, commo-dity exchanges, stock clearing house services not liable –CBE & C letter No.137/57/2006-CX.4 dated 18-5-2007 • Simple chit funds not taxablebut business chit fundstaxable - CBE&C Ref Code034.04/23.8.07 of CBE&CCircular No. 96/7/2007-STdated 23-8-2007 • No service tax on entry andexit load charged by mutualfund to the investor **Exemptions** • Services provided to Government for tax collection exempt - Notification No.13/2004-ST dated 10-9-2004. • Services provided by RBIexempt –Notification No.22/2006-ST dated 31-5-2006. • No service tax on interest charged by service provider -rule 6(2)(iv) Refer 4.4
Beauty treatment	**Statutory coverage** • Services includes hair cutting, hairdyeing, hair dressing, face and beauty treatment, cosmetictreatment, manicure, pedicure orcounselling services on beauty,face care or make-up or such othersimilar services [section 65(17)]. **Case Law/Board Circulars** • Materials used such as cosmetics and toilet preparations are includible for valuation	**Exclusions** • No tax on plastic surgery- CBE&C circular No.B.11/1/2002-TRU dated1-8-2002. **Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Broadcasting	**Statutory coverage** • Service by a broadcasting agency or organisation in relation to broad casting • In the case of a broadcasting agency or organisation, having it shead office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India. • Services of selling of time slots for broadcasting of any pro-gramme or obtaining sponsor-ships for programme and collecting broadcasting charges is a taxable service. [section 65(16)]	**Exemptions** • Exemption to services by digital cinema service provider to distributor or producer - NotificationNo. 12/2007-Service Taxdated 01.03.2007. Refer 4.4
Business auxiliary services	**Statutory coverage** •Promotion or marketing or sale of goods produced or provided by orbelonging to the client •Promotion or marketing of service provided by the client •any customer care service provided on behalf of the client •procurement of goods or ser-vices, which are inputs for the client •production or processing of goods for, or on behalf of, the client •provision of service on behalf of theclient •a service incidental or auxiliary to any activity specified above, such asbilling, issue or collection orrecovery of cheques, pay-ments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision. •services as a commission agent [section 65(19)]	**Exclusions** • 'InformationTechnology Service' means any service in relation to (a) designingor developing of computer software, or (b) system networking, or (c) any other service primarily in relation too peration of computer systems, is excluded. • Activity that amounts to "manufacture" within the meaning of section 2(f) of the Central Excise Act isexcluded. **Exemptions** • The services of production or processing of goods in relation to ***agriculture, printing, textile processing oreducation*** are fully exempt [Notification No.14/2004-ST dated 10-9-2004].
	Case Law/Board Circulars • Job work liable to service tax, butjob work done under Cenvatprovisions exempt. Job work nottaxable if it amounts to'manufacture'.	• Job work exempt if the goods after processing are returned back toclient (raw material supplier) for use in or in relation to manufacture of 'other goods' by the client. The 'other goods' should be such that appropriate duty should be payable on such goods - notification No. 8/2005-ST dated 1-3-2005. • Job workers of parts and accessories of cycles, cycle rickshaws and

Description of service	Coverage	Exclusions/Exemptions
Business Exhibition	**Statutory coverage** • An exhibition, — (a) to market; or (b) to promote; or (c) to advertise; or (d) to show case, — any product or service, intended for the growth in business of the producer or provider of such product or service [section 65(19a)] **Case Law/Board Circulars** • Organizers of events such as trade fairs, road shows, fashion shows, display show-cases kept in airports, railway stations, hotels etc. would be covered under this new levy.	**Exemptions** Refer 4.4
Business Support Services	**Statutory coverage** • Services provided in relation to business or commerce • Evaluation of prospective customers, telemarketing, pro-cessing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and pro-cessing of transactions, opera-tional assistance for marketing, formulation of customer service and pricing policies • Infrastructural support services • Other transaction processing [section 65 (104c)]	**Exemptions** Refer 4.4
Cable	**Statutory coverage** • Service provided by cable operator,including multi-system operator • transmission by cables of aprogramme including retransmissionby cable of any broadcast televisionsignals is taxable [section 65(22)]. **Case Law/Board Circulars** • Broadcasting services provided bycable operators are also taxable. • Service tax is not leviable on entertainment tax levied by State Government, if it is shown separately in the Bill of cable operator to the customer - CBE&C circular No.B.11/1/2002-TRU dated 1-8-2002.	**Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Cargo handling	**Statutory coverage** • Loading, unloading, packing or unpacking of cargo • Cargo handling services provided for freight in special containers or for noncontainerised freight • Services provided by a container freight terminal or any other freight terminal, for all modes of transport	**Exclusions** • Handling of export cargo or passenger baggage is excluded. • Mere transportation of goods excluded. **Exemptions** • Cargo handling services relating to
Cleaning Activity	**Statutory coverage** • Cleaning • specialised cleaning services • disinfecting, exterminating or sterilising of objects or premises, of — (i) commercial or industrial buildings and premises thereof; or (ii) factory,plant or machinery, tank or reservoir of such commercial or industrial buildings and premises [section 65(24b)]	**Exclusions** • Services in relation to agriculture, horticulture, ani-mal husbandry or dairying • 'Cleaning' of goods i.e. movable property will not be taxable under this head • Cleaning of residential buildings and premises has been excluded from the provisions **Exemptions** Refer 4.4
Clearing & Forwarding Agent	**Statutory coverage** • Service, either directly or indirectly, connected with clearing and forwarding operations • It includes a consignment agent. [section 65(25)] **Case Law/Board Circulars** • Services of coal merchants, who are acting as buyer's agents and carry outsuch jobs/assignments as asked for byrespective consumers/buyers arecovered under definition of C&FAgent and are liable to service tax -CBE&C letter F No. 159/1/2003-CX.4 • Mere procuring or booking orders for the Principal by an agent on commission basis would not be 'Clearing and forwarding Agent service' - *Larsen and Toubro Ltd.* v. *CCE* (2006) 4 STT 231 (CESTAT 3 member bench) • A commission agent is not a 'C&F'agent – *CCE* v. *Chandan Chemicals* (2007) 9 STT 556 (CESTAT).	**Exemptions** Refer 4.4
Club or Association's services	**Statutory coverage** • Service to members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount	**Exclusions** "Club or association" does not include— (i) any body established or constituted by orunder any law for the time being in force; or

Description of service	Coverage	Exclusions/Exemptions
	Case Law/Board Circulars • As per section 2 of Charitable Endowments Act, 1890, 'charitable purpose' includes relief to poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship. • Service tax will be payable on life membership fees - para 10.6 of MF(DR) circular No. B1/6/2005-TRU dated 27-7-2005.	(ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry (iii) any person or body ofpersons engaged inany activity having objectives which are in the nature of public service and are of a charitable, religious or political nature (iv) any person or body of persons associated with press or media [section 65(25a)] **Exemptions** • Exemption to Services of housing societies or Resident Welfare Associations to their members are exempt vide notification No.8/2007-ST dated 01-03-2007, if the monthly contribution is less than Rs 3,000. • Refer 4.4
Commercial or Industrial Construction	**Statutory coverage** Following services used, or to be used, primarily for commerce or industry, or work intended for commerce or industry are taxable— (a) construction of a new building or a civilstructure or a part thereof (b) construction of pipeline or conduit (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure (d) repair, alteration, renovation orrestoration of, or similar services in relation to, building or civil structure, pipeline or conduit [section 65(25b)] **Case Law/Board Circulars** • Educational, religious, Government buildings etc. not taxable. • If builder / promoter /developer undertakes cons-truction work on his own without engaging the services of any other person, it is not taxable – Ref Code 079.01/23.8.07 of CBE&C Circular No. 96/7/2007-ST dated 23-8-2007. • Sub-contractors providing the construction services (to main contractor or to any other person) will be liable to service tax.	**Exclusions** • such services provided inrespect of roads, airports, railways, transport terminals, bridges, tunnels and dams [section 65(25b)] • If Vat/sales tax is payable on goods involved in the contract, the service will be classifiable under 'works contract' servicetax. **Valuation** • Any person providing taxable service of commercial or industrial construction can optto pay service tax on 33% of gross amount charged. *This is atthe option of service provider* This relaxation is *not* available if only completion and finishing services are provided - Notification No. 1/2006-ST dated 1-3-2006. The partial exemption is available only if the gross amount charged includes value of goods and materials supplied or provided or used by provider of the commercial or industrial construction of service for providing such service (*Explanation* to Notification No.1/2006-ST]. *However, value ofland is not required to be added asit is neither goods nor material.* **Exemptions** • Construction and works contract services relating to port or other port are exempt. However, services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port are not exempt - Notification No. 25/2007-ST dated 22-5-2007 • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Construction of Residential Complex	**Statutory coverage** Following services relating toconstruction of residential complexcomprising of a building or buildings,having more than twelve residentialunits, a common area; and one or morecommon facilities – *(a)* construction of a new residentialcomplex or a part thereof *(b)* completion and finishing servicesin relation to residential complex such as glazing, plastering, painting, floor and wall tiling,wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools,acoustic applications or fittings and other similar services *(c)* repair, alteration, renovation or restoration of, or similar services in relation to, residential complex [section 65(30a) and [section 65(91a)]] **Case Law/Board Circulars** a. If builder / promoter / deve-loper undertakes construction work on his own without engaging the services of any other person, it is not taxable – Ref Code 079.01/23.8.07 of CBE&C Circular No. 96/7/2007-ST dated 23-8-2007. b. Sub-contractors providing the construction services (to main contractor or to any other person) will beliable to service tax.	**Exclusions** 1. A complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person- "personal use" includes permitting the complex for use as residence by another person on rent or without consideration 2. If Vat/sales tax is payable on goods involved in the contract, the service will be classifiable under 'works contract' service tax. **Valuation** — Any person providing taxable service of commercial or industrial construction canopt to pay service tax on 33% of gross amount charged. *This is at the option of service provider* This relaxation is *not* available if only completion and finishing services are provided - Notification No.1/2006-ST dated 1-3-2006. The partial exemption is available only if the gross amount charged includes value of goods and materials supplied or provided or used by provider of the commercial or industrial construction of service for providing

Description of service	Coverage	Exclusions/Exemptions
Consulting Engineer	**Statutory coverage** • Advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering but excluding the discipline of computer software engineering. **Case Law/Board Circulars** • Technical assistance, training, software support are all 'taxable services' - In *Nokia (I) P Ltd.* v. *CC*(2006) 3 STT 209 (CESTAT) • Services of Valuation taxable - *V.Shanmughavel* v. *CCE* 2001 STT 132 = 6 STT 183 = 121 Taxman 274 = 2STR 466 (Mad HC DB) • Contract for execution of a project is not consulting engineering service - *Ircon International Ltd.* v. *CCE* (2005)2 STT 264 (CESTAT). • Royalty payment for use of technology and know-how cannot be equated with any services provided by foreign collaborator. Hence, no service tax is payable onsuch royalty payment - *Navinon Ltd*. v. *CCE* (2007) 6 STT 411 = 2004 STT 601 (CESTAT).	**Exclusions** • Services in discipline of computer software engineering **Exemptions** • Cess is payable under-section 3 of Research and Development Cess Act, 1986, on transfer of technology. If such cess is payable, the consulting engineer will be granted exemption from service tax to the extent of cess paid - Notification No. 18/2002-ST dated 16-12-2002. Thus, if value of service is Rs 100, tax payable is Rs 12 and cess paid is Rs 5, net service tax actually payable will be Rs 7. • Refer 4.4
Convention	**Statutory coverage** • "Convention" means a formal meeting or assembly which is not open to the general public, but does not include a meeting or assembly, the principal purpose of which is to provide any type of amusement, entertainment or recreation [section 65(32)] **Case Law/Board Circulars** • Service of providing room/hall for convention, video conferencing, head projectors, LCD projector, speakers, microphones, technical staff for operating these equipments, stationery etc. is covered.	**Exemptions** • In case of convention services provided by any person, service tax is payable only on 60% of the gross amount charged by the service provider for providing taxable service, if the gross amount includes charges for catering services. 'Catering service' means supply of a substantial and satisfying meal - Notification No.1/2006-ST dated 1-3-2006. • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Courier	**Statutory coverage** • door-to-door transportation of time sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles [section 65(33)]. **Case Law** **Board Circulars** • Basic postal services not taxable. However, courier services (Speed Post), insurance services (Postal Life Insurance), agency or intermediary services on commission basis which are also provided by other commercial organizations, are taxable - Ref Code 999.02/23.8.07of CBE& C Circular No. 96/7/2007-ST dated 23-8-2007. • Co-loaders i.e. persons providing services to courier liable (earlier circular with-drawn)	**Exclusions** • Basic postal services not taxable **Exemptions** • Refer 4.4
Credit Card,debit card, charge or other payment cards related services	**Statutory coverage** • Service in relation to credit card, debit card, charge card or other payment card service • Receipt and processing of application, transfer of embossing data to issuing bank's personalisation agency, automated teller machine personal identification number generation, renewal or replacement of card, change of address, enhancement of credit limit, payment updation and statement generation • settlement of any amount transacted through such card • Service by the owner of trade marks or brand name to the issuing bank under an agreement, for use of the trade mark [section 65(33a)]	**Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Credit Rating Agency	**Statutory coverage** • Credit rating of any debt obligation or of any project or programme requiring finance • Credit rating of any financial obligation, instrument or security for providing a potential investoror any other person any information pertaining to the relative safety of timely payment of interest or principal [section 65(34)] **Case Law/Board Circulars** • Surveillance fee collected by a Credit rating agency is taxable.	**Exclusions** • Information and advisory services rendered, research and information such asanalysis of industries in aspecific sector, financial and business outlook, indexing services, macrostudies, financial modelling etc. are not in relation to credit rating and hence are not taxable. **Exemptions** • Refer 4.4
Custom House Agent	**Statutory coverage** • Service in relation to the entry or departure of conveyances or the import or export of goods	**Exemptions** •Refer 4.4
Design Services	**Statutory coverage** • Services provided in relation to designing of furniture, consumer products, industrial product, packages, logos, graphics, websites and corporate identity designing and production of three dimensional models [section 65(36b)] **Case Law/Board Circulars** Design services, other than the above specifically mentioned taxable services, like furniture design, aesthetic design, consumer or industrial products, logos, packaging, production of three dimensional models, etc. will be taxable under this category	**Exclusions** • Service provided by interior decorator and a fashion designer (they are covered under different head) **Exemptions** • Refer 4.4
Development and supply of content services	**Statutory coverage** • Development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services • Development and supply of mobile value added services, music, movie clips, ring tones, wallpaper, mobile games, data, whether or not aggregated, information, news and animation films [section 65(36c)]	**Exemptions** •Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Dredging	**Statutory coverage** • Removal of material including, silt, sediments, rocks, sand, refuse, debris, plant or animal matter in any excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any river, port, harbour, back water or estuary [section 65(36a)] **Case Law/Board Circulars** • Excavation of material from sea, river or lake bed and putting the excavated material elsewhere for disposal is covered.	**Exemptions** •Refer 4.4
Dry cleaning	**Statutory coverage** • 'Dry cleaning' includes dry cleaning of apparels, garments or other textile, fur or leather articles [section65(37)] **Case Law/Board Circulars** • Dry cleaning includes tagging and inspection, pre-treatment, dry cleaning and post sorting. No tax is payable on wet cleaning, i.e. cleaning with water and water soluble detergents. Service tax is also not payable on job of dyeing, darning etc. - CBE & C circular No.B.11/1/2002-TRU dated 1-8-2002.	**Exemptions** • Refer 4.4
Erection, Commissioning or installation	**Statutory coverage** •Erection, commissioning or installation of plant, machi-nery, equipment or structures, whether pre-fabricated or otherwise •Installation of— (a) electrical and electronic devices, including wirings or fittings therefor; or (b) plumbing, drain laying or other installations for transport of fluids; or (c) heating, ventilation or air-conditioning including related pipe work, ductwork and sheet metal work; or (d) thermal insulation, sound insulation, fire proofing or water proofing; or (e) lift and escalator, fire escape staircases or travelators; or (f) such other similar services [section 65(39a)] **Case Law/Board Circulars** • Supply of lift and its installation at site. It was held that it is a contract of 'sale' and not a 'works contract'. Skill and labour employed for converting the main components into lift was only incidental - *State of Andhra Pradesh* v. *Kone Elevators (India) Ltd.* 2005 (181) ELT 156 (SC3 member bench). • Service tax payable even if exciseduty paid on entire value of contract including erection charges– *Lincoln Helios (India) Ltd.* v. *CCE*(2006) 3 STT 311 (CESTAT).	**Exclusions** • If Vat/sales tax is payable on goods involved in the contract, the service will be classifiable under 'works contract' service tax. • Erection of Civil Structure not taxable **Valuation** • Value of erection, commissioning or installation may, *at the option of assessee*, be taken as 33% of gross amount of contract and service tax will be payable accordingly. The gross amount charged will include value of plant, machinery, equipment, structures, parts and other material sold - Notification No.1/2006-ST dated 1-3-2006. **Exemptions** • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Event management	**Statutory coverage** • Service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports, marriage or any other event • Includes any consultation provided in this regard [section 65(40)]	**Exclusions** • Service tax is not leviable on sale proceeds of tickets or revenue generated from the sale of space. - CBE&C circular No. B.11/1/2002-TRU dated 1-8-2002 **Exemptions** • Refer 4.4
Fashion designing	**Statutory coverage** • Any activity relating to concept ualizing, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other article intended to be worn by human beings • Any other service incidental thereto [section 65(43)]	**Exclusions** • If fashion designer designs and makes garments himself and sells them, there is no service tax, as he is providing designing service to himself. — Services of tailor and jewellers are not taxable, as no designing is involved. - — CBE&C circular No.B.11/1/2002-TRU dated 1-8-2002 **Exemptions** • Refer 4.4
Fashion designing	**Statutory coverage** • Any activity relating to conceptualizing, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other article intended to be worn by human beings • Any other service incidental thereto [section 65(43)]	**Exclusions** • If fashion designer designs and makes garments himself and sells them, there is no service tax, as he is providing designing service to himself. — Services of tailor and jewellers are not taxable, as no designing is involved. — CBE&C circular No.B.11/1/2002-TRU dated 1-8-2002 **Exemptions** • Refer 4.4
Forward contract	**Statutory coverage** • Service by a member of a recognized association or aregistered association, in relationto a forward contract. • "Forward contract" means the contract for delivery of goods at future date and which is not for ready delivery contract.	**Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
General insurance	**Statutory coverage** • Services by an insurer, including reinsurer, in relation to general insurance business. **Case Law/Board Circulars** • No service tax if assets are in J&K — DGST instruction No.V/DGST/03/GEN/INS/01/2004 dated 17-8-2004	**Exemptions** • Certain schemes like personal accident social security scheme, crop insurance, cattle insurance, janata policy, export credit insurance, insurance on export of goods from India are exempt- Notification No. 3/1994-ST dated 30-6-1994. • Jana Arogya Bima policy is exempt from service tax - Notification No. 12/1997-ST dated 14-2-1997. • Group personal accident policy for self employed women is exempt under notification No.3/1994-ST dated 30-6-1994. Scheme of Rajasthan Government is exempt under notification No. 1/2000-ST dated 9-2-2000. • (a) Cattle insurance services are exempt. — Notification No. 4/2000-ST dated 31-7-2000 (b) National Agricultural Insurance Scheme, Seed Crop Insurance, Farm Income Insurance Scheme are exempt from service tax - Notification No. 3/2000-ST dated 6-7-2000 (c) Insurance of sheep is exempt upto 31-12-2009 – Notification No. 31/2006-ST dated 11-12-2006. • General Insurance Business service provided under Universal Health Insurance Scheme is exempt from service tax - Notification No. 16/2003-ST dated 11-7-2003. • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Health and fitness	**Statutory coverage** • Service for physical well being suchas, sauna and steam bath, turkish bath, solarium, spas, reducing or slimming saloons, gymnasium, yoga, meditation, massage (*excluding* therapeutic massage) or any other like service [section 65(51)]	**Exclusions** • Institutions conducting diploma courses in yoga and research centers do not fall inthe category of health club and will not be liable to service tax. - CBE&C circular No. B.11/1/2002-TRU dated 1-8-2002 **Exemptions** •Refer 4.4
Insurance Auxiliary (General insurance)	**Statutory coverage** • Service to a policy holder or any person or insurer, including reinsurer, by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning general insurance business. • Risk assessment, claim settlement, survey and loss assessment [section 65(55)] **Reverse charge - Person liable to pay service tax** • In respect of services provided by an insurance agent, the insurance company is the 'person liable for paying the service tax'. [section 68(2) of Finance Act, 1994 read with rule 2(1)(d) (iii) of Service Tax Rules, 1994]. The service tax is payable on commission payable to the insurance agent. However, the exemption available to small service providers cannot be availed by insurance agent.	**Exemptions** Refer 4.4
Intellectual property	**Statutory coverage** • Transferring temporarily; or permitting the use or enjoyment of, any intellectual property right is taxable [section 65(55b)] • "intellectual property right" means any right to intangible property, namely, trademarks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright [section 65(55a)]	**Exclusions** • Copyright service is excluded. • Permanent transfer of Intellectual Property not taxable **Exemptions** • Cess is payable under-section 3 of Research and Development Cess Act,1986, on transfer of technology. If such cess is payable, the holder of intellectual property right will be granted exemption from service tax to the extent of cess paid. -Notification No. 17/2004-ST dated 10-9-2004. Thus, if value of service is Rs 100, tax payable is Rs 12 and cess paid is Rs 5, net service tax actually payable will be Rs 7. • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Interior decorator	**Statutory coverage** • Planning, design or beautification of spaces, whether man made or otherwise, in any manner • Advice, consultancy, technical assistance or in any other manner, services relating to planning, design or beautification of spaces • Landscape designer [section 65(59)] **Case Law/Board Circulars** • Services of vastu/Feng shui consultants are taxable • No tax on material, furniture, and temporary structures	**Exemptions** • Refer 4.4
Internet cafe	**Statutory coverage** • Facility for accessing internet	**Exemptions** • Refer 4.4
Internet telephony service	**Statutory coverage** • Telecommunication servic through internet and includes fax, audio conferencing and video conferencing	[section 65 (57a)] **Exemptions** • Refer 4.4
Life insurance	**Statutory coverage** • Service in relation to risk cover inlife insurance. **Case Law/Board Circulars** • Service tax is payable on gross amount charged in respect of risk portion of insurance premium. **Valuation**	• As per rule 6(7A), the insurance company will have option to pay tax at flat rate of 1% of the gross premium without showing any break-up. If policy is purely risk coverage, then service tax will be at full rate on the gross premium. **Exemptions** • Refer 4.4
Mailing list compilation and mailing	**Statutory coverage** • Service in relation to— (i) compiling and providing list of name, address and any other information from any source; or (ii) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing; for, or on behalf of the client [section 65(63a)]	**Exemptions** • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Management, Maintenance or repair	**Statutory coverage** • Any service provided by (i) any person under a contract or an agreement; *or* (ii) a manu-facturer or any person authorised by him, in relation to, (a) management of pro-perties, whether immovable or not (b) maintenance or repair of properties whether immova-ble or not; or (c) maintenance or repair including reconditioning or restoration, or servicing of any goods or equipment, excluding motor vehicle • "Goods" includes computer software [section 65(64)] **Case Law/Board Circulars** • Services relating to maintenance or management of immovable property (such as roads, airports, railways, buildings, parks, electrical installations and the like) have been covered under the purview of service tax - para 16.2 of MF (DR) circular No.B1/6/2005-TRU dated 27-7-2005 • Services provided during the warranty period by the dealer or any other authorized person is taxable - CBE&C circular No. 59/8/2003 dated 20-6-2003. • Software maintenance is taxable. • AMC contracts taxable.	**Exclusions** • Services to motor vehicles not taxable under this head [section 65(64)] **Exemptions** • Refer 4.4
Management or Business Consultant	**Statutory coverage** • Service in connection with the management of any organisation or business in any manner • Advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management,productionmanagement, logistics management, procurement and management of information technology resources or other similar areas of management [section 65(65)]	**Exclusions** • Executory services would not fall under 'consultancy services' - *Glaxo Smithkline Pharmaceuticals* v. *CCE* (2005) 1STT 37 (CESTAT) – quoted with approval in *Glaxo Smithkline Consumer Healthcare*v. *CCE* (2007) 9 STT 496 (CESTAT). **Exemptions** • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Mandap keeper	**Statutory coverage** • "mandap" means any immovable property and includes any furniture, fixtures, light fittings and floor coverings there in let out for consideration for organising any official, social or business function [section 65(66)] • Social function includes marriage [section 65(67)] • Service provided as a caterer are included [section 65 (105)(m)] **Case Law/Board Circulars** • Services of hotel or restaurant will be taxable if it provides 'mandap' services. — view confirmed in *Rajmalal Hotel* v. *CCE* (2007) 6 STT 11(CESTAT). **Exclusions** In *Social Service League* v. *CCE* (2006)	4STT 283 (CESTAT), it has been held that drama performances conducted ina hall or mandap will not come under mandap keeper services. In a contrary view, in *ADA Rangamandira Trust* v.*CCE* (2007) 8 STT 206 (CESTAT), it washeld that drama, music and dances hould be held as social functions. **Exemptions** • If the mandap keeper provides catering services alsoand if his bill indicates that his bill is inclusive of charges for catering services, he has to pay service tax only on 60% of his gross charges to client.Catering service means supply of food - Notification No.1/ 2006-ST dated 1-3-2006. • Use of precincts of a religious place as *mandap* is exempted from service tax - notification No. 14/2003-ST dated 20-6-2003, • Refer 4.4
Manpower recruitment or supply agency	**Statutory coverage** • Recruitment or supply of manpower, temporarily or otherwise, in any manner • Services in relation to pre recruitment screening, verification of the credentials and an tecedents of the candidate and authenticity of documents submitted by the candidate. **Case Law/Board Circulars** • Academic/educational institutes providing recruitment services are taxable - Ref Code 010.01/23.8.07 of CBE&C Circular No. 96/7/2007-ST dated 23-8-2007. • Services of labour contractors are taxable w.e.f. 16-6-2005. • Service of providing employees of Agency to business or industrial organizations for a specific period is taxable - Ref Code 010.02/23.8.07 of CBE&C Circular No. 96/7/2007-ST dated 23-8-2007.	**Exemptions** • Refer 4.4 **Valuation** • Service tax is to be charged on the full amount of consideration for the supply of manpower, whether full-time or part-time. The value includes recovery of staff costs from the recipient e.g. salary and other contri-butions. Even if the arrange-ment does not involve the recipient paying these staff costs to the supplier (because the salary is paid directly to the individual or the contributions are paid to the respective authority) these amounts are still part of the consideration and hence form part of the gross amount - per MF(DR) circular No.B1/6/2005-TRU dated 27-7-2005 para 22.4 (It is difficult to agree with this view. However, if the principal employer is in a position to avail Cenvat credit, it may be advisable to pay service tax on entire amount, instead of entering into fruitless and costly litigation).

Description of service	Coverage	Exclusions/Exemptions
Market research agency	**Statutory coverage** • Market research in any manner, inrelation to any product, service orutility, including all types of customised and syndicated research services [section 65(69)]	**Exemptions** • Refer 4.4
Mining of mineral, oil or gas services	**Statutory coverage** • Service in relation to mining of mineral, oil or gas.	**Exemptions** • Refer 4.4
On-line information and database accessor retrieval	(Computer network) **Statutory coverage** • On-line information and data base access or retrieval or both in electronic form through computer network • Providing data or information, retrievable or otherwise, to a customer, in electronic form through a computer network [section 65(75)] **Case Law/Board Circulars** • Following would be covered - (a) Internet Service Providers (ISP) (b) On line information provision and retrieval services like paid websites. However, e-commerce transactions are not covered as they do not charge surfers. - CBE&C letter No.B.II/I/2000-TRU dated 9-7-2001. • Providing matrimonial services onwebsite is taxable – *prima facie* view in*Bharat Matrimony.com Pvt. Ltd.* v. *CST* (2007) 6 STT 85 (CESTAT)	**Exemptions** • Refer 4.4
Opinion poll	**Statutory coverage** • Service designed to secure information on public opinion regarding social, economic, politicalor other issues [section 65(75a)]	**Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Outdoor Caterer	**Statutory coverage** • Services in connection with catering at a place other than his own, but including a place provided by way of tenancy or otherwise by the person receiving such services [section 65(76a)] • "Caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose oroccasion [section 65(24)] **Case Law/Board Circulars** • Supply of food to airlines for in-flight service to passengers is taxable-*Saj Flight Services* v. *Superintendent of CE*(2006) 3 STT 165 (Ker HC)–confirmed in *Saj Flight Services* v. *Superintendent of CE* (2006) 5 STT 266(Ker HC DB) • In case of canteen in office or factory run by canteen contractor, if theservice is received by the employer, it will be taxable. If the service is directly provided to employees/workmen, then the canteen should not come within the definition.	**Exclusions** • Home delivery of food not taxable - MF(DR) circular No.B2/8/2004-TRU dated 10-9-2004. **Valuation** • The outdoor caterer can opt to pay service tax on 50% of his Bill amount. He can avail this concession if following conditions are satisfied - (a)The Bill or challan issued indicates that it is inclusive of charges for supply of food (Food means a substantial and satisfying meal, only snacks are not sufficient) (b) He does not take Cenvat credit ofduty/service tax paid oninputs, input services and capital goods and (c) He does not avail benefit of notification No. 12/2003-ST dated 20-6-2003 - Notification No. 1/2006-ST dated 1-3-2006. **Exemptions** • Refer 4.4
Packaging Activity	**Statutory coverage** • Packaging of goods including pouch filling, bottling, labelling or imprinting of the package [section 65(76b)] **Case Law/Board Circulars** • The intention seems to be to cover specialised packaging services like packing for transport etc. If packaging results in manufacture of new Article, excise duty will become payable.	**Exclusions** • Any packaging activity that amounts to 'manufacture' within the meaning of section 2(f) of Central Excise Act, 1944 is excluded. **Exemptions** • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Pandal or Shamiana	**Statutory coverage** • Service by a pandal or shamiana contractor • 'Pandal or shamiana' means a plac especially prepared or arranged for organizing an official, social or business function. Social function includes marriage [section 65(77a)] • Preparation, arrangement, erection or decoration of a pandal or shamiana • Supply of furniture, fixtures, lights and lighting fittings, floor coverings and other articles for use in pandal or shamiana [section 65(77b)]	**Valuation** If a pandal or shamiana contractorprovides catering services of full meals, tax will be payable only on 70% of the gross amount charged toclient - Notification No. 1/2006-ST dated 1-3-2006 **Exemptions** Refer 4.4
Photography	**Statutory coverage** • "Photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography [section 65(78)] **Case Law/Board Circulars** • In *Live Tone* v. *State of Tripura* (2001) 122 STC 115 (Gau HC), it was held that works contract tax (Vat) can be levied on the value of goods transferred (i.e. negative and printing paper) but not on wholeprice which includes charge of artistic skill required in developing photograph – same view in *Classic Colour Lab* v. *DCCT* (1998) 110 STC269 (Kar HC) * *Bavens* v. *UOI* (1995) 97 STC 161 (Ker HC DB)	**Exclusions** • X-ray or CT scan will not be covered as in common parlance they are not photography studios or agencies. - CBE&C letter No.B.II/I/2000-TRU dated 9-7-2001. **Valuation** • In *Laxmi Colour* v. *CCE* (2005)2 STT 220 = 3 STR 363(CESTAT), it was held that no deduction of material cost is allowable. It was also held that in service like photography, there is noelement of sale of goods. Thus, tax is payable on entire amount. **Exemptions** • Refer 4.4
Practising CA/CWA/CS Services	**Statutory coverage** • Service by a Practising Chartered Accountant/Cost Accountant/Company Secretary in his professional capacity	**Exemptions** • Services provided by practising CA/CWA/CS in his professional capacity to a client, relating to representing before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, are exempt from service tax. All other services provided by practising CA/CWA/CS in his professional capacity are taxable (Notification No.25/2006-ST dated 13-7-2006). • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Programme Production (of TV or Radio programmes)	**Statutory coverage** • Service by a programme producer, in relation to a programme. • "Programme" means any audio or visual matter, live or recorded, which is intended to be disseminatedby transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations [section 65(86a)]	**Exemptions** • Refer 4.4
Public relations management service	**Statutory coverage** • Service in relation to managing the public relations of another person • "Public relations" includes strategic counselling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotions, events and communications and crisis communications [section 65(86c)]	**Exemptions** • Refer 4.4
Rail Travel Agent	**Statutory coverage** • Service in relation to booking of passage for travel by rail	**Exclusions** • Tax is *not payable* on rail fare collected by rail travel agent -rule 6(2)(iii) of Service Tax Valuation Rules. **Exemptions** • Refer 4.4
Real Estate Agent	**Statutory coverage** • Advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate [section 65(89)] • Service in relation to sale, purchase, leasing or renting, of real estate. • Services of Real estate consultant [section 65(88)]	**Exemptions** • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Recovery Agent	**Statutory coverage** • Service in relation to recovery of any sums due to banking company or financial institution, including a nonbanking financial company, or any other body corporate or a firm.	**Exemptions** • Refer 4.4
Registrar to an issue	**Statutory coverage** • Activities in relation to an issue including collecting application forms from investors, keeping arecord of applications and money received from investors or paid tothe seller of securities, assisting in determining the basis of allotment of securities, finalising the list of persons entitled to allotment of securities and processing and despatching allotment letters, refund orders or certificates and other related documents [section 65(89c)] • "Issue" means an offer of sale or purchase of securities to, or from, the public or the holder of securities [section 65(59a)]	**Exemptions** • Refer 4.4
Rent-a-Cab operator	**Statutory coverage** • Service in relation to the renting of a cab • "cab" means - (i) a motorcab, or (ii)a maxicab, or (iii) any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward [section 65(20)] **Case Law/Board Circulars** • If a driver is provided with cab, it is still rent-a-cab service – *Shiva Travels* v. *CCE* (2006) 7 STT 75 (CESTAT).	**Exclusions** • Maxicab referred to in sub-clause(ii) or motor vehicle referred toin sub-clause (iii) rented for useby an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, is excluded. • Ambulances are not meant for carrying passengers for hire or reward. Hence, service taxliability does not arise - para 7.2.1 of D.O. F. No. 334/1/2007-TRU dated 28-2-2007. **Exemptions** • Service tax is payable only on 40% of the gross amount charged by the operator for providing taxable service, if the Rent-a-cab operator does not avail Cenvat of duty/tax paid on inputs, input services and capital goods and he does not avail benefit of notification No. 12/2003-ST dated 20-6-2003 – Notification No. 1/2006-ST dated 1-3-2006. • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Renting of immovable property	**Statutory coverage** • Renting of immovable property for use in the course or furtherance of business or commerce. • "Immovable property" includes - (i) building and part of a building, and theland appurtenant thereto (ii) land incidental to the use of such building orpart of a building (iii) the common or shared areas and facilities relating thereto; and (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate. • "Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce [section 65(90a)] • Use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings is covered [Explanation to section 65(90a)]	**Exclusions** • Renting of following is not included – (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land (c) and used for educational, sports, circus, entertainment and parking purposes; and (d) building usedsolely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities [section 65(90a)] • Renting of immovable property by a religious body or to a religious body; or renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching center is excluded [section 65(90a)] **Exemptions** • Deduction of property tax will be allowed in respect of tax actually paid (and not on payable basis). Deduction will be on *pro rata* basis. Service tax is payable only on rent actually received from service receiver. • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Sale of advertising space or time	**Statutory coverage** • Sale of space or time for advertisement,in any manner is a 'taxable service' • Providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automatedteller machines, internet • Selling of time slots on radio or television by a person, other than a broadcasting agency or organisation • Aerial advertising • Sale of space in yellow pages, business directories	**Exclusions** • Sale of space for advertisement inprint media. "Print media" means- (i) "newspaper" (ii) "book" butdoes not include business directories, yellow pages and trade catalogues which areprimarily meant for commercial purposes • Sale of time slots by abroadcasting agency or organisation (It is taxable under different head) **Exemptions** • Refer 4.4
Scientific and technical consultancy	**Statutory coverage** • Service by a scientist or a technocrat, or any science or technology institution or organisation, in relation to scientific or technical consultancy **Case Law/Board Circulars** • Executory services would not fall under 'consultancy services' - *Glaxo Smithkline Pharmaceuticals* v. *CCE* (2005) 1 STT 37(CESTAT) – quoted with approval in*Glaxo Smithkline Consumer Healthcare Ltd.*v. *CCE* (2007) 9 STT 496 (CESTAT).	**Exclusions** • Service tax is not payable by doctors, medical colleges, nursing homes, hospitals, diagnostic and pathological labs etc. as in common parlance they are not known as scientists, technocrats etc. - CBE&C letter No. B.II/I/2000-TRU dated 9-7-2001. **Exemptions** • Notification No. 9/2007-ST dated 01.03.2007 exempts all taxable services provided by incubators. • Service tax exemption is also provided to incubates vide notification No. 10/2007-ST dated 1-3-2007: • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Security agency	**Statutory coverage** • Services by security agency in relation to the security of any movable or immovable property orperson, by providing security personnel or otherwise • Provision of services of investigation, detection or verification of any fact or activity [section 65(94)] **Case law/Board circulars** • Service tax payable on services of safe deposit lockers. • Services provided by ex-servicemen or charitable orga-nization taxable w.e.f. 18-4-2006.	**Valuation** • Service tax is payable on gross amount charged for service. It has been clarified that service tax is payable on entire amount charged by security agency to client, which includes salary of guards, employer's ESIC, PF, contribution towards labour funds, bonus, leave, uniform etc. No abatement can be granted in respect of such expenses incurred by security agency. • In *Panther Detective Services* v.*CCE* (2007) 8 STT 215 (CESTAT), it was held that service tax is payable on gross amount including ESI, PF and wages of guards. The amount should be inclusive of service tax and then back calculations should be made – same viewin *Punjab Ex-Serviceman Corpn* v. *CCE* (2005) 2 STT 273(CESTAT). **Exemptions** • Refer 4.4
Share Transfer Agent	**Statutory coverage** • Maintaining record of holders of securities and deals with all matters connected with the transfer or redemption of securities or activities incidental there to [section 65 (95a)]	**Exemptions** • Refer 4.4
Site formation and clearance etc.	**Statutory coverage** • Services in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities. • drilling, boring and core extraction services for construction, geophysical, geological or similar purposes • soil stabilization • horizontal drilling for the passage of cables or drain pipes • land reclamation work • contaminated top soil stripping work • demolition and wrecking of building, structure or road [section65(97a)]	**Exclusions** • Services in relation toagriculture, irrigation, watershed development • Drilling, digging, repairing, renovating or restoring of water sources or water bodies. **Exemptions** • Exemption to services relating to roads, airports, railways, transport terminals etc. bridges, port etc. - Notification No. 17/2005-ST dated 7-6-2005 •Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Sound recording	**Statutory coverage** • Recording of sound on any media or device including magnetic storage device • Services relating to recording of sound in any manner such as sound cataloguing, storing of sound and sound mixing or re-mixing or any audio post-production activity [section 65(98)]	**Exemptions** Refer 4.4
Sponsorship service	**Statutory coverage** • Service in relation to sponsorship • "Sponsorship" includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition [section 65(99a)] • Service tax is leviable only when the sponsor is any body corporate or firm [section 65 (105) (zzzn)] **Reverse charge - Person liable for paymentof tax** • In case of sponsorship service provided to a body corporate or firm located in India, the body corporate or firm receiving such sponsorship service will be liable to pay service tax [rule 2(1)(d) (vii)]. • If the recipient of sponsorship service is located outside India, service tax is required to be paid by the service provider and not by the recipient.	**Exclusions** • Sponsorship of sports events is excluded from the scope of this levy • Any financial or other support in the form of donations or gifts, given by the donors is not taxable, if the service provider is under no obligation to provide anything in return to such donors [section 65(99a)] **Exemptions** • Refer 4.4
Steamer Agent	**Statutory coverage** • Service in relation to a ship's husbandry or dispatch or any administrative work related thereto • Booking, advertising or canvassing of cargo • Container feeder services [section 65(100)] **Case Law/Board Circulars** • Expenses paid by steamer agent on behalf of shipping line not liable toservice tax - CBE&C circular No. B43/1/97-TRU dated 6-6-1997.	**Exemptions** • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Stock broking	**Statutory coverage** • Service by a stock-broker in connection with the sale or purchase of securities listed on recognized stock exchange. • As per rule 6(1)(i) of Service Tax Valuation Rules (Earlier, it was *Explanation* 1 clause (a) to section 67 upto 18-4-2006), the value of taxable services shall include the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker. **Case Law/Board Circulars** • No tax on turnover charges payable to stock exchange – *prima facie* view in *JSEL Securities Ltd.* v. *CCE* (2007) 8 STT 428 (CESTAT).	**Exemptions** Refer 4.4
Storage and warehousing	**Statutory coverage** • Services in relation to storage and warehousing of goods, including liquids and gases [section 65(102)] **Case Law/Board Circulars** • Storage outside the port premises is taxable - *Gujarat Chem Port Terminal Co. Ltd.* v. *CC* (2005) 1 STT 98 (CESTAT) • Storage of empty containers taxable -CBE&C circular No. 60/9/2003-ST dated 10-7-2003	**Exclusions** • Service provided for storageof agricultural produce orany service provided by acold storage excluded [section 65(102)] **Exemptions** • Refer 4.4
Survey and exploration of mineral	**Statutory coverage** • Geological, geophysical or other prospecting, surface or sub-surface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas [section 65 (104a)]	**Exemptions** • Refer 4.4
Survey and map-making	**Statutory coverage** • Geological, geophysical or any other prospecting, surface, sub-surface or aerial surveying or map-making of any kind [section 65(104b)]	**Exclusions** • Service provided by an agency under the control of, or authorised by, the Government, in relation to survey and map-making not taxable [section 65 (105) (zzzc)] • Survey and exploration of mineral excluded [section 65 (104b)] (as covered under another head) **Exemptions** • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Technical inspection and certification	**Statutory coverage** • Inspection or examination of goods or process or material or any immovable property to certify that such goods or process or material or immovable property qualifies or maintains the specified standards, including functionality or utility or quality or safety or any other characteristic or parameter [section 65(108)]	**Exclusions** • Service in relation to inspection and certification of pollution levels is excluded [section 65(108)] **Exemptions** • Refer 4.4
Technical testing and analysis	**Statutory coverage** • Service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or any immovable property • Clinical testing of drugs and formulations [section 65(106)] **Case Law/Board Circulars** • Sample collection centers not taxable – *Dr.Lal Path Lab (P) Ltd.* v. *CCE* (2006) 5 STT 171 (CESTAT),	**Exclusions** • Testing or analysis service provided in relation to human beings or animals is excluded. • Testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals is not taxable. Medical testing and diagnosis has been excluded from service tax [section 65(106)] **Exemptions** • Testing and analysis of water quality by Government laboratories exempt - Notification No. 6/2006-Service Tax dated 1.3.2006. • Exemption to clinical testing of newly developed drugs - Notification No. 11/2007-ST dated 1-3-2007. • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Telecommunication Services	**Statutory coverage** • Service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception • voice mail, data services, audio tex services, video tex services, radiopaging • fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, in bound and out bound telephone service to and from national and international destinations	**Exclusions** • Service in relation to on-line information and database access or retrieval, a broadcasting agency or organisation in relation to broadcasting and internet telephony excluded [section 65(109a)] (since cover edunder another head) **Sale of SIM Card** • In *Bharat Sanchar Nigam Ltd*. v. *UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 282ITR 273 = 3 VST 95 = 145 STC91 = AIR 2006 SC 1383 (SC 3 member bench), it has been held that what a SIM card represents is ultimately aquestion of fact. In determining the issue, the assessing authorities will have to keep in mind the following principles, 'If the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by service providers, then a SIM card cannot be charge dseparately to sales tax.
	• cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations • carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic orinternational calls, charging forjointly used facilities including poleattachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or atelegraph circuit • provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call conferencing.	It would depend ultimately upon the intention of parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the sales tax authorities to levy sales tax thereon. If the sale of SIM card is merely incidental to the service being provided and only facilitates the identification of subscriber, their credit and other details, it would not be assessable to sales tax. In any event, cost of service cannot be included in the value of SIM card.

Description of service	Coverage	Exclusions/Exemptions
Tour operator	**Statutory coverage** • 'Tour' means a journey from one place to another irrespective of the distance between such places. • Business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sight seeing or other similar services) by any mode of transport • Business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act [section 65 (115)]	**Exemptions** • In case of package tour, w.e.f. 23-8-2007, service tax is payable on 25% of gross amount charged (Till 22-8-2007, service tax was payable on 40% of gross amount charged) - Notification No.1/2006-ST dated 1-3-2006 • Tax only on 10% amount when operator only provides booking services -Notification No. 1/2006-STdated 1-3-2006.
	Case Law/Board Circulars • In *Praseetha Suresh* v. *CCE* (2007) 8 STT324 (CESTAT), it was held that thevehicle is required to satisfy specifications as per rule 128 of Motor Vehicle Rules. If these are not satisfied, it is not a tourist vehicle and hence the service is not taxable.	• Tax payable 40% in case of other tours - Notification No.1/2006-ST dated 1-3-2006. • Refer 4.4
Transport of persons by cruise ships	**Statutory coverage** • Transport of person embarking from any port by a cruise ship. "cruiseship" means a ship or vessel used for providing recreational or pleasure trips.	**Exemptions** • Refer 4.4
Transport of goods by air	**Statutory coverage** • Transport of goods by aircraft	**Exemptions** • Service of transport of goods is exempt if it is in relation to transport of export goods by aircraft - Notification No.29/2005-ST dated 15-7-2005. • Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Transport of goods by road	**Statutory coverage** • Service by a goods transport agency, in relation to transport of goods by road in a goods carriage. • 'Goods transport agency' means any person who provides service in relation to transport of goods by road **and** issues consignment note, by whatever name called [section 65(50b)] **Reverse charge - Person liable for payment ofservice tax** As per rule 2(1)(d)(v) of Service Tax Rules,Consignor or consignee *who is paying freight* will be liable to pay service tax, if consignor or consignee is any one of the following -(*a*) any factory registered under or governed by the Factories Act, 1948 (63 of 1948).(*b*) any company formed or registered under the Companies Act, 1956 (1 of 1956).(*c*) any corporation established by or under any law.(*d*) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India.(*e*) any co-operative society established by or under any law.(*f*) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made the reunder.(*g*) any body corporate established, or a partnership firm registered, by or under any law.	**Cenvat Credit** • The service receiver should pay tax by GAR-7 challan @ 3.09%.Then, he can avail Cenvat credit of tax so paid by him [Notification No. 1/ 2006-ST dated 1-3-2006]. **Exemptions** • As per exemption notification No.13/2008-ST customer by goods transport agency. Thus, service tax payable will be 3% plus 2% education cess plus 1% SAH education cess i.e. total 3.09%.Transport of fruits, vegetables, eggs or milk by road (as exempt under notification 33/ 2004-STdated 3-12-2004) • Gross Amount charged on consignments transported in a goods carriage does not exceed ₹ 1,500 (as exempt under clause (i) of noti-fication No.34/2004-ST dated 3-12-2004) [This is total of all consignmentscarried in a goods carriage at onetime] • Gross Amount charged onindividual consignment transported in a goods carriage does not exceed ₹ 750 (as exempt under clause (ii) of notification No. 34/2004-ST dated 3-12-2004). • Refer 4.4
Transport of goods in containers by rail	**Statutory coverage** • Transport of goods in containers by rail	**Exclusions** • Service provide by Government railway exempt. **Exemptions** • Service tax is payable only on30% of gross value charged, if Cenvat credit not availed -Notification No. 1/2006-ST, dated 1-3-2006. • Refer 4.4
Transport of goods (other than water) through pipeline or conduit	**Statutory coverage** • Transport of goods other than water, through pipeline or other conduit	**Exclusions** Transport of water is excluded. **Exemptions** Refer 4.4

Description of service	Coverage	Exclusions/Exemptions
Travel agent (other than air travel agent and rail travel agent)	**Statutory coverage** • Booking of passage for travel other than air travel and rail travel	**Exemptions** Refer 4.4
Video tape production agency	**Statutory coverage** • Process of any recording of any programme, event or function on a magnetic tape or on any other media or device • Services such as editing, cutting, colouring, dubbing, title printing, imparting special effects, processing, adding, modifying or deleting sound, transferring from one media or device to another • Any video post-production activity [section 65(120)]	**Exemptions** • Refer 4.4
Works Contract Services	"Works contract" means a contract wherein, –*(i)* transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, **and** *(ii)* such contract is for the purposes of carrying out, -*(a)* erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or other-wise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or waterproofing, lift and escalator, fire escape stair cases or elevators; or *(b)* construction of a new buildingor a civil structure or a part there of, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or *(c)* construction of a new residential complex or a part thereof; or *(d)* completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to *(b)* and (c); or *(e)* turnkey projects including engineering, procurement and construction or commissioning (*EPC)* projects	**Exclusions** • Works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams, are excluded. **Value of taxable service** • Broadly, two options areavailable to service provider - (a) Calculate value of service as perrule 2A of Service Tax (Determination of Value) Rules, 2006 (in short 'Valuation Rules) and pay service tax at normal rate @ 12.36% (inclusive of educationcess and SAH education cess) on such 'value'. In such case, assessee can avail Cenvat creditof input services, inputs and capital goods (b) Pay service tax under 'composition scheme' at 4.12% of 'gross amount charged for works contract' (inclusive of education cess and SAH education cess), under 'Works Contract (Composition Scheme for Payment of Service tax) Rules, 2007' (the percentage was 2.06% upto 29-2-2008). As per rule 3(2)of Composition Scheme, the assessee cannot avail Cenvat credit of inputs. Thus, the assessee can avail Cenvat credit of input services and capital goods. • In both the cases, Vat/sales tax will not be included in the 'value' for purpose of calculating service tax.

Description of service	Coverage	Exclusions/Exemptions
	Case Law/Board Circulars • In *Bharat Sanchar Nigam Ltd.* v. *UOI*(2006) 3 SCC 1 = 152 Taxman 135 = 3VST 95 = 3 STT 245 = 282 ITR 273 = 145STC 91 = AIR 2006 SC 1383 (SC 3 member bench), it was held that'various 'aspects' of transaction can be taxed separately, but sales tax cannot be imposed on service portion and service tax cannot be imposed on value of goods. In *Gannon Dunkerley & Co.* v. *State of Rajasthan* (1993) 66 Taxman 229 = 1993AIR SCW 2621 = (1993) 1 SCC 364 = 88 STC 204 (SC 5 member Constitution bench) it was held that value of goods at the time of incorporation in the works can constitute measure for levy of tax. However, cost of incorporation of the goods in works contract cannot be made part of measure for the levy of tax.	**Exemptions** • Construction and works contract services relating toports exempt, but no exemption to finishing or repairing services- Notification No. 25/2007-ST dated 22-5-2007 • Refer 4.4

4.16 POINT OF TAXATION

Point of Taxation to determine rate of service tax and due date of paymento service tax

4.16.1 One major change made in service tax effective from 1-4-2011 is the introduction Point of Taxation Rules, 2011 to *(a)* introduce provisions relating to payment of service tax on accrual basis instead of receipt basis and (b) to specify date relevant for determineing rate of service tax.

So far, the provision was that service tax was payable on receipt basis *i.e.* on receipt of payment of the invoice or bill from customer or receipt of advance, whichever is earlier;' Now, w.e.f. 1-4-2011, service tax will be payable on billing basis and *not* on 'receipt of payment' basis *i.e.* on accrual basis and not cash basis (Option has been granted to, assessees to continue with payment on receipt basis upto 30-6-2011, if they so desire, ; Large companies may start payment on accrual basis from 1-4-2011 itself, as changing method in mid-year will be very cumbersome for them).

Section *65(105)* of Finance Act, defines various taxable services as 'any service provided` or to be provided'. Section 67 (valuation provision) and section 66A (Import of service) l also provide for 'any service provided or to be provided'.

Thus, service tax was payable when advance Was received, even if service was provided! later. If there was change in rate of service tax, issue was what would be the rate appli . cable for payment of service tax. There was no clarity on this aspect. Now, clarity has' been provided on this aspect under new rules.

In *Letter F No. 334/3/2011-TRU, dated 28-2-2011* **(Annex 4A.1),** it is clarified as follows, 'The general rule will be that the time of provision of service will be the earliest of the following dates - (I) Date of which service is provided or to be provided (ii) Date of in-voice *(iii)* Date of payment.

Can issue of invoice be a taxable event? - Really, issue of invoice is only a procedural aspect. Not issuing invoice in time can at the most be a procedural lapse. Why it should affect tax liability?

Relevant date for rate of tax - As per rule 5B of Service Tax Rules (as inserted w.e.f. 1-4-*2011),* the rate of tax in case of service provided or to be provided shall be the rate prevailing at the time when the service is deemed to have been provided as per rules made in this regard.

Due date for payment** of **service tax - Rule 6(1) of Service Tax Rules (as amended w.e.f. 1-4-2011) states that service tax shall be paid to the credit of Government by 5th/6th of the month/quarter immediately following the month/quarter in which service is deemed to be provided as per rules framed in this regard.

Rules to determine 'date when service is deemed to be provided' - 'Point of Taxation Rules, 2011' have been issued (which are effective from 1-4-2011) to make provisions in respect of date when a service shall be 'deemed to be provided'. These rules will be applicable for purposes of rules 5B and 6(1) of Service Tax Rules.

Meaning of 'point** of **taxation' - 'Point of taxation' means the point in time when a ser-vice shall be 'deemed to have been provided' [Rule *2(e)* of Point of Taxation Rules, 2011]. This point will determine rate of service tax and due date of payment of service tax.

General provision relating to point of taxation unless otherwise provided

4.16.2 Rule 3 of make general provisions in respect of 'point of taxation'. These are appli-cable *'unless otherwise provided'* Rules 4 to 9 of Point of Taxation Rules, 2011 make provisions in respect of various special cases. Thus, provisions of rule 3 apply only when any of rules 4 to 9 are not applicable.

***Date of invoice is normally 'point** of **taxation' -** As* per Rule 3(a) of Point of Taxation Rules, 2011, unless otherwise provided (i.e. *except cases covered under rules 4 to 9 as discussed below),* time when invoice for the service provided or to be provided is issued, shall be 'point of taxation'.

As per Rule 4A of Service Tax Rules, every person providing taxable service is required to issue invoice within fourteen days from the date of ***completion*** of service ***or*** receipt of any payments towards the value of such taxable service, ***whichever is earlier.***

Thus, issue of invoice within 14 days of completion of service or receipt of advance, whichever earlier, is a statutory requirement.

It is possible that despite the statutory provision, an assessee may not issue invoice within 14 days, to defer his tax liability. To ensure this does not happen, proviso to rule 3(a) of Point of Taxation Rules, 2011, states that if invoice is not issued within 14 days of completion of provision of the service, date of completion of service shall be 'point of taxation'.

Receipt of advance before issue of invoice - If any payment (i.e. advance) is received by service provider before issue of an invoice, the date of receipt of payment will be 'point of taxation' *to the extent of such payment [Rule 3(b) of Point of Taxation Rules, 2011].* Thus, once advance is received, service tax would become payable even if invoice was not issued.

It may be noted that even if invoice is issued within 14 days, the 'point of taxation' will still be date of receipt of advance. This would create difficulties where advance is re-ceived in later part of the month.

The various dates have been clarified as follows, *vide* para 3 of *Letter F. No.341 /34/2011-TRU, dated 31-3-2011.*

S. No.	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation	Remarks
1.	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	Invoice issued in 14 days and before receipt of payment
2.	April 10, 2011	April 26, 2011	April 30, 201 1	April 10, 2011	Invoice not issued within 14 days and payment received after completion of service
3.	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Invoice issued in 14 days but payment received before invoice
4.	April 10, 2011	April 26, 2011	April 5, 2011 (part) and April 25, 2011 (remaining)	April 5, 2011 and April 10, 2011 for respective amounts	Invoice not issued in 14 days. Part payment before completion, remaining later

Point of taxation in case of change **in effective rate of service tax, if service was provided before change of effective rate**

4.16.3 If taxable service was provided before change of rate (i.e. there is change in rate of service tax after completion of service), the point of taxation will be as follows -

Invoice and payment receipt after change of effective rate - if invoice is issued and payment is received *after change* in effective rate of tax, point of taxation will be date of receipt of payment or issue of invoice, *whichever is earlier [Rule 4(a)(i) of Point of Taxa-tion Rules, 2011]* [Really incorrect since service was already provided prior to change. In any case, assessee has to ensure that he issues invoice before the change in rate becomes effective]

Invoice prior to change but payment received after change in effective rate - If invoice was issued prior to change of effective rate of tax but payment was received after change of effective rate, point of taxation shall be date of issuance of invoice *[Rule 4(a)(ii) of Point of Taxation Rules, 2011].*

Payment received before change in effective rate but invoice issued later - If payment is received prior to date of change of rate but invoice is issued after change in effective rate, point of taxation shall be date of receipt of payment *[Rule 4(a)(iii) of Point of Taxa-tion Rules, 2011].*

Point of taxation in case of change in effective rate of service tax, if service was provided after change of rate.

4.16.4 If taxable service was provided after change in effective rate of service tax, the point of taxation will be as follows -

Invoice prior to change, but payment received after change in effective rate - If invoice is issued prior to change of tax rate *but* payment is received after change in effective rate, point of taxation will be date of payment [*Rule 4(b)(i) of Point Rules, 2011*]

Invoice and payment received both prior to change in effective rate - If invoice was issued earlier and payment was also received before change in effective rate, point of taxation shall be date of issuing of invoice or date of receipt of payment, *whichever is earlier [Rule 4(b)(ii) of Point of Taxation Rules, 2011]*

Invoice after change in effective rate but payment received prior to change in effective rate - If invoice was raised after change of rate but payment was received before the date of change of rate, point of taxation will be date of issuing an invoice *[Rule 4(b)(iii) of* Point of Taxation Rules, 2011].

Thus, when there is change in effective rate, assessee should be very prompt in issuing invoice. Really, invoice preparation is a procedural matter. It should not have been taken as a 'taxable event'.

Meaning of 'change in effective rate of tax'

4.16.5 'Change in the effective rate of tax' shall also include change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder - *Explanation to Rule 4 of Point of Taxation Rules.*

Thus, change in rate of abatement or rates under composition scheme will also be 'change in effective rate of tax'. Department, *vide* para 3 of *Letter F. No. 341/34/201 1-TR U, dated 31-3-2011* has clarified as follows -

> 'Rule 4 has been amended to clarify that change in the effective rate of tax shall also include change in that portion of value on which tax is payable in terms of an exemption notification or rules made in this regard. It may be noted that an exemption has been granted in value for various services *vide* Notification No. *1/2006-ST* dated *1-3-2006* which has the effect of payment of tax only on a part of the value. Similarly either the values or the rates at which tax is payable are provided under rule *6(7, 7A,* 7B or *7C)* of the Service Tax Rules, 1994 as well as the Works Contract (Composition Scheme for Payment of Service Tax) Rules, *2007.* Thus, whenever these values or the composition rates are changed, it would have the same effect as the change in the rate of duty. It is hereby further clarified that the rate of tax shall also include any other notification which is issued, rescinded or amended and has the effect of altering the taxability of any service'.

Payment of service tax in case of new services

4.16.6 In case of new services, tax is not payable if invoice is issued and payment is received before such service became taxable. Similarly, even if invoice is issued after the imposition of service tax, tax will not be payable if invoice is issued within 14 days from completion of service, as provided in rule 4A of Service Tax Rules *i.e.* within 14 days from completion of service *[Rule 5 of Point of Taxation Rules, 2011].*

This provision does not apply to 'continuous supply of service'

Invoice received** earlier **but payment received** after **the** service **became taxable - The rule does not provide for a situation where service has been provided before the service became taxable and invoice has also been issued but payment is received after the service became taxable. In such case, rule *3(a)* should apply and service tax should not be payable, since rule 3 applies when no other rule is applicable.

Point of taxation in case of continuous supply of service

4.16.7 'Continuous supply of service' means any service provided or to be provided for a period exceeding three months *[Rule 2(c) of Point of Taxation Rules, 2011].*

Following services have been notified as 'continuous supply of services' in terms of clause *2(c)* of the rules *vide* Notification No. 28/ST-2011, dated 1-4-2011 :

(a) Telecommunication service [Section *65(105)(zzzx)]*

(b) Commercial or industrial construction [Section *65(105)(zzq)]*

(c) Construction of residential complex [Section *65(105)(zzzh)]*

(d) Internet Telecommunication Service [Section *65(105)(zzzu)]*

(e) Works contract service [Section *65(105)(zzzza)].*

These services will constitute 'continuous supply of services' irrespective of the period for which they are provided or agreed to be provided. Other services will be considered continuous supply only if they are provided or agreed to be provided continuously for a period exceeding three months - para *6* of Letter F. No. 341/34/2011-TRU, dated 31-3-2011.

These would normally cover services like renting of premises, insurance, security ser-vices, supply of tangible goods for use service etc.

Date of completion of an event in terms of contract is date of completion of provision of service - Where the provision of the whole or part of the service is determined periodi-cally on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provi-sion of service - *Explanation 1 to Rule 6 of Point of Taxation Rules, 2011.*

For example, in case of construction contract, if the contract provides for payment of certain amounts at each stage like plinth, slab, plaster, finishing, etc., each such event will be date of completion of provision of service of (that part of) service.

Date of invoice is normally 'point of taxation' - *As* per Rule *6(a)* of Point of Taxation Rules, 2011, time when invoice for the service provided or to be provided is issued, shall be 'point of taxation'.

As per Rule 4A of Service Tax Rules, every person providing taxable service is required to issue invoice within fourteen days from the date of ***completion*** of service ***or*** receipt of any payments towards the value of such taxable service, ***whichever is earlier.***

Thus, issue of invoice within 14 days of completion of service or receipt of advance, whichever earlier, is a statutory requirement.

In case of continuous service, date of completion of each 'event' is completion of provi-sion of (that part of) service.

It is possible that despite the statutory provision, an assessee may not issue of invoice within 14 days, to defer his tax liability. To ensure this does not happen, *proviso* to rule *6(a)* of Point of Taxation Rules, 2011, states that if invoice is not issued within 14 days of completion of provision of the service, date of completion of service shall be 'point of taxation'.

Receipt of advance before issue of invoice - If any payment (i.e. advance) is received by service provider before issue of an invoice, the date of receipt of payment will be 'point of taxation' *to the extent of such payment [Rule 6(b) of Point of Taxation Rules, 2011].* Thus, once advance is received, service tax would become payable even if invoice was not issued.

It may be noted that even if invoice is issued within 14 days, the 'point of taxation' will still be date of receipt of advance. This would create difficulties where advance is re-ceived in later part of the month.

Departmental clarification - *Para 5 of Letter ENo. 341/34/2011-TRU, dated 31-3-2011* clarifies as follows :

> Rule 6 relating to continuous supply of service has been aligned with the revised rule 3 and the date of completion of continuous service has been defined within the rule. This date shall be the date of completion of the specified event stated in the contract which obligates payment in part or whole for the contract. For example, in the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each such stage of construction is completed. Moreover, it has been provided that this rule will have primacy over rules 3, 4 and 8.

Point of taxation in case of Export of Service

4.16.8 In case of services covered under rule 3(1) of Export of Service Rules, 'point of taxation' will be date on which payment is received, if payment is received within period specified by RBI.

However, if the payment for export of service is not received within the period specified by RBI, the point of taxation will be determined as if this rule *i.e.* rule 7 does not exist (That means 'point of taxation' will be determined under rule 3, 4, 5, 6 or 8 as applicable) - Rule 7(a) and first proviso to rule 7 of Point of Taxation Rules, 2011.

In such case, interest for delayed payment will be applicable, as 'point of taxation' will shift to much earlier date.

(Usually, RBI allows 12 months for receipt of payment but in certain cases, elongated credit terms are allowable).

In short, if service is exported as per Export of Service Rules but foreign exchange is not realised within period prescribed by RBI, service tax will become payable, since realiza-tion of payment in foreign exchange is one essential condition to treat a service as 'Export of Service'.

Departmental clarification - *Para 9 of Letter E. No. 341/34/2011-TRU, dated 31-3-2011* clarifies as follows :

> Export of services is exempt subject, *inter alia,* to the condition that the payment should be received in convertible foreign exchange. Until the payment is received, the provision of service, even if all other conditions are met, would not constitute export. In order to remove the hardship that will be caused due to accrual method, the point of taxation has been changed to the date of payment. However, if the payment is not received within the period prescribed by RBI, the point of taxation shall be determined in the absence of this rule.

Point of taxation when service tax is payable under reverse charge

4.16.9 In case of services like GTA, services of mutual fund agent and insurance agent, sponsorship services, etc., service tax is payable by service receipient under section 68(2) of Finance Act, 1994.

In case of such services, the point of taxation shall be the date on which payment is made to service provider, if the payment for such service is not made within six months from date of invoice.

However, if the payment for such service is not made within six months from date of invoice, the point of taxation will be determined as if this rule *i.e.* rule 7 does not exist (That means 'point of taxation' will be determined under rule 3, 4, *5,* 6 or 8 as applicable) - *Rule 7(b) and second proviso to rule 7of Point of Taxation Rules, 2011.*

In such case, interest for delayed payment will be applicable, as 'point of taxation' will shift to much earlier date.

Departmental clarification - Para 10 of *Letter ENo.341/34/2011-TRU, dated 31-3-2011* clarifies as follows :

> In the case of services where the recipient is obligated to pay service tax under rule 2(1)(of Service Tax Rules *i.e.* on reverse charge basis, the point of taxation shall be the date of making the payment. However, if the payment is not made within six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Professionals to pay service tax on receipt basis even after 1-7-2011

4.16.10 Following professionals, namely :

- Architects [Section *65(105)(p)]*
- Interior Decoraters [Section *65(105)(q)]*
- Chartered Accountants [Section *65(105)(s)]*
- Cost Accountants [Section *65(105)(t))*
- Company Secretaries [Section *65(105)(u)]*
- Scientists [Section *65(105)(za)]*
- Legal Consultants [Section *65(105)(zzzzm)]*

will continue to pay service tax on receipt basis instead of accrual basis even after 1-7-2011 - *Rule 7(c) of Point of Taxation Rules.*

For some unknown reasons, Consulting Engineers and Management Consultants are *not* eligible for this concession.

***Departmental clarification* -** Para *8(iii)* of *Letter F No. 341/34/2011-TRU, dated 31-3-2011* clarifies as follows :

> Individuals, proprietorships and partnership firms providing specified services (Chartered Accountant, Cost Accountant, Company Secretary, Architect, Interior Decorator, Legal, Scientific and Technical consultancy services). The benefit shall not be available in case of any other service also supplied by the person concerned along with the specified services.

Point of taxation in case of 'associated enterprises' where person providing service is outside India

4.16.11 In case of 'associated enterprises', where the person providing the service is outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment, whichever is earlier - *Third* proviso *to rule 7 of Point of 'Taxation Rules, 2011.*

***Departmental clarification* -** Para 10 of *Letter F No. 341/34/2011-TRU, dated 31-3-2011* clarifies as follows :

> In the case of associated enterprises, when the service provider is outside India, the point of taxation will be the earlier of the date of credit in the books of account of the service receiver or the date of making the payment.
>
> In case the associated enterprise is situated in India, no separate provision has been made as normal rules of Point of Taxation will apply - Para 7 of *Letter F. No.341 /34/2011-TRU, dated 31-3-2011.*

Point of taxation in case of Intellectual Property Right (IPR) services

4.16.12 In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount is not ascertainable at the time of provision of ser-vice, service shall be deemed to have been provided each time payment in respect of such service is received or invoice is issued by service provider, whichever is earlier *[Rule 8 of Point of Taxation Rules, 2011I.*

Payment of service tax on accrual basis made optional upto 30th June

4.16.13 Point of Taxation Rules, 2011 have been amended to provide that payment of service tax on accrual basis instead of receipt basis is optional upto 30-6-2011. Thus, in case of services provided upto 30-6-2011, assessee can opt to pay service tax on receipt basis instead of accrual basis or may decide to pay on accrual basis from 1st April 2011 itself - *Rule 9 of Point of Taxation Rules, 2011.*

When Credit Note can be issued by service provider

4.16.14 Since service tax is payable on invoice basis (and not on receipt basis) w.e.f. 1-4-2011, it may happen that invoice will be raised and service tax deposited with Government, but payment may not come partly or fully from customer. Further, since service tax is payable on receipt of advance also, it is possible that advance may be received and service tax deposited but later service was not provided partly or fully.

In such cases, rule 6(3) of Service Tax Rules, as amended w.e.f. 1-4-2011 provides that if (z) service not provided fully or partly for any reason *or (ii)* where amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, assessee (service provider) can *(a)* refund the amount to the service receiver with service tax *or(b)* issue a Credit Note to service receiver [Till 31-3-2011, there was no provision of issue of credit note. Only there was provision of refund, and that too only for non-provi-sion of service and not for any other reason].

After such refund of amount or issue of credit note, then assessee can himself adjust the excess service tax paid by him against his service tax liability for the subsequent period [Rule 6(3) of Service Tax Rules amended w.e.f. 1-4-2011]. [Till 31-3-2011, the provision of credit note was not there. Only refund was permissible].

However, such adjustment is not permissible in case of bad debts or giving simple dis-count/reduction in charges.

Note that 'contract' need not be writing. Even verbal agreement can be a legally binding 'contract'

Departmental clarification - Para 11(it) of *Letter F. No. 341/34/2011-TRU, dated 31-3-2011* clarifies as follows :

> If the amount of invoice is renegotiated due to deficient provision or in any other way changed in terms of conditions of the contract (e.g. contingent on the happening or non-happening of a future event), the tax will be payable on the revised amount provided the excess amount is either refunded or a suitable credit note is issued to the service receiver. However, concession is not available for bad debts.

Credit can be taken immediately on receipt of Invoice

4.16.15 Rule 4(7) of Cenvat Credit Rules has been amended to provide that Cenvat Credit of service tax be taken immediately on receipt of invoices issued on or after 1-4-2011, except where service tax is payable under reverse charge method. However, if payment is not made to service provider within three months of date of invoice, the credit taken will have to be reversed. The credit can be taken again after payment is made to service provider.

Provision has also been made to issue Supplementary invoice, bill or challan by inserting rule *9(bb)* of Cenvat Credit Rules.

Departmental clarification - Para 12 of *Letter F. No. 341/34/2011- TR U, dated 31-3-2011* clarifies as follows :

> The credit of input services under rule 4(7) of the Cenvat Credit Rules has also been liberalized *vide* notification No. 13/2011-CE (NT) dated 31.03.2011 and the same shall be available on receipt of invoice (except in cases of reverse charge) as long as the payment is made within three months. Even specified persons required to pay tax on cash basis will be able to avail credit on receipt of invoice. Suitable changes have also been made for reversal of credit or payment when the value of service is renegotiated or altered for any reason by refund or issue of a credit note by the service provider. Amendment has also been made in Rule *9 of* Cenvat Credit Rules, *2004* by allowing credit on supplementary invoice, except in *non-bonafide* cases, which may become necessary in certain situations e.g. where the point of tax is the date *of* payment while the invoice had already been issued e.g. rule 4(b)(t) of Point of Taxation Rules.

Issues arising out of the Rules

4.16.16 The Point of Taxation Rules have been issued to align present provisions of Vat and excise duty, in view of proposed GST. In case of State Vat and Central Excise, the tax is payable on accrual basis and not on receipt basis. When GST comes, provision of payment of tax on receipt basis in case of services cannot co-exist with provision of payment of tax on accrual basis under Vat and excise duty.

However, under central excise and Vat, tax is not payable on receipt of advance. Excise duty is payable only when goods are cleared and Vat is payable only when sale is made, while in case of services, tax is payable when advance is received, even if service is provided later. This distinction should also disappear it the intention is to move towards GST regime.

Issue of invoice is really only a procedural part. Making it as a 'taxable event' is not technically correct, as it would be penalising for a technical lapse. In some cases like construction of residential complex, 'invoice' is not issued.

In case of services, discounts, deductions from invoices raised and bad debts are common. However, no provision has been made for such deductions, except in case of services provided by professionals.

7A.17 Point of Taxation at a glance

SL *No.*	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*
1.	**Normal situation (not covered under rules 4 to 9)**	3(a)	Issue of Invoice	Completion of service or receipt of advance payment	Time of Invoice
2.		3(a)	Completion of service	Invoice issued within 14 days	Time of Invoice
3.		*Proviso*to 3(a)	Completion of service	Invoice *not* issued within 14 days	Date of Completion of service
4.		3(b) and *Explanation* to rule 3	Receipt of payment or advance	Invoice or completion of service	Time of receipt of payment, *to the extent of such payment*
5.	**Taxable service provided *before* change in effective rate of service tax**	**4(a)(i)**	Invoice issued and payment received after the change in effective rate	N.A.	Date of receipt of payment or date of issuance of in voice, whichever is earlier
6		4(a)(ii)	Invoice issued prior to change in effective rate	Payment received after change in effective rate of tax	Date of issuing invoice
7		4(a)(iii)	Payment received before change in effective rate	Invoice issued after change in effective rate of tax	Date of receipt of payment
8	**Taxable service provided *after* change in effective rate of service tax**	**4(b)(i)**	Invoice issued prior to change in effective rate of tax of tax	Payment received after change in effective rate of tax tax	Date of receipt of payment
9		4(b)(ii)	Invoice issued and payment also received prior to change in effective rate of tax	Taxable service provided	Date of receipt of payment or date of issuance of invoice, whichever is earlier
10		4(b)(iii)	Payment received before change in effective rate	Invoice issued after change in effective rate	Date of issuing of Invoice
11	**New service brought under tax net**	5(a)	Invoice issued and payment received before service became taxable	N.A.	No service tax payable
12		5(b)	Payment received before service became taxable	Invoice issued within 14 days of provision of service	No service tax payable
13		3(a)	Service provided before tax became effective	Invoice within 14 days and payment received after tax became effective	No service tax payable

SL No.	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*
14	**Continuous supply of service (applicable separately to each event as specified in contract)**	6(a)	Issue of Invoice	Completion of service or receipt of advance	Time of Invoice
15		6(a)	Completion of service	Invoice issued within 14 days	Time of Invoice
16		*Proviso* to 6(a)	Completion of service	Invoice *not* issued within 14 days	Date of Completion of service
17		6(b) and *Explanation 2* to rule 6	Receipt of payment or advance	Invoice or completion of service	Time of receipt of payment, *to the extent of such payment*
18	**Export of Service**	7(a)	Completion of service	Payment received within period specified by RBI	Date of receipt of payment
19		7(a) and first *proviso* to rule 7	Completion of service	Payment ***not*** received within period specified by RBI	As per rule 3, 4, 5, 6 or 8 (as applicable). Interest will be payable.
20	**Service where tax payable by recipient of service under reverse charge**	7(b)	Receipt of service	Payment made to service provider in advance ***or*** within six months of date of invoice of service provider	Date of payment
21		7(b) and second *proviso* to rule 7	Receipt of service	Payment ***not*** made to serivce provider within six months of date of invoice of service provide	As per rule 3, 4, 5, 6 or 8 (as applicable). Interest will be payable
22	**Professionals and firms providing specified taxable service**	7(c)	Invoice, completion of service or receipt of payment in any sequence		Date of receipt of payment
23	**Service received from associated enterprise when service provider outside India**	Third *proviso* to rule 7	Date of credit in books of account of person receiving service	Date of making payment	Date of credit in books of account of person receiving service
24		Third *proviso* to rule 7	Date of making payment	Date of credit in books of account of person receiving service	Date of making payment
25	**Intellectual Property Service (copyright, trade mark, design or patent), where consideration not ascertainable at the time of service**	8	Receipt of payment or benefit is received by service provider	Invoice issued by service provider	Receipt of payment or benefit is received by service provider
26		8	Invoice issued by service provider	Receipt of payment or benefitis received by service provider	Invoice issued by service provider
27	**Services completed on or before 30-6-2011**	9	Issue of invoice	Receipt of payment	Issue of invoice or date of receipt of payment, ***at the option of tax payer***

ILLUSTRATIONS ON SERVICE TAX

Illustration 1. Under cargo handling services, full exemption has been granted under Notification No. 10/2002 for services provided in relation to agricultural produce or goods intednded to be stored in a cold storage. Suppose a cargo handling agency had received the following amounts :

Amount received towards services in relation to agricultural produce etc.	₹ 6,00,000
Amount received towards other services	₹ 4,50,000
Aggregate value of taxable services	₹ 10,50,000

In this case, the 'aggregate value of taxable services' will be ₹ 10,50,000 (and not ₹ 4,50,000). Since this amount is in excess of ₹ 10 lakhs, the service provider will not be eligible for exemption benefit.

Illustration 2. In the case of commercial or industrial construction services, the service tax is payable on 33% of the gross amount received (where value of land does not form part of gross amount received) by the service provider under Notification No. 1/2006. Assume that the service provider has received ₹ 15 lakhs under construction contract. He is required to pay the service tax on the value of ₹ 4,95,000. However, for the purpose of applying the limit of ₹ 10 lakhs, the gross value received, *i.e.*, ₹ 15 lakhs, will be considered and not ₹ 4,95,000.

Illustration 3. Suppose the profit and loss account of a goods transport agency shows the following gross receipts :

(a)	Amount received for which service tax is payble by consignor or consignee	₹ 52,00,000
(b)	Amount received for which service tax is payable by goods transport agency	₹ 7,00,000
	Total	₹ 59,00,000

In computing the limit of ₹ 10 lakhs, the amount of ₹ 52 lakhs need not be considered. Hence, the goods transport agency will be entitled to the benefit of this notification.

Illustration 4. Suppose a security agency has received the following payment towards the gross amount charged for services rendered, starting from 1-4-2011 :

	Date of receipt	Client from whom received	Amount received ₹
1.	20-4-2011	L.I.C of India	7,40,000
2.	5-5-2011	World Health Organisation	1,20,000
3.	20-5-2011	Bharat Heavy Electricals	1,60,000
4.	3-6-2011	Canadian High Commission	1,70,000
5.	15-6-2011	L.I.C. of India	1,40,000

The aggregate of items (1), (2) and (3) is ₹ 10,20,000, yet the aggregate cannot be said to have crossed the ₹ 10 lakhs limit on 20-5-2011, since item (2) has to be excluded, being a service on which the exemption granted to services provided by any service provider to UNO will be available. Therefore, the total consecutive payments received upto 20-5-2011 will be ₹ 9,00,000 only, being the total of items (1) and (3). Similarly, item (4) will also have to be excluded, since services provided to diplomatic missions are fully exempt from tax. Therefore, the total consecutive payments received till 3-6-2011 will continue to remain at ₹ 9,00,000. Only on 15-6-2011, the total consecutive payments will be ₹ 10,40,000. At that stage, the security agency will claim the thereshold exemption upto ₹ 10 lakhs, and pay the tax on the balance of ₹ 40,000. Thereafter, on all payments received from 15-6-2011 to 31-3-2012 the security agency will have to pay tax.

The security agency will not be eligible to opt for the exemption benefit for the financial year 2012-13 since the aggregate value of taxable services for the financial year 2011-12 exceeds ₹ 10 lakhs.

Illustration 5. J Ltd. intends to construct multiplexes with theatres, hotels, shopping area, etc., in Mumbai. It engages the services of an architect situated in United Kingdom for making drawing, designing, supervising the construction and advising in relation to construction. The service of architect is in respect of the property which is located in India. Therefore, services tax will be payable by J Ltd. on the amount remitted to the architect situated in U.K.

Illustration 5. Rent-A-Cab services are specified under this category. Say 'Y' an Executive of J Ltd. company visits Hong Kong for business purpose. He hires car for visiting various customers. After receipt of the services, he pays the amount to the car owner in Hong Kong, In this case, whole of the service is rendered outside India and no part is rendered in India. Therefore, service tax will not be payable by J Ltd. as whole of the services are rendered outside India. Therefore, it cannot be deemed that the services arc received in India.

Illustration 6. Courier Agency 'X' located in India receives a document from a company in Chennai to deliver it to a company in US. 'X' receives the charges from company in Chennai for delivery of document. 'X' has arrangement with 'A' in US for delivery of document received by 'X'. The services in this case are partially rendered in India and partially outside India. Therefore, as per the criterion laid down in clause (*ii*), the service rendered by 'A' in US is deemed to be received by 'X' in India. Therefore, the service tax would be payable on the entire amount received by X.

In *Intas Pharmaceuticals Ltd.* v. *CST* [2009] 22 STT 230 (Ahd. - CESTAT) it was held that mriewof rule 3(*ii*), levy of service tax is only on services which are rendered in India and where taxable event takes place in India; when service is fully provided outside India, proviso to rule 3(*ii*) is not applicable. The argument that the proviso to rule 3(*ii*) would mean that if the services are fully performed outside India, the provider is liable to pay tax is not sustainable. The objective of the proviso is to avoid litigation and valuation issues when a service is partly performed in India and outside India. When it is partly performed, full value is to be taken. Similarly, if it is fully performed in India, there would be no dispute about the liability since the same would be on the full value of the service. When the service is fully provided outside India, this proviso is clearly not at all applicable. The levy of service lax is only on services which are rendered in India and where taxable event takes place in India.

Illustration 7. X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for television advertiseement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent on behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilate him to perform his services as an estate agent.

Illustration 8. In the course of providing a taxable service, a servie provider incurs costs such as travelling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

Illustration 9. A countracts with B, an architect for building a house. During the course of providiing the taxable services, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A.. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall free, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.

Illustration 10. Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the

tour, the chaufffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the company X.

Illustration 11. Choose the most appropriate answer - What would be the value of taxable service, if gross amount charged by a service provider on 5th May, 2011 is ₹ 9,000 — (a) ₹ 8,010 (b) ₹ 8,160 (c) ₹ 9,000 (d) ₹ 8,100.

Answer : ₹ 8,160 (rounded off). [(₹ 9,000 × 100)/110.3. Check that service tax @ 10.396 on ₹ 8,160 is Z 840.48 and gross amount including service tax will be ₹ 9,000.48].

Illustration 12. Ms Priya rendered taxable services to a client. A bill of ₹ 40,000 was raised on 29-4-2011. ₹ 15,000 was received from a client on 1-7-2011 and the balance on 23/10/2011. No service tax was separately charged in the bill. The questions are: (a) Is Ms Priya liable to pay service tax, even though the same has not been charged by her? (b) In case she is liable, what is the value of taxable services and the service tax payable, if service tax rate is 1096 plus education cess as applicable?

Answer : She is liable even if tax was not charged separately. ₹ 40,000 will be treated as inclusive of service tax. Hence, 'Value' for service tax is ₹ 36,264.73 [(₹ 40,000 × 100)/110.30]. Service tax @ 10% is 3,626.47, Education cess is ₹ 72.53 and SAHE cess is 36.27.

The tax is payable on 5th July, 2011 if paid by cheque/cash and 6th July, 2011 if paid electronically.

(Till 31-3-2011, the service tax was payable on receipt basis. Hence, in that case due date would have been 5th/6th October for ₹ 15,000 and 5th/6th January (next year) for balance ₹ 25,000).

Illustration 13. M/s. ABC & Associates, a firm of Cost Accountants, raised an invoice for ₹ 38,605 (35,000 + service tax of ₹ 3,605 @ 10.3%) on 12th April, 2011. The client paid lump sum of ₹ 36,000 on 2nd June, 2011 in full and final settlement: (i) How much service tax M/s. ABC & Associates have to pay and what is the due date for payment of service tax? (ii) What will be the liability if the client refuses to pay service tax and pays only ₹ 35,000?

Answer : In first case, ₹ 36,000 is treated as inclusive of service tax @ 10.30%. Hence, making back calculations, service tax will be ₹ 3,361.74 on value of ₹ 32,638.26. In second case, ₹ 35,000 is treated as inclusive of service tax @ 10.30%. Hence, making back calculations, service tax will be ₹ 3,268.36 on value of ₹ 31,731.64. [Note that in case of Practising CA/CWA/CS, service tax is payable on receipt basis and not on accrual basis, even after 1-4-2011].

Illustration 14. Mr. Deshpande, Cost Accountant rendered taxable service to Vishwa Cement Ltd. In this regard the company sent 200 cement bags free of cost, for the house construction of Mr. Deshpande. Explain how the value of the taxable service will be determined in this case. Will your answer be different if the service had been rendered free of charge?

Answer : In first case, value of 200 cement bags will be treated as consideration for services received. It will be treated as gross value of service and service tax will be calculated by making back calculations. In second case, no service tax is payable since 10.30% of Nil is Nil.

Illustration 15 Ms. Gombu, a proprietor of Intellect Security Agency received ₹ 100,000 by an account payee cheque, as advance while signing a contract from proceeding taxable services; he received ₹ 5,00,000 by credit card while providing the service and another ₹ 5,00,000 by a pay order after completion of service on January 31, 2012. All three transactions took place during financial year 2011-12. He seeks your advice about his liability towards value of taxable service and the service tax payable' by him.

Answer : He is liable on entire ₹ 11 lakhs, presuming that he is not eligible for exemption as small service provider. The ₹ 11 lakhs are to be taken as inclusive of service tax and service tax is payable by back calculations.

Assuming service tax rate as 10.30%, the 'value' would be ₹ 9,97,280.15 and service tax @ 10.30% would be ₹ 1,02,729.85.

Illustration 16. For certain taxable services rendered by Prem, VAT as well as service tax is leviable. The following bill was raised by Prem on Vignesh (service receiver) on 20-3-2012 -Amount of bill - ₹ 40,000, Vat - ₹ 400. Total - ₹ 40,400. On 31.03.2012, Prem received a sum of ₹ 30,000 in full settlement. What is the service tax payable? You are informed that Vignesh has incurred hotel bills of ₹ 3708 on behalf of Prem. Clearly indicate the provisions considered in arriving at the service tax payable.

Answer : Service tax is not payable on Vat amount. Total ₹ 43,708 is taken as gross amount charged for purpose of service tax. `Value' for purpose of service tax is ₹ 39,626.47 [43,708 × 100)/110.3] and service tax ® 10.3% is ₹ 4,081.53.

[**Note -** If the period was prior to 31-3-2011, service tax was payable on receipt basis. Hence, total ₹ 33,708 was to be taken as gross amount received for purpose of service tax and then back calculations made].

Illustration 17. Mrs. Bose is rendering taxable services, which were brought into the service tax net w.e.f. 1-5-2011. The following information are made available to you: (i) Amount received on 10-5-2011 for services provided in April, 2011 - ₹ 2,00,000 (ii) Advance received from one client on 10.5.2011 - ₹ 3,39,000 (iii) For balance services of ₹ 7,00,000 bill was raised on 12.3.2012 and the amount due was received from the above client on 15.6.2012 (iv) Other taxable services billed and received during 1.5.2011 to 31.3.2012 - ₹ 4,00,000 (v) Value of free services rendered in October, 2011 - 1,50,000. — Compute the value of taxable services and service tax payable for the year ended 31.3.2012. Service tax was not charged separately in invoice.

Answer : (i) Service tax is not payable on ₹ 2,00,000 as service was provided before imposition of tax (ii) Service tax is payable on 3,39,000 plus 7,00,000 plus 4,00,000. No service tax is payable on free services. Thus, service tax is payable on ₹ 14,39,000. Mrs. Bose can claim exemption of first ₹ 10 lakhs and pay service tax @ 10.30% on ₹ 4,39,000. Since service tax was not charged separately, this amount is treated as inclusive of service tax. Hence, 'value' is ₹ 3,98,005.43 [(4,39,000 × 100)/110.3]. Service tax payable 39,800.54, Education Cess - 796.02 and SAH education cess 398.01.

[Note - If the period was prior to 31-3-2011, service tax would not be payable on 7,00,000 in that year as payment was not received during the year].

Illustration 18. J.C. Professionals, a partnership firm, gives the following particulars relating to the services provided to various clients by them for the half-year ended on 30-9-2011: (i) Total bills raised for ₹ 8,75,000 out of which bill for ₹ 75,000 was raised on an approved International Organisation and payments of bills for ₹ 1,00,000 were not received till 30-9-2011. (ii) Amount of ₹ 50,000 was received as an advance from XYZ Ltd. on 25-09-2011 to whom the services were to be provided in October, 2011. You are required to work out the : (a) taxable value of services (b) amount of service tax payable for the half year. Service tax rate is 10.30% (Assuming small service provider exemption is not available).

Answer : It is assumed that the amount is inclusive of service tax. Tax is payable on 8+0.50 = ₹ 8.50 lakhs, as there is exemption to services provided to approved international organizations. Hence, value for service tax is ₹ 7,70,625.56 [(8,50,000 × 100)/110.3]. Service tax payable @ 10.3% is ₹ 79,374.44

Note - If the period was prior to 31-3-2011, answer would be as follows - Tax is payable on 7 + 0.50 = 6.50 lakhs, as there is general exemption to services provided to international organizations. Service tax was payable on receipt basis till 31-3-2011. Therefore, Tax Payable = 10.3% of 6,79,963.73 = ₹ 70,036.27.

Illustration 19. Ajay Ltd. has agreed to render services to Mr. Guru. The following are the chronological events - (a) contract for services entered upto 31-8-2011 (b) Advance received in September 2011 towards all services - ₹ 60,000 plus service tax as applicable (c) Total value of services billed in February, 2012 - ₹ 2,10,000, excluding

service tax. This includes non-taxable services of ₹ 70,000 (d) Balance amount was received in March, 2012. — When does the liability to pay service tax arise and for what amount? Service tax is to be charged separately. Service tax rate is 10.30% (Assuming small service provider exemption is not available).

Answer : Total value of services are ₹ 2,10,000 out of which ₹ 70,000 i.e. one-third were not taxable. Advance of ₹ 60,000 was received in September 2011. Hence, we can assume that out of advance received, two-third was for taxable service and one-third was for non-taxable services. Thus, advance of ₹ 40,000 was towards taxable services. On this, service tax @ 10.3% is ₹ 4,120. Since assessee is a company, service tax is payable on monthly basis. The tax is payable on 5th October, 2011 if paid by cheque/cash and 6th October, 2011 if paid electronically.

On balance ₹ 1,00,000 [₹ 1,40,000 value of service less ₹ 40,000 advance received], service tax payable @ 10.3% is ₹ 10,300.

The tax is payable on 5th March, 2012 if paid by cheque/cash and 6th March, 2012 if paid electronically.

[Note - If the period was prior to 31-3-2011, the tax of ₹ 10,300 would have become payable on 31st March]

Illustration 20. State with reason in brief whether the following statement is true or false with reference to the provisions of Service Tax - Mr. Salim, an architect has received the fees of ₹ 4,48,500 after the deduction of Income Tax of ₹ 51,500. The Service Tax is payable on ₹ 4,48,500.

Answer : TDS is also 'payment received'. Hence, service tax was payable on ₹ 5,00,000 (including TDS) [Note that Architect is required to pay service tax on receipt basis even after 1-4-2011].

Illustration 21. X & Co. is a service provider. It received ₹ 19,80,000 during the financial year after deduction of tax at source under section 194J of the Income tax Act, 1961. The rate of tax deduction being 10% (i.e. after deduction of ₹ 2,20,000). — (i) calculate the service tax liability of X & Co.

Answer : This question is not relevant after 1-4-2011, since service tax is payable on billing basis [In respect of period prior to 31-3-2011. Even TDS is 'amount received'. Hence, service tax was payable on ₹ 22,00,000]

Illustration 22. ABC & Co. furnishes the following information for the half-year ending March 31, 2012 : (i) Amount received for services provided to UNICEF (an international organization): ₹ 2,00,000. (ii) Advance money received from customers ₹ 4,00,600 in respect of which services were not rendered till March 31, 2012 (iii) Services billed during the half-year excluding items (i) and (ii) above, was ₹ 15,00,000 [+ service tax and cess @ 10.3 per cent]. It consists of the following : (a) One customer 'X' to whom a bill of ₹ 2,20,600 [+ service tax and cess @ 10.3 per cent] raised, did not pay service tax and cess (b) Customer 'Y' to whom a bill was raised for ₹ 1,00,000 [+ service tax and cess] has not paid the amount till March 31, 2012 (c) The balance amounts billed during the year were realized fully. Compute the value of taxable service on which service tax is payable.

Answer : After 1-4-2011, service tax is payable on accrual basis. Hence, the calculations would be as follows –

Details	*Value* ₹
(i) Amount received from UNICEF is exempt from tax	Nil
(ii) Advance received (but service not provided till 31-3-2012) value of taxable service will be ₹ (4,00,600 × 100)/ 110.30 [It is assumed that Invoice of totalamount was issued and service tax was charged]	3,63,191.30
(iii) *(a)* Amount received from 'X' ₹ 2,20,600 [Even if service tax is not paid by customer, the value will not get reduced, since Credit Note cannot be issued simply because customer did not pay]	2,20,600.00
(iii) *(b)* Service provided to 'Y'	1,00,000.00
(iii) (c) Service provided to others (₹ 15,00,000 - ₹ 2,20,600 – ₹ 1,00,000)	11,79,400.00
Total value of taxable service	18,63,191.30

Answer if transactions were upto 31-3-2011 :

Details	*Value* ₹
(i) Amount received from UNICEF is exempt from tax	Nil
(ii) Advance received (but service not provided till 31-3-2011) value of taxableservice will be ₹ (4,00,600 × 100)/ 110.30 [It is assumed that Invoice of totalamount was issued and service tax was charged]	3,63,191.30
(iii) *(a)* Amount received from 'X' ₹ 2,20,600, is to be treated as inclusive ofservice tax. Hence, value of taxable service will be ₹ (2,20,600 × 100)/ 110.30	2,00,000.00
(iii) *(b)* Service provided to 'Y' (No tax payable as amount not received)	Nil
(iii) (*c*) Service provided to others (₹ 15,00,000 – ₹ 2,20,600 – ₹ 1,00,000)	11,79,400.00
Total value of taxable service	17,42,591.30

Illustration 23. ABC & Co. received the following amounts during the half year ended 31-03-2012 (i) For services performed prior to the date of levy of Service tax - ₹ 3,50,000 (Assume service tax was levied from a specified date by change of law) (ii) Advance amount received in March, 2012 - ₹ 75,000 (No service was rendered and the amount was refunded to the client in July 2012) *(iii)* For free services rendered to customers, amount reimbursed by the manufacturer of such product (for the period after the imposition of service tax) - ₹ 50,000 (iv) Amounts billed and on which service tax is payable (excluding the items (i) to (iii) above) - ₹ 14,26,500. — Calculate the service tax liability duly considering the threshold limit.

Answer : In absence of any specific information, it is presumed that service tax is not charged separately. Hence, the amounts received are presumed to be inclusive of service tax. Tax liability of each transaction is as follows – (i) No tax payable (ii) Tax is payable on advance of ₹ 75,000 as service tax is payable by 31st March itself. If assessee gets refund later, he can adjust the service tax paid earlier in subsequent return (iii) Tax is payable on ₹ 50,000. Even if these are termed as 'free services', they are not actually free as the amount is received for that service from manufacturer (iv) Taxis payable on ₹ 4,26,500 as assessee can claim threshold exemption of ₹ 10 lakhs. — Thus, tax is payable on ₹ 5,51,500 (75,000 plus 50,000 plus 4,26,500). The amount is inclusive of service tax. Hence, net value for service tax is ₹ 5,00,000 (5,51,500 × 100/110.30). Hence, service tax payable is ₹ 50,000. Education cess @ 2% - ₹ 1,000. SANE cess - ₹ 500. Total service tax payable ₹ 51,500.

Illustration 24. X & Co. received the following amounts (i) Date of Receipt 20-04-2011- Rs.1,00,000 for services rendered in July, 2011 (ii) Date of Receipt 30-06-2011 - Advance for services to be rendered Z5,00,000. Services were rendered in July and August, 2011 (iii) Date of receipt 5-8-2011 - ₹ 50,000 for services rendered in April, 2011 for which billing was done on 1-8-2011 (iv) Date of receipt 10-09-2011 - Advance for service ₹ 3,50,000. A sum of ₹ 50,000 was refunded in April, 2012 after termination of Agreement. For the balance amount, service was provided in September, 2011. Compute: (i) The amount of taxable service for the first two quarters of the Financial Year 2011-12, assuming the assessee is eligible for payment of service tax on quarterly basis (ii) The amount of Service tax payable.

Answer : (i) and (ii) Service tax is payable on advance received also. Hence, for quarter April-June 2011, service tax is payable on advance of ₹ 6,00,000.

(iii) If service was rendered in April, 2011, that will be 'Point of Taxation' even if billing is done in August 2011. Hence, service tax on ₹ 50,000 is payable in April-June 2011 quarter.

These amounts are to be taken as inclusive of service tax and back calculations should be made. Hence, for April-June 2011, gross amount receives on which service tax is payable is ₹ 6,50,000. Assessable Value of service is ₹ 5,89,301.90 [6,50,000 × 100)/110.30]. Service tax @ 10% is ₹ 58,930.19. Education cess @ 2% is 21,178.61 and SAHE cess @ 1% is ₹ 589.30 (Total ₹ 6,50,000).

(iv) For quarter July-September 2011, value of service is ₹ 3,50,000. Hence, 'value' of service is ₹ 3,17,316.40 [(3,50,000 × 100)/110.30]. Service tax @ 10% is ₹ 31,731.64. Education cess @ 2% is ₹ 634.64 and SAHE cess @ 1% is ₹ 317.32 (Total ₹ 3,50,000).

In respect of amount of ₹ 50,000 refunded in April 2012, it is presumed that the amount was refunded as service was not provided. Hence, if Credit Note is issued to party with service tax, the excess service tax can be adjusted while making payment of service tax for the month of April, 2012.

[**Note** - If the period was prior to 31-3-2011, service tax was payable on receipt basis. Hence, in respect of ₹ 50,000 received in August, 2011, service tax would have become payable only in quarter July-September, 2011]

Illustration 25. M/s ABC Services Ltd. a service provider for the first time made an agreement on 22nd May, 2011 with XYZ Ltd. to provide different services covered under Business Auxiliary Services at a price of ₹ 80 lakhs (inclusive of service tax) per annum. They are not providing any other services except as above. As per terms of contract executed by ABC Services Ltd., an advance of 15% of contract price has been received for the services to be provided which would be adjusted against final bill in the end of the year. The bills raised and amount received (in ₹ lakhs) are given as follows - (1) Advance 15% of Contract price for service to be provided - Bill dated 1-6-2011 for ₹ 12 lakhs - Amount received ₹ 12 lakhs on 1-6-2011 ₹ 12 lakhs (2) 1st Bill for June 2011 for service provided - Bill dated 8-7-2011 for ₹ 25 lakhs. Amount received on 20-7-2011 ₹ 12 lakhs (3) 2nd Bill for July 2011 for service provided - Bill dated 5-8-2011 - ₹ 12 lakhs - Amount received on 18-8-2011 - ₹ 25 lakhs. Service tax due as per provision has been deposited in due time. Total gross value of services provided was ₹ 37 lakhs after which the contract was terminated with mutual consent. On closure of the contract amount of advance of ₹ 12 lakhs has been refunded to M/s XYZ Ltd. Please explain the following assuming service tax payable is 10.3% (and figures are expressed in ₹ in lakhs) - (i) What action should be taken by ABC Services Ltd. on execution of agreement on dated 22nd May, 2011? (ii) Can ABC Services Ltd. avail threshold limit for the year 2011-12, if so what is the amount? (iii) Is service tax payable on the advance of ₹ 12 lakhs for which no service has been provided in June 2011. How much advance is taken for computation of service tax? (iv) What is the value of services taken for computation and the amount of service tax paid through designated branches and on which dates? (v) What will happen to the service tax, if any, excess deposited for which no service was provided due to termination of contract and refund of the amount thereof?

Answer : (*i*) ABC Ltd. should apply for registration under service tax within 30 days *(ii)* Yes, upto first ₹ 10 lakhs advance received (in) Service tax is payable on ₹ 2 lakhs to be treated as inclusive of service tax (iv) Service tax payable on billing basis. These are to be treated as inclusive of service tax (v) The excess service tax paid can be adjusted against future payment of service tax. For which a credit note should be issued. This should be shown in the ST-3 return.

Illustration 26. Mr. Happy, a service provider, has provided services of ₹ 1,00,00,000. Out of this, ₹ 70,00,000 are taxable output services and ₹ 30,00,000 are exempt output services. Mr. Happy has opted not to maintain separate inventory and accounts and pay prescribed amount on value of exempt output services. Service tax paid on his input services, excluding education cess and secondary and higher education cess (EC & SAHEC) is ₹ 6,00,000 which do not include any service specified in rule 6(5) of the CENVAT Credit Rules, 2004. Rate of service tax, excluding. EC and SAHEC, is 10%. Calculate the tonal amount payable including Service tax, EC and SAHEC by Mr. Happy by GAR-7 challan.

Answer : Service tax payable on ₹ 70 lakhs @ 10% is ₹ 7,00,000. In addition, education cess @ 2% is ₹ 14,000 and SAHE cess is ₹ 7,000.

As per rule 6(3)(ii) of Cenvat Credit Rules, assessee can avail proportionate Cenvat credit i.e. ₹ 4,20,000 (70% of ₹ 6,00,000). Education cess would be ₹ 8,400 and SAHE cess ₹ 4,200.

Thus, assessee will be required to pay tax by GAR-7 challan as follows - (a) service tax - ₹ 2,80,000 (b) Education cess - ₹ 5,600 (c) SAHE cess - ₹ 2,800.

STUDY NOTE - 5

ADJUDICATION, PENALTIES AND APPEALS IN INDIRECT TAXES

This Study Note includes

- Common Topics in Indirect Taxes
- Adjudication in Indirect Taxes
- Enforcement Powers of Revenue Officers
- Penalties in Indirect Tax Laws
- Confiscation of Goods in Excise and Customs
- Prosecution for Offences
- Proof in adjudication and prosecution in indirect taxes

5.1 COMMON TOPICS IN INDIRECT TAXES

Three major indirect taxes, viz. Central Excise, Service Tax and Customs are being administered by single authority i.e. Central Board of Excise and Customs (CBE&C) under Ministry of Finance, Government of India. Final departmental appellate authority i.e. Tribunal is common. It is, therefore, natural that basic thinking and approach is same in all the legislations connected with these three taxes.

Many provisions of Central Excise are made applicable to service tax. Many provisions of customs law have been made applicable to Central Excise.

Provisions in respect of demands, refunds, penalties, appeals are common or similar

Provisions relating to demands, refunds, penalties and appeals are either common in all the three legislations or at least they are similar.

Assessee and assessment

Assessment means determining the tax liability.

Duty is paid by the manufacturer on his own while clearing goods from the factory/warehouse, on 'self assessment'. The assessee himself has to determine classifi cation and valuation of goods and pay duty accordingly.

Rule 2(b) of Central Excise Rules states that 'assessment' includes self-assessment of duty made by the assessee and provisional assessment made under Rule 7.

Who is 'assessee' - Rule 2(c) of Central Excise Rules states that 'assessee' means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored, and includes an authorized agent of such person.

Self-assessment - The assessment under Central Excise is basically an Invoice based self-assessment, except in case of cigarettes. Rule 6 of Central Excise Rules provides that the assessee shall himself assess the duty payable on excisable goods, except that that in case of cigarettes, the Superintendent or Inspector of Central Excise shall assess the duty payable before removal of goods.

The assessee has to submit monthly return in ER-1/ER-2/ER-3 form. The return has to be along with 'Self Assessment Memorandum', where Assessee declares that (a) the particulars in ER-1/ER-2/ER-3 return are correctly stated (b) Duty has been assessed as per provisions of Section 4 or 4A of CEA (c) TR-6 challans by which duty has been paid are genuine.

In case of service tax also, Section 70(1) of Finance Act, 1994 provides that every person liable to pay service tax shall himself assess the tax due and fi le return. The ST-3 return fi led by assessee contains a 'Self-Assessment Memorandum'.

Scrutiny of correctness of duty – After submission of return by assessee, first stage dealer and second stage dealer, the 'proper officer' will scrutinise the return on the basis of information contained in the return and further enquiry as considered necessary. The manner of scrutiny will be prescribed by CBE&C [Rule 12(3) – inserted w.e.f. 1-4-2005].

Every assessee shall make available to 'proper officer' all documents and records for verification as and when required by such officer [Rule 12(4)].

Assessment order in customs but not in excise and service tax - In case of customs, Bill of Entry (in case of imports) and Shipping Bill (in case of exports) is an assessment order. If the valuation shown by assessee is not accepted by department, order with reasons will have to be issued within 14 days. Appeal can be filed against the order. Mere fi ling of refund claim is not sufficient.

In case of excise and service tax, the assessee is required to fi le returns. Excise officers will not 'assess' the duty i.e. assessment order is not issued. If the officers are of opinion that there is short payment, show cause notice cum demand will have to be issued.

Provisional assessment

Rule 7 of Central Excise Rules make provisions in respect of provisional assessment. Provisional assessment can be requested by the assessee. Department cannot itself order provisional assessment.

Final assessment will be made later by Assistant/Deputy Commissioner after getting the required details. In case of such provisional assessment, demand can be raised within one year after the provisional assessment is finalised.

Overview of provisions of provisional assessment - An assessee can request for provisional assessment in following circumstances – (a) Assessee is unable to determine the value of excisable goods in terms of Section 4 of CEA on account of non-availability of any document or information *or* (b) Assessee is unable to determine rate of duty applicable.

In aforesaid cases, assessee may request Assistant/Deputy Commissioner in writing giving reasons for provisional assessment of duty. [Assessee should give reason why he wishes to have provisional assessment]. After such request, the Assistant/Deputy Commissioner may by order allow payment of duty on provisional basis. The Assistant/Deputy Commissioner shall also specify the rate or value at which the duty will be paid on provisional basis. [Rule 7(1)].

Payment of duty on provisional basis will be allowed subject to execution of bond for payment of differential duty [Rule 7(2)]. After that Assistant/Deputy Commissioner should pass order for fi nal assessment within 6 months from date of order of provisional assessment. This period can be extended by further 6 months by Commissioner and further without any time limit by Chief Commissioner [Rule 7(3)]. If differential amount is payable, interest is payable [Rule 7(4)]. If excess amount was paid, it is refundable with interest [Rule 7(5)]. The refund is subject to provision of unjust enrichment [Rule 7(6)].

Finalisation of provisional assessment

AC/DC is required to pass order of fi nal assessment after getting relevant information, within six months of date of communication of his order allowing provisional assessment. The period of 6 months can be extended by Commissioner of CE, on making a specific request, for reasons to be recorded in writing. Extension beyond one year for further period can be granted only by Chief Commissioner. [Rule 7(3) of Central Excise Rules].

No time limit for finalisation in case of customs – In *Shakti Beverages* v. *CC* 2003(153) ELT 445 (CEGAT 3 member bench), it was held that there is no time limit for fi nalising provisional assessment. The only question that can be considered by Tribunal is whether due to delay in finalising provisional assessment whether appellant has suffered any prejudice and whether there is violation of principles of natural justice. [The principle should apply to Central Excise also].

Interest payable/receivable - If differential duty is found to be payable, interest as specified in Section 11AA or 11AB will be payable by assessee from first day of the month succeeding the month *for which* such amount is determined till date of payment thereof. [Rule 7(4)].

Since the word used is '*for*', interest is payable from first day of next month after clearance of goods. For example, if goods were cleared on 15th October 2003 under provisional assessment and assessment was finalized on 25th March 2004, interest will be payable from 1st November 03 till date of payment.

If differential amount is found to be refundable to assessee, it shall be refunded with interest at rate as specified in Section 11BB from first day of the month succeeding the month *for which* refund is determined till the date of refund [Rule 7(5)]. Thus, interest is payable by department is on the same basis as payable by assessee, i.e. not from date of finalisation of provisional assessment, but from month next to the month on which duty was provisionally paid. [Note that u/s 11BB, interest on delayed refund is payable only three months after filing of refund application. This provision does not apply to refund obtainable after finalisation of provisional assessment].

Interest in case of customs - Section 18 of Customs Act (inserted w.e.f. 13-7-2006) makes provision for payment of interest after finalisation of provisional assessment.

Refund after finalisation of assessment

If duty is paid on provisional basis, refund claim can be filed within one year after duty is adjusted after final assessment. [*Explanation* B(eb) to Section 11B].

Refund subject to provision of unjust enrichment - Rule 7(6) of Central Excise Rules clarifies that refund is subject to provisions of 'Unjust Enrichment', i.e. refund will be granted to manufacturer if he has not passed on incidence of duty to another person – confirmed in *Hindustan Lever* v. *CCE* (2004) 171 ELT 12 (CESTAT).

In case of customs duty, there was no parallel provision in respect of provisional assessment. Section 18(5) of Customs Act inserted by Taxation Laws (Amendment) Act w.e.f. 13-7-2006, has made provision for unjust enrichment in case of customs duty refund when there was provisional assessment.

5.2 ADJUDICATION IN INDIRECT TAXES

Adjudicate means to hear or try and decide judicially and adjudication means giving a decision. As per Oxford Dictionary, 'adjudicate' means deciding judicially (regarding a claim etc.), pronounce.

Excise and customs authorities are empowered to determine classification, valuation, refund claims and the tax/duty payable. They are also empowered to grant various permissions under rules and impose fines, penalties, etc., and confiscate offending goods. Since the authorities are departmental officers, the process is called "departmental adjudication".

They are required to follow principles of natural justice. Their adjudicating powers are prescribed under Act and departmental circulars Their orders are appealable.

These are 'quasi judicial authorities' and they are not bound by any trade notice or instructions of superiors.

Uncontrolled authority may cause great damage to an assessee and hence opportunity of appeal against the order has been provided. The topmost authority of departmental appeal is "Tribunal" in excise and customs. The decision of the Tribunal is final as far as the departmental remedy of appeal is concerned. Provisions are available for appeal/reference to High Court/Supreme Court in limited cases. Needless to mention, writ jurisdiction of High Court and Supreme Court is independent of any provision/s of the Excise Act and Writ Petition can be filed in High Court/SLP in Supreme Court irrespective of any provision of Excise Act.

Principles of Natural justice - Basic requirements of principle of natural justice are – (a) Full information about charges (b) Allowing party to state his defence (Personal Hearing) (c) Unbiased authority (d) Order with reasons.

Adjudicating Authority - Section 2(a) of CEA defines 'adjudicating authority' as any authority competent to pass *any order or decision* under the Central Excise Act, 1944. However, Commissioner (Appeals) and Central Board of Excise and Customs are not 'adjudicating authority'.

Similarly, as per Section 2(1) of Customs Act, 'adjudicating authority' means any authority competent to pass any order or decision under Customs Act, but does not include CBE&C, Commissioner (Appeals) or Tribunal (CESTAT).

Section 73(1) of Finance Act, 1994 (which contains provisions relating to service tax), empowers Central Excise Officer to serve notice demanding service tax short levied or short paid and then determine the tax payable. Section 11B of Central Excise Act (relating to refunds) and Section 33A of Central Excise Act (relating to adjudication procedure) has been made applicable to service tax. Thus, 'central excise officer' is adjudicating authority for service tax purposes.

Thus, any order or decision under the Act by authority *other than* Commissioner (Appeals) and CBE&C is an *adjudication order*.

Section 35 of Central Excise Act, Section 128 of Customs Act and Section 85 of Finance Act, 1994 (which contains provisions relating to service tax), provide that any person **aggrieved** by *any decision or order* passed by Central Excise/Customs Officer (lower than rank of Commissioner) can appeal to Commissioner (Appeals). However, appeal against order of Commissioner can be fi led to Tribunal only if the decision or order is passed by Commissioner as *adjudicating authority*.

Adjudication in Indirect Taxes – Excise and Customs Officers are required to adjudicate matters in following cases.

Imposition of penalty and confiscation of goods - Various rules in Central Excise provide for penalty on persons and confiscation of goods. Commissioners of Central Excise have been authorised to impose penalty and Confiscate the goods vide Section 33 of CEA. In respect of Service Tax, Section 83A of Finance Act, 1994 (which contains provisions relating to service tax) empowers Central Excise Officers to impose penalties.

Demand of duty short paid/not paid - Demand of duty can be raised by any Central Excise Officer under Section 11A of CEA and Section 73 of Finance Act, 1994 (which contains provisions relating to service tax). However, these powers have been restricted as per departmental instructions.

Original Jurisdiction in excise, customs and service tax

Adjudication powers in Central Excise and service tax - Departmental authorities have original adjudication powers as briefed below : [CBE&C circular No. 752/68/2003-CX dated 1-10-2003 amended vide Circular No.865/3/2008-CX dated 19-2-2008]

Authority	Issue of SCN and Demand of duty	Remission of duty for loss of goods	Other powers
Commissioner	Without limit	Without limit	
Additional Commissioner	Between ₹ 20 lakhs to 50 lakhs	₹ 5,00,000	Cases relating matters under *proviso* to Section 35B(1) i.e. export under bond or under claim of rebate, loss of goods during transit to warehouse - without upper monetary limit
Joint Commissioner	Between ₹ 5 lakhs to 50 lakhs	₹ 5,00,000	Cases relating matters under *proviso* to Section 35B(1) i.e. export under bond or under claim of rebate, loss of goods during transit to warehouse - without upper monetary limit
Deputy/ Assistant Commissioner	Upto ₹ 5 lakhs	₹ 1,00,000	(1) Issue registration certificate (2) Refund claim without limit
Superintendent	No powers	Upto ₹ 10,000	

Note (1) Demand of duty or differential duty may be relating to * determination of valuation and/ or classification or * Cenvat credit cases or * duty short paid or not paid or erroneously refunded for any reason. Such demand may or may not contain for allegation of fraud, suppression of facts etc. (in other words, whether or not there is allegation of fraud/suppression of facts etc., the monetary limit of adjudication remains same.

Note (2) As per CBE&C circular No. 809/6/2005-CX dated 1-3-2005, in case of refund claim, AC/DC can pass order without any monetary limit. However, claims of ₹ 5 lakhs and above will be subject to preaudit at level of jurisdictional Commissioner.

Who can issue show cause notice - Show cause notice should be approved and signed by officer empowered to adjudicate the case.

Similar monetary limit in case of service tax demands – In case of service tax, similar monetary limits for imposing penalty have been prescribed. Following restrictions have been placed for imposing penalty u/s 83A, *vide* Notification No. 30/2005-ST dated 10-8-2005. Though the restrictions are only on imposing penalty, indirectly, they act as restriction on demand of service tax also, since almost any demand of service tax will involve proposal to impose penalty.

Adjudication powers in customs - Monetary penalties and confiscation can be ordered by departmental authorities themselves. These are '*quasi-judicial*' powers

The powers are as follows :

(a) Gazetted officer lower in rank than Assistant Commissioner (like Appraiser) : when the goods liable to confiscation does not exceed ₹ 10,000

(b) Assistant Commissioner/Dy Commissioner : when the goods liable to confiscation does not exceed ₹ 2,00,000

(c) Additional Commissioner or Joint Commissioner : ₹ 10 lakhs - *as per Board circular*

(d) Additional Commissioner or Joint Commissioner : without limit in cases of baggage and duty drawback

(e) Commissioner : without limit.

All notices pertaining to demands on account of collusion, wilful misstatement or suppression of facts will be issued only by Commissioner if demand is over ₹ 5 lakhs, even if demand is issued within six months/one year. In case of demand upto ₹ 5 lakhs, show cause notice for collusion, fraud, mistatement etc. can be issued by Additional Commissioner/Jt Commissioner. [CBE&C circular No 47/97-Cus dated 6.10.97]

It may be noted that as per Section 122 of Customs Act, Additional Commissioner or Joint Commissioner is authorised to adjudicate the cases without any limit of amount. Restriction of ₹ 10 lakhs is only by an administrative instructions.

Demand of customs duty and interest - As per Section 28 (1) of Customs Act, show cause notice for demand of customs duty and interest can be issued by *'proper officer'* i.e. an officer of customs who is assigned the functions to be performed under Customs Act, by Board or Commissioner of Customs (Chief Commissioner, Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner and Appraiser are all 'officers of Custom' and hence authority can be given to them by Board).

As per Section 2(34) of Customs Act, 'proper officer' in relation to functions to be performed under the Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs (Chief Commissioner, Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner and Appraiser are all 'officers of Custom' and hence authority can be given to them by Board).

Order valid for demands of duty if the officer exceeds monetary limit, but what about order of penalty and confiscation? - The limits prescribed for issue of show cause notice and adjudication of demands u/s 11A of CEA and Section 73 of Finance Act, 1994 are only as per administrative instructions. As per Section 11A of CEA, any Central Excise Officer can issue show cause notice and confirm demand. As per Section 28 of Customs Act, notice can be issued by 'proper officer'.

In *Pahwa Chemcials P Ltd*. v. *CCE* 2005 (181) ELT 339 (SC 3 member bench), it was held that notice can be issued and demand can be confirmed by any 'Central Excise Officer'. These statutory powers cannot be cut down that jurisdiction by issuing a circular. The circulars issued by Board (specifying powers of various officers) are nothing more that administrative directions allocating certain types of works to various class of officers These administrative directions cannot take away jurisdiction vested in Central Excise Officer under the Act. At the highest all that be said is Central Excise Officer as a matter of propriety, must follow the directions and deal with the work which has been allotted to him by virtue of these circulars. But if an officer still issues a notice or adjudicates contrary to the circulars, it would not be a ground for holding that he had no jurisdiction to issue the show cause notice or to set aside the adjudication — view confirmed in *Aeon's Construction Products* v. *CCE* 2005 (183) ELT 120 (SC 3 member bench).

Board can restrict powers of officers of confiscation of goods and imposition of penalty - The decision of Supreme Court in *Pahwa Chemicals P Ltd*. v. *CCE* 2005 (181) ELT 339 (SC 3 member bench) is based on provisions of Section 11A of CEA, where notice can be issued and demand can be confirmed by 'any Central Excise Officer'. However, Section 33 of CEA specifies powers of adjudication of confiscation and penalty. This Section confers very limited powers of confiscation of goods not exceeding ₹ 500 and imposition of penalty not exceeding ₹ 250 on Assistant Commissioner and Deputy Commissioner of Central Excise. *Proviso* to this Section states that CBE&C may confer on any officer the powers indicated in Section 33 of CEA (This Section has not been made applicable to service tax).

Section 33 of CEA does not make any provision in respect of issue of show cause notice. Hence, in *Aeon's Construction Products* v. *CCE* 2005 (183) ELT 120 (SC 3 member bench), it has been held CBE&C can limit or confer powers on officers of excise the powers of adjudication u/s 33 (in respect of powers to impose penalty and confiscation of goods), but powers to issue show cause notice cannot be restricted either under Section 11A or under Section 33, i.e. show cause notice proposing penalty and confiscation can be issued by any central excise officer.

Suggested time for adjudication - There is no statutory bar to adjudicate the matter. In *CCE* v. *Bhagsons Paint Industry* 2003 (158) ELT 129 (SC), adjudication nine years after a lapse of nine years after issue of show cause notice was held as permissible, particularly because it pertained to duty and not to penalty or interest (Of course, even in respect of notice for penalty or interest, there is no statutory time limit for adjudication).

Suggested time limit for passing order in case of demand of duty - Duty short levied or not levied should be determined within a period of 6 months, *as far as possible*. In case of short levy or non levy due to suppression of facts or collusion or wilful misstatement, duty should be determined within one year, *as far as possible*. [Possibly more time is given in case of suppression, collusion etc. are more evidence may have to be examined] [Section 11A(2A) of CEA - parallel Section 28(2A) of Customs Act]. The time limit is not mandatory but only suggestive.

Notices/demands under Customs Act – As per Section 28 of Customs Act, a notice can be issued and demand can be confirmed by 'proper officer'. As per Section 2(34) of Customs Act, 'proper Officer' in relation to any functions to be performed under the Customs Act, means the officer of customs who is assigned those functions by the Board or Commissioner of Customs.

Thus, in case of customs notices and demands, if an officer exceeds limit specified by CBE&C, he will not be 'proper officer' and notice/demand issued by him cannot be held as valid.

Review of order by adjudicating authority

After passing of judgment, decree or order, the court or tribunal becomes *functus officio* and thus being not entitled to vary the terms of judgments, decrees or orders earlier passed. Only accidental omissions or mistakes can be corrected. – *Dwarka Das* v. *State of MP* AIR 1999 SC 1031. Same principle applies to adjudicating authority also.

Once an order is passed by the authority, he becomes *'functus officio*'. He cannot revise or review his own order. [At the most, he can correct typographical or clerical or arithmetical mistakes].

5.3 ENFORCEMENT POWERS OF REVENUE OFFICERS

Excise and Customs Officers have powers of adjudication i.e. Demand of duty, imposing penalty and confiscation of goods, sanctioning of refund claim. Excise officers can audit accounts of assessee. Besides, they have powers of enforcement of law. These include visits, searches, seizures and arrests. The powers are similar in excise, customs and service tax, though there are variations depending on nature of each tax. In fact, some provisions of customs have been made applicable to central excise and some provisions of central excise have been made applicable to service tax.

Applicability of some provisions to service tax - Section 14 of Central Excise Act which makes provisions in respect of summons has been made applicable to service tax. Provisions relating to search and seizure (of documents or books or things) have been made applicable to service tax vide Section 82 of Finance Act, 1994.

However, provisions relating to seizure of goods and provisions relating to arrest are not applicable to service tax.

Some provisions of Customs Act applicable to excise - Section 12 of CEA authorises Central Government to apply provisions of Customs Act regarding levy, exemption, drawback, warehousing, offences, penalties, confiscation and procedure relating to offences and appeal to Central Excise, making suitable modifications and alterations to adapt them to circumstances. Under these powers, Notifi cation No. 68/63-CE dated 4th May, 1963 has been issued making some provisions of Customs Act applicable to Central Excise subject to some modifications.

Provisions of Customs Act, which are also made applicable to Central Excise Act are as follows –

- Section 105(1) - Powers of search
- Section 110 - seizure of goods, documents and things
- Section 115 - confiscation of conveyances
- Section 118(a) - confiscation of packages containing goods
- Section 119 - confiscation of goods used for concealing goods
- Section 120 - confiscation of goods even if form changes
- Section 121 - confiscation of sale proceeds of contravening goods
- Section 124 - issue of show cause notice before confiscation of goods
- Section 142(1)(b) - Recovery of duty
- Section 150 - procedure for sale of goods.

These powers are discussed at appropriate places.

Certain Officers required to assist Customs and Excise Officers - Following officers are empowered and required to assist officers of customs in the execution of Customs Act –

(a) Officers in Central Excise department

(b) Officers of Navy

(c) Officers of Police

(d) Officers of Central or State Governments employed at any port or airport

(e) Any other officer of Central or State Governments or local authority specified by Central Government in Official Gazette. [Section 151 of Customs Act]

Certain Officers required to assist CE officers - Section 15 of CEA specifi es that all officers of police and customs and all officers of Government engaged in the collection of land revenue, and all village officers are empowered and required to assist the Central Excise Officers in the execution of Central Excise Act.

Protection of Acts done in good faith - Section 40 of CEA (parallel Section 155 of Customs Act), provides that no suit, prosecution or legal proceedings shall lie against Central Government or any officer of Central/State

Government for anything done or intended to be done, in good faith, in pursuance of Central Excise Act or any Rule made thereunder. As per Section 40(2), if any proceeding (other than a suit) is to be commenced, one month advance notice is required to be given to Central Government.

This Section has been made applicable to service tax.

Power of visits and inspection

As per Rule 22(1) of Central Excise Rules, an officer empowered by Commissioner shall have access to any premises registered under CE Rules for purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. All officers in the rank of Inspector and above are authorised for this purpose. All officers of rank of an Inspector and above have been authorised under Rule 22(1) within their jurisdiction.

Rule 5A of Service Tax Rules provides that an officer authorised by the Commissioner in this behalf shall have access to any premises registered under service tax rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Visit Book of Excise Officers - Each factory is required to maintain a visit book in prescribed form. Inspector and Superintendent visiting the factory are required to fill in the book. The visit book should contain name and address of the factory, excisable items manufactured, Central Excise Commissionerate, division and range at the top. - [*CBE&C Circular No 3/90-CX dated 24-1-1990*].

Power of Customs Officers to inspect - Under Section 106A, Customs Officers have powers to inspect the premises intimated as storage places of 'notified goods' or 'specified goods'. The inspection can be at any reasonable time, with or without notice. The officers can check the records and inspect the goods. The person in charge of premises is required to produce accounts required to be maintained by 'notified goods' or 'specified goods'. Places other than those intimated under provisions of 'notified goods' or 'specified goods' cannot be inspected under this Section. (Since now there are no 'notified goods' or 'specified goods', these powers are redundant.)

Power to Stop conveyance, search and seize - Excise officers are empowered under Rule 23 of Central Excise Rules to search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty.

If Central Excise Officer has reason to believe that any goods, which are liable to excise duty but no duty is paid thereon or the said goods are removed with intention of evading the duty payable thereon, the Central Excise Officer may detain or seize the goods - Rule 24 of Central Excise Rules.

Vehicle carrying the goods can also be seized under Section 110 of Customs Act which is also made applicable to Excise.

These provisions are *not* applicable to service tax matters

Power to stop and inspect conveyance to Customs Officers - Customs Officer is empowered under Section 106 of Customs Act to stop any aircraft, vessel, vehicle or animal and to examine and search the aircraft, vehicle or vessel. He can break open any lock of door or package, if key is withheld. If the vessel, aircraft etc. does not stop or land after giving signals, it may be chased. If it refuses to stop after fi ring a signal, the vehicle may be fired upon.

Powers of Customs Officer

Some powers of Customs Officers are discussed below.

Power of Customs Officers to X ray bodies - Section 103 of Customs Act provides that if Customs Officer has reasons to believe that any person coming to India or leaving from India or any person in customs area has secreted inside his body any goods liable to confiscation, he can detain and take him to nearest magistrate. If the Magistrate is satisfied that reasonable grounds exist, he can order that body of such person may be X-rayed. The X-rays will be taken by a *qualifi ed radiologist* and his report may be given to Magistrate. If the report indicates that goods are secreted inside, he may direct that suitable action may be taken to take out goods as per advise of qualified doctor. Magistrate can order that the person may be kept in custody. If the person himself admits that the goods are secreted inside his body and voluntarily submits for action to bringing out the goods, X-ray etc. may not be taken.

Power to call for documents and examine a person - Under Section 107, an officer of Customs, empowered by Commissioner, during enquiry in connection with smuggled goods, may require any person to produce relevant document or examine any person acquainted with the facts of the case.

Power to Summons

Section 108(1) of Customs Act and Section 14(1) of CEA provides that Gazetted Officers of customs or any central excise officer empowered by Central Government to issue summons to any person for any inquiry which such Customs Officer is making under Customs Act. As per Section 108(2) of Customs Act and Section 14(1) of CEA, the empowered customs/excise officer can require a person to produce any document or any other thing relevant to enquiry. The customs/excise officer can examine a person.

Section 14 of CEA has been made applicable to service tax.

The term 'summons' means asking a person to appear before the named authority and give evidence and produce documents or other things.

Person summoned is bound to attend and state the truth upon any subject respecting which they are examined. [Section 14(2) of CEA - similar Section 108(3) of Customs Act].

The enquiry are 'judicial proceedings' within the meaning of Sections 193 and 228 of Indian Penal Code [Section 14(3) of CEA and Section 108(4) of Customs Act]. The provision applies to service tax also.

Exceptions u/s 132 of CPC (Code of Civil Procedure) are applicable to requisitions for attendance under this Section (In case of central excise, Section 133 of CPC also applies)

No right of silence - Section 14(2) of CEA and Section 108(3) of Customs Act specifically provide that all persons summoned shall be bound to state the truth upon any subject respecting which they are examined and to produce such documents and other things as may be required.

Section 14 of CEA is made applicable to service tax.

Power to arrest

Excise and Customs Officers have powers of arrest. These provisions are not applicable to service tax matters

Powers under Central Excise - An Excise Officer not below the rank of Inspector, to arrest a person whom they have '*reason to believe*' to be liable to be punished under provisions of the Act. Such arrest can be only with prior approval of Commissioner of Central Excise [Section 13 of CEA].

Power to arrest under customs - In case of customs, as per Section 104 of Customs Act, an officer of customs who has been empowered by Commissioner of Customs by general or special order, can arrest a person whom they have '*reason to believe*' to be liable to be punished under Sections 132 (false declaration, false documents), 133 (obstruction of officer of customs), 135 (refusal to be x-rayed), 135A (evasion of duty or prohibitions) or 136 (offences by officers of customs) of Customs Act.

No Powers of arrest under service tax – Section 13 of CEA is not applicable to service tax. Hence, provisions of arrest are not applicable to service tax matters.

Procedure for arrest - The officer can arrest him and inform him ground of arrest. The person arrested has to be forwarded to the Magistrate. He must be produced before a magistrate within 24 hours The magistrate may grant the bail on bond or refuse the bail and remand him to custody. Bail is at the total discretion of Court. Offences under Customs Act and Central Excise are non-cognizable.

The arrest should be as per provisions of Code of Criminal Procedure [Section 18 of Central Excise Act]. As per Section 50 of CrPC, person arrested should be informed full particulars of offence and his rights about bail. Section 57 of CrPC provides that arrested person should be taken to Magistrate within 24 hours.

Forward to magistrate or Police custody - The person arrested has to be forwarded to the Central Excise Officer who is empowered to send the arrested person to a Magistrate. If such empowered excise officer is not available within reasonable distance, the person may be sent to Officer-in-Charge of nearest Police Station [Section 19 of CEA]. *Superintendent of CE has been empowered for this purpose.*

Arrested person must be produced before Judicial Magistrate within 24 hours of arrest. Power to grant bail is normally exercised by a Judicial Magistrate.

Procedure if the person sent to excise officer - Excise Officer of rank of Superintendent or above will make enquiry into charges against the person arrested. While making enquiry, he has same powers as the officer-in-charge of police station [Section 21(1)(b) of CEA]. If he is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he can forward the person to Magistrate for bail or custody. [*proviso* (a) Section 21(2) of CEA].

Excise/Customs Officer also can release on bond - Central Excise Officer making arrest has powers to release a person on executing a bond, with or without sureties, and make a report to his superior officer. He can do so if it appears to him that there is no sufficient evidence or reasonable ground of suspicion against the accused person [*proviso* (b) Section 21(2) of CEA]. Superintendent of CE and officers above him have been empowered for this purpose - Notification No. 9/99-CE(NT) dated 10-2-1999.

Powers of Search

Search and seizure are coercive measures designed to be enforced forcibly against persons unwilling to be subjected to these operations.

Search as per CrPC - Section 18 of CEA and Section 82(2) of Finance Act, 1994 (which contains provisions relating to service tax), provides that all searches and seizures must be as per provisions of Code of Criminal Procedure.

Under Section 165 of CrPC, the requirements are : (*a*) The officer making investigation should have reason to believe that anything necessary for investigation may be found in a place within his jurisdiction (*b*) such thing cannot be otherwise obtained without undue delay (*c*) grounds of such belief should be recorded in writing and specifying the things for which search is to be made (*d*) the officer should search himself, if practicable or require any officer subordinate to him to make the search (*e*) authority to subordinate officer should be in writing, specifying the place to be searched and things for which search is to be made (*f*) copy of record made should be sent to Magistrate and should be furnished to the owner or occupier of the place searched, if he applies for the copies. The copies should be supplied free of cost.

Power to Search - Under Section 105 of Customs Act (made applicable to Excise also), Assistant/Deputy Commissioner of Central Excise/Customs, who has *reasons to believe* that any goods liable to confiscation or any document or thing relevant to any proceeding under CEA/Customs Act are secreted in any place, can authorise any Central Excise Officer upto rank of Inspector to search or he may himself search for such goods, documents or things (*in common discussions 'search' is called 'raid'*). Such authority will be by way of a search warrant signed by him under his seal. However, in urgent necessity, search can be carried out without a search warrant. Search warrant should be shown to the person in charge of the premises and his signature should be obtained. Search warrant should indicate the place to be searched, but name of person need not be mentioned as the search warrant is in respect of place and not person.

Special provisions of search under customs

Searches under Customs Act are stipulated under following categories : (i) searches of persons under Customs Area or people entering or leaving India – Section 100 of Customs Act (ii) Search of other persons by officer specifically empowered by Commissioner for search of gold, diamond etc. which are liable to confiscation – Section 101 of Customs Act (iii) searches of premises e.g. godowns, bank vaults, etc.

– Section 105 of Customs Act (iv) searches of conveyances, vehicles, etc. – Section 106 of Customs Act.

Provisions of Section 105 of Customs Act are made applicable to central excise also. These are discussed above. Other powers are discussed below.

Power of Customs Officers of search - Customs Officer can search a person if he has reason to believe that smuggled goods or documents relating thereto are secreted in his person (Section 100 of Customs Act).

Such search may be of (*a*) any person who has landed from or is about to board or is on board of a vessel or foreign going aircraft or vehicle arrived from or going to any place out of India (*b*) any person who has entered or is about to leave India (*c*) any person in Customs area. Before the search, at least two persons should be called to attend and witness the search. Search should be made in presence of them and list of things seized should be signed by the witnesses. [Section 102(4) of Customs Act].

A female can be searched only by a female. The person being searched can request that the search may be carried out before a Gazetted Officer or magistrate. If such requisition is made, search must be carried out before Gazetted Officer of customs or magistrate. [Section 102(2) of Customs Act].

Search before magistrate or gazetted officer - It has been held that it is mandatory to inform the person to be searched about his right to be searched only before a Gazetted Officer or magistrate. Violation of this requirement will be fatal to prosecution case and will vitiate the trial - *State of Punjab* v. *Balbir Singh* 70 ELT

481 (SC) = 1994 AIR SCW 1802 = 1994 (3) SCC 299 = AIR 1994 SC 1872.

Power to search other persons - The powers of search under Section 100 of Customs Act are in respect of people in customs area or people entering or leaving India only. However, as per Section 101 of Customs Act, an Officer of Customs *empowered by special order of Commissioner of Customs* can search *any person* (anywhere in India), if he has reason to believe that such person is carrying gold, diamonds, manufacture of gold and diamonds or watches, or any other class of goods as may be notified by Central Government *which are liable to confiscation*. Before the search, two or more persons should be called to attend and witness the search. Search should be made in presence of them and list of things seized should be signed by the witnesses [Section 102(4) of Customs Act]. A female can be searched only by a female. The person being searched can request that the search may be carried out before a Gazetted Officer or magistrate. If such requisition is made, search must be carried out before Gazetted Officer of customs or magistrate [Section 102(2) of Customs Act]

Search of premises - Under Section 105 of Customs Act, Assistant Commissioner of Customs, who has reasons to believe that any goods liable to confiscation or any document or thing relevant to any proceeding under Customs Act are secreted in any place, can authorise any Customs Officer or he may himself search for such goods, documents or things. Search should be as per provisions of Criminal Procedure Code, with the difference that report of search is to be submitted to Commissioner of Customs and not to Magistrate.

Powers of Seizure

If, during search, some goods are found, which are liable for confiscation, the same can be seized by excise officers

Seizure means to take possession of goods in pursuance of demand under legal right. Seizure is only taking goods in custody or detention. Ownership of goods remains with the owner even after seizure and he can get the goods released under bond. [**Confiscation** means the goods become property of Central Government].

Section 82(1) of Finance Act, 1994 (which contains provisions relating to service tax), empowers authorised Central Excise Officer to search and seize documents, books or things. *However, since there is no provision of confiscation of goods, any goods cannot be seized, if search relates to service tax only.*

Seizure under the Act - Vide Section 110 of Customs Act, which is also made applicable to Central Excise, Excise/ Customs Officer is empowered to seize the goods if he has reasons to believe that such goods are liable for confiscation under Central Excise Act, 1944/Customs Act. Vehicle carrying the contraband goods can also be seized. Goods can be seized by officer of rank of Superintendent and above.

If the goods are bulky, they can be kept in possession of the owner himself and a notice be served on him that he should not remove or in any way deal with the goods. [*proviso* to Section 110(1) of Customs Act].

Detention and seizure - Detention and seizure are not same. 'Detention' of goods means the officer asks the person to stop so that he can check goods, documents. Such detention is normally for short period and officer does not take possession of goods. No documents are prepared. Detained goods can be released without any formality after excise officer is satisfied that goods are not contraband. The release can be made by Superintendent also.

Seizure means to take possession of goods in pursuance of demand under legal right. The officer takes actual or constructive possession of goods after making seizure memo i.e. *panchanama*. After goods are seized, these can be released only after following proper procedure. Usually, these are released under bond.

Thus, simple detention is without seizure of goods, while seizure necessarily means detention plus taking possession of goods by excise/Customs Officer.

Seizure of documents – Documents relevant to proceedings under the Customs Act can also be seized. The person from whom the documents are seized is entitled to take extracts therefrom in presence of Customs Officer [Section 110(4) of Customs Act which is also made applicable to Central Excise, except that in place of 'customs', 'excise' is substituted].

The person from whom the documents are seized is entitled to take extracts therefrom in presence of Central Excise Officer not below the rank of sub-inspector.

Provisional release of seized goods - Seized goods and vehicles can be provisionally released by the Excise/ Customs Officer on such conditions as he may deem fit.

Provision in case of customs – As per Section 110A of Customs Act [inserted by Taxation Laws (Amendment)

Act w.e.f. 13-7-2006], seized goods, documents or things can be provisionally released to the owner, on execution of a bond with security and conditions as may be required by Commissioner of Customs.

Return goods within 6 months if no SCN - If seized goods are felt to be liable for confiscation, a show cause notice has to be served giving him grounds for confiscation, asking his representation and giving him opportunity of personal hearing as per Section 124 of Customs Act, which is also made applicable to Central Excise. Vide Section 110(2) of Customs Act which is also made applicable to excise, if no show cause notice is issued within six months, the goods ***shall*** be returned to person from whose possession they were seized. This period can be further extended by six months on sufficient cause, by Commissioner of Central Excise. Since the words used are 'shall be returned', it has been held that it is a mandatory requirement. The owner of goods gets a civil right and goods must be returned even if no application is made.

This period of 6 months can be further extended by six months on sufficient cause by Commissioner of Customs.

5.4 PENALTIES IN INDIRECT TAX LAWS

The word 'Offence' is not defined in Excise law. It is not defined in the Constitution, but Article 367 of the Constitution says that unless the context otherwise provides for, words not defined in Constitution, the meaning assigned in the General Clauses Act, 1897 may be given. - - Section 3(8) of General Clauses Act defines *Offence* as any act or omission made punishable by any law for the time being in force.

Civil and criminal punishment - The Central Excise and Customs Law envisages two types of punishments.

Civil Liability - Penalty for violation of statutory provisions involving a penalty of money and confiscation of goods. This is a civil penalty and can be adjudged in departmental adjudication. This penalty can be imposed by excise and customs authorities like Commissioner, Dy. Commissioner, Assistant Commissioner, etc. within the powers granted to them. These penalties are provided in various Central Excise Act and Rules and Customs Act.

Criminal Liability - Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. These are provided in Central Excise Act and Customs Act.

Finance Act, 1994 (which contains provisions relating to service tax) does not provide for criminal liability in service tax matters.

Section 34A of CEA and Section 127 of Customs Act specifically provide that confiscation made or penalty imposed under the Act (by departmental authorities) shall not prevent infliction of any other punishment to which the person affected is liable. Thus, both departmental penalties and criminal prosecution for same offence is permissible.

Penalty and punishment for same offence - Article 20(2) of Constitution of India provides that no person can be punished twice for the same offence. In *Shiv Dutt Rai Fateh Chand* v. *UOI* (1983) 53 STC 289 (SC) = AIR 1984 SC 1194 = (1984) 145 ITR 664 (SC), it was observed that the word 'offence' as mentioned in Article 20 relates to persons who are charged with a crime before criminal court. — It does not include 'penalty' levied under tax laws imposed by departmental authorities. A penalty imposed by tax authorities is only a civil liability.

Departmental adjudication and criminal proceedings independent - Pending criminal matter is not impediment to proceed with the civil suit - *State of Rajasthan* v. *Kalyan Sundaram* - (1996) 86 Comp Cas 433 (SC). In *Santram Paper*

Mills v. *CCE* 1997(96) ELT 19 (SC), it was held that criminal proceedings shall be determined on its own merits and according to law, uninhibited by the findings of the Tribunal.

Mens Rea in Penalty provisions - *Mens rea* means guilty mind. Normally, penalty is levied if violation is intentional. However, in many penal provisions in taxation laws, the liability is absolute, i.e. penalty is leviable irrespective of intention. Penalty is leviable for violation of rules - it does not matter whether it is a genuine mistake, lack of knowledge, negligence or intentional violation of rules. This can be considered only while deciding ***quantum of penalty leviable***.

Rule 25(1)(d) of Central Excise Rules provides penalty for contravention of rules if it is with *intention to evade duty*. Penalty provision in Rule 15 of Cenvat Credit Rules also makes no mention of state of mind. However, definition of 'reasonable steps' [*Explanation* to Rule 9(3) of Cenvat Credit Rules] states that the manufacturer should 'satisfy himself' about identity of supplier of goods on which Cenvat credit was taken. Except in these cases, other penalty provisions do not describe any state of mind. 'Intention to evade', 'wilfully, 'knowingly', 'satisfy himself' etc. are states of mind. These are difficult to prove.

In case of service tax, Section 76 (penalty for failure to pay service tax) and Section 77 (penalty for contravention of any provision for which no penalty is provided), do not envisage *mens rea*. Section 78 of Finance Act, 1994 provides for penalty in case of fraud, collusion, wilful misstatement or suppression of facts. This obviously requires *mens rea.*

Hon. Supreme Court, High Courts and Tribunals have consistently held that *mens rea* is not an essential ingredient for imposing a penalty unless statute specifically prescribes so. In economic crimes and departmental penalties, '*mens rea*' is not essential for imposing penalty - *R S Joshi* v. *Ajit Mills* - AIR 1977 SC 2279 = (1977) 40 STC 497 = 1979 UPTC 171 (SC 7 member bench).

Penalties under Central Excise Act

Excise authorities are empowered to impose penalties like fines, confiscation of goods, etc., which are provided in Central Excise Rules. Some rules themselves provide penalty for violating those rules, while some are general penalties. Excise Officers can impose (a) Penalty for violation of law (b) Confiscate the goods (c) Give option to pay fine in lieu of confiscation i.e. redemption fine. Court of Law can impose fine, imprisonment as well as confiscation of goods.

General Penalty provisions – Rule 25 of Central Excise Rules provide general provisions for breach of various rules. Under Rule 25(1) of Central Excise Rules, following are offences :

- Removing excisable goods in contravention of Excise Rules or notifications issued under the rules [Rule 25(1)(a)].
- Not accounting for excisable goods manufactured, produced or stored [Rule 25(1)(b)].
- Engaging in manufacture, production or storage of excisable goods without applying for registration certificate u/s 6 of CE Act [Rule 25(1)(c)].
- Contravening any provision of Central Excise Rules or notifications issued under these rules *with intent to evade* payment of duty [Rule 25(1)(d)].

Penalties imposable under Rule 25 - Penalty for violations prescribed in Rule 25 (earlier Rule 173Q) is –

(a) confiscation of contravening goods

(b) penalty upto duty payable on such contravening goods or ₹ 2,000 whichever is higher.

The Central Excise Officer will follow principles of natural justice while issuing the order [Rule 25(2)].

Residual Penalty under Central Excise - Rule 27 of Central Excise Rules is a residual penalty, which is that for breach of any excise Rule, if no penalty has been prescribed, the penalty would be ₹ 5,000 plus confiscation of goods in respect of which offence has been committed. [The Rule does not use the word 'notification'. Hence, it can be argued that no penalty can be imposed for violation of provision of any notification].

Mandatory penalty in case of fraud, suppression of facts etc. in excise and customs.

Provisions of Rule 25(1) are subject to Section 11AC of CEA, which means that provisions of Section 11AC of CEA prevail over provisions of Rule 25(1).

Mandatory penalty in case of fraud etc. - A mandatory penalty equal to the duty short paid or not paid or erroneously refunded is payable if such non-payment or short payment or erroneous refund was due to fraud, collusion, wilful mistatement or suppression of facts etc. [Section 11AC of CEA, similar Section 114A of Customs Act].

In case of service tax, Section 78 of Finance Act, 1994 does provide for penalty in case of fraud, suppression of facts, wilful misstatement or collusion, but penalty can be reduced u/s 80 if reasonable cause is shown.

In case of non-payment or short payment of duty due to fraud, wilful misstatement etc. there is mandatory penalty equal to duty evaded under Section 11AC of CEA - *neither more nor less*. CBE&C has confirmed that under Section 11AC of CEA (parallel Section 114A of Customs Act), there is no discretion to adjudicating authority to impose penalty less than or more than the amount of duty evaded.

Provisions of Section 114A of Customs Act are similar, the only difference is that the Section provides both for duty and interest. The distinction has been made as interest is payable under Customs Act if duty is not paid within five days from date of assessment on Bill of Entry.

Penalty u/s 114A will be equal to duty *and* interest (though the word used in the Section are '*or*'). – CBE&C circular No. 61/2002-Cus dated 20-9-2002. [In case of Central Excise, question does not arise as Section 11AC of CEA only uses the word 'duty'].

As per *proviso* to Section 11AC of CEA and Section 114A of Customs Act, if the duty, interest and penalty is paid within 30 days from communication of order, mandatory penalty payable u/s 11AC of CEA (parallel Section 114A of Customs Act) will be reduced to 25% - followed in *Finolex Industries Ltd*. v. *CCE* (2007) 208 ELT 88 (CESTAT).

If extended period of limitation is not available, penalty (u/s 11AC or 114A) is not imposable – *Pahwa Chemicals* v. *CCE* 2005 (189) ELT 257 (SC).

Voluntary payment when notice alleging fraud/suppression received – Even in cases where notice alleges suppression of facts, fraud, wilful misstatement or collusion, if assessee pays duty and interest within 30 days, penalty will be reduced to 25%. He can even make part payment of duty demanded.

Personal penalty on director, partners and employees

Normally, penalty is imposed on the company/firm which has committed an offence. The penalty under Rule 25(1) is on the company or firm.

Though Company is an independent legal person, it works through Managing Directors, directors and employees. In case of firms, it works through partners and employees. Hence, in addition to penalty that may be imposed on the company/firm, personal penalty can be imposed on the person who was actually involved in committing the offence.

Penalty for knowingly dealing in goods liable to confiscation - Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or rules, shall be liable to a penalty upto the duty payable on such goods or ₹ 2,000 whichever is greater – Rule 26(1) of Central Excise Rules. [The minimum penalty of ₹ 10,000 reduced to ₹ 2,000 w.e.f. 11-5-2007].

Note that Rule 26 imposes personal liability ***only*** *of penalty and* ***not*** *of duty involved.*

Thus, a director or partner or an employee or transporter will be personally liable to penalty if he is personally involved in clandestine removal etc.

Penalty for issuing false invoice or document for availing ineligible Cenvat credit - Any person who issues (i) an excise duty invoice without delivery of goods mentioned therein or abates in making such invoice or (ii) any other document or abates in making such document, on the basis of which the user of the said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of Cenvat credit or refund, shall be liable to a penalty not exceeding the amount of such benefit or ₹ 5,000 whichever is greater [Rule 26(2) inserted w.e.f. 1-3-2007].

Publication of name of defaulters

Central Government can publish name and other particulars of a person in relation to any proceedings or prosecution under Central Excise Act or Customs Act, if in its opinion, it is in public interest to do so [Section 37E(1) of Central Excise Act and Section 154B(1) of Customs Act, inserted by Taxation Laws (Amendment) Act w.e.f. 13-7-2006]. Name of directors, partners or managers. or members of association can be published, if circumstances justify such publication [*explanation* to Section 37E(2) and Section 154B(2) of Customs Act, inserted by Taxation Laws (Amendment) Act w.e.f. 13-7-2006].

Publication relating to penalty imposed shall not be made if appeal is pending with Commissioner (Appeals) or Tribunal [Section 37E(2) of Central Excise Act and Section 154B(2) of Customs Act, inserted by Taxation Laws (Amendment) Act w.e.f. 13-7-2006].

Similar provision has been made in case of service tax under Section 73D of Finance Act, 1994.

5.5 CONFISCATION OF GOODS IN EXCISE AND CUSTOMS

Some provisions of Customs Act relating to search, seizure, confiscation and recovery of duty have been made applicable to Central Excise subject to some modifications.

Provisions of confiscation of goods have not been made applicable to service tax.

Contravening goods liable to confiscation - Under Rule 25 of CE, following goods are liable to confiscation * excisable goods removed in contravention of Central Excise rules, * excisable goods not accounted for * Excisable goods manufactured without registration of the factory.

Confiscation of Conveyance - As per Section 2(9) of Customs Act, 'conveyance' includes a vessel, an aircraft and a vehicle.

Following conveyances are liable to confiscation under Section 115(1) of Customs Act, which is also made applicable to Central Excise :

(a) Any conveyance from which goods are thrown overboard or destroyed to prevent seizure by officer of customs.

(b) Conveyance which is required by Customs Officer to land or stop for inspection but fails to do so.

(c) Conveyance by which warehoused goods are cleared for export, but goods are unloaded without permission.

(d) Conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of vessel is able to account for the loss of or deficiency in goods.

Confiscation of Conveyance for transport of smuggled goods - Section 115(2) of Customs Act provides that any conveyance or animal used as a means of transport in smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of conveyance proves that the conveyance was used without the knowledge or connivance of the owner, his agent and the person in charge of the conveyance.

If such conveyance is used for carriage of goods or passengers for hire, the owner of conveyance shall be given an option to pay fine in lieu of confiscation. The fine shall not exceed market price of smuggled goods. Market price means the market price at the date when goods were seized [*proviso* to Section 115(2)].

This Section, which is also made applicable to Central Excise provides that conveyance used as transport for removal of excisable/prohibited goods in contravention of provisions of Central Excise Rules/Customs Act is liable for confiscation. However, conveyance used for transport of contravening goods will not be liable for confiscation, if the owner of conveyance proves that the conveyance was used without the knowledge or connivance of the owner, his agent or person in charge of the conveyance. Further, if the conveyance is normally used for hire, the owner shall be given option to pay fine not exceeding the market price of contravening goods being removed instead of confiscation of vehicle.

No confiscation of container - It has been held that 'container' obtained on hire and in which goods are 'stuffed' is not a 'package' and it cannot be Confiscated. - *United States Lines Agency* v. *CC* (1998) 101 ELT 602 (CEGAT).

Confiscation of goods used for concealing - Goods used for concealing contravening excisable goods are liable for confiscation (except conveyance, for which separate provisions have been made) [Section 119 of Customs Act which is also made applicable to CE].

Distinction between conceal and cover - In *Mazda Chemicals* v. *CC* 1996(88) ELT 767 (CEGAT), it was held that there is difference between 'coverage and concealment'. It was held that Section 119 of Customs Act is applicable only when goods have actually been used for concealment of contraband items and not for coverage of the same [Conceal implies deliberate and intentional attempt, while in case of 'cover', the owner of such goods will not be even aware that his goods are being used to cover the smuggled goods].

Confiscation even if form changes - Contravening goods are liable for confiscation even if there is any change in its form. If the contravening goods are mixed with other goods and they cannot be separated, whole goods are liable for confiscation. If the owner proves that he had no knowledge that the goods included contravening goods, only that part of goods, value of which is equal to value of contravening goods shall be liable to confiscation [Section 120 of Customs Act which is also made applicable to CE].

Confiscation of sale proceeds - If the contravening goods are found to have been sold, sale proceeds of such sale are liable to confiscation [Section 121 of Customs Act which is also made applicable to CE]. The burden is on department to prove that (*i*) there was a sale (*ii*) the sale must be by a person having knowledge or reason to believe that the goods were of smuggled origin (*iii*) the sale proceeds are of the goods liable to confiscation *(iv)* seller and purchaser and quantity must be established by Customs authorities. - *Ramchandra* v. *CC* - 1992 (60) ELT 277 (CEGAT)

Disposal of seized/Confiscated goods - Goods Confiscated can be disposed off if redemption fine is not paid. Usual procedure is to auction the goods.

Redemption fine

After goods are Confiscated, these become property of Central Government and Government can sell/auction the goods. However, in some cases, the person from whom goods were seized can get them back on payment of fine. This fine is termed as 'redemption fine'.

Redemption fine in lieu of confiscation - Section 125(1) of Customs Act provides that whenever confiscation of goods is ordered, the adjudicating officer ***may*** give option to owner of goods to pay 'fine' in lieu of confiscation, if the importation or exportation of goods was prohibited. However, if importation or exportation of goods was not prohibited, the option to pay redemption fine ***shall*** be given to owner of goods. This is called 'redemption fine'. After payment of redemption fine, the goods are returned to the owner of goods. Section 125(2) of Customs Act makes it clear that where any fine in lieu of goods is imposed, the owner of goods or the person from whom the goods were seized, is liable to pay duty and charges in respect of such goods, in addition to the fine.

Limit for imposing redemption fine – As per *proviso* to Section 125(1) of Customs Act, redemption fine upto market price of goods less duty chargeable thereon can be imposed. [Of course, in addition, duty and charges (e.g. demurrage, storage charges, interest etc.) in respect of such goods is also payable, which is made clear in Section 125(2) of Customs Act].

As per Section 2(30) of Customs Act, 'market price' in relation to goods means the wholesale price of the goods in the ordinary course of trade in India.

Provision in Central Excise for redemption fine - Though Section 125(1) of Customs Act is not made applicable to Central Excise, as per Section 34 of CEA, such option must be given to assessee to pay redemption fine in lieu of confiscation. Normally, such option is always given to assessee.

5.6 PROSECUTION FOR OFFENCES

Excise and Customs Law provides stiff punishments of imprisonment and fines for violation of law. These can be imposed only by *Court of Law* and these are independent of penalties and confiscation that can be imposed by Excise Authorities through departmental adjudication. Hon. Supreme Court has held that both can be imposed simultaneously.

Finance Act, 1994 (which contains provisions relating to service tax) does not make any provision in respect of criminal liability.

Offences under the Central Excise Act - Section 9 of CEA defines offences which are criminal offences under the Act. Section 9 of Central Excise Act makes following as offences punishable

- Contravening provisions of restrictions of possession of goods in excess of prescribed quantity as prescribed under Section 8.
- Evading payment of duty payable under CEA.
- Removing excisable goods or concerning himself with such removal, in contravention of provisions of Central Excise Act and Rules.
- Acquiring or in any way concerning himself with transporting, depositing, concealing, selling, purchasing or otherwise dealing with excisable goods where he knows or has reason to believe that the goods are liable to confiscation under Central Excise Act or Rules.
- Contravening any provision of Central Excise Act or rules in relation to Cenvat credit.
- Failure to supply information or knowingly supplying false information.
- Attempting to commit or abetting commission of an offence regarding evasion of duty or transit of goods or restriction on storage of goods or non-registration of a unit.

As per Section 135A of Customs Act, preparation for illegal export is an offence.

Punishment that can be imposed under Central Excise Act - Punishment imposable is imprisonment upto seven years and fine (without limit) if (*a*) the duty leviable on the excisable goods exceeds one lakh of rupees [Section 9(1)] *or* (*b*) a person already convicted for offence under Central Excise Act is convicted again [Section 9(2)]. The imprisonment should be minimum for six months unless there are special and adequate reasons for granting lesser punishment. If the duty leviable on goods is less than ₹ 1 lakh, imprisonment upto three years or fine (without limit) *or both* can be imposed.

Further punishments - In addition to aforesaid, Court has powers to order following punishment

(a) Forfeiture to Government of any goods in respect of which offence has been committed and packages, vehicles or conveyance, or machinery used in manufacture of the goods. - Section 10 of CEA. [The forfeiture is different than the power of confiscation available to Excise authorities. The difference is that if the goods are Confiscated, option has to be given by departmental adjudicating authorities to the offender to redeem the goods i.e. take back the goods, on payment of prescribed penalty. In case of forfeiture, no such option is to be given by Court].

(b) Publication of names, place of business or residence, nature of contravention etc., under Section 9B of CEA – parallel Section 135B of Customs Act. Such publication will be at the cost of accused and in newspaper or otherwise as directed by Court.

Publication of name by department – Department itself can publish name and other particulars of a person relating to any penalty proceedings or prosecution. See under 'penalty'.

What are 'Special and adequate reasons' - Minimum punishment is imprisonment of six months in case of offences involving goods over ₹ 1 lakh *or* for habitual offenders; unless there are special and adequate reasons for awarding lesser imprisonment. Section 9(3) of CEA [Parallel Section 135(3) of Customs Act] provides that following ***will not be*** considered as special and adequate reasons

(a) accused is convicted for first time

(b) in departmental adjudication, penalty has already been imposed on him or the goods in respect of the offence have been Confiscated

(c) Accused was not principal offender and he was a secondary party in the commission of offence or

(d) Age of accused (too young or too old).

Lesser penalty imprisonment can be imposed only for reasons other than these reasons. The reasons for awarding less punishment should be recorded in writing in the judgment.

Offences under Customs Act

Main penal provision contained in Section 135 of Customs Act is in respect of evasion of duty and breaking prohibitions under the Act.

Who can be punished - The punishment is imposable on a person (*a*) who is knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt to evasion of duty *or* of any prohibition imposed on the imports/export of such goods (*b*) who acquires possession or is any way concerned with carrying, harbouring, keeping, concealing, selling or purchasing, or otherwise dealing with goods which he knows or has reason to believe are liable to confiscation under Section 111 i.e. improper imports or under Section 113 i.e. attempt to improperly export (c) who attempts to export any goods which he knows or has reason to believe are liable to confiscation u/s 113. (d) who fraudulently avails or attempts to avail duty drawback or exemption from duty provided in Act in connection with export of goods [Section 135(1) as amended w.e.f. 11-5-2007]

Punishment that can be imposed - Punishment imposable is as follows

(a) If offence relates to - (A) goods with market price exceeding ₹ one crore (B) duty evaded or attempted to be evaded exceeds ₹ 30 lakhs (C) prohibited goods notified by Central Government or (D) drawback or duty exemption fraudulently availed exceeds ₹ 30 lakhs - imprisonment can be upto seven years and fine (minimum one year in absence of special and adequate reasons) - Section 135(1)(i) of Customs Act amended w.e.f. 11-5-2007.

(b) In other cases - imprisonment upto three years or fine or both - Section 135(1)(ii) of Customs Act amended w.e.f. 11-5-2007.

(c) repeat conviction : If a person already convicted for offence under Customs Act is convicted again, the imprisonment punishment can be seven years and fine and in absence of special and adequate reasons, the punishment shall not be less than one year. [Section 135(2) amended w.e.f. 11-5-2007]

Meaning of 'Special and adequate reasons' - Minimum punishment is imprisonment of one year in case of offences involving goods over ₹ 1 crore; unless there are special and adequate reasons for awarding lesser imprisonment. Section 135(3) of Customs Act provides that following ***will not be*** considered as special and adequate reasons: (*a*) accused is convicted for fi rst time (*b*) in departmental adjudication, penalty has already been imposed on him or the goods in respect of the offence have been Confiscated (*c*) accused was not principal offender and he was a secondary party in the commission of offence or (*d*) age of accused (too young or too old). Lesser penalty imprisonment can be imposed only for reasons other than these reasons. These should be recorded in writing in the judgment.

Publication of Name - If a person is convicted under this Act, Court can order publication of names, place of business or residence, nature of contravention etc., under Section 135B of Customs Act. Such publication will be at the cost of accused and in newspaper or otherwise as directed by Court.

Offence in case of Company - Though Company is an independent legal person, it works through Managing Directors, directors and employees. Personal penalty can be imposed on person in-charge or responsible to pay customs duty. If an employee is involved in fraud, penalty can be imposed on him. The provisions are common for excise and customs and are discussed later in this chapter.

Other minor Offences under Customs Act - Other minor offences under Customs Act are as follows.

False declaration - Person making, signing or using any statement, declaration or document knowing or having reason to believe that such statement, declaration or document is false in any material particular, shall be punishable with imprisonment upto two years or fine or both (Section 132 of Customs Act) (The period of imprisonment was six months upto 13-7-2006).

Obstruction of officers of customs - If any person intentionally obstructs any officer of Customs in exercise of any powers conferred under the Customs Act, he shall be punishable with imprisonment upto two years or fine or both (Section 133 of Customs Act) (The period of imprisonment was six months upto 13-7-2006).

Refusal to be X-rayed - If any person refuses to take X-ray picture of his body in accordance with order of Magistrate or refuses to allow suitable action to be taken to bringing out goods from his body under supervision of a doctor, he shall be punishable with imprisonment upto six months or fine or both (Section 134 of Customs Act). This provision is mainly in respect of persons smuggling goods by hiding the same in their body.

Preparation for improper export - Attempting to make exports in contravention of Customs Act is punishable with imprisonment upto three years or fine or both.

Offence by Officers of Customs - If an Officer of Customs enters into any agreement to do or abstain from doing or permits any act or connives at any act or thing, whereby any fraudulent export is effected, or by which duty of customs is evaded or prohibited goods are allowed to enter India or go out of India, he shall be punishable with imprisonment upto a term of three years or with fine, or both. [Section 136(1) of Customs Act].

If any Customs Officer (a) Requires a person to be searched for goods without any reason to believe that he has such goods (b) Arrests a person without any reason to believe that he has committed an offence u/s 135 or (c) Searches or authorises search without any reason to believe that any goods, documents or things are secreted in the place; he shall be punishable with imprisonment upto 6 months or fine upto ₹ 1,000 or both. [Section 136(2) of Customs Act].

If an officer of customs discloses any information obtained by him in official capacity, he shall be punishable with imprisonment upto 6 months or fine upto ₹ 1,000 or both. Of course, he can disclose the information in discharge of his duties on in compliance with any law in force. [Section 136(3) of Customs Act].

The prosecution can be launched in Court only with previous sanction of Central Government in case of prosecution against officer of rank of Assistant Commissioner and above. In lower ranks, previous sanction of Commissioner is required. [Section 137(2) of customs Act].

Who can be punished

Any person who commits an offence as prescribed is punishable.

Offences in case of company or firm - In case of Company or partnership firm, every person who was incharge of or was responsible to affairs of the Company/firm is deemed to be guilty. Normally, a Managing Director (partner in case of firm) or other person specially authorised is deemed to be in-charge. However, such person can prove that offence was committed without his knowledge or he had taken due care to prevent the offence [Section 9AA(1) of CEA – parallel Section 140(1) of Customs Act].

In addition, if it is proved that the offence in relation to Company is committed with consent or connivance of, or due to neglect on part of any director, manager or Secretary or other officer of Company or partnership firm, such person shall be deemed to be guilty [Section 9AA(2) of CEA – parallel Section 140(2) of Customs Act].

Difference between provisions of Section 9AA(1) and Section 9AA(2) of CEA [parallel Section 140(1) and Section 140(2) of Customs Act] is that in former case, the person in charge is deemed to be guilty and burden of proof is on him to prove that he had no knowledge; while in later case, burden of proof is on prosecution to prove that offence was committed with knowledge or connivance of the director, manager, secretary or other officer.

Company includes firm and AOP – As per *explanation* to Section 9AA(2) of CEA and Section 140(2) of Customs Act, 'company' means any body corporate and includes a firm or other association of individuals, and 'director' in relation to firm means a partner of the firm.

Mens Rea presumed - State of mind (culpable mental state) like intention, motive, knowledge of a fact or belief in a fact or reasons to believe in a fact are difficult to prove. Section 9C of CEA [parallel Section 138A of Customs Act], therefore, provides that such mental state shall be *presumed* by Court. Prosecution (here the Excise/ customs department) need not prove the guilty state of mind of the accused. If the accused claims that he did not have *guilty mind*, **he** has to prove the same. In legal terminology, it is explained as "*burden of proof regarding non existence of '**Mens rea**' is on the accused*". This proof has to be '**beyond reasonable doubt**'.

Cognizance of Case - Offences under Central Excise and Customs are non-cognizable [Section 9A of CEA and Section 104(4) of Customs Act]. - . – As per Section 2(c) of CrPC, 'cognizable offence' means an offence for which a police officer may arrest without warrant. As per Section 155 of Criminal Procedure Code, a police officer cannot investigate a non-cognizable case without the order of a Magistrate [A police officer can investigate cognizable case without order of Magistrate].

According to Black's Law Dictionary, cognizance means 'jurisdiction' or the 'exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking the notice of – *State of Himachal Pradesh* v. *M P Gupta* 2003 AIR SCW 6887.

Cognizance of case in customs law – Section 104(4) of Customs Act provides that offences under Customs Act are not cognizable. As per Section 137(1) of Customs Act, Court cannot take cognizance of any offence u/ss 132, 133, 135, 135 or 135A of Customs Act, without previous sanction of Commissioner of Customs. In case of offence u/s 136 against officer of customs, sanction of Central Government/Commissioner is required without which cognizance of offence cannot be taken by Court. – Section 137(2) of Customs Act.

No time limit for launching prosecution - Economic Offences (Inapplicability of Limitation) Act provides that there is no time limit for launching a prosecution in case of offences under some specified Acts.

Limitation bar contained in Criminal Procedure Code is not applicable to offences under Central Excise, Service Tax and Customs Law.

Compounding of offences

Provisions of compounding have been introduced for the fi rst time in excise and customs law.

Section 9A(2) of Central Excise Act and Section 137(3) of Customs Act has been inserted w.e.f. 10-9-2004, to provide that any offence under the Act can be compounded by Chief Commissioner of Central Excise/Customs. Such compounding can be done either before or after the institution of prosecution. Central Government is authorised to make Rules to provide for amount to be paid for compounding.

What is compounding ? - Fine and imprisonment can be imposed only by competent criminal Court. However, instead of going to Court, the offender may agree to pay composition amount. Order for paying composition money can be made by quasi-judicial authorities. This is called 'compounding of offences'.

'Compounding' is essentially a compromise arrangement between administrator of the enactment and person committing an offence. Compounding crime consists of receipt of some consideration (termed as compounding fees) in return for an agreement not to prosecute one who has committed an offence - *Reliance Industries, In re* - (1997) 24 CLA 214 (CLB).

Procedure for compounding – Procedure for compounding has been prescribed in Central Excise (Compounding of Offences) Rules, 2005 and Customs (Compounding of Offences) Rules, 2005.

Who can apply – A person can apply either before launch of prosecution or even when prosecution is pending. Officers of customs and central excise cannot apply for compounding [Rule 2(b)]. As per MF(DR) circular No. 54/ 2005-Cus dated 30-12-2005, opportunity will be given to assessee to compound offence, before launching of prosecution.

Compounding Authority - Application can be made either before or after institution of application in form prescribed under the rules to jurisdictional Chief Commissioner (who is 'compounding authority'). If offence has been committed at more than once places, Chief Commissioner having jurisdiction over such place where value of goods seized or duty evaded or attempted to be evaded is more than others will be the 'compounding authority' [Rule 3].

Report from Commissioner – After such application is made, 'compounding authority' shall call report from jurisdictional Commissioner, who will be 'reporting authority'. The report will be sent within one month [Rule 4(1)].

Compounding of offence – After receipt of report, the 'compounding authority' will either allow application indicating the compounding amount and grant immunity from prosecution or reject the application. Application shall not be rejected unless opportunity of hearing is given [Rule 4(3)].

Application for compounding will not be allowed unless the duty, penalty and interest liable has been paid for the case for which application has been made [proviso to Rule 4(3)].

Compounding amount - Fixation of compounding amount will be within limits as given in Rule 5. Various limits have been specified.

Immunity from prosecution - Immunity from prosecution will be given if compounding authority is satisfi ed that applicant has cooperated in the proceedings before him and has disclosed all facts relating to case. Immunity from prosecution can be subject to conditions as prescribed [Rule 6].

Payment of compounding amount - On receipt of order, the applicant shall pay the compounding amount within 30 days and submit proof of payment. If Court rejects compounding application, the amount paid will be refunded, otherwise not [Rule 4(6)]

5.7 PROOF IN ADJUDICATION AND PROSECUTION IN INDIRECT TAXES

Provisions in respect of proof under Customs Act are summarised below.

Burden of Proof of Offence is on Department - In Customs and Excise law, the commitment of offence has to be proved by department beyond reasonable doubt. However, the accused has to prove beyond reasonable doubt that there was no culpable state of mind like intention, knowledge, belief etc.

In case of goods covered under Section 123 of Customs Act i.e. notified goods, burden of proof is on person from whom goods are seized.

Mens Rea presumed - Section 138A of Customs Act provides that '*mens rea*' (guilty mind) shall be presumed by Court '*burden of proof regarding non-existence of* ***Mens rea*** *is on the accused*'. This proof has to be '**beyond reasonable doubt**'. Thus, department has to prove the offence beyond reasonable doubt. However, the accused has to prove that he had no 'culpable state of mind'. - validity of this provision upheld in *Devchand Kalyan Tandel* v. *State of Gujarat* 1997(89) ELT 433 (SC) = AIR 1996 SC 2787.

Special provisions for Goods covered u/s 123 of Customs Act

Section 123 of Customs Act makes special provisions in respect of certain sensitive goods like Gold, Synthetic yarn and metallised yarn, fabrics made of synthetic yarn, Electronic calculators, watches, watch movements, zip fasteners and Silver bullion. In case of these items, if these are seized in the reasonable belief that they are smuggled goods, the owner or possessor has to prove that these are not smuggled goods. In other words, 'burden of proof' that these are not smuggled is on accused. Validity of this Section (Section 178A of earlier Act) has been upheld in *CC* v. *Nathella Sampathu Chetty* AIR 1962 SC 316 = 110 ELT 157 (SC 5 member bench).

However, even in cases of goods covered under Section 123 of Customs Act, prosecution has to prove that (*a*) the goods are of foreign origin (*b*) they are imported from abroad - *Shanti Lal Mehta* v. *UOI* - 1983 (14) ELT 1715 (SC).

Ingredients in case of seizure under Section 123 of Customs Act - There are four ingredients –

(1) There should be seizure under provision of Customs Act

(2) Seizure must be from possession of the person proceeded against

(3) Seizure must be in respect of goods for which Section 123 of Customs Act applies

(4) Seizure must be in *reasonable belief* that the goods seized are smuggled.

Relevancy of Statement before Excise/Customs Officer

Statement made and signed before any Central Excise Officer/Customs Officer of gazetted rank is allowed as evidence in the prosecution as follows :

(a) In case of a person who is dead or if he cannot be found or whose presence cannot be obtained without undue delay or expenses, the statement *will be* allowed as evidence

(b) In case of person who is present before the Court and is examined as witness, Court *may* admit the statement if it is of the opinion that the statement should be admitted in the interest of justice. Thus, discretion is given to Court in case of statements made before Excise Officer, only if such person is examined as witness. [Section 9D of CEA – parallel Section 138B of Customs Act].

This Section is applicable to service tax also.

This provision is applicable to departmental adjudication also.

Revenue officer is not a police officer - A statement made before police officer cannot be admitted as an evidence. However, customs/excise officer is not 'police officer' though he is invested with some powers of a police officer. Hence, statement made before customs/excise officer can be admitted as evidence - *Illias* v. *CC* - 1969 2 SCR 613 = 1983 (13) ELT 1427 = AIR 1970 SC 1065 – (SC 5 member Constitution Bench).

Statement must be voluntary as well as true - It must not only be established that statement is voluntary but also it must be established that the statement is true. For purpose of establishing the truth, it is necessary to examine the confession and compare it with rest of the evidence on record - *Sarwan Singh* v. *State of Punjab* - AIR 1957 SC 637. Confession, before relied upon, must be established to have been made voluntarily and true - *Mohabir Biswas* v. *State of WB* - (1995) 2 SCC 25 (3 member bench).

If a statement is not true, that cannot be used even if the same were confessional in nature because the settled law is that for a confession to be used against the maker in criminal case, the same has to be both true and voluntary. - *State of Haryana* v. *Rajinder Singh* - (1996) 2 SCALE 488.

Evidence by dmocuments

Provisions regarding documentary evidence are as follows.

Presumption regarding Documents seized from a person - Any document seized from a person shall be *presumed* to be true about the contents therein. Signature and other part of hand written document on such seized document, purporting to have been of a person or reasonably assumed to be of that person shall be presumed to be of that person. If such person claims that the document is not true or not signed by him, *the burden of proof* is on him [Section 36A of CEA – parallel Section 139(i) of Customs Act]. *This Section is applicable to service tax also.*

Presumption regarding documents received from place outside India – If any document is received from a place out of India in the course of investigation, it will be presumed that signature and other part of hand written document on such seized document, purporting to have been of a person or reasonably assumed to be of that person shall be presumed to be of that person. However, in case of such documents, there is no presumption that the contents are true. In other words, in case of documents obtained from abroad, prosecution has to prove that the contents are true, though they don't have to prove that the signature or handwriting is of that person only, who is purported to have signed it or written it [Section 139(*ii*) & (*c*) of Customs Act]. – (interestingly, no parallel Section in Central Excise Act).

Other documents admissible - (*a*) A document which is required by law to be stamped, will be admissible as evidence even if it is not duly stamped. [Section 36A(b) of CEA – parallel Section 139(b) of Customs Act] (*b*) Micro film or Photostat/Xerox copy of document or reproduction of image is admissible, without further proof of original [Section 36B(1)(*a*) & (*b*) of CEA – parallel Section 138C(1) of Customs Act]. *This Section is applicable to service tax also.*

Computer printouts - Statement printed by computer is admissible if (*a*) Computer printout was produced during the period when the computer was used for storing and processing the information (*b*) the information contained in the statement was regularly supplied to computer during the period (*c*) computer was operating properly during the period or breakdowns were not significant to affect accuracy of documents (*d*) the printout is reproduced in ordinary course of activities. [Section 36B(2) of CEA – parallel Section 138C(2) of Customs Act]. *This Section is applicable to service tax also.*

The computer print outs will be allowed as evidence even if multiple computers or different computers or different combinations of computers were used. A statement or a certificate given by a responsible person *to the best of his knowledge and belief* identifying the statement or describing its contents or giving particulars of computers used in production of documents shall be evidence of any matter contained in the certificate.

Coded data on computer admissible? - The provision is silent about any coded or secret data kept by the accused on computer and decoded by the authorities. Since such secret data entry is obviously not in ordinary course of activities, it is doubtful if such decoded data will be acceptable as evidence. Moreover, the Section talks only about print outs and not the data stored in computer. As use (*and misuse*) of computer spreads, suitable amendment in the law may become necessary.

In *Harsinghar Gutka* v. *CCE* (2008) 221 ELT 77 (CESTAT). Department had confirmed duty of ₹ 135 crores on gutka/ pan masala, based on reconstructed/retrieved data from computer. It was held that computer printout is admissible only if the same was produced by computer during regular operation.

Testing of samples

Section 144 of Customs Act makes specific provision for taking samples. There is no specific provision to take samples in rules for testing by CE officers However, these powers can be said to be implied powers of excise officers *Chapter 11 of CBE&C's CE Manual, 2005* makes detailed provisions in respect of taking of samples, its testing, re-testing etc. Samples are required in case of export, assessment etc.

Quantity of samples to be taken in respect of various products has been specified in CE Manual of Chemical Laboratories in Customs House – *reproduced in chapter 11 of CE Manual, 2005.*

Test memo should be prepared in triplicate. Four samples should be drawn in the presence of owner/manager of the factory. These are sealed with excise seal in presence of manufacturer, along with test memo in prescribed form. It should be accompanied by owner's declaration that the sample is representative of the lot. Owner can also fix his own seal. The samples should be packed properly. Original sample is sent to Chemical Examiner with test memo, duplicate to DC/AC for safe custody, triplicate to range office for future reference and quadruplicate to the manufacturer for his own records – *Chapter 11 para 8.4 of CE Manual, 2005.*

The sample along with three copies of test memo are sent to Chemical Examiner. The Chemical Examiner will inform the test result. If the test results are not acceptable to manufacturer, he can apply to Assistant/Deputy Commissioner within 90 days for re-test. Request beyond 90 days is not acceptable. Re-test can be carried out of remnant of earlier sample or duplicate/triplicate sample. Schedule of fees for testing and re-testing of samples in laboratories of CBE&C has been specified in – *Chapter 11 para 8.8 of CE Manual, 2005.* [Interestingly, testing is only ₹ 50 per sample].

Assessee can request that re-test should be by laboratory other than control laboratory. This can be done with prior permission of Commissioner. However, he will have to pay for cost of re-test in outside laboratories – *Chapter 11 para 8.10 of CE Manual, 2005.*

STUDY NOTE - 6

APPEALS IN INDIRECT TAXES

This Study Note includes

- Provisions of appeal and revision
- Pre-deposit for filing appeal
- Time limit for filing appeal
- Departmental Appeal/Review
- Appeal to Commissioner (Appeals)
- Revision by Commissioner in Service Tax
- Revision by Central Government
- Settlement Commission
- Advance Ruling
- Appeal to Tribunal
- Rectification of own mistakes by Tribunal
- Appeal to High Court on substantial question of law
- Appeal to Supreme Court
- Constitutional remedies in Indirect Taxes

6.1 PROVISIONS OF APPEAL AND REVISION

Excise and Customs Law empower excise/Customs Officers to pass adjudication orders demanding duty and interest and imposing penalty and confiscation of goods.

Excise and Customs Act have made elaborate provisions for appeals against adjudication orders passed by excise/customs authorities. There is only one appeal in case of orders of Commissioner, while in case of other orders (i.e. orders of Superintendent, Assistant Commissioner, Dy. Commissioner, Jt. Commissioner, and Additional Commissioner), first appeal is with Commissioner (Appeals) and other with Tribunal. In some matters, revision application lies with Government against order of Commissioner and Commissioner (Appeals).

Tribunal is final fact finding authority and no further appeal lies against facts as found by Tribunal (CESTAT). In case of order of Tribunal relating to classification or valuation, appeal lies with Supreme Court. In other matters, appeal can be made to High Court only if substantial question of law is involved.

Bar of jurisdiction of Civil Court

As per Section 9 of Code of Civil Procedure, civil court has a wide, all embracing jurisdiction to entertain a claim. It can try all civil suits except those which are expressly or impliedly barred. In *Sahebgouda* v. *Ogeppa* 2003 AIR SCW 3088, it was observed, 'It is well settled that Civil Court has jurisdiction to try all suits of civil nature and the exclusion of jurisdiction is not to be lightly inferred. A provision of law ousting the jurisdiction of a Civil Court must be strictly construed and onus lies on the party seeking to oust the jurisdiction to establish his right to do so'.

Excise and Customs Law provides remedies of appeal etc. and normally, assessee does not approach Civil Court to get redressal in excise matters Section 35C(4) of CEA [Parallel Section 129B(4) of Customs Act] prescribe that order of Tribunal is final, subject to reference to High Court or appeal to Supreme Court. Section

11B(3) of CEA [parallel Section 27(3) of Customs Act] makes it clear that any refund will be granted only as per provisions of Section 11B(2) of CEA [parallel Section 27(2) of Customs Act]. Thus, these provisions effectively bar the jurisdiction of Civil Court in excise matters, except in cases where the law is claimed or declared as invalid.

In *Mafatlal Industries Ltd.* v. *UOI* 89 ELT 247 (SC) = (1997) 5 SCC 536 = 17 RLT 907 (SC 9 member Constitution bench), it was held that jurisdiction of Civil Court is barred in case of Customs and Central Excise.

Remand to lower authority

Remand means sending the case back to lower authorities for decision. Section 35C(1) of CEA [parallel Section of 129B(1) of Customs Act] empower Appellate Tribunal to refer the case back to lower authority for fresh adjudication. Tribunal can also give directions to lower authorities while remanding the case. Broad reasons should be given for such remand. Lower authorities have to readjudicate as per the directions in the order of remand.

In view of Section 86(7) of Finance Act, 1994, Tribunal can remand in respect of service tax matters also.

When matter is remanded – In following cases, matter may be remanded –

(a) When fresh points are raised in appeal and appellate authority feel that these need consideration for proper decision

(b) Enquiry into questions of facts is required - *Cynamid India Ltd*. 1984(15) ELT 186 (CEGAT). When primary facts are not on record – *Assam Co*. v. *CIT* (1996) 217 ITR 109 (Gau)

(c) Verification of certain facts like dates, documents, proofs etc. is required

(d) order appealed against is contradictory, inconsistent and vague

(e) When principles of natural justice were not followed by lower authority - e.g. not giving opportunity of hearing, not allowing examination of witnesses, not giving speaking order etc. * *A R Almeida* 1987(32) ELT 358 (Bom) * *Macneill & Magor Ltd.* 1987 (28) ELT 318 (CEGAT) - Not consideration of cited judgment is violation of principles of natural justice and matter can be remanded – *Dorma Door Controls* v. *CC* 2002(139) ELT 232 (CEGAT)

(f) Since Tribunal is final fact finding authority, it can remand when it feels some difficulty to record a correct finding of fact. – *CIT* v. *Manohar Glass Works* (1998) 232 ITR 302 (All HC)

(g) An event subsequent to the order of adjudicating authority, which has important bearing on the issue - e.g. a subsequent favourable circular of Board - *Pioma Industries* v. *CCE* 1995 (77) ELT 424 (CEGAT)

(h) Point of law raised for the first time in second appeal - *Precision Fasteners Ltd*. 1984(15) ELT 188 (CEGAT) * *CIT* v. *Indian Overseas Bank* (1999) 239 ITR 335 (Mad). When a new aspect of issue is raised for first time in appeal – *CIT* v. *Jeypore Sugars* (1989) 175 ITR 627 (AP)

(i) Papers submitted for first time in appeal which were not seen by adjudicating or appellate authority – *Southern Iron* v. *CC* 2002(141) ELT 233 (CEGAT).

Remand delays the matter. Hence, present view of Supreme Court is that matter should be decided by Tribunal as far as possible, without remanding the matter.

Signing of appeal

Rule 3(2) of Central Excise (Appeals) Rules provides that appeal to Commissioner (Appeals) should be signed (*a*) in the case of individual, by himself or person duly authorised by him - usually through power of attorney. In case of minor or mentally retarded person, by his guardian or other person competent to act on his behalf (*b*) in case of Hindu undivided family - by *Karta* (*c*) in case of Company or a local authority - by its principal officer (*d*) in case of firm - by any major partner (*e*) in case of other person - by that person or competent person to act on his behalf.

These provisions are applicable only in respect of appeal to Commissioner (Appeals), but not to CESTAT.

As per Rule 8(3) of CESTAT (Procedure) Rules, 1982, appeal/application/cross objection shall be signed and verifi ed by appellant/applicant/respondent or the Principal Officer duly authorised to sign appeal/application/ cross objection. The appellant/applicant/respondent or the consultant or advocate retained by them shall certify as true the documents produced before Tribunal.

In case of a company, the term 'principal officer' has not been specified. Normally, appeal should be signed by Managing Director or Secretary. In case of large companies, it may not be possible. Hence, authority should be conferred by a Board Resolution.

Authorised representative in appeal

If a person has to make statement on oath or if he has to be examined/cross examined, he has to personally attend the hearing. Otherwise, a person can appear either himself or through authorised representative.

As per Section 35Q(2) of CEA [parallel Section 146A(2) of Customs Act], the authorised representative may be (*a*) His relative or regular employee (*b*) Advocate who is authorised to practice in civil court (*c*) Person holding requisite qualification prescribed under Rule 12 of Central Excise (Appeals) Rules – earlier Rule 232B - parallel Rule 9 of Customs (Appeal) Rules, 1982. Under Customs Law, Custom House Agent is also permitted to appear on behalf of appellant.

This Section is applicable to service tax also.

The qualification prescribed under Rule 12 are : (*i*) Chartered Accountant (*ii*) Cost Accountant (*iii*) Practising Company Secretary (*iv*) Post graduate or Hons. degree holder in Commerce (*v*) Post graduate degree or diploma in Business administration (*vi*) Person retired or resigned from Excise, Customs or narcotics department after serving for at least ten years.

Disqualifications of authorised representative - Section 35Q of CEA and Section 146A of Customs Act prescribe certain disqualifications, which are (*a*) A person who was member of Indian Customs and Central Excise Service Group A for at least three years cannot appear for two years after he retires or resigns from service (*b*) A person who is dismissed or removed from Government service is permanently debarred (*c*) A person who is convicted of an offence under Excise Act or Customs Act will be debarred for period prescribed by competent authority (*d*) An insolvent person cannot appear till the insolvency continues (*e*) A legal practitioner found guilty of misconduct in his professional capacity and debarred by that authority from practice (*f*) Authorised representative, other than legal practitioner, cannot appear if found guilty of misconduct in connection with proceedings under the Act by prescribed authority.

Adjournment

Case may be adjourned to a future date by adjudicating authority/appellate authority.

Adjudicating authority, Commissioner (Appeals) and Tribunal (CESTAT) can grant maximum three adjournments - Section 33A(2), Section 35(1A) and Section 35C(1A) of Central Excise Act and Sections 122A, 128(1A) and 129B(1A) of Customs Act, as inserted w.e.f. 10-9-2004.

This provision can be taken only as directory and not mandatory. It does not mean that adjournments cannot be granted beyond three adjournments even for genuine reasons.

In *Afloat Textiles* v. *CCE* (2007) 215 ELT 198 (CESTAT), Commissioner fixed three dates of notice i.e. 10th October, 17th October and 31st October in first notice itself. When assessee requested for adjournment, he considered these as three adjournments and passed order *exparte*. It was held that this approach is not on the basis of principles of natural justice.

6.2 PRE-DEPOSIT FOR FILING APPEAL

Section 35F of Central Excise Act (similar Section 129E of Customs Act) provides that person desirous of appealing against the order shall, *pending the appeal*, deposit the duty demanded or penalty levied. In case of customs, pre-deposit of duty, interest and penalty is required.

This Section has been made applicable to service tax also.

Meaning of 'duty demanded' - As per *explanation* to Section 35F of CEA (inserted w.e.f. 11-5-2007), 'duty demanded' shall include following –

(i) amount determined u/s 11D
(ii) amount of erroneous Cenvat credit taken
(iii) amount payable under earlier Central Excise Rule 57CC
(iv) amount payable under Rule 6 of Cenvat Credit Rules
(v) Interest payable under provisions of Central Excise Act and Rules.

This provision applies to service tax also.

Prior deposit of duty pending appeal - Section 35F of Central Excise Act (similar Section 129E of Customs Act) provides that person desirous of appealing against the order shall, *pending the appeal*, deposit the duty demanded or penalty levied. However, the appellate authority [Commissioner (Appeals) or Appellate Tribunal] is empowered to dispense with such deposit if it is of the opinion that the deposit of duty or penalty will cause undue hardship to the person. Such waiver may be subject to such conditions as may be imposed to safeguard interests of revenue.

This provision is only for hearing and deciding the appeal by the appellate authority on merits. Normally, while admitting appeal without payment of dues, stay for recovery is also granted as considerations for granting stay and dispensing of pre-deposit are same. It will be futile to admit appeal without payment of duty and penalty, if stay for recovery is not simultaneously granted. *However, mere filing appeal or admitting appeal does not amount to grant of stay*.

This provision applies to service tax also.

Stay/Dispensing of Prior deposit

Order passed by adjudicating authority becomes effective as soon as it is signed and issued to concerned person. Excise authorities can take legally permissible steps to recover the duty and penalty as confirmed in the order. *There is no legal binding on them to wait till the decision of appellate authority*.

Decision of appeal may take time and recovery of amount pending appeal might lead to injustice and hardship to party. Hence, appellate authorities can grant stay of recovery of dues till appeal is decided, subject to conditions as they may deem fi t. Such powers are not specified in the Act, but Supreme Court, in *ITO, Cannanore* v. *M K Mohammad Kunhi* - AIR 1969 SC 430 = (1969) 71 ITR 815 (SC), has held that these are incidental and ancillary powers of appellate authority, as without such powers, appeal would be rendered nugatory even if successful. CEGAT (now CESTAT) has held that it is inherent powers to grant stay of recovery of redemption fi ne also.

A separate application should be made along with appeal requesting for stay of recovery *till appeal is decided*.

Stay by Commissioner (Appeals) - Stay can be granted by Commissioner (Appeals) in respect of appeals before him. He can grant stay subject to conditions as he deems fit. However, appeal cannot be filed to Tribunal against this order, though Commissioner (Appeals) can himself modify his own 'interlocutory order'.

Suggested time to decide stay application – Commissioner (Appeals) should, wherever possible to do so, decide such application within 30 days from filing. [second proviso to Section 35F of Central Excise Act – parallel 129E of Customs Act]. No such time limit has been specified in respect of stay application by CESTAT. Even the time limit prescribed in case of Commissioner (Appeals) is only indicative, as the wording is 'wherever possible to do so'.

Stay by CESTAT – CESTAT (Tribunal) can grant stay of recovery if order of demand of duty and imposition of penalty is passed by Commissioner or Commissioner (Appeals). While filing application to CESTAT of stay, application fees is payable. Section 35B(7) of Central Excise Act and Section 129A(7) of Customs Act have been inserted w.e.f. 10-9-2004, to provide for payment of fee of ₹ 500 for any of such application.

The fees are not payable if department files a miscellaneous application.

Validity of stay granted by Tribunal is only 180 days - Section 35C(2A) of Central Excise Act and Section 129B(2A) of Customs Act provide that if stay is granted by Tribunal for recovery, appeal shall be decided by Tribunal within 180 days. *If appeal is not disposed of by Tribunal within 180 days, the stay shall stand automatically vacated.*

This Section has not been made applicable to service tax matters. However, it is advisable to file application for extension of stay even in respect of service tax matters.

Tribunal can extend stay beyond 180 days - In *Kumar Cotton Mills* v. *CCE* 2002(146) ELT 438 (CEGAT), it was held tribunal can pass fresh stay order after 180 days – view confirmed in *IPCL* v. *CCE* (2004) 169 ELT 267 = 63 RLT 1 (CESTAT 3 member bench).

Criteria for granting stay

First proviso to section 35F of Central Excise Act (parallel Section 129E of Customs Act) states that predeposit of duty and penalty for hearing appeal may be dispensed by appellate authority, if it would cause *'undue hardship*' to the person.

This Section has been made applicable to service tax also.

The hardship can be any hardship and not only financial hardship. Wide discretion is available to appellate authority in granting stay/dispensing pre-deposit of duty. There are no hard and fast rules, but appellate authority do take following into consideration of * *Prima facie* case * Balance of convenience * Financial Hardship * Irreparable Injury or loss etc. while granting stay and imposing conditions for stay/dispensing of pre-deposit.

While granting stay, interest of revenue should be safeguarded.

In Indian conditions, expression 'undue hardship' is normally related to economic hardship. 'Undue' means something which is not merited by the conduct of claimant, or is very much disproportionate to it. Undue hardship is caused when the hardship is not warranted by the circumstances. It is true that on merely establishing a *prima facie* case, interim order of protection should not be passed. But if on a cursoryglance it appears that the demanded raised has no leg to stand, it would be undesirable to require the assessee to pay substantive part of the demand. Where denial of interim relief may lead to public mischief, grave irreparable injury or shake a citizens' faith in the impartiality of public administration, interim relief can be given – *Benara Valves* v. *CCE* (2007) 6 STT 13 = 204 ELT 513 (SC) – similar views in *Indu Nissan Oxo Chemicals* v. *UOI* (2008) 221 ELT 7 (SC).

For hardship to be undue, it must be shown that the particular burden is out of proportion to the nature of requirement and the benefit which applicant would derive from compliance of it. Consideration of hardship and imposition of conditions to safeguard the interest of revenue should be kept in view – *Indu Nissan Oxo Chemicals* v. *UOI* (2008) 221 ELT 7 (SC).

The principles for waiver of condition of pre-deposit, well settled by a catena of decisions of Supreme Court and High Court are (a) whether there is a *prima facie* case in favour of assessee (b) the balance of convenience *qua* the deposit or otherwise (c) irreparable loss, if any to be caused in case stay is not granted and (d) safeguarding interest of revenue. – *UOI* v. *Adani Exports Ltd.* (2007) 218 ELT 164 (SC) * *Bhavya Apparels* v. *UOI* (2007) 216 ELT 347 (SC).

Prima facie case - If strong *prima facie* case is made out, deposit of duty and penalty may be dispensed with or considerably reduced, even if no financial hardship is pleaded. Thus, factors like (*a*) not considering decisions of Courts in the issue by lower authority (*b*) order without jurisdiction (*c*) not following principles of natural justice by lower authority (*d*) order based on no evidence etc. can be considered.

Effect of not getting stay or not fulfi lling conditions

If aggrieved party does not apply for dispensing of pre-deposit or does not comply with conditions imposed by Appellate Authority for stay and dispensing of pre-deposit, the appeal can be dismissed without hearing. Normally, stay is granted subject to payment of part amount/issue of bank guarantee etc. If these conditions are not complied with within the time given (or extended time if such extension given), the appeals can be dismissed for non-compliance.

6.3 TIME LIMIT FOR FILING APPEAL

Every Statute prescribes time limit within which appeal has to be filed. The time limit is necessary as firstly, matters cannot be kept hanging indefinitely and secondly law helps only those vigilant and careful about their rights and not those who are negligent and careless. Excise and Customs law allows time of 60 days for filing appeal to Commissioner (Appeals) (three months in case of service tax) and three months for filing of appeal to CESTAT (Tribunal), *after the order is communicated to him*.

Calculating time provided for appeal **-** Legal provisions for calculating the time prescribed for appeal are :

(*a*) Section 35-O of CEA - parallel Section 131A of Customs Act - provides that time taken for obtaining a copy of order shall be excluded, as a certified copy of order must accompany the appeal. (*b*) Day on which order is received should be excluded. (*c*) As per Section 29(2) of Limitation Act, if last day is a gazetted holiday, appeal can be filed on next working day. (*d*) If appeal is sent by registered post, date of actual receipt at the appellate authority will only be considered.

Condonation of delay in filing appeal

Delay can be condoned if *sufficient cause* is shown for not presenting appeal in time. Delay upto last date of filing of appeal need not be explained, but *delay* thereafter has to be explained.

Separate application should be made to appellate authority for condonation of delay.

In *Shrimant Jadhavrao* v. *Dilip Balvantrao* 2002 AIR SCW 2612 (SC 3 member bench), it was reiterated that delay upto last date of filing is not required to be explained. Only delay subsequent to last date is required to be explained.

Power to condone delay - Delay may occur due to genuine reasons and hence appellate authorities are empowered to condone delay. Commissioner (Appeals) can condone delay only upto 30 days (that time three months). Commissioner (Appeals) has no powers to condone delay beyond 30 days – *Singh Enterprises* v. *CCE* (2008) 12 STT 21 = 12 VST 542 = 221 ELT 163 (SC).

There is no such restriction of time on Tribunal about the period. Condonation is not a matter of right even for genuine reasons. Various factors are considered and it may happen that even a one day delay may not be condoned while in another case, delay of even months may be condoned.

In *State of West Bengal* v. *Administrator, Howrah Municipality* - AIR 1972 SC 749 = (1972) 1 SCC 366, it was observed that in the matter in deciding whether a particular case amounts to 'sufficient cause' or not, Courts have to use their judicial discretion in the interest of justice. The words 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bonafide* is imputable to party.

In *Collector, Land Acquisition, Anantnag* v. *Mst Katiji* 28 ELT 185 = AIR 1987 SC 1353 = 35 Taxman 17 = 167 ITR 471 (SC) = 66 STC 228 = (1987) 2 SCC 107 = (1987) 2 SCR 387 = 62 Comp Cas. 370 (SC); the Apex Court has given some guidelines, which can be summarised as follows :

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. When the delay is condoned, highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) "Every day's delay must be explained", does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately or on account of culpable negligence, on account of *malafides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be remembered that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. It was held :

"Law should be applied in meaningful manner which subserves the ends of justice. There may be various reasons like sudden sickness of appellant or his advocate, strike in factory etc. If delay is not condoned, appeal will be dismissed without hearing on merit".

(7) In respect of application for condonation from Government, it was observed : "All litigants, including the State as a litigant, should be accorded same treatment and law should be administered in an even handed manner. In fact, on account of impersonal machinery, and bureaucratic machinery, delay on part of State is less difficult to understand."

6.4 DEPARTMENTAL APPEAL/REVIEW

An assessee can file appeal against order of adjudicating authority. The adjudicating authority is a quasijudicial authority when he passes adjudication order. Hence, his order cannot be straight away annulled by any authority higher to him. However, if the higher authority is of the opinion that the order is not proper, it can order for its review by higher appellate authority. In case of order of Commissioner (Appeals), department can file appeal against such order to Tribunal.

Departmental Review - Copy of order of Assistant/Deputy/Joint Commissioner as adjudicating authority is sent to Commissioner. After examination of the order, if Commissioner is of opinion that the order needs review, review application can be filed with Commissioner (Appeals) u/s 35E(2) of CEA – parallel Section 129D(2) of Customs Act.

In case of service tax matters, there is no provision for filing review application before Commissioner (Appeals).

Similarly, Copy of order of Commissioner as adjudicating authority is sent to Chief Commissioner. If Committee of Chief Commissioners is of opinion that the order needs review, a review application is filed with CESTAT u/s 35E(1) of CEA – parallel Section 129D(1) of Customs Act.

Such application will be treated as appeal filed against the adjudication order [Section 35E(4) of CEA – parallel Section 129D(4) of Customs Act].

In case of service tax, Section 86(2) of Finance Act, 1994 provides that Committee of Chief Commissioners can direct Commissioner file appeal against order of Commissioner.

Appeal against order of Commissioner (Appeals) – In case of order of Commissioner (Appeals), department has to file a regular appeal with Tribunal u/s 35B(2) of CEA [parallel Section 129A(2) of Customs Act and Section 86(2A) of Finance Act, 1994] within three months. It is a regular appeal, and not a 'review'.

Who can order review – Order of authority lower than Commissioner (i.e. order of Assistant/Deputy/Joint Commissioner) is to be reviewed by jurisdictional Commissioner. Order of Commissioner as adjudicating authority is to be reviewed by Committee of Chief Commissioner.

Committee of Chief Commissioners to review orders of Commissioner - Section 35E(1) of Central Excise Act and Section 129D(1) of Customs Act make provision for reviewing orders of Commissioner of Central Excise/Customs which have been passed as adjudicating authority. The decision to review the order will be taken by Committee of two Chief Commissioners (Till 13-5-2005, the review was required to be ordered by CBE&C). The Committee will be constituted by CBE&C u/s 35B(1B) of Central Excise Act and 129A(1B) of Customs Act, by issue of notification.

Section 86(2) of Finance Act, 1994 provides for filing of appeal against order of Commissioner. It is 'appeal' and not 'review', though in effect, it does not make any difference.

Purpose of review - The order by Commissioner for review is 'for the purpose of satisfying himself (i.e. Commissioner) as to legality or propriety of any decision or order passed by Assistant/Deputy/Joint

Commissioner as adjudicating authority' [Section 35E(2) of CEA – parallel Section 129D(2) of Customs Act] (no parallel provision in service tax).

The order by Committee of Chief Commissioners is 'for the purpose of satisfying itself (i.e. Committee of Chief Commissioners) as to legality or propriety of any decision or order passed by Commissioner as adjudicating authority' [Section 35E(2) of CEA – parallel Section 129D(2) of Customs Act]. In case of service tax, there is provision of appeal u/s 86(2) of Finance Act, 1994 and not review.

Order for review by Commissioner of order of officer lower than him - Commissioner can order review of the order of authority lower than him (Joint Commissioner DC/AC of Central Excise) passed as adjudicating authority.

The Commissioner can instruct the adjudicating authority or any central excise officer subordinate to the Commissioner, within a period of three months from decision or order of adjudicating authority to apply to Commissioner (Appeals). [Section 35E(3)] [*The period was one year. It has been reduced to three months by Finance Act, 2007, w.e.f. 11-5-2007*].

On receipt of such order, the adjudicating authority (Joint Commissioner/DC/AC as the case may be) or the Central Excise Officer to whom should file application to Commissioner (Appeals) within one months (appeal against his own order). [This period was three months, which has been reduced to one month vide Finance Act, 2007 w.e.f. 11-5-2007].

Section 35E(4) of CEA [parallel Section 129D(4) of Customs Act] states that where in pursuance of order u/s 35E(1) or 35E(2) of CEA [parallel Section 129D(1) or 129D(2) of Customs Act], adjudicating authority or authorised officer makes an application to Commissioner (Appeals) within one month, it will be treated as departmental appeal (Till 11-5-2007, the time limit from filing application was three months).

The appeal shall be in respect of such points arising out of the order of adjudicating authority (DC/AC/ Superintendent) as may be specified by Commissioner in his order.

Any officer can be authorised to sign appeal - Section 35E(2) of CEA [parallel Section 129D(2) of Customs Act] as amended w.e.f. 13-7-2006 by Taxation Laws (Amendment) Act, 2006; state that Commissioner can direct the adjudicating authority or any Central Excise Officer subordinate to him to apply to Commissioner (Appeals) for determination of such points out of decision or order as may be specified by Commissioner. (This is treated as departmental appeal).

Order by Committee of Chief Commissioners for review of order of Commissioner – Committee of Chief Commissioners can order review of the order of Commissioner of Central Excise (as adjudicating authority). Such order can be issued by Committee of Chief Commissioners under Section 35E(1) of CEA [Parallel Section 128D(1) of Customs Act].

The Committee of Chief Commissioners can instruct any Commissioner within a period of three months from the date of communication of order of Commissioner to apply to CESTAT [Section 35E(3) of CEA – parallel Section 129D(3) of Customs Act]. [Till 11-5-2007, the period available was one year from date of order. This period has been reduced to 'three months from communication of order', vide Finance Act, 2007 w.e.f. 11-5-2007].

In case of service tax, there is provision for appeal u/s 86(2) of Finance Act and not of review.

On receipt of such order, the Commissioner should file application to CESTAT within one month from communication of order to him, in form EA-5 (Form CA-5 in case of Customs) – Rule 7(1) of Central Excise (Appeals) Rules. This will be treated by CESTAT as appeal by department against the decision of Commissioner [Section 35E(4) of CEA - parallel Section 129D(4) in Customs Act]. This will be treated by Tribunal as appeal by department against the decision of Commissioner.

Note that in case of order of Commissioner (Appeals), an appeal has to be filed by Committee of Commissioners under Section 35B(2) of CEA [Parallel Section 129A(2) of Customs Act and Section 86(2A) of Finance Act, 1994], within three months as specified in Section 35B(3) of CEA [Parallel Section 129A(3) of Customs Act], while in case of order of Commissioner as adjudicating authority, application for review (which is in nature of departmental appeal) can be filed within four months (plus time in communication) - three months for Committee of Chief

Commissioners to issue order for review and further one month to Commissioner to file an application. In case of service tax, appeal is to be filed within three months only.

Review must arise out of order as may be specified - It may be noted that order of Committee of Chief Commissioners (for review of order of Commissioner) and that of Commissioner (for review of order of Assistant/Deputy Commissioner) must satisfy two requirements

(a) The matter must arise out of the decision or order. Thus, review cannot be made if the matter does not arise out of the order. New points not connected with order cannot be raised.

(b) The points to be determined have to be specified by CBE&C or Commissioner as the case may be.

Thus, in such departmental appeal, only points specified can be determined. New point cannot be taken up.

Departmental Appeal against order of Commissioner (Appeals)

Department can file appeal against orders of Commissioner (Appeal).

It should be noted that departmental appeal cannot be filed on entirely new ground. Plea must arise out of the order. New case cannot be made at appellate stage.

Vide Section 35B(2) of CEA [parallel Section 129A(2) of Customs Act and Section 86(2A) of Finance Act, 1994], Committee of Commissioners of Central Excise may authorise any officer to file appeal against order of Commissioner (Appeals), if it is of the opinion that the order is not legal or proper. [Note that Commissioner (Appeals) has to forward a copy of his order to assessee, jurisdictional Commissioner and Chief Commissioner. Committee of Commissioners can file an appeal if the Commissioner (Appeals) has given a decision favouring the assessee].

Committee of Commissioners to decide to file appeal against orders of Commissioner (Appeals) - The decision to file appeal against order of Commissioner (Appeals) will be taken by Committee of two Commissioners (So far, i.e. upto 13-5-2005, decision to file appeal against the order of Commissioner (Appeals) was taken by jurisdictional Commissioner singly).

Copy of authorisation to be filed – Copy of authorisation of Committee of Commissioners is required to be filed along with appeal.

6.5 APPEAL TO COMMISSIONER (APPEALS)

Appeal against order of Superintendent, Assistant Commissioner, Dy. Commissioner and Additional Commissioner lies with Commissioner (Appeals), u/s 35(1) of CEA - parallel Section 128(1) of Customs Act and Section 85(1) of Finance Act, 1994 (which contains provisions relating to service tax) *[Appeal against order of Commissioner lies directly to Tribunal.*]

Time limit for filing appeal – In case of central excise and customs, appeal must be filed within 60 days from *date of communication* of order. Commissioner (Appeals) has powers to extend this period by further 30 days if *sufficient cause* is shown.

In case of service tax, appeal is to be filed within three months from date of receipt of order [Section 85(2) of Finance Act, 1994].

Application for Condonation of delay – If appeal is filed beyond date, application for condonation of delay should be filed with appeal. Otherwise, appeal is likely to be dismissed [In case of service tax, time limit for appeal is 3 months and Commissioner (Appeals) can condone delay upto three more months].

No fees are payable while filing application with Commissioner (Appeals) for condonation of delay, but fee of ₹ 500 is payable while filing stay application to CESTAT, as per Section 35B(7) of Central Excise Act and Section 129A(7) of Customs Act.

Commissioner (Appeals) cannot condone delay beyond statutory limit - Commissioner (Appeals) cannot condone delay beyond the statutory limits - *Singh Enterprises* v. *CCE* (2008) 12 STT 21 = 12 STT 542 = 221 ELT 163 (SC).

Form of Appeal to Commissioner (Appeals) **-** Appeal should be in prescribed form No. EA-1 (CA-1 in case of Customs and ST-4 in case of service tax) in duplicate and should be accompanied by a certified copy of the decision or order against which appeal is filed. – Rule 3(3) of Central Excise (Appeals) Rules * Parallel Rule 3 of Customs (Appeal) Rules, 1982. The form requires to give name and address of appellant, details of order appealed against, description of goods, whether duty or penalty is deposited, whether appellant wants to be heard in person and relief claimed. Appeal should also include **statement of facts and grounds of appeal**. It should be properly verified.

Form of Departmental appeal - Departmental appeal should be in form EA-2 in duplicate (form CA-2 in case of Customs), with two copies of decision or order passed by adjudicating authority and a copy of order passed by Commissioner of CE directing the authority to apply to Commissioner (Appeals). – Rule 4(2) of Central Excise (Appeals) Rules * Rule 4 of Customs (Appeal) Rules, 1982.

In case of service tax, department cannot file appeal to Commissioner (Appeals). Commissioner can revise the order of lower authority u/s 84 of Finance Act, 1994.

Affixing Court fee stamps - As per Schedule 1 Article 6 of Court Fees Act, 1970, copy of an order not having force of decree should bear court fee stamp of 50 Ps. Hence, copy of order enclosed with appeal to Commissioner (Appeals) or CESTAT is required to bear court fee stamp of 50 Ps.

As per Schedule II Article 11 of Court Fees Act, 1970, memorandum of appeal to executive officer requires court fee stamp of 50 Ps, while memorandum of appeal to Chief Controlling Executive or Revenue Authority requires court fee stamp of ₹ 2. Thus, in case of appeal to Commissioner (Appeals), the memorandum of appeal should bear court fee stamp of 50 Ps, while appeal to CESTAT should bear court fee stamp of ₹ 2. [*It appears that in some States, the fee has been increased. It is advisable to refer to provisions of State where appeal is being filed*].

Additional evidence before Commissioner (Appeals) – As per Rule 5 of Central Excise (Appeals) Rules * Parallel Rule 5 of Customs (Appeals) Rules, 1982, additional evidence can be produced before Commissioner (Appeals) in following cases - (*a*) when adjudicating authority has refused to admit an evidence which ought to have been admitted (*b*) where the appellant was not able to produce evidence due to sufficient reasons (*c*) when sufficient opportunity was not given to appellant to produce relevant evidence. Commissioner (Appeals) has to record reasons for admitting the additional evidence.

However, if such evidence has to be admitted, the adjudicating authority which passed the original order or an officer authorised by him, should be given reasonable opportunity to examine the evidence or document or cross-examine the witness or produce any evidence to rebut evidence produced by appellant. – Rule 5 of Central Excise (Appeals) Rules * Parallel Rule 5 of Customs (Appeals) Rules, 1982.

Additional grounds of Appeal - Grounds of Appeal have to be specified in the appeal. Additional grounds of appeal may be raised only if Commissioner (Appeals) is satisfied that omission of that ground in the original appeal was not wilful or unreasonable. [Section 35A(2) of CEA - parallel Section 128A(2) of Customs Act].

This provision has been made applicable to service tax, *vide* Section 85(5) of Finance Act, 1994.

Suggested time to finalise order – The Commissioner (Appeals) shall, *wherever it is possible to do so*, hear and decide the appeal within 6 months from the date on which it is filed. [Section 35(4A) of Central Excise Act – parallel Section 128A(4A) of Customs Act].

Suggested time to decide stay application – Often appeal is accompanied by application for admission of appeal without pre-payment of duty and for stay of demand of duty and penalty. Commissioner (Appeals) should, wherever possible to do so, decide such application within 30 days from filing. [second proviso to Section 35F of Central Excise Act – parallel Section 129E of Customs Act] {Deciding stay application almost takes the same time as time taken to decide the appeal, as the Commissioner (Appeals) has to give personal hearing and pass a reasoned order even in respect of stay application. Thus, his workload is almost double. It will be much better if system is evolved such that final appeal itself is decided within maximum 6 months}.

Powers of Commissioner (Appeals) - Commissioner (Appeals) cannot exercise powers of Central Excise Officer. However, he can issue summons u/s 14 of Central Excise Act and exercise powers under Chapter VIA (relating to appeals) [Section 12E(2) of Central Excise Act and Section 5(3) of Customs Act].

This provision is made applicable to service tax matters

Commissioner (Appeals) can direct production of any document or examine any witness on his own to enable him to dispose of the appeal – Rule 4(4) of Central Excise (Appeals) Rules.

Order that can be passed – The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against [Section 35A(3) of Central Excise Act – parallel Section 128(3) of Customs Act and Section 85(4) of Finance Act, 1994].

Communication of order – The order of Commissioner (appeals) will be communicated to appellant, adjudicating authority, Commissioner and Chief Commissioner [Section 128A(5) of Customs Act].

Order of Commissioner (Appeals) - The order should be in writing, shall state all points for determination, give decision and reasons for the same [Section 35A(4)]. Copy of the order should be communicated to (*i*) Appellant (*ii*) the adjudicating authority against whose order the appeal was filed and (*iii*) Commissioner.

6.6 REVISION BY COMMISSIONER IN SERVICE TAX

The Commissioner of Central Excise can revise the orders passed by adjudicating authority subordinate to him. The revision order can be passed any time within two years of the original order, but not afterwards. No revision can be made if appeal against such order is pending with Commissioner (Appeals) [Section 84 of Finance Act, 1994] [The powers are similar to Section 263 of Income Tax Act].

Appeal against the order of Commissioner (after revision) lies with CESTAT under Section 86 of Finance Act, 1994.

6.7 REVISION BY CENTRAL GOVERNMENT

The Act provides for appeal to Tribunal in most of the cases against order of Commissioner (Appeals). However, in few matters, appeal does not lie with CESTAT. In such cases, a revision application has to be made with Central Government. [An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of Central Government].

Appeal from order of Commissioner or Commissioner (Appeals) lies with Tribunal against all orders, ***except*** (*a*) loss of goods occurring in transit from factory to warehouse or to another factory (*b*) rebate of duty on goods exported outside India or excisable goods used in manufacture of goods which are exported and (*c*) goods exported without payment of duty [Section 35EE of CEA].

In the aforesaid matters, Tribunal has no jurisdiction, but revision application can be filed with Central Government under Section 35EE of CEA [parallel Section 129DD of Customs Act] within three months. Central Government can annul or modify the order. *In all other matters, appeal lies with Tribunal*. Revision application can be filed by assessee or the Commissioner of CE.

There is no parallel provision in service tax.

In case of Customs, CESTAT has no jurisdiction in the matters of (*a*) baggage (*b*) payment of duty drawback and (*c*) goods short landed in India. In these matters, revision application lies with Central Government [Section 129DD of Customs Act].

The revision application should be submitted personally to Under Secretary, Revision Application Unit, Government of India, Ministry of Finance, Department of Revenue, 4th floor, Jeevan Deep Building, Sansad

Marg, New Delhi - 110001, or sent by registered post to him. The revision application will be deemed to have been submitted on the date on which it is received in the office of Under Secretary. [Rule 10(2) of Central Excise (Appeals) Rules * Rule 8B of Customs (Appeal) Rules, 1982]. Application should be accompanied by prescribed fees.

Time limit for filing application - Revision application must be filed in 3 months from communication of the order. This period can be further extended by three months on sufficient cause being shown. —Section 35EE(2) of CEA - Section 129DD(2) of Customs Act.

Revision application by Commissioner - Application for revision can also be made by Commissioner of Central Excise, if he is of the opinion that order of Commissioner (Appeals) is not proper. He can direct an officer to file revision application. [Section 35EE(1A) of CEA - parallel Section 129DD(1A) of Customs Act]. This is like departmental appeal against order of Commissioner (Appeals).

No fees are payable along with such an application. No time limit has been prescribed for filing the application.

Suo motu revision by Central Government - Central Government can, on its own motion, annul or modify the order of Commissioner (Appeals). Before passing such order, show cause notice has to be given to the party within one year from date of order of Commissioner (Appeals), if it is proposed to enhance the penalty or fine in lieu of confiscation - Sections 35EE(4) and 35EE(5) of CEA - parallel Sections 129DD(4) and 129DD(5) of Customs Act.

6.8 SETTLEMENT COMMISSION

Central Excise and Customs law have made provision of 'Customs and Central Excise Settlement Commission' on the lines of a similar Commission under the Income-Tax Act, 1961 u/ss 245A to 245L of Income Tax Act.

The provisions are incorporated in Sections 31, 32 & 32A to 32P of Central Excise Act and Sections 127A to 127N of Customs Act.

The provisions are not made applicable to service tax.

Settlement Commission is constituted for settling complicated cases of chronic tax evaders as an extraordinary measure, for giving an opportunity to such persons to make a true confession and to have matters settled once for all, and earn peace of mind. It is a forum of self surrender and not a forum of challenging the legality of assessment order. – *N Krishnan* v. *Settlement Commission* (1989) 180 ITR 585 = 47 Taxman 294 (Kar HC DB).

The Settlement Commission consists of a Chairman and as many Vice-Chairmen and other Members as the Central Government thinks fi t and shall function within the Department of the Central Government dealing with Customs and Central Excise matters. The Chairman, Vice-Chairmen and other members of the Settlement Commission shall be appointed from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of Customs and Central Excise laws.

The powers and authority of the Settlement Commission will be exercised by a principal Bench sitting at Delhi and such additional Benches established by the Central Government at the places as it considers necessary. The Chairman of the Settlement Commission may, for the disposal of any particular case, constitute a Special Bench of three or even more members Decisions of the Commission will be by majority [Section 32A of CEA].

Who can approach Settlement Commission

Any assessee (in case of Central Excise) and any importer, exporter or any other person (in case of customs) can approach the Settlement Commission. The 'case' should be pending and amount involved should be more than ₹ three lakhs. Applicant should make full disclosure.

Application should be accompanied by prescribed fees. Application once made cannot be withdrawn.

Application only if the case is pending – Application to Settlement Commission can be made only when a 'case' is pending before adjudicating authority on date of application [Section 32E(1) read with 31(c) of CEA and Section 127B(1) read with Section 127A(b) of Customs Act as amended w.e.f. 1-6-2007].

"Case" means any proceeding under this Act (Customs or Central Excise Act) or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application u/s 32E(1) of CEA or Section 127B(1) of Customs Act. — When any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, then such proceeding shall not be deemed to be a 'proceeding pending'. [Section 31(c) of CEA – Section 127A(b) of Customs Act as amended w.e.f. 1-6-2007]

Thus Settlement Commission can be approached only when original adjudication is pending and not even when matter was remanded for fresh adjudication - confirmed in Para 29(t) of D. O. F. No. 334/1/2007- TRU dated 28-2-2007.

Disclosure to be made by applicant

Applicant has to make an application in prescribed form and prescribed manner stating, *inter alia*, a true and full disclosure of his duty liability which has not been disclosed before the Central Excise/Customs Officer having jurisdiction, the manner in which such liability has been incurred and the additional amount of excise/customs duty accepted to be payable by him. He has also to supply other information regarding dutiable goods in respect of which he admits short levy. Application should be for settlement of the case [Section 32E(1) of Central Excise Act and Section 127B(1) of Customs Act].

Which issues can be taken before Settlement Commission

As per Section 32E(1) of Central Excise Act (parallel Section 127B(1) of Customs Act), an application for settlement is ***not*** entertained by the Settlement Commission under Central Excise Act, 1944/Customs Act in the following circumstances :- (i) The applicant has not filed a return (in case of Central Excise) or bill of entry or shipping bill (in case of customs). (ii) A show cause notice has not been issued and case is not pending (iii) the additional amount of duty accepted by the applicant does not exceed ₹ 3 lakhs. (iv) An application/case is pending with the Tribunal or Court. (v) Where any dutiable goods or books of accounts/documents are seized and 180 days have not expired. (vi) Application pertains to classification or valuation of excisable goods.

Application for settlement only once in lifetime - Section 32-O of CEA and Section 127L of Customs Act (amended w.e.f. 1-6-2007) provides that application for settlement can be made only once in life time of applicant. In respect of cases involving identical recurring issue, the applicant can file application for settlement provided that his earlier application is pending before the Settlement Commission.

Additional amount should be more than three lakhs - The additional amount accepted by applicant as payable shall be more than ₹ three lakhs (The limit was ₹ two lakhs upto 1-6-2007).- *proviso* (c) to Section 32E(1) of Central Excise Act and *proviso* (b) to Section 127B(1) of Customs Act as amended w.e.f. 1-6-2007).

Case involving classification or valuation cannot be taken - Applications involving interpretation of the classification of excisable goods under the Central Excise Tariff Act, or Customs Tariff Act cannot be taken by Settlement Commission. This is made clear in third *proviso* to Section 32E(1) of Central Excise Act and fourth *proviso* to Section 127B(1) of Customs Act.

Case should not be relating to narcotics or Section 123 goods - In case of customs, application in respect of following cannot be entertained - (a) Goods to which Section 123 of Customs Act applies (b) Goods in respect of which offence under Narcotic Drugs & Psychotropic Substances Act has been committed [third *proviso* to Section 127B(1) of Customs Act].

Application 180 days after seizure - If any excisable goods or dutiable goods, books of account or other documents have been seized, application for settlement can be made only 180 days after such seizure.

Admitted duty with interest to be paid along with application - The appellant is required to pay duty admitted to be payable by him along with interest [*proviso* (d) to Section 32E(1) of Central Excise Act and *proviso* (c) to Section 127B(1) of Customs Act as amended w.e.f. 1-6-2007].

The amount along with interest should be paid by way of TR-6/GAR-7 challan in quintuplicate.

Admission of application - On receipt of application, Settlement Commission will issue notice within seven days to explain in writing why the application should be allowed to be proceeded and then within 14 days from date of notice, will either allow the application to be proceed with or reject the application. If no notice is issued within the prescribed period, the application shall be deemed to have been allowed to be proceeded with [Section 32F(1) of CEA and Section 127C(1) of Customs Act].

Copy of the order u/s 32F(1) will be sent to applicant and jurisdictional Commissioner of Central Excise [Section 32F(2) of CEA and 127C(2) of Customs Act].

Duty, penalty or interest to be paid within 30 days - Commission will pass the final order and determine the duty, penalty and interest payable [Section 32F(5) of CEA and Section 127C(5) of Customs Act]. The amount of duty determined shall not be less than duty liability admitted by applicant. [*proviso* to Section 32F(8) of CEA and Section 127C(8) of Customs Act].

Powers to grant immunity from prosecution

The Settlement Commission shall, subject to certain provisions, have power to grant immunity from prosecution penalty and fine in respect of the case covered by the settlement, if the applicant has cooperated with the Commission and has made full and complete disclosure. If the payment is not made as per order, the immunity will be withdrawn.

Immunity can be granted only in respect of prosecution under Central Excise Act or Customs Act and not in respect of prosecution under Indian Penal Code or any other Central law. Immunity under IPC or other Central law can be exercised in existing pending cases or cases filed upto 31-5-2007. [Section 32K(1) of CEA and Section 127H(1) of the Customs Act as amended w.e.f. 1-6-2007].

6.9 ADVANCE RULING

A businessman would like to be clear in his mind about various aspects of his venture and risks involved, before he starts a new business or adventure. He would like to get clear verdict about his doubts in respect of taxation matters, before he decides to venture in the new business. Otherwise, he may be exposed to certain unexpected risks which may have serious adverse consequences and his business may even fail. Hence, provisions of advance ruling were made in 1993 in Income Tax Act vide Sections 245N to 245R.

Advance ruling brings certainty in determining duty liability and it helps in avoiding long drawn and expensive litigation at a later date.

Similar provision of 'advance ruling' in respect of indirect taxes has been made in 1999 so that the manufacturer/ producer/importer/exporter is clear about legal aspects. The provisions were extended to service tax in May 2003. The provisions are contained in Sections 23A to 23H of Central Excise Act, 1944, Sections 28E to 28L of Customs Act, 1962 and Sections 96A to 96-I of Finance Act, 1994 (in respect of service tax). The Authority for Advance Ruling will give a decision on question raised before it. Such ruling will be binding on the applicant and the department.

Constitution of Authority - Authority of Advance Ruling (Central Excise, Customs and Service Tax) shall be constituted by Central Government by issuing a notification in official gazette. The Authority will consist of (a) Chairperson, who shall be retired judge of High Court or Supreme Court. (b) An Officer of Customs or Central Excise who is eligible to become member of CESTAT. (c) An officer of Indian Legal Service who is qualified to be Additional Secretary to Government of India. The authority can function even if there is any vacancy or defect in the constitution of Authority. The office of Authority will be in Delhi. [Section 28F of Customs Act]. - same Authority will decide customs, excise and service tax matters.

Who can apply to the authority – As per Section 23A(c) of CEA, Section 28E(c) of Customs Act and Section 96A(a) of Finance Act, 1994, application for advance ruling can be made by any of following, if they propose to undertake any business activity in India -

(i) (a) Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident

(b) A resident setting up a joint venture in India in collaboration with a non-resident or (c) A wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which proposes to undertake any business activity in India.

(ii) A joint venture in India or

(iii) A resident falling in any class or category, as may be specified by Central Government by issuing a notification.

'Joint venture in India' means a venture in which at least one of the participants, partners or equity holders is a non-resident having substantial interest in the joint venture and exercising joint control over it [*explanation* to Section 23A(c) of Central Excise Act, explanation to Section 96A(b) to Finance Act, 1994 and *explanation* to Section 28E(1) of Customs Act inserted by Finance Act, 2007 w.e.f. 11-5-2007]. Till 11th May 2007, a joint venture could make application even if all parties to/ joint ventures were residents of India.

As can be seen, presently, scope of advance ruling is very limited, i.e. only in respect of joint ventures where a non-resident is involved or in case of wholly owned subsidiary of foreign company. The provision can be extended to any resident by issuing a notification.

Meaning of advance ruling - 'Advance Ruling' means determination of a question of law or fact specified in the application submitted by applicant regarding the liability to pay duty in relation to activity (of manufacture/ production/import/export) proposed to be undertaken by the applicant.

As per Section 23C of CEA – similar Section 28H of Customs Act and Section 96C(2) of Finance Act, 1994,

the question can be in respect of –

(a) classification of goods (or services in case of service tax)

(b) applicability of an exemption notification

(c) principles to determine value of goods for purpose of assessment

(d) notifications issued in respect of excise duty payable under CEA, CETA or any other law where duty is chargeable in same manner as duty of excise or customs duty payable under Customs Tariff Act or

(e) Admissibility of Cenvat Credit (service tax credit in respect of service tax).

(f) Determination of liability to pay duties of excise on any goods (clause inserted w.e.f. 18-4-2006)

(g) Determination of origin of goods in terms of Customs rules and matters relating thereto.

As per Section 96C(2) of Finance Act, 1994 (applicable to service tax), application for advance ruling can be made on a question in respect of –

(a) classification of any service as a taxable services

(b) valuation of taxable services for charging of service tax

(c) principles to be adopted for determination of value of taxable service

(d) Applicability of notifications issued

(e) Admissibility of credit of service tax

(f) Determination of liability to pay service tax (clause inserted w.e.f. 18-4-2006)

Binding nature of Advance Ruling - The advance ruling is binding on the applicant. It is binding on Commissioner only in respect of the applicant (i.e. not in respect of others). The advance ruling will continue to be binding unless there is change in law or facts on the basis of which advance ruling was given. [Section 23E of CEA, Section 28J of Customs Act and Section 96E of Finance Act, 1994 (Service Tax Provisions)].

Advance Ruling void if obtained by fraud or misrepresentation - As per Section 23F(1) of Central Excise Act, Section 28K of Customs Act and Section 96F(1) of Finance Act, 1994 (which applies to service tax), where an advance ruling pronounced by the authority has been obtained by the applicant by fraud or misrepresentation of facts, the authority can declare the ruling to be void *ab initio*. Thereupon, all the provisions of the Act shall apply to the applicant as if such ruling had never been made. Copy of such order declaring the ruling void *ab initio* shall be sent to Commissioner of Customs and Central Excise.

6.10 APPEAL TO TRIBUNAL

Appeal against order of Commissioner/Commissioner (Appeals) **-** Section 35B(1) of CEA [parallel Section 129A(1) of Customs Act and Section 86(1) of Finance Act, 1994 (which contains provisions relating to service tax) provides that any *person aggrieved* by (*a*) Decision or order of Commissioner of Central Excise as adjudicating authority (*b*) Order of Commissioner (Appeals) under Section 35A of CEA [parallel Section 128A of Customs Act and Section 85 of Finance Act, 1994] (*which are passed on appeal from order of lower authorities*); can file appeal.

There are two parties to an appeal : one the assessee and other the excise department. If one party files an appeal, another can file cross-objections, in nature of cross appeal. Appeal to CESTAT should be in form EA-3. [In case of Customs, form No. is CA-3. In case of service tax, it is ST-5].

Appeal only against decision or order - Appeal can be filed against decision or order only. A Trade Notice is not a decision or order as it has no legal force. Appeal cannot be filed against a trade notice.

Refusal of petty Appeals - Tribunal may, at its discretion, refuse to admit an appeal if the duty involved or difference of duty involved or penalty involved is less than ₹ 50,000. However, such appeal cannot be refused if the issue pertains to valuation or rate of duty - *proviso* to Section 35B(1) of CEA [parallel Section 129A(1) of Customs Act].

Cross Objections to appeal

There are two parties to an appeal - one the assessee and other the excise department. If one party files an appeal, another will get notice of such appeal with a copy of appeal. The other party (assessee or department as the case may be) can file cross-objections. Provision of such cross objection has been made u/s 35B(4) of CEA, Section 86(4) of Finance Act, 1994 and Section 129A(4) of Customs Act.

The cross objection should be filed within 45 days of receiving of such notice. However, Tribunal can condone delay if sufficient cause is shown. The memorandum of cross objections should be in form EA-4 and should be duly verified. [In case of Customs, form number is CA-4. In case of service tax, form No. is ST-6]. The cross objections should be serially numbered and under distinct heads without any argument or narrative. Cross objections are in the nature of *Cross Appeal* and ***not*** in nature of opposing the points raised in the appeal. Following example will make the distinction clear.

Constitution of Tribunal **-** The Tribunal consists of Judicial Members and Technical Members, which gives the Tribunal a balanced overall view of legal background and practical implementation of law.

Benches of Tribunal

Tribunal sits in benches. Presently, benches are at New Delhi, Mumbai, Kolkata, Chennai and Bangalore.

Types of Benches - The benches are (*a*) Principal Bench (*b*) Zonal Bench. The Principal Benches are situated at Delhi. Presently there are seven Principal Benches. These benches can be assigned cases arising anywhere in India. (*b*) Zonal benches : These are * Northern Bench at Delhi * Southern Bench at Chennai and Bangalore * Eastern Bench at Kolkata and * Western Bench at Mumbai and Ahmedabad.

Single Member Bench - Vide Section 35D(3) of CEA [parallel Section 129C(4) of Customs Act], President of CESTAT can authorise any member to hear case singly when the duty involved or difference of duty involved *or* the fine *or* penalty involved does not exceed ₹ 10,00,000 (ten lakhs).

Fees payable for appeal before Tribunal **-** The appeal must be accompanied by a fee. Section 35B(6) of Central Excise Act, Section 86(6) of Finance Act, 1994 and Section 129A of Customs Act as amended w.e.f. 10-9-2004, prescribes fees for filing appeal before Tribunal.

Grounds of Appeal - Applicant is expected to mention all grounds of appeal in the appeal memorandum. A ground not mentioned in grounds of appeal can be accepted only with permission of Tribunal.

Time limit for passing of order by Tribunal - Section 35C(2A) of Central Excise Act and Section 129B(2A) of Customs Act, (as amended on 11-5-2002) provides that the Appellate Tribunal shall hear and decide every appeal within a period of three years, wherever it is possible to do so. Thus, the time limit is only indicative and not mandatory. However, if stay is granted by Tribunal for recovery, appeal shall be decided within 180 days. *If appeal is not disposed of by Tribunal within 180 days, the stay shall stand automatically vacated.*

As per Section 86(7) of Finance Act, 1994, these provisions apply to service tax also.

6.11 RECTIFICATION OF OWN MISTAKES BY TRIBUNAL

Tribunal has no powers to review its orders - *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji* - AIR 1970 SC 1273 = (1971) 3 SCC 844. However, Tribunal can pass order for rectifying a mistake apparent from the records, within six months of passing of order. - Section 35C(2) of CEA - similar Section 129B(2) of Customs Act.

This Section has not been made applicable to service tax. However, Section 86(6A) of Finance Act, 1994 specifies fees for application for rectification. Section 86(7) of Finance Act, 1994 states that all powers exercisable by Tribunal under Central Excise can be exercised by Tribunal in matters of service tax. Hence, Tribunal should be able to rectify its own orders In any case, it can exercise its inherent powers.

Mistakes apparent from records can be rectified – The purpose of 'rectification of mistake' is based on the fundamental principle that no party appearing before Tribunal, be it an assessee or department, should suffer on account of any mistake committed by the Tribunal. When prejudice results from an order attributable to Tribunal's mistake, error or omission, then it is duty of Tribunal to set it right - *Honda Siel Power Products Ltd.* v. *CIT* (2007) 165 Taxman 307 = 9 STR 117 = 12 VST 500 = 221 ELT 11 (SC).

The mistake can be corrected only if it is apparent from records. The error could be of fact or an error in law - *K B Foams (P.) Ltd.* v. *Dy Commissioner of CT* - (1986) 62 STC 233 (Kar HC).

Mistakes that can be rectified - The mistakes may be (*a*) typographical errors or calculation mistakes (b) Palpable mistakes (*c*) order based on inapplicable statutory provisions (*d*) point raised in appeal but not considered (*e*) wrong application of judgment of High Court. (*f*) subsequent binding decision of Superior Court (g) binding decisions not considered (h) orders traversing beyond show cause notice.

6.12 APPEAL TO HIGH COURT ON SUBSTANTIAL QUESTION OF LAW

Appeal can be made to High Court against order of Tribunal if the case involves substantial question of law, except in cases relating to rate of duty and valuation.

Appeal to High Court in certain cases - Tribunal is final fact finding authority. However, if there is a substantial question of law arising out of order of Tribunal (in cases other than relating to rate of duty and valuation); an appeal can be made to High Court within 180 days. [Section 35G(1) of CEA - parallel Section 130(1) of Customs Act].

This Section has been made applicable to service tax also.

The provisions are identical to Section 100 of Civil Procedure Code [CPC] and Section 260A of Income Tax Act.

In case of question relating to rate of duty and valuation, appeal lies with Supreme Court.

The appeal can be made either by the Commissioner of CE/Customs or the other party. If the appeal is made by other party, the application should be accompanied by fee of ₹ 200/-. The memorandum of appeal shall clearly state the substantial question of law involved. [Section 35G(2)(c) of CEA - parallel Section 130(2)(c) of Customs Act].

Hearing of appeal - The appeal will be heard by High Court bench of at least two judges. [Section 35G(7) of CEA – parallel Section 130(7) of Customs Act]. Decision will be by majority. If the judges are equally divided on the issue, matter will be referred to third judge. He will hear only on the point on which the judges were differing. The point will then be decided by majority, including those who had first heard the appeal. [Section 35G(8) of CEA - parallel Section 130(8) of Customs Act]. Provisions of Code of Civil Procedure relating to High Court will apply in case of such appeals.

Court to decide whether substantial question involved – If High Court is satisfi ed that substantial question of law is involved, it will formulate the question. Other party can argue that substantial question of law is not involved. High Court can even answer question of law not formulated by it, if it is satisfied that the case involves such substantial question of law. [Section 35G(4) of CEA – parallel Section 130(4) of Customs Act].

Judgment of High Court and action by concerned excise officer - The High Court will deliver the judgment on the substantial question of law either formulated by it or even if not formulated by it. High Court may award cost as it deems fit. [Section 35G(5) of CEA - Section 130(5) of Customs Act]. The concerned Central Excise Officer will give effect to the order passed by High Court in appeal, on the basis of certified copy of the judgment of High Court. [Section 35K(1A) of CEA – parallel Section 130D(1A) of Customs Act].

These Sections have been made applicable to service tax also.

Substantial question of law – Appeal can be made only if there is 'substantial question of law'.

6.13 APPEAL TO SUPREME COURT

Appeal to Supreme Court can be made in following cases :

- Judgment of High Court in appeal, if High Court certifies it to be a fit case for appeal to Supreme Court [Section 35L(a)(i) of CEA - parallel Section 130E(a)(i) of Customs Act]
- Judgment of High Court in reference (pertaining to matters prior to 1-7-2003), if High Court certifies it to be a fit case for appeal to Supreme Court
- Order of Appellate Tribunal where it relates to question relating to rate of duty excise or value for purpose of duty. [Section 35L(b) of CEA - parallel Section 130E(b) of Customs Act]
- By Special Leave Petition (SLP) under Article 136 of Constitution i.e. permission of Supreme Court, even in cases where High Court does not certify it to be a fit case for appeal to Supreme Court.

Section 35L of CEA has been made applicable to service tax also.

Appeal against order regarding dutiability/ valuation/classification - Appeal to Supreme Court can be made if the order of CESTAT relates, among other things, to the determination of any question having a relation to rate of duty or to value of goods. [If it does not relate to these issues, appeal has to be made to High Court u/s 35G].

Since the words used are 'among other things', even if one of the issue relates to rate or value, appeal lies with Supreme Court and not High Court.

Appeal to SC should be presented within 60 days from the date the order is communicated. Appeal should be with seven extra sets and should recite all relevant facts and set forth objections to the order and ground of appeal. An authenticated copy of order appealed against should be attached. These are 'civil appeals'.

6.14 CONSTITUTIONAL REMEDIES IN INDIRECT TAXES

Our Constitution has maintained a balance between powers of Legislature, Judiciary and Executive. All actions of Government are subject to judicial scrutiny of Supreme Court and High Courts, irrespective of provisions of any particular statute. These judicial powers are conferred by Constitution itself and hence cannot be curtailed by any legislation. Declaration in any Statute that the order shall be final does not affect writ jurisdiction.

Powers of Supreme Court - Article 136 authorises Supreme Court to grant special leave to appeal from any judgment, decree or order in any cause or matter passed or made by any court or Tribunal in India. This is at the discretion of the Supreme Court and applications under this Article are termed as Special Leave Petitions (SLP) as these can be admitted only with special leave (permission) of Supreme Court.

Powers of High Court - High Court, within the territory of its jurisdiction, has powers, *vide* Article 226 of Constitution, to issue orders or writs for enforcement of any fundamental right and *for any other purpose*.

Article 227 confer powers on High Court of superintendence over all courts and Tribunals in the territory in which the High Court has jurisdiction. Thus, Tribunals in a State are subordinate to the High Court of that State and decisions of the High Court are binding on the Tribunal bench sitting in that State.

Norms for invoking special powers - Powers to issue high prerogative writs are extraordinary discretionary powers and hence are to be exercised sparingly and in fit case, on sound principles of law. Courts will invoke writ jurisdiction only in exceptional cases. Thus, when alternate remedy like departmental appeal or ordinary civil suit is available, writ jurisdiction will not be normally invoked.

STUDY NOTE - 7
CENTRAL SALES TAX ACT, 1956

This Study Note includes

- Introduction
- Constitutional Provisions & Nexus Theory
- Principles & Objects of CST Act, 1956
- Definitions
- Sale or purchase in the course of Interstate Sale
- Sale or purchase outside a State
- Sale in the course of export/import
- Person liable to pay CST
- Exemption in respect of Subsequent Sale
- Taxability of transfer of goods made otherwise than by way of sale
- Registration of Dealer
- Rates of tax in the course of interstate trade or commerce
- Purchase of goods by a Registered Dealer
- Furnishing of Declaration
- Power to exempt or impose tax at Concessional Rates
- Sale for units located in Special Economic Zone
- Determination of Taxable Turnover
- Levy & Collection of Tax
- Penal provisions under CST Act
- Imposition of Penalty in lieu of Prosecution
- Cognizance of Offences
- Goods of Special Importance
- Liability of liquidator of company in liquidation
- Liability of Directors of Private Company in liquidation
- Appeals
- Orders appealable and procedure for filing appeal
- Procedure on receipt of appeal
- Powers of the CST Appellate Authority
- Authority for Advance Rulings
- Transfer of Pending Proceedings
- Applicability of Order Passed
- Forms under CST
- Practical Problems on CST

7.1 INTRODUCTION

- Central Sales Tax is an indirect tax which is levied by the Central Government.
- In this case, the taxable event is **'sale of goods inter-state'.**
- CST applies to the whole of India including the state of Jammu & Kashmir.
- CST is payable in the state in which the movement of goods commences.
- Though it is called CST, it is actually assessed, collected & administered by the local (i.e. State) sales tax authorities only.
- Also, the tax collected under CST is actually retained by the state (in which it is collected).

7.2 CONSTITUTIONAL PROVISIONS & NEXUS THEORY

(A) Constitutional Provisions :

- The power to levy tax is given through the constitution of India. (Entry No.92A and 92B of List I, called the Union List, in the Seventh Schedule to the Constitution of India, as per Article 246(1).
- Article 265 of the Constitution of India states that no tax shall be levied or collected except by authority of law.
- Article 269 (1)(G) empowers the Central Government to levy taxes on sale or purchase of goods other than newspapers, which takes place in the course of inter-state trade or commerce.(Entry No.92A and 92B)
- Article 269(2) assigns the levy of such tax to the States.
- Article 269(3) empowers the Parliament to formulate principles for determining when a sale or purchase takes place in the course of interstate trade or commerce.
- Article 286 prohibits the States to levy tax on transactions which are covered by the CST Act.

(B) Nexus Theory :

Sales tax is levied on the transaction of sale of goods. A sale of goods has various elements such as goods, agreement to sell, transfer of property, valuable consideration, seller, buyer etc.

It is possible that each such element of sale may be distributed over more than one state.

For e.g. : the seller is in one state, the buyer is in another state, transfer takes place in the third state, consideration may pass in the fourth state etc.

Earlier, each such state tried to subject a single sale transaction to its own sales tax under the 'Nexus doctrine'. 'Nexus' means connection or link.

Under the guise of having a territorial nexus each state brought a single sale transaction to its own sales tax.

This consequently resulted in the same sale transaction being subject to multiple taxation.

To put an end to this unfair multiple taxation on a single sale transaction, Article 286 of the Constitution of India was amended.

Article 286 provides that no law of a State shall impose, or authorize the imposition, of a tax on the sale or purchase of goods where such sale or purchase takes place

(a) Outside the State, or

(b) In the course of the import of the goods into, or export out of, the territory of India.

7.3 PRINCIPLES & OBJECTS OF CST ACT, 1956

(A) Principles of Central Sales Tax Act :

Entry 92 (a) of the List-I (Union List) to the Seventh Schedule of the Constitution of India empowers the Union Government to levy tax on the sale or purchase of goods, which takes place in the inter-state trade or commerce. Accordingly, the Central Sales Tax Act was enacted.

(B) Objects of the CST Act:

The objects of the Central Sales Tax Act, 1956 as given in the Preamble of the Act are as follows :

1. To formulate principles for determining when a sale or purchase of goods takes place :
   (a) In the course of interstate trade or commerce (Sec 3)
   (b) Outside a state (Sec 4)
   (c) In the course of import into or export from India (Sec 5).
2. To provide for the levy, collection and distribution of taxes on the sale of goods in the course of interstate trade or commerce (Sec 9).
3. To declare certain goods to be of special importance in inter-state trade or commerce (Sec 14).
4. To specify the restrictions and conditions on the State laws imposing taxes on the sale or purchase of such goods of special importance (Sec 15).
5. To provide for collection of taxes from companies under liquidation (Sec 16 - 18).

7.4 DEFINITIONS (SEC 2)

Sec 2(a) -'Appropriate State' means :

(a) in relation to a dealer who has one or more places of business situated in the same state, that state.

(b) In relation to a dealer who has places of business situated in different states, every such state with respect to the place or places of business situated within its territory.

Significance of 'Appropriate State'.

1. Administration, levy and collection of tax have been delegated to Appropriate State (Sec 9).
2. Registration should be made with the authorities of the Appropriate State.
3. Monthly returns, appeals, reviews, references, refunds and compounding of penalties are to be dealt with by the Appropriate State.
4. Appropriate state is equally significant in the application of :
   - Sec 8(2) (rate of tax on sales not covered by C Form);
   - Sec 8(1) and Sec 8(2)(c) (extension of tax concessions on intra state sales to inter-state sales) and
   - Sec 9(2A) (offences under General Sales Tax Acts are offences under CST Act too in the respective states).

Sec 2(aa) -'Business' includes :

(a) Any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture,
   - whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and
   - whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern;

(b) Any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.

Analysis of the definition :

1. The meaning of **'business'** is significant since dealer u/s 2(b) is a person who carries on the business of buying, selling, supplying or distributing goods.
2. The definition of business is inclusive and not exhaustive.
3. For determining whether a transaction is in the nature of business, frequency regularity and volume of such transaction has to be looked into.
4. It is not necessary that the business is carried on with a profit motive. Even an activity suffering a loss may be called a business.
5. Business may be legal or illegal. It may be carried on regularly or otherwise.
6. If the main activity of a dealer is business under clause (a) above - only then incidental or ancillary activities under clause (b) above will also be business.

Examples :

- Temples sell prasadam which is an ancillary activity. However, the main activity of temples is not business. Hence, sale of prasadams cannot be taxed. (**Tirumala Tirupathi Devasthanam Case).**
- The sale of assets by bank for realisation of loans (an ancillary activity) cannot be taxed as the main activity of bank is not business (trade, commerce, manufacture etc.) **(Canara Bank Case).**

Sec 2(ab) -'Crossing the customs frontiers of India' means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance bycustorns authorities.

Customs station means a customs port, customs airport or a land customs station as defined under the Customs Act, 1962.

Sec 2(b) -'Dealer' means any person

- who carries on (whether regularly or otherwise), the business of
- buying, selling, supplying or distributing goods, directly or indirectly,
- for cash or for deferred payment, or for commission, remuneration or other valuable consideration.

Dealer includes the following :

(a) A local authority, a body corporate, a company, any co-operative society or other society, club, firm, HUF or other association of persons which carries on such business.

(b) A factor, broker, commission agent, del credre agent, or any other mercantile agent, by whatever name called, and whether of the same description as herein before mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not, and

(c) An auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

Deemed Dealers :

Explanation 1 : Every person who acts as an agent, in any State, of a dealer residing outside that state and buys, sells, supplies, or distributes, goods in the State or acts on behalf of such dealers as —

(a) A mercantile agent as defined in the Sale of Goods Act, 1930, or

(b) An agent for handling of goods or documents of title relating to goods, or

(c) An agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment, and every local branch or office in a state of a firm registered outside that State or a company or other body corporate, the principal office or headquarters whereof is outside that state, shall be deemed to be a dealer for the purposes of this Act.

Explanation 2 : A Government which, whether or not the course of business buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall except in relation to any sale, supply or distribution of surplus, un-serviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purposes of the CST Act.

'Central Government can become a dealer, but the state government cannot-is the statement correct? Give reasons.

Answer :

- The statement is not correct. According to Explanation 2 under Sec 2(b), "a **Government** which, whether or not the course of business buys, sells, supplies or distributes goods……shall….. be deemed to be a dealer for the purposes of CST Act'
- The word used is 'Government' and not Central Government.
- No distinction is sought to be made between Central Government and State Government.
- Hence every government, be it central or state, buying /selling goods will be deemed to be a dealer.

Sec 2(c) - 'Declared goods' means goods declared under Section 14 to be of special importance in interstate trade or commerce.

Sec 2(d) -'Goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares & securities.

Analysis of definition :

The definition of 'goods' is inclusive definition. It does not bring out the essential characteristics of goods, but declares that all materials, articles commodities and all other kinds of movable property are goods and excludes some specified items. Article 366(12) of the Constitution of India, defines the term 'goods' to include all materials, commodities and articles. But this definition is very wide, when compared with the definition of goods under the CST Act.

Held to be 'Goods'	**Held not to be 'Goods'**
Electricity and electric meters	Labour
Animals or birds in captivity and livestock	Money (Cash/Currency/Cheque/DD)
Copyrights, branded software programmes of floppies or discs	Oil Tanker embedded in earth
Lottery tickets, incomplete films, steam etc.	Claim for loss or damages

Goods include all movable property :

- The immovable property is excluded from the definition of Goods. Immovable property includes land, benefits arising out of land and things attached to earth or permanently fastened to anything that is attached to the earth.
- However, goods include standing crop, grass and things attached to and forming part of land, which is agreed to be severed before sale or under contract of sale. But standing trees are not goods and not taxable, unless timber is identified, contract is unconditional and the timber is in deliverable state.
- The securities like shares, debentures, stocks or money certificates are not goods and hence not taxable.

Examples :

(1) Arun sells his land along with the standing crops and trees for ₹20 lakhs. Sales tax officer wants to assess for sales tax the value of standing crops and trees. Comment.

Answer :

- What is sold is land along with standing crops and trees.

- The sale does not pertain to the latter alone in which case they are uprooted and removed. Consequently, they become goods.
- In the instant case, the standing crops and trees are immovable.
- They are not goods and hence do not attract sales tax.

(2) Are sale of bundles of old newspapers as waste papers exempt from CST?

Answer :

As per section 2(d), goods do not include 'news paper'.

In **Sait Rikhaji Furtarnal Vs State of AP**, the Supreme Court held that when old newspapers are sold as newspapers, they are only in the character of newspapers and they are not goods.

However, when the newspapers are sold as waste papers, they are not newspapers and hence they are goods. Therefore, sale of bundles of old newspapers as waste papers is taxable**. (The Hindu vs. State of Tamil Nadu)**

Sec 2(dd) -'Place of Business' includes :

(a) In any case, where a dealer carries on business through an agent (by whatever name called), the place of business of such agent;

(b) A warehouse, godown or other place where a dealer stores his goods; and

(c) A place where a dealer keeps his books of account.

Significance of 'Place of Business'

- The 'Place of Business' has significance in the context of registration of dealers for Sec 7, 8 & 9 of the CST Act, 1956.
- A dealer having a place of business in more than one state - has to get himself registered under each state.
- If a dealer has different places of business in one state, then he can apply for registration through a single application for that state.

Sec 2(g) -'Sale' means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

Deemed Sale :

Pursuant to amendment of **Article 366** of the Constitution, the following deemed transactions are also covered :

1. A transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
2. A transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
3. A delivery of goods on hire-purchase or any system of payment by instalments;
4. A transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
5. A supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
6. A supply, by way of or as part of any service of goods, being food or any other article for human consumption or any drink (whether or not intoxication), where such supply or service is for cash, deferred payment or other valuable consideration.

Essential ingredients of a sale :

- There must be two parties to the contract of sate (i.e.) the buyer & the seller.

- There must be valid consent of both the above parties.
- There must be an actual transfer of property in goods (i.e. agreement to sell is not a sale)
- There must be a consideration in cash or in deferred payment or any other valuable consideration in money or moneys worth.
- Sale includes deemed sales.
- Sale does not include a mortgage or hypothecation of or a charge or pledge on goods.

Examples:

(1) Is transfer of property in goods without consideration chargeable to CST?

Answer : Sale u/s 2(g) means transfer of property for cash or deferred payment or for any other valuable consideration. Where there is transfer of property in goods without consideration, it does not amount to sale within the meaning of the definition under the act and therefore CST is not attracted.

(2) Is transfer by way of mortgage chargeable to CST?

Answer : the definition of 'sale' u/s 2(g) specifically excluded mortgage, hypothecation of goods, charge or pledge on goods. Hence, CST cannot be charged when there is transfer by way or mortgage.

Sec 2(h) -'Sale price' means the amount payable to a dealer as consideration for the sale of any goods, less, any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof, other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

Inclusions in Sale Price:

- **Central Sales Tax**-whether or not shown separately in invoice (then back calculations are made)
- **Excise Duty**- the excise duty payable is includible in 'sale price'. *Hindustan Sugar Mills vs. State of Rajasthan(1979); Ramco Cement Distribution Co.(P) Ltd. V. State of Tamilnadu* Sales tax is also payable on excise duty whether or not shown separately in invoice and even if paid directly by purchaser. However, this is so only when liability to pay duty is on seller.-*McDowell and Co.Ltd v. CTO.*

  Excise duty is a part of turnover, even in that case, the duty was payable by the purchaser, as primary liability to pay duty is of the manufacturer-*Mohan Breweries & Distilleries Ltd v.CTO(1997), State of Kerala V.MRF(1997)*-the judgement was in case of 'cess' payable.
- **Packing material and packing charges**-sales tax is leviable on packing material as well as packing charges (i.e. labour charges for packing goods). Sales tax is leviable on packing charges, even if shown separately-CST v. Rai Bharat Das (1988); *Ramco Cement Distribution Co .(P) Ltd. V. State of Tamilnadu; Dalmia Cement (Bharat)Ltd. V. State of Tamilnadu(1991). Cost of packing material is includible in sale price-HPCL v .State of Kerala(1993)*
- **Bonus discount or incentive bonus-** for additional sales affected by the distributor/dealer.
- **Insurance charges-**if the goods are insured by the seller.
- **Freight and delivery charges incidental to sale only are deductible-** if the goods are sold from depot, transport charges from factory to the depot cannot be allowed as deduction-*Dyer Meakin Breweries Ltd.V. State of Kerala(1970)*
- **Design charges-** in case of goods includible if charged separately in respect of goods manufactured as per design and sold to buyer,as it is a pre-sale expense and forms part of manufacturing cost-*American Refrigerator Co.Ltd.v.State of Tamilnadu(1994)*
- **Compulsory warranty charges-**includible if a manufacturer sales goods with service warranty on which customer has no option, the charges for warranty are includible as there is no sale without it-*State of AP V. Hyderabad Allwyn Ltd(1970)*

- **Weighment charges paid for goods-**includible in the sale price.
- **Subsidy/incentive paid to supplier –** these are not post sale expense, hence includible. *EID Parry V.ACCT(1997)*
- **Tax paid by buyer when liability is of seller.** However, if the liability to pay tax/cess/duty is in the buyer, the same cannot be considered for purpose of 'sale price'-*P.V.Beedies(P)Ltd v. State of Mysore (1963); G M S Prakash Rice Mills v. State of Punjab(1993).* Market cess collected by dealer from buyer and paid to Government is not part of consideration for sale and hence is not taxable-*State of AP v. T. Siddaiah Naidu (1997)*
- **Any sum charged for anything done by the dealer-***in respect of goods at the time of or before delivery of such goods.*

Exclusions from Sale Price :

The following items shall not be a part of sale price for the calculation of sales tax liability :

- **Freight / transport charges for delivery of goods**- CST is not payable on freight and transport charges. However, CST is payable on freight charges if (a)Freight Charges are not shown separately in invoice or (b) contract is for FOR destination.

  Supreme Court envisaged three situations: (1) Price at the factory gate, i.e. ex-works price. Here tax is not payable on freight (2) Contract for sale is FOR destination (3) the price is FOR destination, but contract does not have all ingredients of FOR destination railway contract. *Hindustan Sugar Mills Ltd. V. State of Rajasthan(SC);Kurkunta and Seram Stones (P)Ltd. V.State of Karnataka; Black Diamond Beverages v.CTO, Hyderabad Asbestos Cement Products Ltd v.State of AP; CST v. Ballarpur Industries Ltd(1995).*
- **Cost of installation if charged separately**- is not to be includible.
- **Cash discount** for making timely payments- is not includible.
- **Trade discounts**-is deduction from list price to wholesalers/dealers, cannot be considered for calculation of CST. *Dy.CST v .Advani Oerlikons (P) Ltd (SC); State of Tamilnadu V.Alkali Chemical Corporation (1994); Dy.CST v.Kerala Rubber and Allied Products (1993); Dy.CST v.Motor Industries Co (SC).*
- **Insurance on transit if incurred at the request of buyer**-are not chargeable to CST.
- **Goods returned within 6 months of the date of sale**-Sec 8A (b) provides that if goods are returned by buyer within six months, its sale price will be deducted from 'aggregate sale price', if satisfactory evidence is produced before sales tax authority in respect of the same. *Dy.CST v.Motor Industries Co (SC); State of Maharashtra v.BASF (India) Ltd (SC).*
- **Goods rejected**-in such case, the period of six months is not applicable, as in case of rejected goods, there is no 'complete sale' at all within the meaning of CST Act or Sale of Goods Act, as the purchasing party has not accepted the goods. Return of goods is a bilateral transaction brought about by consent of seller and purchaser, while rejection of goods is a unilateral transaction, open only to purchaser. It means that sale has not taken place to attract tax. *Metal Alloy Co.(P) Ltd. V. CTO, Bhavanipur Charge Calcutta(1977); State of Tamilnadu v. General Engineering Stores(1993)*
- **Government subsidy & other subsidy**-is excludible from the sale price for CST.
- **Deposits for returnable containers**-Deposits taken for returnable bottles or tin containers are not sales. Even if the customer does not return the container for long time and security deposit is transferred to profit and loss account that will convert the deposits as part of sale proceeds. There is no intention to sale the container. If the container is not returned the deposit is retained as liquidated damages for loss of bottle. *United Breweries Ltd. V.State of AP (SC); State of Tamilnadu V McDowell (SC); Kalyani Breweries v.State of West Bengal.*
- **Customs duty paid by Buyer-**when sale is by transfer of documents-*Gujarat Export Corporation Ltd.V. State of Maharashtra(1990)*
- **Taxes and fees statutorily recoverable from Buyer-***Anand Swarup Mahesh Kumar v.CST(SC); State of AP v. T Siddaiah Naidu*

Sec. 2 (i) : Sales tax law and general sales tax law

'Sales tax law' means any law for the time being in force in any state or part thereof which provides for the levy of taxes on the sale or purchases of goods generally or on any specified goods expressly mentioned in that behalf.	'General sales tax law' means the law for the time being in force in any state or part thereof which provides for the levy of tax on the sale or purchase of goods generally.

Sec 2 (j) -'Turnover' means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of interstate trade or commerce made during any prescribed period and determined in accordance with the provisions of the CST Act and the Rules made there under.

Sec 2(k) -'Year' in relation to a dealer means the year applicable in relation to him under the General sales tax law of the appropriate State and where there is no such year applicable, the financial year.

7.5 SALE OR PURCHASE IN THE COURSE OF INTERSTATE SALE (SECTION 3)

According to Section 3 of the Central Sales Tax Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase :

(a) Occasions the movement of goods from one state to another; or

(b) Is effected by a transfer of documents of title to goods during their movement from one state to another.

The essential ingredients of interstate sale are as follows :

1. The transaction should be a complete sale.
2. There should be movement of goods from one state to another state by virtue of agreement to sale.
3. The completed sale must take place in a state different from the state in which movement of goods commences.
4. It is not necessary that completed sale precedes the movement of goods. Sale can be either before or after the movement of goods.
5. There must be physical movement of goods from one state to another state.
6. Where the movement of goods commences and terminates in the same state, it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other state.
7. The movement of goods shall commence when the goods are delivered to the carrier or other bailee for transmission and the movement of the goods shall end when the delivery is taken from such carrier or bailee. Thus, the transfer of documents to the title of the goods (Lorry receipt/ Railway Receipt, Bill of Lading, Airway Bill) shall be made during the movement of the goods from one state to another.

Case Laws :

In **Union of India Vs K.G. Khosla Co. Ltd** it was held that a sale can be 'interstate sale' even if the contract of sale does not itself provide for the movement of goods from one state to another. However, such movement should be the result of a covenant of sale or an incidence of that contract.

In **East India Corporation Ltd. Vs State of Tamil Nadu**, the assessee and the customer were from the same state (i.e. Tamil Nadu). However, it was held as an interstate sale u/s 3(b) since goods had moved in from a state outside Tamil Nadu.

In **Mewalal Kawal Kishore v CST,** it was held that there can well be an interstate sale between the two persons belonging to the same state, if the goods move from one state to another, as a result of a contract of sale or the goods are sold, while they are in transit by transfer of documents.

Exceptions to Section 3 :

- Generally, CST is leviable on interstate sale transactions which cover movement of goods from one state to another.
- However, all dispatches of goods from one state to another state do not ipso facto result in interstate sale u/s. 3 of the CST Act.
- Only when the movement is on account of a covenant or the sale effected by a transfer of document of title to the goods during their movement from one state to another, it will be an interstate sale U/s 3.
- The following are the instances where goods move from one state to another but do not amount to interstate sales :
  - (a) A movement of goods from one state to another will not amount to interstate sales unless the seller had the responsibility to deliver the goods outside that state or the movement was as a result of a covenant or incident of contract of sale.
  - (b) Stock transfer between head office & branch office will not amount to interstate sales as the basic elements of sale i.e., the presence of a buyer & seller; consideration & transfer of ownership etc. are not present.
  - (c) Sale or purchase in the course of export/ import does not attract levy of CST since these have been specifically covered u/s 5 of the CST Act, 1956.
  - (d) Sale through commission agent / on account sales will not amount to interstate sales as the agent only acts on behalf of the seller and he does not acquire any ownership of the goods. The agent is only entitled to receive commission on the sales effected by him and will also get re-imbursement of the expenses incurred by him.

Is sale by VPP liable to Central Sales Tax?

Answer :

- In order to be an interstate sale, there must be movement of goods in connection with the sale as stipulated in Section 3.
- In a sale by VPP, both the requirements of Section 3 are satisfied. In a sale by VPP, there is an order by the buyer on the seller.
- The seller dispatches the goods by post parcel and the goods are to be delivered by postal authorities to the buyer on payment of price.
- The sale takes place in the state where the parcel is received and its value is paid to the post office.

7.6 SALE OR PURCHASE OUTSIDE A STATE (SECTION 4)

1. Section 4(1) provides that subject to the provisions of Section 3, if a sale or purchase of goods is said to take place inside a state, then, such sale or purchase shall be deemed to have taken place outside all other states.
2. According to Section 4(2), a sale or purchase of goods shall be deemed to take place inside a state, if :

In case of ascertained or specific goods	If the goods are within the State at the time of contract of sale
In case of unascertained or future goods	If the goods are within the State at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation

3. Where there is a single contract for sale or purchase of goods situated at more than one place, it shall be treated as separate contracts in respect of goods at each such place.

7.7 SALE IN THE COURSE OF EXPORT /IMPORT (SECTION 5)

(A) Sale in the course of export : [Section 5(1)]

1. Section 5(1) provides that a sale or purchase of goods shall be deemed to take place in the course of export only if :
   (a) The sale or purchase occasions such export, or
   (b) It is effected by a transfer of documents of title to the goods **after** the goods have crossed the customs frontiers of India.
2. The requisites of an export sale are :
   (a) There is a contract of sale between an Indian exporter and a foreign buyer.
   (b) There must be an obligation to export as a result of the above foreign contract.
   (c) There must be an actual export of goods to a foreign destination.
3. An export sale can also be effected by transferring documents of title to the goods to a foreign buyer after the goods have crossed the customs frontiers of India.

(B) Sale in the course of Import : [Section 5(2)]

1. Section 5(2) provides that a sale or purchase of goods shall be deemed to take place in the course of import only if :
   (a) The sale or purchase occasions such import, or
   (b) It is effected by a transfer of documents of title to the goods **before** the goods have crossed the customs frontiers of India.
2. The requisites of an import sale are :
   (a) There is a contract of sale between an Indian importer and a foreign seller.
   (b) There must be an obligation to import as a result of the above foreign contract.
   (c) There must be an actual import of goods from a foreign destination.
3. An import sale can also be effected by transferring documents of title to the goods in favour of an Indian buyer before the goods have crossed the customs frontiers of India.

(C) Penultimate sale for export of goods : [Section 5(3)]

1. Penultimate sale is the last sale immediately prior to the original export.
2. According to Section 5(3) of the CST Act, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export if the following conditions are satisfied :
   (a) There must have been pre-existing agreement or order to sell the specific goods to a foreign buyer.
   (b) The last purchase as referred above, must have taken place after that agreement with the foreign buyer was entered into.
   (c) The last purchase must have been made for the purpose of complying with the pre-existing agreement or order.
   (d) The same goods, which are purchased in the penultimate sale, must be exported.
   (e) The dealer should obtain proof of export from the original exporter.
   (f) The original exporter should give Form H to the dealer and only on that basis the dealer can claim exemption of deemed export.

7.8 PERSON LIABLE TO PAY CST [SECTION 6(1) & 6(1A)]

- Section 6(1) of the CST Act provides that subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of interstate trade or commerce during any year on and from the date so notified.

  However, a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of section 5(3), is a sale in the course of export of those goods out of the territory of India.

Analysis of Section 6(1) :

Section 6(1) is the charging Section. It reveals the following ingredients :

(a) The taxability under this Section is subject to other provisions of the Act.

(b) A sale under this Section shall be taxed only if it comes within the scope of section 3 of the Act, to be determined as Interstate Sale.

(c) An assessee, to become liable to pay tax, should be dealer within the meaning of section 2(b) of the Act.

(d) The liability to tax shall arise in respect of all goods, except electrical energy.

(e) The penultimate sales in the course of export of goods outside the territory of India are exempt from tax liability.

- Section 6(1A) provides that a dealer shall be liable to pay tax under the CST Act on sale of any goods effected in the course of interstate trade or commerce notwithstanding that no tax would have been leviable under the Local Sales Tax Act of the appropriate state if such sale had taken place inside that State.
- Thus, the absence of levy in intra state sales has no bearing on the levy in respect of interstate sale

7.9 EXEMPTION IN RESPECT OF SUBSEQUENT SALE [SEC 6(2)]

1. According to Section 6(2) of the Central Sales tax Act, 1956, any sale effected during the movement of goods from one state to another by transfer of document of title is known as subsequent sale.

2. Such subsequent sale shall be exempted from CST when the following conditions are fulfilled :

   (a) The first sale should be an interstate sale.

   (b) A sale subsequent to the sale mentioned here in above should take place.

   (c) The subsequent sale should be during the course of movement of goods from one state to another.

   (d) Such subsequent sale shall be effected by a transfer of documents of title to such goods.

   (e) The subsequent sale shall be made to the government or a registered dealer other than the government.

   (f) Where the subsequent sale is made to a registered dealer other than the government, the goods are of the description referred to in Section 8(3).

   (g) The dealer effecting the subsequent sale furnishes the prescribed certificate or declaration to the appropriate authority.

   (h) The entire transaction of sale shall be supported by the following supporting documents :

Nature of Sales	Form to be issued by the Buyer*	Form to be issued by the Seller
Original Inter State Sale [Section 3(1)]	Form C	Form E-I
Next Inter State sale by transfer of documents of title to goods	Form C	Form E-II
Subsequent sale u/s 6 (2)	Form C	Form E-II
Second subsequent sale during same transit	Form C	Form E-II

* If the sale is made to Government, Form D will be issued.

3. In case of subsequent sale in the course of Interstate sale, the dealer effecting subsequent sale can avail exemption by submitting Form C/D issued by his customer and by submitting Form E-I, issued by his seller.
4. Form, E-I, E-II & E-III etc. are printed by the Sales Tax department and are supplied to the registered dealer for their use. Form E-I & E-III will have to be issued, in case there are more than one subsequent sale.
5. Thus, it should be noted that Form E-I can be issued by the first seller alone. Form E-II & E-III will have to be submitted by those selling dealer (other than the first dealer) to their purchaser, who can avail of the exemption under section 6(2), subject to the condition that Form C is submitted as well.
6. Where a Government Department has submitted Form D there cannot be subsequent resale by it.

Thus, any number of subsequent sales effected in the course of such single interstate movement of the goods from one state to another by transfer of documents of title to the goods by one dealer to another shall be exempt provided that the above conditions are fulfilled and relevant f6rms are obtained and filed.

7.10 TAXABILITY OF TRANSFER OF GOODS MADE OTHERWISE THAN BY WAY OF SALE (SEC 6A)

1. Where any dealer claims that he is not liable to pay tax under the CST Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer.
2. The dealer may furnish to the assessing authority, within the prescribed time a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, containing the prescribed particulars in the prescribed form (Form F) obtained from the prescribed authority, along with the evidence of dispatch of such goods.
3. If the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed to have been occasioned as a result of sale.
4. If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer are true, he may make an order to that effect.
5. Thereupon, the movement of goods to which the declaration relates shall be deemed to have been occasioned otherwise than as a result of sale.

7.11 REGISTRATION OF DEALER

Section 7 of the CST Act lays down the provisions for registration of Dealers as under:

(A) Compulsory Registration : [Section 7(1)]

Section 7(1) provides that every dealer liable to pay tax under the CST Act shall, within such time as may be prescribed for the purpose, make an application for registration to such authority in the appropriate Stale as

the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

(B) Voluntary Registration : [Section 7(2)]

1. Section 7(2) provides that any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under the CST Act, apply for registration to the authority referred to in Section 7(1), and every such application shall contain such particulars as may be prescribed.
2. A dealer shall be deemed to be liable to pay tax under the sales tax law of the appropriate State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof.

(C) Issue of Certificate of Registration : [Section 7(2A) & 7(3)]

1 . Section 7(2A) provides that where it appears necessary to the authority to whom an application is made for registration, he may for the proper realisation of the tax payable under the CST Act or for the proper custody and use of the forms impose as a condition for the issue of a certificate of registration, by an order in writing and for reasons to be recorded therein, a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order specified security for all or any of the aforesaid purposes.
2. Section 7(3) provides that if the authority is satisfied that the application is in conformity with the provisions of the CST Act and the rules made thereunder and the condition, if any, imposed, has been complied with, he shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of Section 8(1).

(D) Security for Registration : [Section 7(3A), 7(3B), 7(3BB) & 7(3C)]

1. Section 7(3A) provides that where it appears necessary to the authority granting a certificate of registration he may for the proper realisation of tax payable under the CST Act or for the proper custody and use of the forms require, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require from the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security, or, if the dealer has already furnished any security, such additional security, as may be specified in the order, for all or any of the aforesaid purposes.
2. Section 7(3B) provides that no dealer shall be required to furnish any security or additional security unless he has been given an opportunity of being heard.
3. Section 7 (3BB) provides that the amount of security which a dealer may be required to furnish or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish by the authority referred to therein, shall not exceed :
   (a) in the case of a dealer other than a dealer who has made an application, or who has been registered in pursuance of an application, a sum equal to the tax payable under this Act, in accordance with the estimate of such authority on the turnover of such dealer for the year in which such security or as the case may be, additional security is required to be furnished; and
   (b) in the case of a dealer who has made an application, or who has been registered in pursuance of an application a sum equal to the tax leviable under this Act, in accordance with the estimate of such authority on the sales to such dealer in the course of inter-State trade or commerce in the year in which such security or, as the case may be, additional security is required to be furnished, had such dealer been not registered under the CST Act.
4. Section 7(3C) provides that where the security furnished by a dealer is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(E) Forfeiture of Security : [Section 7(3D) & 7(3E)]

1. Section 7(3D) provides that the authority granting the certificate of registration may by order and for good and sufficient cause forfeit the whole or any part of the security furnished by a dealer :
   (a) for realising any amount of tax or penalty payable by the dealer;
   (b) if the dealer is found to have misused any of the forms or to have failed to keep them in proper custody :
2. However, no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.
3. Section 7(3E) provides that where by reason of an order, the security furnished by any dealer is rendered insufficient; he shall make up the deficiency in such manner and within such time as may be prescribed.

(G) Refund of Security : [Section 7(3G)]

Section 7(3G) provides that the authority granting a certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under Section 7, if it is not required for the purposes of the CST Act.

(H) Refusal to issue forms : [Section 7(3F)]

Section 7(3F) provides that the authority issuing the forms may refuse to issue such forms to a dealer who has failed to comply with an order or with the provisions of, until the dealer has complied with such order or such provisions, as the case may be.

(I) Appeal against the order : [Section 7(3H), 7(31) & 7(3J)]

1. Section 7(3H) provides that any person aggrieved by an order may, within thirty days of the service of the order on him, but afterfurnishing the security, prefer, in prescribed form and manner, an appeal against such order to the prescribed appellate authority
2. However, the appellate authority may, for sufficient cause, permit such person to present the appeal :
   (a) after the expiry of the said period of 30 days; or
   (b) without furnishing the whole or any part of such security.
3. Section 7(3I) provides the procedure to be followed in hearing any appeal and the fees payable in respect of such appeals. This shall be such as may be prescribed.
4. Section 7(3J) provides that the order passed by the appellate authority in any appeal shall be final.

(J) Cancellation of Registration : [Section 7(4) & 7(5)]

1. Section 7(4) provides that a certificate of registration granted under Section 7 may :
   (a) Either on the application of the dealer to whom it has been granted, or, where no such application has been made, after due notice to the dealer, be amended by the authority granting it if he is satisfied that by reason of the registered dealer having changed the name, place or nature of his business or the class or classes of goods in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended; or
   (b) Be cancelled by the authority granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that he has ceased to carry on business or has ceased to exist or has failed without sufficient cause, to comply with an order or with the provisions or has failed to pay any tax or penalty payable under the CST Act, or in the case of a dealer registered has ceased to be liable to pay tax under the sales tax law of the appropriate State or for any other sufficient reason.
2. Section 7(5) provides that a registered dealer may apply in the prescribed manner not later than six months before the end of a year to the authority which granted his certificate of registration for the cancellation of such registration, and the authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly, and where he does so, the cancellation shall take effect from the end of the year.

(K) Amendment in Certificate :

1. A certificate of registration can be amended in any of the following cases :
   (a) Where the dealer changes his place of business;
   (b) Where there is a change in the goods dealt with by the dealer;
   (c) Where there is change in the constitution of the firm.
2. The dealer should get his Certificate of Registration modified in the above cases, in order to avoid penalty.

(L) Benefits of Certificate of Registration :

1. A certificate of registration provides the following benefits to the dealer :
   (a) By obtaining the requisite declaration forms from the department and using them, he can make interstate purchase @ 4%.
   (b) The dealer can also obtain form, which will enable him to claim total exemption in respect of subsequent sales, as laid down by section 6(2).
2. Failure to get registered under the CST Act prevents a dealer from effecting interstate sale, even where the turnover is only ₹ 1.

7.12 RATES OF TAX IN THE COURSE OF INTERSTATE TRADE OR COMMERCE [SECTION 8(1) & 8(2)]

Vat (Sales tax) rate for sale within the State	CST rate in case of sale to registered dealers (applicable to declared goods as well as other goods)	CST rate in case of sale to unregistered dealers (applicable to declared goods as well as other goods)
Nil	Nil	Nil
1%	1%	1%
2%	2%	2%
3%	2%	3%
4%	2%	4%
8%	2%	8%
10%	2%	10%
12.5%	2%	12.5%
20%	2%	20%

Note :

Local Rate means the basic rate, surcharge and additional tax payable by dealer under the Local Sales Tax Act.

7.13 PURCHASE OF GOODS BY A REGISTERED DEALER [SECTION 8(3)]

Under section 8(3), a registered dealer can purchase goods as under:

1. Goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended:
   (a) for re-sale by him or subject to any rules made by the Central Government in this behalf, or
   (b) for use by him in the manufacture of processing of 'goods for sale, or
   (c) in mining or
   (d) in the generation or distribution of 'electricity or any other form of power.
2. Containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale or in the telecommunications network.

3. Containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to above or for the packing of any containers or other materials specified in the certificate of registration referred to above.

Thus, the purpose for which the dealer purchases goods will have to conform to the purpose for which he was registered under the CST Act.

7.14 FURNISHING OF DECLARATION [SECTION 8(4)]

1. Section 8(4) provides that the provisions of Section 8(1) shall not apply to any sale in the course of interstate trade or commerce, unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner :
   (a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or
   (b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.
2. However the declaration in prescribed Form, is required to be furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

7.15 POWER TO EXEMPT OR IMPOSE TAX AT CONCESSIONAL RATES [SECTION 8(5)]

Section 8(5) provides that 'the State Government' may, on the fulfilment of the requirements laid down in Section 8(4) by the dealer, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein, direct that :

(a) No tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of interstate trade or commerce to a registered dealer or the Government, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in Section 8(1) or Section 8(2), as may be mentioned in the notification;

(b) In respect of all sales of goods or sales of such classes of goods, as may be specified in the notification, which are made, in the course of interstate trade or commerce to a registered dealer or the Government, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person orto such class of persons as may be specified in the notification, no tax under the CST Act shall be payable or specified the tax on such sales shall be calculated at such lower rates than those specified in Section 8(1) or Section 8(2), as may be mentioned in the notification.

7.16 SALE FOR UNITS LOCATED IN SPECIAL ECONOMIC ZONE [SECTION 8(6)]

1. Section 8(6) provides that sale made by a dealer in the course of interstate trade or commerce to a registered dealer in any Special Economic Zone is not liable for tax subject to the following conditions:
2. The sale should be to a registered dealer in Special Economic Zone.
3. The registered dealer has been purchasing the goods for the purpose of setting up operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, reengineering, packaging or for use as packing material or packing accessories in an unit located in any special -economic zone.
4. The establishment of such unit is authorized by the authority specified by the Central Government.
5. The goods or class of goods shall be specified in the certificate of registration of such dealer.
6. The dealer selling the goods should obtain a declaration in the prescribed form duly filled and signed by the dealer in Special Economic Zone to whom such goods are sold.
7. The above declaration should be furnished, by the dealer, who sold the goods to the prescribed authority.

7.17 DETERMINATION OF TAXABLE TURNOVER (SECTION 8A)

(A) Deduction from Aggregate of the Sale Prices : [Section 8A(l)]

The following deductions are permitted for the aggregate of sales prices, in determining the turnover :

1. The amount arrived at by applying the following formula :

$$\frac{\text{Rate of Tax} \times \text{Aggregate of Sale Prices}}{100 + \text{Rate of Tax}}$$

No deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer has been otherwise deducted from the aggregate of sale prices.

Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax.

2. The sale price of all goods returned to the dealer by the purchasers of such goods within a period of 6 months from the date of delivery of the goods.

However, satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority competent to assess or, as the case may be, reassess the tax payable by the dealer under the CST Act; and

3. Such other deductions as the Central Government may prescribe, having regard to the prevalent market conditions, facility of trade and interests of consumers.

(B) No Other Deduction from Aggregate Sale Prices : [Section 8A(2)]

No other deductions are allowed from the aggregate of the sale prices except which are provided in Section 8A(2).

To determine the turnover from the Turnover inclusive of CST (as calculated above), following formula shall be applied:

$$\text{Turnover} = \frac{(\text{Turnover inclusive of CST}) \times 100}{(1100 + \text{Rate of Tax})}$$

$$\text{CST} = \frac{(\text{Turnover Inclusive of CST}) \times (\text{Rate of Tax})}{(100 + \text{Rate of Tax})}$$

7.18 LEVY & COLLECTION OF TAX (SECTION 9)

1. Section 9(1) :

Nature of Transaction	State empowered to levy tax
Interstate sale transaction whether covered by Section 3(a) or 3(b)	State in which movement of goods commenced
Subsequent sale not'exempt'u/s 6(2) effected by a registered dealer	State from which the registered dealer obtained the relevant forms for claiming exemption
Subsequent sale not'exempt'u/s 6(2) effected by an uregistered dealer	State from which such subsequent sale has been effected by the unregistered dealer.

2. Section 9(2): Powers of Authorities of the Appropriate State under CST Act-

1. The authorities of the appropriate state are empowered to assess, re-assess, collect and enforce payment of any tax, including any penalty payable by a dealer under the CST Act as if it is a tax or penalty payable under the local sales tax law.

2. For the aforementioned purpose, the authorities may exercise all or any of the powers they have under the general sales tax law of the State.
3. All the provisions of the local sales tax law in relation to offences, penalties and penalties in lieu of prosecution shall, with necessary modifications, apply to offences under CST Act, except for the provisions of Section 10 and 10A of the Act.

3. Section 9A: Collection of Tax to be only by Registered Dealers-

Section 9A provides that no person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of interstate trade or commerce any amount by way of tax under the CST Act, and no registered dealer shall make any such collection except in accordance with the CST Act and the rules made thereunder.

7.19 PENAL PROVISIONS UNDER CST ACT (SECTION 10)

Section 10 of the CST Act, 1956 provides for levy of penalty as provided below :

Sec.	Offence	Penalty
10(a)	Issue of false certificate under Sections 6 (2) or 6A (1) or 8 (4)	Simple imprisonment, which may extened to six months, or with fine or with both
10 (aa)	Failure to get registered under Section 7	Fine of Rs. 50 per day till the offence continues.
10(b)	Falsely represents that to purchase of goods of such class which are not covered by his registration certificate	1.5 times of the tax due.
10 (c)	Purchase of goods without having a registration certificate	1.5 times of the tax due.
10 (d)	Purchase of goods for the purpose mentioned in Section 8 (3) but failure to make use of goods for any such specified purpose.	1.5 times of the tax due.
10 (e)	Having possession of any prescribed form, which has not been obtained as per prescribed procedure	1.5 times of the tax due.
10 (f)	Collecting any amount of tax in contravention of the provision of Section 9A 1.5 times of the tax due.	

7.20 IMPOSITION OF PENALTY IN LIEU OF PROSECUTION (SECTION 10A)

1. Section 1 OA(1) provides that if any person purchasing goods is guilty of an offence under section -10(b), (c) or (d), the authority who granted to him or, as the case may be, is competent to giant to him a certificate of registration may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under Section 8(2) in respect of the sale to him of the goods, if the sale had been one falling under that provision.
2. No prosecution for an offence under section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under Section 10A.
3. Section 10A(2) provides that the penalty imposed upon any dealer shall be collected by the Government of India in the manner provided in Section 9(2) :

Nature of offence	Manner of collection
Offence u/s 10 (b) or 10 (d)	Collected in the State in which the dealer purchasing the goods obtained in form prescribed u/s 8(4) (a) in connection with the purchase of such goods
Ofence u/s 10 (c)	Collected in the State in which the person purchasing the goods should have registred himself if the offence had not been committed.

7.21 COGNIZANCE OF OFFENCES (SECTION 11 & 12)

1. No Court shall take cognizance of any offence punishable under the CST Act or the rules made thereunder except with the previous sanction of : (a) The Government within the local limits of whose jurisdiction the offence has been committed or (b) Such officer of that Government as it may, by general or special order, specify in this behalf.
2. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.
3. All offences punishable under the Act shall be cognizable and bailable.
4. However, no suit, prosecution or other legal proceeding shall lie against any officer of Government for anything which is in good faith done or intended to be done under the Act or the rules made thereunder.

7.22 GOODS OF SPECIAL IMPORTANCE (SECTION 14)

The following categories of goods are declared as goods of special importance in interstate trade or commerce :

(a) Cereals (paddy, rice, wheat, maize, barley etc.)
(b) Coal (including coke in all its forms but excluding charcoal)
(c) Cotton of all kinds, cotton fabrics, cotton yarn
(d) Crude oil (including crude petroleum oils and mineral oils)
(e) Hides and skins (whether in a raw or dressed state)
(f) Jute
(g) Oilseeds (Peanut, Til, Cotton seed, Soyabean, etc)
(h) Pulses (Black gram, Green gram etc.)
(i) Man-made fabrics
(j) Sugars
(k) Tobacco (including unmanufactured tobacco, cigars, cigarettes etc.)
(l) Woven fabrics of wool
(m) Iron and steel (including pig & cast iron, steel semis, bars, plates, discs, rings, forgings and castings etc)

Restrictions and Conditions with reference to Declared Goods :

1. Section 15 provides that every sales tax law of a State shall, insofar as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions:
2. The tax payable under the Sales tax law in respect of sales inside the State shall not exceed 4%. Thus, the maximum rate of tax on declared goods for interstate or local sales shall be only 4%.
3. Where local sales tax has been levied in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of interstate trade or commerce, and CST having been paid thereupon, the local sales tax paid shall be reimbursed to the seller making the interstate sale.
4. Where a tax has been levied under the State law in respect of the sale or purchase inside the State of any paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.

5. Where a tax on sale or purchase of paddy is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purposes of section 5(3), the paddy and rice shall be treated as a single commodity.
6. Each of the pulses referred to in Section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under State law.

Analysis of section 14 & 15

- While section 14 declares certain goods to be of special importance, Section 15 places restriction on the tax that can be levied on such declared goods.
- One of the primary conditions laid down by section 15 is that on the declared goods the sales tax shall not be levied in excess of 4%. Further, Sales tax will not be levied at more than one stage.
- Secondly where under the local sales tax law tax has been levied on sale or purchase of goods within a state and where such goods are subsequently sold in the course of interstate sale and sales tax has been paid on such a sale, the local sales tax paid will have to be refunded to the dealer, making the Interstate sale.
- Also, where there are more than one enactments levying tax like sales tax, surcharge, turnover, additional tax etc. on the sale of goods, the aggregate of the multiple rates shall not exceed 4%.
- When declared goods are sold in the same condition in which they are purchased without any further manufacture or processing, the subsequent sale will be exempted from tax. "Single point Sales Tax" exemptions can be claimed only if the declared goods purchased, are sold subsequently in the same form.

7.23 LIABILITY OF LIQUIDATOR OF COMPANY IN LIQUIDATION (SECTION 17)

1. Notice of Appointment of Liquidator/Receiver : Every person-
   (a) Who is the liquidator of any company, which is being wound up, whether under the orders of a Court or otherwise; or
   (b) Who has been appointed the receiver of any assets of a company, shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the appropriate authority.
2. Notification by Appropriate Authority : On receipt of notice from the Liquidator
   (a) The appropriate authority should notify to the liquidator the amount, which in the opinion of the appropriate authority would be sufficient to provide for any tax which is then or is likely thereafter to become payable by the company.
   (b) The above intimation should be made within 3 months of the receipt of notice of appointment.
   (c) The appropriate authority is empowered to make such inquiry or call for such information, as it may deem fit, for arriving at the tax liability.
   (d) The Company's liability under the CST Act, upto the date of winding up, shall be notified to the liquidator, in writing.
3. Duties of Liquidator : The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority. On being so notified, he shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands.
4. However, the Liquidator can part with such assets or properties of the Company for the following purposes :
   (a) Compliance with any order of a Court
   (b) Payment of the tax payable by the Company under the CST Act
   (c) Payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation
   (d) Meeting reasonable costs and expenses of the winding up.

5. Personal Liability of Liquidator: The liquidator shall be personally liable for the payment of the tax, which the company would be liable to pay, if he: (a) fails to give the notice, as provided or (b) fails to set aside the amount as required by, or (c) parts with any of the assets of the company or the properties in his hands in contravention of the provisions

6. Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

7. Effect of these Provisions : The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

7.24 LIABILITY OF DIRECTORS OF PRIVATE COMPANY IN LIQUIDATION (SECTION 18)

1. Directors of a private company are personally aointly & severally liable for tax due under the CST Act if the following conditions are fulfilled :

   (a) The private company is wound up after the commencement of the CST Act.

   (b) Any tax assessed on the Company under the CST Act for any period, whether before or in the course of or after its liquidation, cannot be recovered.

   (c) The person was a director of the private company at anytime during the period for which the tax is due.

2. The Director shall not be jointly and severally liable for the payment of such tax if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

7.25 APPEALS

Constitution of Central Sales Tax Appellate Authority : (Section 19)

1. Section 19 provides that the Central Government shall constitute an Authority, to be known as"the Central Sales Tax Appellate Authority," which would settle inter-State disputes failing under Section 6A read with Section 9 of the CST Act.

2. Composition of Authority: The Authority shall consist of the following Members appointed by the Central Government :

Member	Qualification
A Chairman	Retired Judge of the Supreme Court, or a retired Chief Justice of a High Court
An officer of the Indian Legal Service	Is or qualified to be, an Additional Secretary to the Government of India
An officer of a State Government	Not below the rank of Secretary or an officer of the Central Government not below the rank of Aditional Secretary, who is an expert in sales tax matters.

3. Staff & Officers: The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

4. Terms & Conditions : The salaries and allowances payable to, and the terms and conditions of service of, the Chairman and Members shall be such as may be prescribed.

7.26 ORDERS APPEALABLE AND PROCEDURE FOR FILING APPEAL (SECTION 20)

1. This section shall apply to appeals filed by the aggrieved dealer against any order of the assessing authority made under Section 6A or Section 9 of the CST Act.
2. The appeal shall be filed by the aggrieved dealer within 45 days from the date on which the order is served on him.
3. However, the Authority may entertain any appeal after the expiry of 45 days, but not later than 60 days from the date of such service, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
4. The application shall be made in quadruplicate and be accompanied by a fees of ₹ 5,000.

7.27 PROCEDURE ON RECEIPT OF APPEAL (SECTION 21)

1. On receipt of an appeal, the Authority shall cause a copy thereof to be forwarded to the Assessing Authority concerned as well as to each State Government concerned with the appeal and to call upon them to furnish the relevant records.
2. The Authority shall adjudicate and decide upon the appeal filed against an order of the assessing authority.
3. The Authority, after examining the appeal and the records called for either allow or reject the appeal.
4. The appeal shall not be rejected without giving the appellant dealer a reasonable opportunity of being heard.
5. Whether an appeal is rejected or accepted, reasons for such rejection or acceptance shall be given in the order.
6. The order shall be passed by the Authority within 6 months from the receipt of the appeal.
7. A copy of every order shall be sent to the appellant and to the assessing authority.

7.28 POWERS OF THE CST APPELLATE AUTHORITY (SECTION 22 & 23)

Section 22 :

1. The Authority shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 in respect of the following matters, namely :
   (a) Enforcing the attendance of any person, examining him on oath or affirmation;
   (b) Compelling the production of accounts and documents;
   (c) Issuing commission for the examination of witnesses;
   (d) The reception of evidence on affidavits;
   (e) Any other matter which may be prescribed.
2. Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code.

Section 23 :

The Authority shall have the power to regulate its own procedure in all matters arising out of the exercise of power under the CST Act.

7.29 AUTHORITY FOR ADVANCE RULINGS (SECTION 24)

The Authority for Advance Rulings constituted under section 245-0 of the Income-tax Act, 1961 shall be the authority under the CST Act till such time an authority is constituted under Section 19.

On and from the date of the constitution of the Authority in under the CST Act, the proceedings pending with the Authority for Advance Rulings under Section 245-0 shall be transferred to the Authority under Section 19.

7.30 TRANSFER OF PENDING PROCEEDINGS (SECTION 25)

Section 25 provides that on and from the date when the Authority is constituted under Section 19, every appeal arising out of the provisions contained in Chapter VI :

(a) Which is pending immediately before the constitution of such Authority before the appellate authority constituted under the general sales tax law of a State or of the Union territory, as the case may be; or

(b) Which would have been required to be taken before such appellate Authority; shall stand transferred to such Authority on the date on which it is established.

7.31 APPLICABILITY OF ORDER PASSED (SECTION 26)

An order passed by the Authority shall bt, binding on each State Government concerned, the assessing authorities and other authorities created by or under any law relating to general sales tax, in force for the time being in any State or Union territory.

7.32 FORMS UNDER CST

Form A	This form is prescribed for application to get registered u/s 7 of CST Act. Details such as name status, place of business, warehouses, nature of business, nature and purpose of goods to be dealt, goods to be bought from outside the state etc., are required to be furnished. Care should be taken to list the goods sought to be bought from outside the state and the purposes for which they are proposed to be utilized as the benefit of Form C is restricted to the goods and end uses listed only.
Form B	Certificate of registration shall be issued by the authority in this form. The certificate of registration should be kept in the principal place of business an copies thereof in the branches inside the appropriate state
Form C	Registered dealers are entitled to certain exemptions under CST Act, 1956 Form C is used by a purchasing dealer to get the goods at confessional rate of duty and is issued in favour of the dealer who effects interstate sale. It is obtained from the sales tax authorities in the state in which the purchasing dealer is registered. It contains particulars such as name of purchasing dealer, sales tax registration no., its validity, details of goods obtained (whether for resale, manufacture, processing or as packing material), name and address of the seller etc.
Form D	Now Abolished
Form EI & E II	In case of subsequent sale in the course of Interstate sale, the dealer effecting subsequent sale can avail exemption by submitting Form C issued by his customer and by submitting Form E-1, issued by his seller. Form, E-I, E-II & E-III etc. are printed by the Sales Tax department and are supplied to the registered dealer for their use. Form E-II & E-III will have to be issued, in case there are more than one subsequent sale.

Form F	Thus, it should be noted that Form E-I can be issued by the first seller alone. Form E-II & E-III will have to be submitted by those selling dealer (other than the first dealer) to their purchaser, who can avail of the exemption under section 6(2), subject to the condition that Form C is submitted as well. Contents of Form E-I: Declaration contains the name of the issuing state, date of issue, name of selling dealer, name of purchasing dealer name and place of state in which movement of goods commence, quantity, weight, value, number and date of declaration in Form C received by the purchasing dealer. Contents of Form E-II: the. Declaration contains the name of the issuing state, date of issue, name and address of dealer effecting sate by transfer of documents to the title name of purchasing dealer, name and place of state in which movement of goods commence, quantity, weight, value, invoice, number and date of declaration in Form C received by the purchasing dealer.
Form G	This form is used by registered dealer for making a declaration to the effect that the transfer of goods from one state to another by him is done otherwise than by way of sale as per the provisions of Section 6A of the CST Act, 1956. These forms are issued by the sales tax authorities of the concerned state where the goods are received. It contains the name of the issuing state, date of issue, name and address of consignee and his registration no., name and registration no. of the transferor, description of goods, quantity, weight value etc. The declaration shall be signed by the authorized signatory.
Form H	Form G relates to the indemnity which is required to be furnished by the dealer in regard to matters of security deposit (section 7A). The value of the stamp duty on which this should be executed has to be determined at the time of furnishing the indemnity after discussing with the Officer concerned. This form is used by the exporters who purchase the goods for the purpose of export. The actual exporter shall issue a certificate to the penultimate seller in Form H. These forms are obtained from the sales tax authorities by the exporter. Form H contains the name of the issuing state, date of issue name and address of exporter and his registration no., name and registration no. of the selling dealer, description of goods, quantity, weight, value details of export etc. It also contains an undertaking by the exporter that if the goods are re-imported they will inform the sales tax authorities about the re-import within 1 month of such re-import.

7.33 PRACTICAL PROBLEMS ON CST

Problem 1.

Determine the central sales tax liability from the following data when a sale is effected from Faridabad to Lucknow :

- **(a) Invoice no. : 00708374**
- **(b) Basic price : ₹ 3,00,000**
- **(c) Excise duty : 10% ad valorem**
- **(d) CST : as applicable under 'C' forms**
- **(e) Trade discount : 8%**

(f) Cash discount : 2%

(g) Quantity supplied : 10,000 kgs

(h) Quantity rejected by buyer within 3 days of delivery : 1000 kgs

(i) Quantity returned by buyer after 6 months of despatch : 1000 kgs.

Solution :

Computation of CST

Particulars	Amount ₹
Basic Price @ ₹ 30/kg	3,00,000
Less : Goods rejected/returned by buyer within 6 months	30,000
Balance	2,70,000
Less : Trade Discount @ 8%	21,600
Balance	2,48,400
Less : Cash Discount @ 2%	5,400
Net Sales	2,43,000
Add : Excise Duty @ 10%	24,300
Total	2,67,300
CST @ 2% (under 'C' Form)	5,346

Problem 2.

Vishal is a dealer. His sales during the first quarter of 2011-12 (April to June) are :

Date	Invoice No.	Amount (₹)
05.04.2009	101	10,000 plus tax @ 2%
12.04.2009	102	80,000 plus tax @ 2%
05.04.2009	102	62,400 (inclusive of tax)
05.04.2009	104	14,000 plus tax @ 2%
05.04.2009	105	18,000 plus tax @ 2%

(i) Goods worth ₹ 7,000 (excel of tax) against Invoice No. 104 were returned on 29.06.11.

(ii) Goods worth ₹ 13,000 (incl of tax) sold on 26.12.10 were returned on 30.06.11.

(iii) Goods worth ₹ 6,500 (incl of tax) sold on 27.12.10 were returned on 30.06.11.

All the above sales were made in the course of inter-State trade. Calculate the turnover and sales tax payable if the rate of tax is 2%.

Solution : Computation of Turnover (Inclusive of Sales Tax)

Invoice No.	Computation	Amount ₹
101	(10000 + 2%)	10,200
102	(80000 + 2%)	81,600
103	—	62,400
104	(14000 + 2%)	14,280
105	(18000 + 2%)	18,360
		1,86,840
Less : Sales return within 6 months		**7,280**
Aggregate sale value		**1,79,560**

Turnover = $\frac{100 \times 1,79,560}{100 + 2}$ = **1,76,039**

Sales tax payable = $1,76,039 \times \frac{2}{100} = 3,521$

Note : Goods returned beyond 6 months are not deductible. Hence ₹ 13,000 and ₹ 6,500 are not deductible.

Problem 3.

A dealer effected the following sales during the first quarter of 2011-12 (April to June) —

(i) Invoice No. 1171 dt. 2.4.10 for ₹ 26,000 plus tax @ 2%

(ii) Invoice No. 1172 dt. 19.4.10 for ₹ 70,000 plus tax @ 2%

(iii) Invoice No. 1173 dt. 2.5.10 for ₹ 52,000 (inclusive of tax)

(iv) Invoice No. 1174 dt. 4.6.10 for ₹ 12,200 plus tax @ 2%

(v) Invoice No. 1175 dt. 25.6.10 for ₹ 20,000 plus tax @ 2%

(vi) Good worth ₹ 6,100 (exclusive of tax) against invoice No 1174 were returned on 28.6.2010

(vii) Goods worth ₹ 5,200 (inclusive of tax) sold on 25.12. 2009 were returned on 30.6.2010.

All the goods were made in the course of inter state trade. Calculate the turnover and sales tax payable if the rate of tax is 4%.

Solution :

Computation of Turnover (Inclusive of Sales Tax)

Invoice No.	Computation	Amount ₹
1171	(26400 + 2%)	26,928
1172	(70000 + 2%)	71,400
1173	—	52,000
1174	(12200 + 2%)	12,444
1175	(20000 + 2%)	20,400
		1,83,172
Less : Sales return within 6 months		**6,344**
Aggregate sale value		**1,76,828**

Turnover = $\frac{100 \times 1,76,828}{100 + 2}$ = **1,73,361**

Sales tax payable = $1,73,361 \times \frac{2}{100} = 3,467$

Note : Goods returned beyond 6 months are not deductible. Hence ₹ 5,200 is not deductible.

Problem 4.

A registered dealer of Bikaner (Rajasthan) sold goods worth ₹ 4,36,000 (including tax @ 9%) to an unregistered dealer or Gujarat. Calculate the amount of central sales tax payable, if the sales tax rate on such goods in Rajasthan is 9% and surcharge @ 15% is also payable on it.

Solution :

As per Section 8(2) of CST Act, 1956 in case of sale to unregistered dealers, the rate of CST in respect of goods other than declared goods shall be calculated at the rate as applicable for sale inside the State 2%. Even if the dealer had collected tax at lower rates, he will have to pay the correct tax. The word 'Tax' includes 'Surcharge' on tax also.

Taxable Turnover $= \dfrac{\text{(Sales Turnover} \times 100)}{100 + \text{Rates}}$

$= \dfrac{\text{(Rs. 4,36,000} \times 100)}{(100 + 9)} = ₹\ 4,00,000.$

As the State tax 10.35% (i.e. 9% +1.35%, 15% Surcharge on 9%), therefore, tax is payable @ 10.35%.
Amount of Central Sales Tax payable = ₹ 4,00,000 × 10.35% = ₹ 41,400

Problem 5.

Sales tax payable on product 'A' is sold within State of Punjab is 10%. If the product is sold in inter-State sale, what will be the Central Sales Tax payable if :

(a) Buyer furnish C form

(b) Buyer does not furnish any form

(c) Buyer furnish H form

(d) Buyer furnish J form?

Solution :

S. No.	Particulars	Rate of Tax
(A)	Buyer furnish C form	2%
(B)	Buyer does not furnish any form	10%
(C)	Buyer furnish H form	Nil
(D)	Buyer furnish J form	Nil

Problem 6.

Adwell Co. of Indore (Madhya Pradesh) has supplied the following statement of sales :

(i) Sales of cloth ₹ 12,00,000 of which ₹ 7,50,000 sold in Madhya Pradesh and rst in Rajasthan.

(ii) Sales to a registered dealer of Gujarat for sale on Form C of such goods which are given in his registration certificate : ₹ 4,68,000.

(iii) Sale of declared goods to unregistered dealer of Maharashtra : ₹ 9,45,000 (The rate of sales-tax on such goods is 2% in the State and the customer returned goods worth ₹ 46,500 within 6 months.)

(iv) Sale to a registered dealer of Gujarat of such undeclared goods which have not been given in his registration certificate : ₹ 3,63,000. (Sales tax on such goods in the State is 7%.)

(v) Sale of goods to Bangladesh : ₹ 6,00,000. (Rate of sales tax in the State is 4%.)

(vi) Subsequent sale during inter-State trade : ₹ 1,20,000. (Rate of tax in the State is 10%).

Compute the taxable turnover under the CST Act, 1956. Sales include the sales tax.

Solution :

Computation of Taxable turnover

	Particulars	Amount (₹)	Taxable Amount (₹)
(I)	Sales of cloth (Exempt from Tax)	—	—
(II)	Sales to a registered dealer of Gujarat for sale on form C	4,68,000	
	Less : Sales Tax @ 2% i.e. 4,68,000 × 2/102	**9,147**	4,58,853
(III)	Sale of declared goods to unregistered dealer of Maharashtra	9,45,000	
	Less : Sales return within 6 months	46,500	
	Less : Sales Tax double the state rate @ 2% i.e. 8,98,500		
	(9,45,000 – 46,500) × 2/102	**17,618**	8,80,882
(IV)	Sale to a registered dealer of Gujarat of undeclared goods		
	which are ot given in the registration certificate	3,63,000	
	Less : Sales Tax at state rate or 6% whichever		
	is higher i.e. 3,63,000 × 6/106	**10,572**	3,52,428
(V)	Sale of goods to Bangladesh. Exempt since it is export		
	from India	6,00,000	—
(VI)	Subsequent sale during Inter-state trade (assumed to a		
	registered dealer) is exempt under Sec 6(2)	—	—
	Taxable Turnover		**16,92,163**

Problem 7.

Calculate the CST payable from the following data —

(1) Invoice No. 1011 dated 01.04.2011 for ₹ 1,78,967 inclusive of CST @ 2%.

(2) Invoice No. 1012 dated on 02.04.2011 for ₹ 1,87,697 exclusive of CST @ 2%.

(3) Invoice No. 1013 dated 03.04.2011 for ₹ 1,75,000 inclusive of local Sales Tax @ 10%.

(4) Invoice No. 1014 dated 04.04.2011 for ₹ 2,50,000 exclusive of local Sales Tax @ 8%.

(5) 50% of the goods sold on 01.04.2011 on inter-state trade was rejected and returned on 31.07.2011.

(6) 20% of the goods sold on 04.04.2011 on local sale was returned on 30.06.2011.

(7) 30% of the goods sold on 02.04.2011 on inter-state trade returned on 02.06.2011.

(8) 10% of goods sold on 03.04.2011 on local sale was rejected on 03.10.2011.

(9) Goods of ₹ 1,50,000 was stock transferred from Bangalore to Indore on 05.04.2011 excludes CST elements of 2%.

(10) Export of goods worth 10 million Yens to Japan on 06.04.2011 of which 50% were rejected and returned on 01.11.2009 (1 Yen = Re. 0.35).

(11) Export through Canalising Agency for value of 100 thousands Dollars (Export order with Canalising Agency) (1 dollar = ₹ 48).

(12) Purchased goods for ₹ 3,00,000 from the market on 09.01.2011 and exported to Singapore on 14.01.10 to the Agent for further sale (The goods attracted local sales tax of 10%).

Give reasons for inclusion/non-inclusion of the above.

Solution :

Calculation of CST

Invoice No. and date	**Aggregate Sale Price (100+2%) Col. No. 1**	**Turnover (₹) Col. No. 1×100/102 Col. No. 2**	**CST (₹) Col. No. 1-2 Col. No. 3**
1011 Dt. 01.04.2011	1,78,967	1,75,458	3,509
1012 Dt. 02.04.2011	1,95,205	1,91,377	3,828
Total	3,74,172	3,66,835	7,337
Less -			
(a) Rejected & returned goods sold on 01.04.2011	89,484	87,729	1,755
(b) Returned goods sold on 02.04.2011	58,561	57,413	1,148
Net Amount	**2,26,127**	**2,21,693**	**4,434**

Hence, total CST payable is ₹ 4,434.

Working Notes :

(1) Since CST payable is required to be calculated, local sale as given at Sr. Nos. 3, 4, 6 and 8 are not considered.

(2) Any rejections are excludable without restriction that these must be returned within sixe months.

(3) Direct exports and export through canalising agency are exempted from CST. Hence, sales given in Sr. No's. 10, 11 and 12 are ignored.

(4) No tax is payable on stock transfer and hence transfer as shown at Sr. No. 9 is not taxable.
Thus, we consider only Sr. No's 1, 2, 5 and 7 for calculation of CST.

Problem 8.

M/s. Menoka Enterprise placed orders for import of sugar from various exporters abroad. All import documents were in the name of M/s. Menoka Enterprises. After import, M/s. Menoka Enterprises allotted the imported sugar to various buyer in India. No Sales Tax was charged as the sales were treated as "in the course of import". Is this in order? Discuss.

Solution :

If the contract between the foreign supplier and importer on one hand and importer, and Indian buyer on the other hand, are independent of each other, the sale within India cannot be termed as 'sale in the course of import'.

In the present case, M/s Menoka Enterprises has first imported the goods independently in its own name. The said import order is independent of subsequent sale to Indian buyers and cannot be termed as sale in the course of import. Hence, sales tax is payable on the sale to Indian buyers.

Problem 9.

From the following details, compute the Central sales-tax payable by a dealer carrying on business in New Delhi :

Particulars	Amount (₹)
Total turnover for the year which included	**16,00,000**
Trade commission for which credit notes have to be issued separately	**48,000**
Installation charges	**25,000**
Excise duty	**80,000**
Freight, insurance and transport charges recovered separately in the invoices	**60,000**
Goods returned by dealer within six month of sale, but after the end of financial year	**40,000**
Buyer have issued C Form for all purchases.	

Solution :

Computation of Central sales-tax payable

Particulars	Amount (₹)
Gross turnover	16,00,000
Less :	
Trade Commission	48,000
Installation charges (assumed shown separately)	25,000
Excise Duty	60,000
Freight shown separately	40,000
Aggregate of Sale Price	14,27,000
CST rate	2%
CST	27,980

Problem 10.

During 2011-12, the gross inter-State sales made by Strend Fast Ltd. of Jodhpur is ₹ 71,79,000. Although the central sales tax is not shown separately, the following information is available from the records of the company —

(i) The company sells machinery which makes copper wire rods. If is sold in the Rajasthan State, sales tax rate is 7 per cent [plus additional tax 10 per cent of sales tax]

(ii) Information regarding sales with and without C Form is as follows —

Particulars	Inter-State sale with C Form	Inter-State sale without C Form
Gross sales	**44,25,000**	**27,54,000**
It includes the following —		
Excise duty	**19,12,500**	**6,15,00**
Freight [not being shown separately]	**55,500**	**72,000**
Freight [shown separately]	**1,05,000**	**25,500**
Packing charges	**22,815**	**29,550**
Cost of installation [shown separately]	**1,38,000**	**1,59,000**
Insurance charge to cover the risk of the seller	**15,750**	**22,800**
Insurance charges for covering the risk of	**22,500**	**1,26,000**
Buyer at the request of the buyer		

The following items have not been deducted to calculate gross sales turnover

Particulars	Inter-State sale with C Form	Inter-State sale without C Form
Trade discount [given by way of credit note on March 31, 2012]	27,000	30,000
Goods returned within 6 months	3,00,000	1,50,000
Incentives bonus for additional sale	37,500	30,000

Ascertain the sales trunover and Central Sales Tax payable.

Solution :

Computation of Sales Turnover & Central Sales Tax

Particulars	Inter-State sale with C Form	Inter-State sale without C Form
Gross Sales	44,25,000	27,54,00
Less :		
Excise duty [not to be deducted]	—	—
Freight not being shown separately [not to be deducted]	—	—
Freight shown separately	1,05,000	22,500
Packing charges [not to be deductd]	—	—
Cost of installation shown separately	1,38,000	1,59,000
Insurance charges to cover the risk of the seller [not to be deducted]	—	—
Insurance charges for covering the risk of buyer at the request of the buyer	22,500	1,26,000
Trade discount [as it is not deducted from gross turnover, it shall be deducted]	27,000	30,00
Goods returned within 6 months	3,00,000	1,50,000
Incentives bonus for additional sale	—	—
[not to be deducted from sale price]		
Aggregate sale price [Total : ₹ 60,96,000] [a]	38,32,500	22,63,500
Local sales tax rate [7% + 10% of 7%]	7.70%	7.70%
Central sales tax	2%	2%
Central sales tax [i.e., 2/102 of ₹ 38,32,500; $\frac{7.70}{107.70}$ of ₹ 22,63,500] [b]	75,147	1,61,829
Sales turnover [a+b] [Total : ₹ 58,59,024]	37,57,353	21,01,671

STUDY NOTE - 8

STATE LEVEL VAT

This Study Note includes

- Background of State VAT
- Basic Principle of VAT
- Disadvantages and Pitfalls in VAT
- Overview of State VAT
- Procedural Provisions relating to VAT
- Impact of VAT on CST
- Practical Problems on VAT

8.1 BACKGROUND OF STATE VAT

Tax on sale within the State is a State subject. Over the period, many distortions had come in taxation. Following were some of the problems -

- Unhealthy competition among States by giving sales tax incentives to new industries. When one State gave incentives, others also had to give. This ruined State finances.
- 'Tax rate war' started to attract more revenue to State. Often, goods from the State were sent to another State on stock transfer basis and brought back in the same State to show as Inter-State Sale.
- States introduced 'first point sale' to avoid cascading effect of State sales tax. This made tax evasion easy.
- Cascading effect of tax due to Central Sales Tax.

Discussions with State Governments - Central Government initiated discussions with State Governments in 1995. After lot of persuasion by Central Government, all States ultimately agreed to introduce State Level Vat at the conference of Chief Ministers all States at Delhi in November, 1999.

'Empowered Committee' of State Governments - A high power committee consisting of senior representatives of all 29 States was constituted under Chairmanship of Dr. Asim Dasgupta, Finance Minister, West Bengal. After deliberations and many meetings, it was announced that all States have agreed to introduce VAT w.e.f. 1-4-2005. A 'White paper' was released by Dr. Asim Dasgupta, Chairman of Empowered Committee, on 17-1-2005. The White Paper is a policy document indicating basic policies of State Sales Tax VAT.

CST is proposed to be abolished – Vat is consumption based tax while CST is production based tax. Thus, CST is against principles of Vat. CST has been reduced to 3% w.e.f. 1-4-2007. CST rate is proposed to be reduced by 1% every year and made Nil by 1-4-2010.

Revenue loss if CST rate is reduced - If CST rate is reduced, State finances will suffer, since revenue of Central Sales Tax goes to respective State Government. It is proposed to authorise State Governments to levy tax on some services like medical, legal and education.

8.1.1 State-wise position of VAT

Haryana was the only State to introduce VAT w.e.f. 1-4-2003. 20 States introduced VAT w.e.f. 1-5-2005. These include Assam, Andhra Pradesh, Bihar, Delhi, Goa, Karnataka, Kerala, Maharashtra, Punjab and West Bengal.

States ruled by BJP like Gujarat, Chhatisgarh, Jharkhand, Madhya Pradesh and Rajasthan introduced Vat w.e.f. 1-4-2006. Tamilnadu has introduced Vat on 1-1-2007.

Uttaranchal has not introduced Vat till November, 2007. UP has introduced Vat w.e.f. 1-1-2008. J&K is not in the picture due to constitutional issues.

Vat system not same in all States - *The VAT system as introduced is result of deliberations of committee of representatives from 29 States. Each State has its own views and peculiarities. Hence, having uniform nationwide Vat is very difficult and some compromises/adjustments are inevitable.*

Vat law not uniform in all States - *Each State has made changes as per their needs. Though basic concepts are same in Vat Acts of all States, provisions in respect of credit allowable, credit of tax on capital goods, credit when goods are sold inter-state are not uniform. Even definitions of terms like 'business', 'sale', 'sale price', 'goods', 'dealer', 'turnover', 'input tax' etc. are not uniform. Schedules indicating tax rates on various articles are also not uniform, though broadly, the schedules are expected to be same.*

8.1.2 *State Vat is diluted version of VAT*

The Vat as introduced, is a diluted version of Vat and some compromises have been made. There is no credit of Central Sales Tax paid on inter-state purchases. This problem will not arise if CST rate is reduced to 0% on 1-4-2010, as planned and inter-state sale is made 'zero rated'.

If goods are sent outside State on stock transfer basis, credit (set off) of tax paid on inputs is available only to the extent of tax paid in excess of 4%. Thus, credit (set off) to the extent of 4% tax on inputs is lost. It is not clear what will be position when CST rate is brought down to Nil. Thus, the VAT as introduced is State Vat and not a national Vat.

8.1.3 World scenario in respect of Development of 'VAT'

Concept of VAT was developed to avoid cascading effect of taxes. VAT was found to be a very good and transparent tax collection system, which reduces tax evasion, ensures better tax compliance and increases tax revenue.

First introduced in France - Concept of VAT was first conceived by Mr. Maurice Laure, Joint Director of French Tax Authority. Vat (termed as TVA in France) was introduced for the first time in France on 10-4-1954.

Vat in Europe - Vat system got real impetus when European Union (EU) made adopting VAT regime as condition precedent to joining European Common Market. Members of EU (that time it was European Common Market) were required to introduce common system of Vat *vide* Sixth Council Directive No. 77/388/EEC dated 17-5-1977. This is most important document so far as Vat is Europe is concerned.

Vat is imposed in Europe on both goods and services. Vat rate varies in various member countries of European Union. Minimum is 15% and maximum is 25%. General Vat rate in UK is 17.5%, but there is lower rate of 5% in case of some goods and some goods are exempt.

General Vat rate in some other countries is as follows – Sweden – 25%, Germany – 19%, France – 19.6%.

If goods or services are exported to another EU member country or other country, Vat is not imposed. Vat paid on inputs is granted as refund.

European Union was formed on 1-11-1993. Many countries joined EU later. As in July 2007, 27 countries are part of EU.

Development in other countries - Many countries in Asia, Central America and other parts of Europe have introduced Vat. So far, about 135 countries have introduced Vat.

Vat in China - China introduced in Vat on 24 items in 1984. Later, regulations for VAT Tax were made effective on 1-1-1994 and Vat was extended to all goods and services. The general Vat rate is 17%. Vat rate is reduced to 13% in some cases. There is no Vat on exports.

Consumption tax in Japan – Japan has system of consumption tax, which is levied @ 5%.

No Vat in USA - USA has not introduced Vat. In USA, tax is levied by State Governments on retail sale. The rate varies between 0% to 8.8%. There is no tax on services in USA.

Development in India - In India, Vat was introduced at manufacturing stage under Central Excise in 1986, termed as Modvat (modified value added tax). Modvat was re-named as Cenvat w.e.f. 1-4-2000. System of Vat was introduced in service tax w.e.f. 16-8-2002. Credit of excise duty and service tax was made inter-changeable w.e.f. 10-9-2004. Thus, partial integration of goods and service tax has been achieved. Presently, full integration is not possible since power to levy sales tax is with State Government.

8.2 BASIC PRINCIPLE OF VAT

VAT (Value Added Tax) is a tax on final consumption of goods and services.

VAT works on the principle that when raw material passes through various manufacturing stages and manufactured product passes through various distribution stages, tax should be levied on the 'Value Added' at each stage and not on the gross sales price. This ensures that same commodity does not get taxed again and again and there is no cascading effect. In simple terms, 'value added' means difference between selling price and purchase price. VAT avoids cascading effect of a tax.

Basically, VAT is multi-point tax, with provision for granting set off (credit) of the tax paid at the earlier stage. Thus, tax burden is passed on when goods are sold. This process continues till goods are finally consumed. Hence, VAT is termed as 'consumption based' tax. It is tax on consumption of goods and services. VAT works on the principle of 'tax credit system'.

Distinction between sales tax and Vat - Basic distinction between Vat and sales tax is that sales tax is payable on total value of goods while Vat is payable only on 'value addition' at each stage.

8.2.1 Cascading effect of tax

Generally, any tax is related to selling price of product. In modern production technology, raw material passes through various stages and processes till it reaches the ultimate stage e.g., steel ingots are made in a steel mill. These are rolled into plates by a re-rolling unit, while third manufacturer makes furniture from these plates. Thus, output of the first manufacturer becomes input for second manufacturer, who carries out further processing and supply it to third manufacturer. This process continues till a final product emerges.

This product then goes to distributor/wholesaler, who sells it to retailer and then it reaches the ultimate consumer. If a tax is based on selling price of a product, the tax burden goes on increasing as raw material and final product passes from one stage to other, as illustrated below, where A sales to B and B sales to C.

Details	A	B	C
Purchase	–	110	165
Value Added	100	40	35
Sub-Total	100	150	200
Add Tax 10%	10	15	20
Total	110	165	220

You will find that B is paying tax not only on his contribution of ₹ 40 but also on ₹ 100 and ₹ 10. Thus, same material gets taxed again and again and there is also tax on tax. As stages of production and/or sales continue, each subsequent purchaser has to pay tax again and again on the material which has already suffered tax. Tax is also paid on tax. This is called *cascading effect*.

8.2.2 Disadvantages of cascading effect of taxes

A tax purely based on selling price of a product has cascading effect, which has the following disadvantages :

- Real tax content in the price of a product cannot be known, as a product passes through various stages and tax is levied at each stage.
- Tax burden on any commodity will vary widely depending on the number of stages through which it passes in the chain from first producer to the ultimate consumer.
- Ancillarisation is discouraged and manufacturer tries to manufacture all parts and do all processes in his plant itself. This increases manufacturing costs.
- End use based exemptions and concessions (e.g. exports or goods consumed by poor) cannot be given since it is not known what were taxes paid in earlier states.
- Exports cannot be made fully tax free.

8.2.3 VAT avoids cascading effect of tax

System of VAT works on tax credit method. In Tax Credit Method of VAT, the tax is levied on full sale price, but credit is given of tax paid on purchases. Thus, effectively, tax is levied only on 'Value Added'. Most of the countries have adopted 'tax credit' method for implementation of VAT.

The aforesaid illustration will work out as follows under VAT system.

'B' will purchase goods from 'A' @ ₹ 110, which is inclusive of duty of ₹ 10. Since 'B' is going to get credit of duty of ₹ 10, he will not consider this amount for his costing. He will charge conversion charges of ₹ 40.00 and sell his goods at ₹ 140. Following example will illustrate the tax credit method of VAT.

	Transaction without VAT		Transaction with VAT	
Details	A	B	A	B
Purchases	–	110	–	100
Value Added	100	40	100	40
Sub-Total	100	150	100	140
Add Tax 10%	10	15	10	14
Total	110	165	110	154

Note - 'B' is purchasing goods from 'A'. In second case, his purchase price is ₹ 100/- as he is entitled to VAT credit of ₹ 10/- i.e. tax paid on purchases. His invoice shows tax paid as ₹ 14. However, since he has got credit of ₹ 10/-, effectively is paying only ₹ 4/- as tax, which is 10% of ₹ 40/-, i.e. 10% of 'value added' by him.

Meaning of 'Value added' - *In the above illustration, the 'value' of inputs is ₹110, while 'value' of output is ₹150. Thus, the manufacturer has made 'value addition' of ₹40 to the product. Simply put, 'value added' is the difference between selling price and the purchase price.*

8.2.4 Revenue Neutral Rate

Government was earlier getting tax revenue of ₹ 25. In above example, Government gets revenue of only ₹ 14. To avoid loss of revenue, rate of tax will have to be suitably increased such that Government gets same revenue as per previous system. This is termed as 'RNR' (Revenue Neutral Rate'). In aforesaid example, RNR will be high i.e. 17.86%.

Practically, since most State Governments had single point sales tax at first level, RNR is not high. In fact, RNR is lower than the earlier sales tax rate since under Vat, tax is realised on final selling price and not the price at the first level.

For example, if earlier sales tax rate was 15% on wholesale price of ₹ 100; under VAT system, tax will be collected at consumption stage i.e. on retail price of (say) ₹ 140.

It has been decided to levy sales tax at RNR of 12.5% for most of commodities.

What is meant by consumption Types of 'VAT? - 'Consumption based tax' means tax is actually levied only when goods are finally consumed/utilised. Till then, the tax burden is passed on to next buyer.

8.2.5 Advantages of VAT over conventional system of taxation

Advantages of VAT are as follows :

- Tax burden is only at the last i.e. consumption stage. This is useful for taxation structure based on 'destination principle'.
- It becomes easier to give tax concessions to goods used by common man or goods used for manufacture of capital goods or exported goods.

- Exports can be freed from domestic trade taxes.
- It provides an instrument of taxing consumption of goods and services.
- Interference in market forces is minimum.
- Simplicity and transparency.
- Aids tax enforcement by providing audit trail through different stages of production and trade.
- Thus, it acts as a self-policing mechanism resulting in lower tax evasion.
- Tax rates can be lower as tax is levied on retail price and not on wholesale price.

8.3 DISADVANTAGES AND PITFALLS IN VAT

One major disadvantage of Vat is tremendous paper work and record keeping. Vat system can work only if record keeping is proper and reliable. The elaborate record keeping is not possible to small businesses. Hence, exemption is granted to tiny businesses whose turnover is below prescribed limits. In case of small businesses, a composition scheme is provided where tax is paid on gross value of sales at a fixed rate.

Some major problems in Vat are –

- Bogus Invoices on which tax credit is availed, i.e. invoice without actual purchase of goods.
- Acquisition fraud (missing trader fraud).
- Carousel Fraud (missing trader fraud).

Acquisition fraud - The acquisition fraud is based on the fact that goods imported are tax free. A dealer imports goods and makes sale within the country. The dealer either has his own Vat registration number or he hijacks other's Vat number. He collects the tax from buyer and then disappears without paying the collected tax to Government. The buyer is usually innocent and is not aware that the seller is not going to pay tax to Government. This is 'missing trader fraud' of one type.

In Indian context, this fraud is possible when CST rate is Nil or is reduced to 1%. A dealer can purchase goods inter-state and make sale within the State. He will collect tax and then disappear. He may use someone else's vat number in his invoices or may himself get registered with address of some temporary rented premises.

8.3.1 'Carousel fraud' in VAT

'Carousel' means 'merry-go-around' or' roundabout' (Concise Oxford Dictionary). This is 'missing trader fraud' of another type. It is much more involved and difficult to trace. The fraud works as follows –

One dealer 'A' imports goods without tax. He sells goods to 'B' and charges Vat. 'B' avails credit of tax shown by 'A' in his Invoice. 'B' sells the goods to 'C' and charges Vat. Actually, 'B' has to pay only differential amount as tax. 'C' avails credit of tax shown by 'B' in his Invoice. 'C' sells goods to 'D' by charging Vat. Since 'C' has availed credit of Vat paid by 'B', he has to pay only differential amount, which is small. 'D' exports the goods and claims refund of input tax i.e. entire tax shown by 'C' in his Invoice.

This is a legitimate transaction. The missing link is that 'A' actually does not deposit tax to Government. 'A' either has his own Vat registration number or he hijacks other's Vat number. He collects tax and then disappears. Thus, 'D' gets refund of tax which is actually not paid by 'A'!. By the time Government traces the transaction to 'A', he i.e. 'A' has disappeared.

The same goods are used again and again for 'imports' and 'exports'. That is why the fraud is termed as 'carousel' fraud. The high value goods like microchips and mobile phones are generally used for such deals.

UK is said to be main victim of such fraud. It is reported that UK has lost 12.6 billion Euro in such frauds. It is said that fraudsters prefer UK since it has weak and time consuming legal system!

In UK, reverse charge has been introduced in 2006 on tax payable on wholesale sales of mobile phones and microchips to combat the fraud. In 'reverse charge', buyer himself is liable to pay Vat on goods purchased.

Can the fraud work in Indian context? – In Indian context, the fraud can work in inter-state purchases and sales in the same way in which it works in European countries in imports/exports. The person finally selling the goods outside the State can either claim refund of tax paid on his purchases or can adjust the credit for paying taxes on sales made within the States.

In fact, it is possible that actually, goods may not move. Only documents may move from one State to another!.

What happens if 'D' is innocent and had entered into genuine transaction? - If 'D' is innocent, he cannot be penalised for default of 'A'. One such case has been decided by Court of Justice of European Communities, which is the highest Court of European Union. In *Optigen Ltd* v. *Commissioners of Customs and Excise* 2006 EUECJ C-354/03 (decided on 12-1-2006), it has been held that Government cannot refuse refund in such cases.

In India also, Tribunal has held that a buyer cannot be penalised for default of the seller.

In *Prachi Poly Products* v. *CCE* 2005 (186) ELT 100 (CESTAT SMB), it was held that a genuine buyer is eligible for Cenvat credit, even if the seller-manufacturer did not pay duty.

In *R S Industries* v. *CCE* 2003(153) ELT 114 (CEGAT), the manufacturer supplied goods to buyer on duty paying document. The manufacturer had availed Cenvat credit on inputs fraudulently. It was held that the buyer is not responsible for fraud of supplier and he is entitled to Cenvat credit on basis of a valid duty paying document.

Precautions being taken by State Governments under Vat - State Governments have put up or are in process of putting up check posts at State borders to ensure that all goods entering and leaving State are properly recorded. Though the purpose is sound, it is experience everywhere that such physical barriers increase harassment of honest tax payers while dishonest taxpayers can devise their own ways to hoodwink the system.

8.4 OVERVIEW OF STATE VAT

A 'White paper' was released by Dr. Asim Dasgupta, Chairman of Empowered Committee, on 17-1-2005. The White Paper is a policy document indicating basic policies of State Sales Tax VAT.

The white paper gives background of problems in present system of sales tax, principles of Vat and its advantages. It also gives basic design of State level Vat proposed to be implemented. States have generally followed the principles as given in the White Paper. Of course, there are variations.

Highlights of policy regarding State Vat as contained in White Paper are given below.

Tax Credit - Manufacturer will be entitled to credit of tax paid on inputs used by him in manufacture. A trader (dealer) will be entitled to get credit of tax on goods which he has purchased for re-sale [*para 2.3 of White Paper on State-Level VAT*].

Input Tax Credit - Credit will be available of tax paid on inputs purchased within the State. Credit will ***not*** be available of certain goods purchased like petroleum products, liquor, petrol, diesel, motor spirit (position of furnace oil is not clear in white paper, but many States do not give credit).

No credit is available in case of Inter-State purchases.

Credit of tax paid on capital goods - Credit will be available of tax paid on capital goods purchased within the State. Credit will be available only in respect of capital goods used in manufacture or processing. The credit will be spread over three financial years and not in first year itself. There will be a negative list of capital goods [*para 2.4 of White Paper on State-Level VAT*]

States has deviated from these provisions. In West Bengal and Kerala, it is available in 36 monthly instalments. In Karnataka, it is available in 12 monthly instalments, but value of capital goods should be minimum ₹ 10 lakhs. Capital goods of value less than ₹ 10 lakhs will be 'inputs' and immediate credit will be available. In Maharashtra, entire credit is available immediately.

Instant credit – Credit will be available as soon as inputs are purchased. It is not necessary to wait till these are utilised or sold [*para 2.3 of White Paper on State-Level VAT*].

No credit of CST paid - Credit of Central Sales Tax (CST) paid on inputs and capital goods purchased from other States will not be available [*para 2.6 of White Paper on State-Level VAT*]. This appears to be discriminatory and violative of Articles 303 and 304(a) of Constitution.

Transitional Credit of stock as at the beginning of Vat Act - Input tax as already paid on goods lying in stock as on the day when Vat was introduced (which are purchased within one year prior to that date) was available to dealer. For example, if Vat was introduced on 1-4-2005, credit of tax paid on stock lying as on 31-3-2005 was allowed if the goods were purchased on or after 1-4-2004.

Detailed stock statement were required to be submitted to sales tax authorities. This credit will be available over a period of six months after an interval of 3 months need for verification [*para 2.7 of White Paper on State-Level VAT*].

States have deviated from these provisions.

Very few sales tax forms – Most of present sales tax forms will disappear. [*para 2.14 of White Paper on State-Level VAT*] However, forms relating to EOU/SEZ may continue. Forms under CST Act will continue.

One to one correlation not required – VAT does not require one to one i.e. Bill to Bill correlation between input and output. Credit is available as soon as inputs/capital goods are purchased. The credit can be utilised for payment of VAT on any final product. It is not necessary to wait till the input is actually consumed/sold.

Entry tax/Octroi will continue - There is no proposal to extend VAT to entry tax (in lieu of octroi) or Octroi levied by local authorities. These will continue.

8.4.1 Purchase tax in VAT or 'reverse charge'

Though white paper makes no mention of purchase tax, some States like Kerala and Andhra Pradesh have made provision for imposition of purchase tax when purchase is from unregistered dealers. Its credit will be available where vat credit on purchases is available. Thus, in effect, in respect of purchases where Vat credit is not available, purchase tax will be payable.

This is termed as 'reverse charge'.

In UK, reverse charge has been introduced in 2006, on tax payable on sale of mobile phones and microchips.

Reverse charge - Normally, Vat is payable by seller of goods. However, in some cases, the liability is cast on the purchaser of goods. This is termed as 'reverse charge'.

This concept is used in service tax also. In reverse charge, the service receiver also acts as service provider. He pays tax on services received by him. He can avail Cenvat credit of tax paid by him, since the service is actually his 'input service'.

There is provision of 'tax collection at source' under section 206C of Income Tax Act. Here, seller of liquor is liable to pay tax at source. The buyer has no liability. Tax deduction at source (TDS) under Income tax is really not 'reverse charge', since basic responsibility of payment of income tax continues to be that of person earning income.

Mode of 'reverse charge' is used when it is administratively difficult to collect tax from seller of goods or service provider or income earner.

8.4.2 Tax rates under VAT

Ideally, VAT should have only one rate. Though this is not possible, it is certain that there should be minimum varieties of rates. Broadly, following VAT rates are proposed [*para 2.18 and 2.19 of White Paper on State-Level VAT*]

- 0% on natural and un-processed produces in unorganised sector, goods having social implications and items which are legally barred from taxation (e.g. newspapers, national flag). This will contain 46 commodities, out of which 10 will be chosen by individual States which are of local or social importance. Other commodities will be common for all States. Certain specified life saving medicines have been exempted from VAT tax.

- No VAT on Additional Excise Duty items (textile, sugar and tobacco) in first year. Position will be reviewed later. Vat has been imposed by State Governments @ 12.5% on tobacco products w.e.f. 1-4-2007.
- 1% floor rate for gold and silver ornaments, precious and semi-precious stones.
- 4% for goods of basic necessities (including medicines and drugs), all industrial and agricultural inputs, declared goods & capital goods. This will consist of about 270 commodities.
- 12.5% RNR (Revenue Neutral Rate) on other goods.
- Aviation turbine fuel (ATF) and petroleum products (petrol, diesel and motor spirit) will be out of VAT regime. Liquor, cigarettes, lottery tickets, will also be taxed at a higher rate. These will have uniform floor rates for all States (generally 20%). Tax paid on these will not be eligible for input tax credit.

Broadly, VAT rates of all States follow this pattern, but still there are many variations.

For example, in some States, Vat rate on gold and silver ornaments has been reduced to 0.25%, as traders were facing competition from neighboring States. Kerala State has imposed tax @ 20% on some luxury goods, though tax on such goods should be @ 12.5% as per the white paper.

In some States, hand tools are taxed at 4%, while in some States, these are taxed at 12.5%.

Policy about turnover tax, surcharge, additional tax etc. imposed by State Governments - States were levying turnover tax, surcharge etc. on sales tax,. Those taxes on sale will go. However, Octroi and Entry tax (which is in lieu of octroi) will continue. Other type of Entry Tax will either be discontinued or will be made Vatable [*para 2.16 of White Paper on State-Level VAT*] .

8.4.3 Concessions for small dealers

VAT tax will be payable only by those dealers whose turnover exceeds ₹ five lakhs per annum. The dealers whose turnover is less than ₹ five lakhs can register on optional basis. Dealers having turnover exceeding 5 lakhs should register within 30 days from date of liability to get registered [*para 2.9 of White Paper on State-Level VAT*]

In case of Karnataka, the limit is only ₹ two lakhs. Most of States have kept the limit as ₹ five lakhs.

Composition scheme for dealers with turnover upto ₹50 lakhs - Small dealers having gross turnover exceeding ₹ five lakhs but less than ₹ 50 lakhs have option of composition scheme. They will have to pay a small percentage of gross turnover. They will not be entitled to any input tax credit [*para 2.9 of White Paper on State-Level VAT*]

The percentage has not been announced in white paper, but earlier, it was announced as 1%. This rate has been prescribed in West Bengal VAT Act, AP VAT Act, Delhi VAT Act, Kerala VAT Act and Karnataka VAT Act.

In case of Karnataka, composition scheme is available only to a dealer whose turnover in a period of four consecutive quarters does not exceed ₹ 15 lakhs.

In Maharashtra, tax payable under composition scheme is 8% of difference between value of turnover of sales less value of turnover of purchases including tax (other than excluded goods) (in short, it is 8% of gross margin of trader). Second hand car dealer is required to pay sales tax @ 4%. In case of works contract, tax can be paid @ 8% of total contract value after deducting amount payable towards sub-contracts to the sub-contractors.

Dealers who make inter-State purchases are not eligible for the composition scheme. This provision applies to VAT law of almost all States.

The scheme is optional. They can opt to pay normal VAT tax and avail credit of input tax.

Composition scheme is a practical scheme considering ground realities, though it dilutes the basic concept of vat that tax is payable at consumption stage. Of course, such schemes are provided in almost all Vat regimes prevailing in Europe and elsewhere, considering practical difficulties in assessing and collecting tax from small traders.

8.4.4 Where input credit will not be available

Credit of tax paid on inputs will be denied in following situations -

No credit if final product is exempt - Credit of tax paid on inputs is available only if tax is paid on final products. Thus, when final product is exempt from tax, credit will not be availed. If availed, it will have to be reversed on *pro-rata* basis.

Restricted credit if output goods are transferred to another State - If the final products are transferred to another State as stock transfer or branch transfer, input credit availed will have to be reversed on *pro-rata* basis, which is in excess of 2%. In other words, in case of goods sent on stock transfer/branch transfer out of State, 2% tax on inputs will become payable e.g. if tax paid on inputs is 12.5%, credit of 10.5% is available. If tax paid on inputs is 2%, no credit is available (This is termed as 'retention'). Thus, the VAT as introduced is State Vat and not a national Vat (In case of some States, even if CST is reduced to 2%, retention has been kept @ 4% only).

No input credit in certain cases - In following cases, the dealer is not entitled to input credit —

(a) Final product is exempted from Vat.
(b) Inter-state purchases i.e. goods purchased from outside the State
(c) Goods imported (obvious, since there will be no Vat invoice)
(d) Goods purchased from unregistered dealer (as he cannot charge Vat)
(e) Goods purchased from dealer who is paying Vat under composition scheme (as he cannot charge Vat separately in invoice)
(f) Purchase where final goods sold are exempt from Vat
(g) Final product is given free i.e. goods not sold
(h) Inputs stolen/lost/damaged before use/sale as there is no sale
(i) Proper Tax Invoice showing Vat separately is not available
(j) Ineligible purchases like automobiles, fuel, certain capital goods etc. as specified in relevant State Vat law i.e. items in negative list.

No credit on certain purchases – Generally, in following cases, credit is not available – (a) Purchase of automobiles (except in case of purchase of automobiles by automobile dealers for re-sale) (b) fuel.

There are variations between provisions of different States.

8.4.5 Distinction between 'Zero rated sale' and 'exempt sale'

Certain sales are 'zero rated' i.e. tax is not payable on final product in certain specified circumstances. In such cases, credit will be available on the inputs i.e. credit will not have to be reversed. Distinction between 'zero rated sale' and 'exempt sale' is that in case of 'zero rated sale', credit is available on tax paid on inputs, while in case of exempt goods, credit of tax paid on inputs is not available.

As per para 2.5 of White Paper on State-Level VAT, export sales are zero rated, i.e. though sales tax is not payable on export sales, credit will be available of tax paid on inputs.

In respect of sale to EOU/SEZ, there will be either exemption of input tax or tax paid will be refunded to them within three months. If supplies to EOU/SEZ are exempt from sales tax, then the question will arise whether these are 'zero rated' or 'exempt goods'.

In case of stock transfer to another State, CST is not payable, but input credit will have to be reversed to the extent of 3%. Thus, stock transfer of goods to another State is 'exempt' and not 'zero rated'.

It is not clear what will be the policy after CST is reduced to 2% or when CST is reduced to zero. As per basic concept of Vat, inter-state transactions should be 'zero rated' and not 'exempt'.

8.4.6 Refund if VAT credit of input tax available cannot be utilised for any reason

Entire input tax will be refundable within three months, when final product is exported. In respect of sale to EOU/SEZ, there will be either exemption of input tax or tax paid will be refunded within three months [*para 2.5 of White Paper on State-Level VAT*].

If tax credit exceeds tax payable on sales, the excess credit will be carried to end of next financial year. Excess unadjusted credit at end of second year will be eligible for refund [*para 2.4 of White Paper on State-Level VAT*]

Such excess credit can arise when purchases of inputs are made locally, but final product is mainly exported or stock transferred to another State.

8.4.7 Exemptions and incentives to new industries already granted to continue

All State Governments were offering sales tax incentives to new industries set up in the State. The incentives were broadly of three types - (a) Exemption - Don't charge tax and don't pay (b) Deferral - Charge sales tax in invoice but pay after long period of (say) 12 to 18 years (c) Remission - Charge in the invoice but retain and do not pay to Government. - - State Governments have stopped giving incentives to new industries after January, 2000. However, there are commitments in respect of industries set up prior to January, 2000. State Governments to continue with the incentives which were already granted [*para 2.15 of White Paper on State-Level VAT*). [Some States may allow industries under exemption scheme to convert to deferral scheme so that such industries can pass on benefit of VAT to their buyers].

8.5 PROCEDURAL PROVISIONS RELATING TO VAT

A system of audit checks will have to be established to keep check on bogus invoices. One essential requirement is to give TIN (Tax Identification Number) to all registered dealers, so that a check is maintained that (a) The tax as shown in the invoice has indeed been paid (b) There is no double credit on basis of same invoice. TIN will have to be indicated on each invoice issued. It will be a 11 digit numerical code. First two digits will indicate State Code [*para 2.10 of White Paper on State-Level VAT*] .

Thus, State level computer network with check based on TIN will be established. Otherwise, misuse will be rampant.

Documentation required to avail credit of tax paid on inputs and capital goods - Tax credit will be given on basis of document, which will be a 'Tax Invoice', cash memo or bill. Such invoice can be issued only by a registered dealer, who is liable to pay sales tax. The invoice should be serially numbered and duly signed, containing prescribed details. The tax payable should be shown separately in the Invoice. The dealer should keep counterfoil/duplicate of such invoice duly signed and dated [*para 2.8 of White Paper on State-Level VAT*]

In case of manufacturer, Invoice issued under Central Excise Rules should serve purpose of VAT also, if the invoice contains required particulars.

Dealers availing composition scheme shall not show any tax in their invoice. They are not entitled to any credit of tax paid on their purchases.

Debit note and credit note - If sale price is increased/reduced subsequent to sale, the transaction will be recorded through proper debit/credit note. The buyer will adjust the input credit available to him accordingly.

8.5.1 Records and Accounts

Each State has prescribed records to be maintained. Broadly, following records will be required.

- Records of purchases of Inputs.
- Record of debit notes and credit notes.
- Quantity record of inputs.

- Record of credit notes received from supplier.
- Record of capital goods.
- Sale register and tax charged on sales.

Record of Tax credit available - Monthly/quarterly totals of the following should be taken - (a) Input credit available (b) Credit available on capital goods (c) Credit notes from suppliers.

Carry forward/refund of tax credit - If input tax credit cannot be utilised in a particular month/year, the credit can be carried forward and used in subsequent months/year. Refund of such excess credit is permitted only if goods were exported out of India. If credit is not utilised in two years, refund will be granted.

Preservation of records - Since assessment can be opened for prescribed period (usually five to eight years), it is necessary to preserve all relevant records for prescribed period from close of the financial year. The records can be audited by departmental audit party.

8.5.2 Payment of VAT Tax and filing of returns

Every dealer is required to file returns on monthly/quarterly basis. If the records are kept properly, filing the return will be very easy and mistakes will be minimum.

Net Tax payable - Net tax payable will have to be calculated as follows - (a) Output tax *plus* (b) Reversal of Credit (On exempted goods, stock transfers, free samples, lost inputs) - *Less* - (c) Input tax credit available.

This net amount is required to be paid through prescribed challan on or before due date.

8.5.3 Accounting treatment of VAT

ICAI has issued Guidance Note on Accounting for State level VAT on 15-4-2005. The guidance note is based on principles of VAT as contained in White paper released on 17-1-2005. However, there are variations in respect of each State. Hence, accounting policies will have to be adopted to suit provisions of VAT law of the particular State. Following broad principles should be kept in mind -

- As per AS-2, cost of purchase for purpose of inventory valuation should not include tax, if credit of tax paid is available.
- For purpose of income tax, inventory valuation should be inclusive of taxes, even if its credit is available, as per section 145A of Income Tax Act.
- Purchase account should be debited with net amount. VAT credit receivable on purchases should go to 'VAT Credit receivable (Input) Account.
- Account of each rate i.e. 0%, 1%, 4%, 12.5% etc. is required to be kept separately.
- In case of capital goods, as per AS-10, cost of fixed assets should include only non-refundable duties or taxes.
- If entire credit of tax on capital goods is not available immediately, the credit that is available immediately should be debited to VAT Credit Receivable (Capital Goods) Account and credit which is not available immediately should be taken to 'VAT Credit Deferred Account'.
- In case of sales, the sales account should be credited only with net amount (i.e. exclusive of VAT). Tax payable should be credited to separate account 'VAT Payable Account' [This is 'exclusion method'. Interestingly, in case of excise duty paid on final product, 'inclusive method' is permitted, i.e. sale account is credited inclusive of excise duty on final product].
- If any VAT is payable at the end of period (after adjusting VAT credit available), the balance is to be shown as 'current liability'.

8.5.4 Assessment of TAX

Dealer is required to assess his tax and pay himself. It will be basically self assessment. There will be no compulsory assessment at end of the year. If notice is not issued within prescribed time, dealer will be deemed to have been self assessed [*para 2.12 of White Paper on State-Level VAT*]

Returns will be filed monthly/quarterly, as prescribed, along with challans. Returns will be scrutinised and if there is technical mistake, it will have to be rectified by dealer [*para 2.11 of White Paper on State-Level VAT*]

As per West Bengal VAT Act, if dealer does not receive any intimation within two years from end of the accounting year, it is deemed that his return has been accepted by sales tax authority. In case of Andhra Pradesh, the time limit is four years from date of filing of return.

Audit of records - There will be audit wing in department and certain percentage of dealers will be taken up for audit every year on scientific basis. The audit wing will be independent of tax collection wing, to remove bias. There will be cross verification with Central Excise and Income Tax also. [*para 2.13 of White Paper on State-Level VAT*]

Audit by outside Agencies – VAT laws of some States provide for audit by outside agencies. AP Vat Act provides for audit by CA, cost Auditor or Sales tax Practitioner (STP), if audit is ordered by Commissioner.

In Karnataka, audit report is required if turnover exceeds ₹ 25 lakhs.

In Delhi, the dealer is required to submit copy of audit report u/s 44AB of Income Tax Act (This report is required when turnover exceeds ₹ 40 lakhs per annum) No separate audit is prescribed, unless special audit is ordered by department.

In Maharashtra, audit report from Chartered Accountant or Cost Accountant is required if sales turnover exceeds ₹ 40 lakhs.

8.6 IMPACT OF VAT ON CST

The provisions in respect of Central Sales Tax are summarised below –

- Para 4.3 of White Paper on State-Level VAT had stated that present CST rate (that time it was 4%) will continue for some time. CST may go after decision in respect of loss of revenue to States is taken and comprehensive Taxation information System is put in place. Accordingly, CST rate has been reduced to 3% w.e.f. 1-4-2007.
- Present CST forms i.e. C, D, E-I/E-II, F, H, I and J will also continue.
- There will be no credit of CST paid on inter-state purchases [para 2.6 of White Paper on State-Level VAT].
- If goods are sent on stock transfer outside the State, input tax paid in excess of 4% will be allowed as credit. In other words, input tax to the extent of 4% will not be allowed as credit if goods are sent inter-state (The CST rates has been reduced to 3% w.e.f. 1-4-2007. The dis-allowance should also be reduced to 3%. It is not known whether all State Governments are reducing the dis-allowance i.e. 'retention').

Unfortunately, the way sales tax VAT is to be implemented by States, it is only local (i.e. State) VAT and not national VAT. This is because –

(a) If goods are purchased from another State, credit (set off) of CST paid in other State will not be granted by the State where the goods are consumed/used/sold.

(b) If goods are sent to another State on stock transfer basis, only restricted input credit will be given, i.e. there will be no credit on first 4% tax paid on inputs.

Obviously, this is against basic concept of VAT. Thus, the State Level VAT is a truncated version of VAT. It can at the most be termed as 'Local Sales Tax VAT' and not 'National Sales Tax VAT'.

8.6.1 Discriminatory treatment to CST

Provision of not granting credit of CST seems discriminatory. Article 303 of Constitution of India provides as follows, 'Neither Parliament nor the Legislature of State shall have power to make any law giving any preference to one State over another, or making any discrimination between one State and another'.

As per Article 304(a), State Government can impose tax on goods imported from other States, but cannot discriminate between goods imported from other States and goods manufactured within the State.

Kelkar Committee in para 7.2 of its final report submitted in December 2002, has expressed apprehensions about legal implications of Article 304(a) in State Level VAT. The Kelkar Committee has expressed apprehension that investment decisions will tend towards States where the market within the State is larger than outside.

Giving credit only for locally purchased goods appears to be discriminatory and it appears that this will discourage inter-state purchases.

States indirectly taxing inter-state transaction - If goods sent on stock transfer basis, credit will be granted only in excess of 4% tax paid on inputs. Thus, indirectly, tax will be levied on stock transfers.

As per Article 286, State Government cannot impose tax on sale or purchase during imports or exports; or tax on sale outside the State. It means that State Government can impose sales tax only on sale within the State.

12.6.2 Will inter-state sale be zero rated?

The Vat system will be Vat compliant if inter-state sale or stock transfer is 'zero rated' i.e. no tax will be payable on inter-state sale or stock transfers, but entire credit of taxes paid on inputs and capital goods is available. If CST is reduced to Nil, but restricted credit of tax paid inputs is available, then the inter-state sales will be 'exempt' and not 'zero rated'. Then the Vat system will not be as per principles of Vat.

The intention seems to be to make inter-state sales 'zero rated' and not merely 'exempt'. However, white paper issued by Empowered Committee does not categorically say so.

8.7 PRACTICAL PROBLEMS ON VAT

Problem 1 :

Aloke, a registered dealer in the State of Orissa, furnishes the following details relating to its sales for the month of December, 2011.

	₹
1. Sale of exempted goods (*Schedule* A goods)	**75,000**
2. Sale of goods of zero rate (*Schedule* AA goods)	**50,000**
3. Sale of goods taxable at 4% (*Schedule* C goods)	**4,00,000**
4. Sale of goods taxable at 12.5% (*Schedule* CA goods)	**1,20,000**

On buyer of *Schedule C* goods (taxable at 4%) returned goods worth ₹ 20,000 on 20th January, 2012.

Tax on maximum retail price has been paid at the time of purchase of *Schedule CA goods,* taxable at 12.5%.

Determine turnover of sales and taxable turnover of the dealer.

Solution :

Computation of Turnover of Sales and Taxable Turnover of Mr. Alok for the Month of December, 2011.

		₹	₹
Aggregate Sale Price ₹ (75,000 + 50,000 + 4,00,000 + 1,20,000)			6,45,000
Less : (i)	Sales return of *Schedule C* goods within 6 months from the date of sale		
(ii)	Sale price of goods, tax on which has been paid on the Maximum Retail Price (MRP) at the time of purchase	1,20,000	1,40,000
Turnover of Sales [Section 2(55)]			5,05,000
Less : (i)	Sale of Exempted Goods (Schedule A goods)	75,000	
(ii)	Sale of Zero-rated Goods (Schedule AA goods)	50,000	1,25,000
	Taxable Turnover (on which tax is payable)		3,80,000

Problem 2 :

M/s. Vijoy Traders, a registered dealer in the State of Bihar, furnishes the following details relating to it's sales and purchases during the month of November, 2011 :

Details of sales :

Invoice No. 301 dated	**5.11.2011**	**₹**	**10,500**	**(inclusive of 12.5% tax)**
Invoice No. 302 dated	**10.11.2011**	**₹**	**15,000**	**(inclusive of 12.5% tax)**
Invoice No. 303 dated	**12.11.2011**	**₹**	**12,500**	**(inclusive of 4% tax)**
Invoice No. 304 dated	**18.11.2011**	**₹**	**14,700**	**(inclusive of 12.5% tax)**
Invoice No. 305 dated	**22.11.2011**	**₹**	**16,750**	**(inclusive of 4% tax)**
Invoice No. 306 dated	**25.11.2011**	**₹**	**9,750**	**(inclusive of 12.5% tax)**
Invoice No. 307 dated	**31.11.2011**	**₹**	**10,000**	**(inclusive of 4% tax)**

Details of Purchase :

Within Bihar on	**4.11.2011**	**₹**	**7,000**	**(inclusive of 12.5% tax)**
From Other State (CST)	**8.11.2011**	**₹**	**3,500**	**(inclusive of 4% tax)**
Within Bihar on	**12.11.2011**	**₹**	**9,500**	**(inclusive of 4% tax)**
Within Bihar on	**15.11.2011**	**₹**	**10,000**	**(inclusive of 12.5% tax)**
Within Bihar on	**18.11.2011**	**₹**	**7,500**	**(inclusive of 12.5% tax)**
Within Bihar on	**22.11.2011**	**₹**	**12,000**	**(inclusive of 4% tax)**

Out of sale against Invoice No. 302, Goods worth ₹ 2,000 has been returned on 15.12.2011.
Compute the amount of VAT liability for the month of November, 2011.

Solution :

Computation of Net VAT Liability of M/s. Vijoy Traders for the month of November, 2011.

Output Tax Liability :	Output Tax ₹
1. On Turnover of ₹ 10,500 inclusive of 12.5% tax	
₹ $10,500 \times \frac{12.5}{112.5}$	1,167
2. On Turnover of ₹ 13,000 inclusive of 12.5% tax (Net Sales = ₹ 15,000 – ₹ 2,000 = ₹ 13,000 since goods returned within six months)	1,444
3. On Turnover of ₹ 12,500 inclusive of 4% tax	
₹ $12,500 \times \frac{12.5}{112.5}$	481
4. On Turnover of ₹ 14,700 inclusive of 12.5% tax	
₹ $14,700 \times \frac{12.5}{112.5}$	1,633
5. On Turnover of ₹ 16,750 inclusive of 4% tax	
₹ $16,750 \times \frac{4}{104}$	644
6. On Turnover of ₹ 9,750 inclusive of 12.5% tax	
₹ $9,750 \times \frac{12.5}{112.5}$	1,083
7. On Turnover of ₹ 10,000 inclusive of 4% tax	
₹ $10,000 \times \frac{4}{104}$	385
Total Output Tax [A]	6,837
Input Tax Credit on Purchase :	
1. On Turnover of ₹ 7,000 inclusive of 12.5% tax	
₹ $7,000 \times \frac{12.5}{112.5}$	778
2. On Purchase of ₹ 9,500 inclusive of 4% tax	
₹ $9,500 \times \frac{4}{104}$	365
3. On Purchase of ₹ 10,000 inclusive of 12.5% tax	
₹ $10,000 \times \frac{12.5}{112.5}$	1,111
4. On Turnover of ₹ 7,500 inclusive of 12.5% tax	
₹ $7,500 \times \frac{12.5}{112.5}$	833
5. On Purchase of ₹ 12,000 inclusive of 4% tax	
₹ $7,000 \times \frac{4}{104}$	462
Total Input Tax Credit [B]	3,549
Net VAT Payable [A–B]	3,288

Note : No input tax credit is available in respect of purchases from other states, i.e., inter-State purchase.

Problem 3 :

M/s Ashok Engg. Co. Ltd., a registered dealer in the State of Punjab, furnishes the following details relating to it's sales and purchases during the quarter ended 31st December, 2011 :

Sales :

Invoice No. 101 dated	**4.12.2011**	**₹**	**20,000**	**(inclusive of 12.5% tax)**
Invoice No. 102 dated	**8.12.2011**	**₹**	**17,000**	**(inclusive of 4% tax)**
Invoice No. 103 dated	**12.12.2011**	**₹**	**16,000**	**(inter-State sale inclusive of 4% tax)**
Invoice No. 104 dated	**18.12.2011**	**₹**	**19,700**	**(inclusive of 12.5% tax)**
Invoice No. 105 dated	**26.12.2011**	**₹**	**20,100**	**(inclusive of 4% tax)**
Invoice No. 106 dated	**27.12.2011**	**₹**	**22,750**	**(inclusive of 12.5% tax)**

Goods sent to Patna branch of the company on 15.12.2011 for ₹ 12,000.

Purchases :

From dealer in Punjab on	**2.12.2011**	**₹**	**10,000**	**(inclusive of 4% tax)**
From dealer in Punjab on	**4.12.2011**	**₹**	**15,000**	**(inclusive of 12.5% tax)**
From dealer in Delhi (CST) on	**6.12.2011**	**₹**	**7,500**	**(inclusive of 4% tax)**
From dealer in Punjab on	**12.12.2011**	**₹**	**8,500**	**(inclusive of 12.5% tax)**
From dealer in Punjab on	**18.12.2011**	**₹**	**18,000**	**(inclusive of 12.5% tax)**
From dealer in Punjab on	**22.12.2011**	**₹**	**14,000**	**(inclusive of 4% tax)**

Goods purchased on 2.12.2011, was sent to Patna branch of the company.

Compute the amount of VAT liability for the month of December, 2011.

Solution :

Computation of Net VAT Liability of M/s. Ashok Engg. Co. Ltd. for the month of December, 2011.

Output Tax Liability :	Output Tax ₹
1. On Turnover of ₹ 20,000 inclusive of 12.5% tax	
₹ $10,500 \times \frac{12.5}{112.5}$	2,222
2. On Turnover of ₹ 17,000 inclusive of 4% tax	
₹ $17,000 \times \frac{4}{104}$	654
3. On Turnover of ₹ 19,700 inclusive of 12.5% tax	
₹ $19,700 \times \frac{12.5}{112.5}$	2,189
4. On Turnover of ₹ 20,100 inclusive of 4% tax	
₹ $20,100 \times \frac{4}{104}$	773
5. On Turnover of ₹ 22,750 inclusive of 12.5% tax	
₹ $22,750 \times \frac{12.5}{112.5}$	2,528
Total Output Tax [A]	8,366

Input Tax Credit on Purchase :	
1. On Turnover of ₹ 9,750 inclusive of 12.5% tax	
₹ 15,000 × $\frac{12.5}{112.5}$	1,667
2. On Turnover of ₹ 8,500 inclusive of 12.5% tax	
₹ 8,500 × $\frac{12.5}{112.5}$	944
3. On Turnover of ₹ 18,000 inclusive of 12.5% tax	
₹ 18,000 × $\frac{12.5}{112.5}$	2,000
4. On Turnover of ₹ 14,000 inclusive of 4% tax	
₹ 14,000 × $\frac{4}{104}$	538
Total Input Tax Credit [B]	5,149
Net VAT Payable [A–B]	3,217

Note : (1) No input tax credit is available in respect of purchases from other states. Hence, inter-State purchase of ₹ 7,500 is not eligible for input tax credit under VAT.

(2) No input tax credit is available in respect of goods purchased in West Bengal and transferred to Patna branch (stock transfer), since the amount of tax on purchase was 4%. If the rate of tax on purchase happens to be more than 4%, the excess amount beyond 4% shall be eligible for input tax credit.

Alternatively,

If the Input Tax Credit in respect of purchase of ₹ 10,000 (inclusive of 4% tax) has beeen considered, in deterimining Total Input Tax Credit should have been :

		₹
	Total Input Tax Credit	5,149
Add :	Input Tax Credit on ₹ 10,000 ₹ 10,000 × $\frac{4}{104}$	385
		5,534

However, since the goods have been transferred to Patna branch on Stock Transfer basis the credit of ₹ 385 shall be reversed. Hence, Credit shall be for ₹ 385 and Net VAT Payable shall be ₹ (8,366 – 5,534 + 385) = ₹ 3,217.

Liability under Central Sales Tax :

Sale of ₹ 16,000 inclusive of 4% CST i.e., ₹ 16,000 × $\frac{4}{104}$ = ₹ 615

Accordingly, Net VAT Payable = ₹ 3,217

Net CST Payable = ₹ 615

Problem 4 :

BBJ Co. Ltd., a registered dealer under the Central Sales Tax Act and VAT Act in the State of West Bengal. It makes inter-State sale as well as sale within West Bengal of goods specified in *Schedule C* (rate of tax 4%) and *Schedule 3 CA* (tax rate 12.5%).

From the following details, determine the amount of Central Sales Tax and VAT liability of the dealer for the month of January, 2012.

(1) Sale price of *Schedule C* (4%) goods in West Bengal on 12.3.2011 ₹ 5,00,000.

(2) Sale price of *Schedule CA* (12.5%) goods in West Bengal on 18.3.2011 ₹ 3,00,000.

(3) Sale price of *Schedule C* (4%) goods in West Bengal on 20.3.2011 ₹ 7,50,000.

(4) Sale price against *Form C* (4%) goods in West Bengal on 24.3.2011 ₹ 4,00,000.
(All the above sales are exclusive of sales tax)

Purchase of *Schedule C* (4%) Goods in West Bengal ₹ 4,16,000 inclusive of tax.

Purchase of *Schedule CA* (12.5%) Goods in West Bengal ₹ 1,68,750 inclusive of tax.

Purchase from Delhi, against *Form C* (4%) ₹ 52,000 inclusive of CST.

Solution :

Computation of Net VAT liability of M/s BBJ Co. Ltd. for the month of January, 2012.

Output Tax Liability :	Output Tax ₹
1. On Sale price of ₹ 5,00,000	
₹ 5,00,000 × 4%	20,000
2. On Sale price of ₹ 3,00,000	
₹ 3,00,000 × 12.5%	37,500
3. On Sale price of ₹ 7,50,000	
₹ 7,50,000 × 4%	30,000
Total Output VAT Liability [A]	87,500
Input Tax Credit on Purchase :	
1. On Purchase of ₹ 4,16,000 inclusive of 4% tax	
₹ $4,16,000 \times \frac{4}{104}$	16,000
2. On Purchase of ₹ 1,68,750 inclusive of 12.5% tax	
₹ $1,68,750 \times \frac{12.5}{112.5}$	18,750
Total Input Tax Credit [B]	34,750
Net VAT Payable [A – B]	52,750

Note : No input tax credit is available in respect of purchases from other State. Hence inter-State purchase from Delhi of ₹ 52,000 is not eligible for input tax credit under VAT.

Liability under Central Sales Tax :

Sale of ₹ 4,00,000 @ 4% CST (against Form C) = ₹ 16,000

Accordingly, Net VAT Payable = ₹ 52,750

Net CST Payable = ₹ 16,000

Problem 5 :

M/s Jyoti Industries, a registered dealer of VAT in the State of Rajasthan, furnishes the following details relating to it's sales and purchases during the quarter ended 31st December, 2011 :

Sales :

Sale of *Schedule C* (4%) goods in Rajasthan ₹ 8.32,000 inclusive of tax

Sale of *Schedule CA* (12.5%) goods in Rajasthan ₹ 4,50,000 inclusive of tax

Sale of *Schedule C* (4%) goods in Rajasthan ₹ 4,16,000 inclusive of tax

Sale of *Schedule A* (Exempted) goods in Rajasthan ₹ 85,000.

Sale, return of *Schedule CA* goods in April, 2010 for ₹ 20,000 inclusive of tax.

Freight and delivery charges included in turnover and not separately charged :

For *Schedule A* goods	**₹**	**5,000**
For *Schedule C* goods	**₹**	**30,000**
For *Schedule CA* goods	**₹**	**22,000**

Purchases :

***Schedule C* (4%) goods from dealers in Rajasthan ₹ 9,00,000 inclusive of tax**

***Schedule CA* (12.5%) goods in Rajasthan ₹ 3,50,000 inclusive of tax**

***Schedule A* (exempted) goods in Rajasthanl ₹ 70,000**

Purchase from unregistered dealer in Rajasthan for ₹ 2,000 goods used in regular business of the dealer (*Schedule CA* goods) 12.5%

Determine aggregate sale price, taxable turnover of sales, output tax liability, input tax credit and net VAT liability of the dealer.

Solution :

Computation of Net VAT Liability of M/s. Jyoti Industries Ltd. for the month of March, 2010.

	Output Tax ₹
Output Tax Liability :	
1. On Turnover of ₹ 8,32,000 inclusive of 4% tax	
₹ $8,32,000 \times \frac{4}{104}$	32,000
Sale Price ₹ 8,32,000 – ₹ 32,000 = ₹ 8,00,000	
on which VAT is payable @ 4%	
2. On Turnover of ₹ 4,50,000 *less* returned goods ₹ 20,000	
Net turnover of ₹ 4,30,000 @ 12.5%	
₹ $4,30,000 \times \frac{12.5}{112.5}$	47,778
Sale Price ₹ 4,30,000 – ₹ 47,778 = ₹ 3,82,222	
on which VAT is payable @ 12.5%	
3. On Turnover of ₹ 4,16,000 inclusive of 4% tax	
₹ $4,16,000 \times \frac{4}{104}$	16,000
Sale Price ₹ 4,16,000 – ₹ 16,000 = ₹ 4,00,000	
on which VAT is payable @ 4%	
4. Tax on purchase from Unregistered Dealer [*Section 17*]	
₹ 2,000 × 12.5%	250
Total Output Tax [A]	96,028
Input Tax Credit :	

1. On Purchase within Rajasthan @ 4% on ₹ 9,00,000	
₹ 9,00,000 $\frac{4}{104}$	34,615
2. On Purchase of ₹ 3,50,000 @ 12.5%	
₹ 3,50,000 $\frac{12.5}{112.5}$	38,889
3. On Purchase from Unregisterd Dealer (No credit is available)	Nil
Total Input Tax Credit [B]	73,504

Computation of Net VAT Liability

		₹
Total Output Tax	(A)	96,028
Less : Input Tax Credit	(B)	73,504
Net VAT Liability		22,524

Notes : (1) No Input Tax Credit is available in purchase of exempted goods.

(2) No Input Tax Credit is available on purchase from unregistered dealer under *Section 22(5)* of the Act.

(3) Freight and delivery charges are included in the definition of 'Sale Price' under *Section 2(41)* of the Act and hence no deduction is allowed.

Problem 6 :

Mr. X, a manufacturer sells goods to Mr. B, a distributor for ₹ 2,000 (excluding of VAT). Mr. B sells goods to Mr. K, a wholesale dealer for ₹ 2,400. The wholesale dealer sells the goods to a retailer for ₹ 3,000, who ultimately sells to the consumers for ₹ 4,000. Compute the Tax Liability, input credit availed and tax payable by the manufacturer, distributor, wholesale dealer and retailer under Invoice method assuming VAT rate @ 13.5%.

Solution :

	X (Manufacturer)	*B (Distributor)*	*K (Wholesale dealer)*	*Retailer*
Turnover (Net Price)	2,000	2,400	3,000	4,000
Add Vat @ 13.5%	270	324	405	540
Sale Price (Turnoverplus Vat)	2,270	2,724	3,405	4,540
Vat Credit available	Nil	270	324	405
Net Vat payable	270	54	81	135

Total tax paid is₹ 500 as follows - Manufacturer - ₹ 270, Distributor -₹ 54, Wholesale dealer ₹ 81, Retailer - ₹ 135.

Problem 7 :

Compute the VAT liability of Mr. P Kapoor for the month of October, 2011, using the 'Invoice method' of Computation of Vat - (i) Purchases from the local market (Includes VAT @ 4%) ₹ 65,000 (ii) Storage cost incurred ₹ 750 (iii) Transportation Cost ₹ 1,750 (iv) Goods sold at a margin of 5% on the cost of such goods. Vat rate on Sales 13.5%.

Solution :

Since, purchase price including 4% Vat is ₹ 65,000, Net purchase cost (excluding Vat) is ₹ 62,500 [(₹ 65,000 × 100)/ 104]. Vat on purchase @ 4% of ₹ 62,500 is ₹ 2,500 [(₹ 65,000 × 4)/ 104]. Thus, Input Tax Credit (set off) available is ₹ 2,500.

Considering storage cost and transportation cost, total cost is ₹ 65,000 (Net purchase cost ₹ 62,500 + Storage Cost ₹ 750 + Transportation Cost 1,750) (Vat on purchases is not to be considered in purchase cost since the Vat amount is available as credit).

Profit on cost of ₹ 65,000 @ 5% = ₹ 3,250. Hence, 'turnover' (Net selling price) is ₹ 68,250.

Vat payable @ 13.5% on turnover of ₹ 68,250 is ₹ 9,213.75. Input Tax credit (set off) available on inputs is ₹ 2,500. Hence, net Vat payable is ₹ 6,713.75 (= ₹ 9,213.75 – ₹ 2,500).

Problem 8 :

A manufacturer sold goods to distributor for ₹ 20,000. The distributor sold the goods to the wholesaler for 24,000. The wholesaler sold the goods to the retailer for ₹ 30,000. The retailer sold the goods to the final consumer for ₹ 40,000. The VAT rate is 13.5 per cent which is charged separately. Compute VAT liability under invoice method. State why this method is preferable?

Solution :

Details	Manufacturer	Distributor	Wholesaler	Retailer
Turnover (Net Sale Price)	20,000	24,000	30,000	40,000
Vat @ 13.5%	2,700	3,240	4,050	5,400
Sale Price	22,700	27,240	34,050	45,400
Less - Input Tax Credit	Nil	2,700	3,240	4,050
Net Tax paid	2,700	540	810	1,350

Thus, total tax paid is ₹ 2,700 + ₹ 540 + ₹ 810 + ₹ 1,350 = ₹ 5,400.

Problem 9 :

X, a dealer in Mumbai dealing in consumer goods, submits the following information pertaining to the month of December, 2011 – Exempt goods A purchased for ₹ 2,00,000 and sold for ₹ 2,50,000. Goods B purchased for ₹ 2,27,000 (including VAT) and sold at a margin of 10% profit on purchases (VAT rate 13.5%). Goods C purchased for ₹ 1,00,000 (excluding VAT) and sold for ₹ 1,50,000 (VAT rate 4%). His unutilised balance in VAT input credit on 1-12-2011 was ₹ 5,100. Compute the turnover, input VAT, output VAT and net VAT payable by X.

Solution :

1. Sale price of A and C is given. In respect of B, we have to calculate sale price.

   Net purchase cost for B is ₹ 2,00,000 [(₹ 2,27,000 × 100)/113.5]. Vat payable on 'net purchase cost of ₹ 2,00,000 @ 13.5 is ₹ 27,000. Margin of profit @ 10% of ₹ 2,00,000 is ₹ 20,000. Hence, turnover (net sale price of product B) is ₹ 2,20,000.

2. Vat payable on A is Nil. Vat payable on B is ₹ 29,700 [13.5 of ₹ 2,20,000]. Vat payable on C is ₹ 6,000 [4% of ₹ 1,50,000]. Hence, total Vat payable is ₹ 35,700.

3. Input Tax Credit (set off) is as follows - (a) on A - Nil. (b) on B ₹ 27,000. (c) on C - ₹ 4,000 [4% of ₹ 1,00,000]. Total - ₹ 31,000.

4. Net Vat payable by cash = Total Vat payable - Input Tax Credit (set off) available = ₹ 35,700 – ₹ 31,000 = ₹ 4,700. Opening balance credit of ₹ 5,100 is available. Since available balance of Input VAT Credit (₹ 5,100) is more than output VAT liability (₹ 4,700), hence no VAT is payable, at this moment.

   After adjustment of output VAT Liability, the net balance of Input VAT Credit is ₹ 400 (= ₹ 5,100 – ₹ 4,700).

Note that Vat does not require one to one relationship.

Problem 10 :

Purchases by S & Co. for the month of December are as follow : (1) ₹ 1,00,000 at 4% VAT (2) ₹ 5,00,000 at 13.5% VAT. Sales of S & Co. for the month of December are as follows -

(1) Sales of ₹ 3,00,000 at 4% VAT (2) Sales of ₹ 3,00,000 at 13.5% VAT. Compute eligible input tax credit and VAT payable for the month.

Solution :

Vat provisions do not require one to one relation. Entire Input Tax credit available can be utilised to pay Vat on sale of any of the products.

(A) Vat payable for the month of December - (a) VAT payable on local sales @ 4% (₹ 3,00,000 × 4%) - ₹ 12,000 (b) VAT payable on local sales @ 13.5% (3,00,000 × 13.5%) - ₹ 40,500. Total - ₹ 52,500

(B) Input Tax credit (set off) on purchases (a) (1,00,000 × 4%) - ₹ 4,000 (b) (₹ 5,00,000 × 13.5) - ₹ 67,500. Total - ₹ 71,500.

(C) VAT Payable - Nil (As the credit exceeds the Vat payable.)

Balance credit of ₹ 19,000 (₹ 71,500 - ₹ 52,500) can be carried forward to next month and utilised against future sales. If it cannot be utilised in a financial year, refund can be obtained.

Notes

Notes