Question

Explain briefly the following with reference to Central Excise Act 1944:-

(a) Excisable goods

(b) Taxable Event

Answer

(a) As per section 2(d) of the Central Excise Act, 1944, "excisable goods" means goods specified in the First Schedule and Second Schedule to the Central Excise Tariff Act, 1985 as being subject to the duty of excise and includes salt.

The Explanation to section 2(d) states that "goods" include 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, the concept of deemed marketability is introduced by this explanation.

(b) "Taxable Event is the event, which on its occurrence, creates or attracts the liability to tax. In the context of central excise," taxable event is the "manufacture" of goods as per section 3 of Central Excise Act. However, the collection of duty is postponed to the stage of removal of goods as per rule 4 of the Central Excise Rules, 2002.

In *Wallace Flour Mills Vs CCEx (1989) 44 ELT 598,* the Apex Court held that the taxable event for the liability to duty was manufacture of goods but the duty could be levied and collected at any later stage for administrative convenience. Merely because the payment of duty under rules is postponed to the stage of removal, it could not be contended that the removal of goods has become the taxable event for the levy of duty.

Besides, it is also worth mentioning that the excisable goods which were chargeable to duty under the Tariff at the time of manufacture but were exempted under an exemption notification will be liable to payment of duty if, post manufacture and prior to removal,

such exemption is withdrawn. On the other hand, where the goods were outside the purview of the Tariff at the time of manufacture, they would not be chargeable to duty even though subsequent to manufacture but prior to removal, such goods were brought within the purview of the Tariff or were charged to a duty of excise by means of an amendment to the Tariff.

Question

Explain briefly with reference to the provisions of the Central Excise Act the term "Deemed Manufacture".

Answer

As per section 2(f) of the Central Excise Act, 1944 "manufacture" includes any process-

(i) incidental or ancillary to the completion of a 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, o r

(iii) which, in relation to the goods specified in the Third Schedule, 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 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 production or manufacture on his own account.

The processes that qualify to be manufacture as per clause (ii) and (iii) of section 2(f) are termed as deemed manufacture.

Thus, if any process which is specified in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture is carried out, goods will be deemed as manufactured, even if as per Court decisions, the process may not amount to manufacture. For instance, if any of specified processes (like re-packing, re-labelling, alteration of retail sale price etc.) is being carried out on goods covered in Third Schedule to the Central Excise Act, 1944, the process will be deemed as manufacture.

Question

Briefly explain the following with reference to the provisions of Central Excise Act, 1944:

(i) Wholesale dealer

(ii) Factory

(iii) Dutiability of waste and scrap

Answer

(i) As per section 2(k) of the Central Excise Act, 1944, wholesale dealer means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

(ii) As per section 2(e) of the Central Excise Act, 1944, 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 the production of these goods is being carried on or is ordinarily carried on.

(iii) The issue relating to dutiability of waste and scrap was settled by the Supreme Court in the case of *Khandelwal Metal & Engineering Works Vs Union of India 1985 (20) ELT 222* wherein it was held that notwithstanding that process waste and scrap arose as intermediate products or by-products out of final products, such process waste and scrap, if marketable, would be chargeable to duty in view of the incorporation of the specific sub-headings in various Chapters of the Tariff. The Apex court held that process waste and scrap is a commercially distinct and identifiable product and has commercial value. Hence, such waste and scrap is chargeable to duty if covered in the Tariff.

Therefore, the position as it currently stands is that all process waste and scrap if incorporated in the Tariff, and if marketable, would be chargeable to duty. It is important to note here that as the excise duty is on manufacture, the waste and scrap actually generated in the course of manufacture alone is chargeable to duty.

Question

Briefly explain the following with reference to the provisions of the Centr al Excise Act, 1944:

(i) Adjudicating authority

(ii) Assembly tantamounts to manufacture

(iii) Processing and Manufacture

Answer

(i) Section 2(a) of the Central Excise Act, 1944 defines adjudicating authority to mean any authority competent to pass any order or decision under this Act. However, it does not include the following:

(a) Central Board of Excise and Customs constituted under the provisions of Central Board of Revenue Act, 1963;

(b) Commissioner of Central Excise (Appeals);

(c) Appellate Tribunal.

(ii) Assembly is a process of putting together a number of items or their parts to make a product. All cases of assembly may not amount to manufacture as an already manufactured item may also be assembled to put it in a readily usable form.

However, assembly of various parts and components may tantamount to manufacture if a new product which is movable and marketable emerges out of such assembly.

Therefore, if an “immovable property” emerges after such assembly, it will not be considered as manufacture.

The Apex Court in the case of *Narne Tulaman Manufacturers Pvt. Ltd. V CCE 1988 (38) E.L.T. 566 (S.C)* held that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture.

(iii) It is necessary to differentiate between manufacture and processing. Manufacture involves a series of processes, whereas a process is one of the activities undertaken for manufacture of a product from input materials. Manufacture is the cumulative effect of various processes to which raw materials are subjected and each such step towards the finished product would constitute processing in relation to the manufacture.In *Empire Industries v. Union of India 1985 20 ELT 179 (SC)* it was held that any process creating something else having distinctive name, character and use would be “manufacture.”

Question

Briefly describe whether a raw material supplier can be treated as manufacturer? Are there any exceptions to aforestated preposition?

Answer

The person carrying out the actual manufacturing process is the manufacturer even if the raw material is supplied by someone else and the goods have been manufactured as per his specifications as the relationship between the raw material supplier and the job worker is on a principal to principal basis. Merely by supplying the raw material, the supplier thereof cannot be construed as the manufacturer. Therefore, it is not relevant as to whether the raw material belongs to the manufacturer or not.

Ownership of raw material is not relevant to determine who the manufacturer is. If the relationship between the raw material supplier and the job-worker is that of a principal and agent, the raw material supplier will be the manufacturer. It may be noted that a person supplying the raw material cannot be considered as hiring the job worker if he does not supervise and control the activities of the job worker. However, if the manufacturer is a dummy or fake unit, then the raw material supplier will be deemed to be the actual manufacturer.

Question

Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases:

(i) in the State of Jammu and Kashmir;

(ii) by or on behalf of the Government.

Answer

(i) Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.

(ii) Section 3(1A) of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, excise duty is payable on goods (except salt) manufactured by, or on behalf of, the Government (both Central & State) also.

Question

State briefly whether the following circumstances would constitute "manufacture" for purposes of section 2(f) of the Central Excise Act, 1944:

(i) Both inputs and the final product fall under the same tariff heading under the First Schedule to the Central Excise Tariff Act, 1985 (Tariff Act.)

(ii) Inputs and final product fall under different tariff headings of the Tariff Act.

Answer

(i) 'Manufacture is bringing into goods known in the market having distinctive name, character or use and separate and identifiable function. Once a ne w commodity having a definite and distinct commercial identity in market is produced and the same has been specified in the tariff, it is exigible to duty. It is irrelevant whether the new article falls into the same tariff heading as the duty paid raw material from which it is manufactured, or belongs to a separate tariff heading.

It was held in *CCEx. v. Kapri International (P) Ltd. (2002) 142 ELT 10 (SC)* that if manufacture takes place, the commodity is dutiable even if the raw material and the resultant product fall under the same tariff heading. For instance *CCEx., Jaipur v. Mahavir Aluminium Ltd. (2007) 212 ELT 3 (SC)* it was held that converting aluminium ingots (7601.10-old entry) into aluminium billets (7601.01-old entry) is "manufacture", because they have separate, distinct and identifiable marketability and saleability.

(ii) As held in *CCEx. v. Markfed Vanaspati (2003) 153 ELT 491 (SC),* mere change in tariff does not mean that there is „manufacture . It was confirmed in *CCEx. v. SR Tissues (2005) 186 ELT 385 (SC)* that just because raw material and finished product fall in different tariff headings it cannot be presumed that process of obtaining finished product from such raw material automatically constitutes "Manufacture."

Therefore, manufacturing is not only about a process and a product but it is about a new identity that must emerge out of the given process. Mere mention of process in tariff entry is not sufficient, it must be specifically stated that a particular process amounts to "manufacture" – *Shyam Oil Cake Ltd. v. CCEx. (2005) 174 ELT 145 (SC – 3 members bench).*

Question

"Mere selling of a commodity does not mean it is marketable". Elucidate.

Answer

Unless the goods are capable of being marketed, they cannot be charged to duty. Marketability is the capability of a product of being put into the market for sale. Supreme Court in *Union of India v. Delhi Cloth and General Mills Case – 1977 (1) ELT (J199)* has held that in order to become goods, it is necessary that an article must be something which can ordinarily come to the market to be bought and sold.

The Supreme Court in *CCEx v. Tata Iron and Steel Co. Ltd. 2004 (165) E.L.T. 386* has held that the dross and skimming are merely the refuse, scum or rubbish produced during the process of manufacture. The Supreme Court has held that merely because the dross and skimming are sold to customers, it cannot be inferred that they are marketable commodity as even rubbish can be sold. However, that does not make rubbish a marketable commo dity.

Mere selling of a commodity does not mean that it is marketable since a commodity can also be sold as rubbish. Marketability means selling of a commodity which is known to the commerce and which may be worthwhile to trade in.

In view of these decisions it can be inferred that in order to be marketable an item should be capable of being bought and sold. However, the item should be something which is worthwhile to trade in and not just refuse, scum or rubbish.

Question

A Port Trust used cement concrete armour units in the harbour for keeping wate r calm. Each unit weighed about 50 tons and is like a tripod and keeps water calm and tranquil. These units are essentially in prismoid form and were made to order. They are harbour or location specific. The Central Excise Department did not have information that the same can be used in any other harbour. The Central Excise Department contended that the armour units are excisable goods and chargeable to duty.

Examine the validity of the Department's contention in the light of decided case law.

Answer

The facts of the given case are similar to the case of *Board of Trustees v. CCE 2007 (216) ELT 513 (SC).* The Supreme Court held that in order to constitute "goods", twin tests have to be satisfied, namely, process constituting manufacture and secondly marketability. In this case, the second test of marketability was in issue. Armour blocks, in prisomoid form, were made to order and were of certain specifications. They were harbour or location specific. It would depend on the water level required to be maintained in the harbour. There was no evidence to show that these blocks could be used in any other harbour. Moreover, the Department failed to prove marketability of the impugned goods. Therefore, assessee s contention that the goods were not capable for being bought and sold in the market was accepted.

Therefore, in the given case also, the Department s stand is not correct and no duty is payable on the goods.

Question

Gaseous Ltd. purchased helium gas in bulk from the open market and its quality control officer conducted various tests and issued test reports stating the results of the tests. The bulk purchase was packed and filled in cylinders of various sizes and certificates were issued along with quantities. The purchases from the open market were of generic description and after test and analysis were sold to different customers based on their specific requirements with a profit margin of 40 to 60%. The Central Excise Department claimed that duty had to be paid on the sale price as there was "deemed manufacture" in terms of Note 9 to Chapter 28 of the Central Excise Tariff, 1985 which reads as follows:

"In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture."

Briefly explain with a note based on case law, if any, whether:

(i) the process of filling the bulk gas into cylinders of smaller quantities after tests and quality processes with distinct grades would amount to 'treatment' as per the said Chapter Note.

(ii) it could be said that the helium gas purchased in bulk is already marketable and hence the Chapter Note will not be attracted in this case.

Answer

The facts of the given case are similar to the case of *Air Liquide North India Pvt. Ltd. v. CCE 2011 (271) E.L.T. 321 (S.C.)*.

Hence, answers to part (i) and (ii) are based on the observations and the decision in the said case.

(i) Yes, the process of filling the bulk gas into cylinders of smaller quantities after the tests and quality processes with distinct grades would amount to "treatment" as per the said Chapter Note.

In the aforesaid judgment, the Apex Court observed that if the gas purchased by the assessee had not undergone any treatment and was being sold as such, customers of the assessee could have purchased the same from the assessee s suppliers and would not have paid a price 40% to 60% higher than the purchase price of assessee.

(ii) No, the helium gas purchased in bulk was not already marketable and hence, Chapter Note will be attracted in this case.

The Supreme Court observed that the marketability of the product to "the purchaser trading in it" is distinguishable from the marketability of the product to "the purchaser purchasing the same for final consumption". The phrase "marketable to the consumer" in the Chapter Note refers to the latter case.

Question

The assessee M/s T & Co. Ltd. were engaged in the manufacture of „tarpaulin made ups. This was nothing but tarpaulin cloth prepared by making a solution of wax, aluminum stearate and pigments that were mixed. The solution was heated in a vessel and was transferred to a tank. Grey cotton canvas fabric was then dipped into the solution and passed through two rollers, whereafter the canvas was dried by exposure to sun. The tarpaulin made ups were prepared by cutting the cloth into various sizes and stitched and eyelets were fitted.

The Central Excise Department has issued a show cause notice to M/s T & Co. Ltd. that the process of preparing tarpaulin made ups by means of cutting, stitching and fixing eyelets amounts to manufacture under the Central Excise Act, 1944.

Write a brief note with reference to decided case law, if any, whether the Department s view in the matter is legally sustainable.

Answer

The facts of the given case are similar to the one decided by the Apex Court in the case of CCE v. *Tarpaulin International 2010 (256) E.L.T. 481 (S.C.)* In this case, the Apex Court has observed that stitching of tarpaulin sheets and making eyelets does not change the basic characteristic of the raw material as the process does not bring into existence a new and distinct product different from the original commodity. The original material used i.e., the tarpaulin, is still called tarpaulin made-ups even after undergoing the said process. Hence, the Supreme Court has held that process of making tarpaulin made ups by cutting, stitching the tarpaulin fabric and fixing eyelets therein cannot be said to be a manufacturing process liable to excise duty.

Therefore, in view of the above-mentioned judgement, the Department s view in the matter is not legally sustainable.

Question

PQR & Co. is engaged in the business of fabrication and erection of structures of various types on contract basis. They entered into a contract with M/s. XYZ Co. for fabrication, assembly and erection on turnkey basis of a waste water treatment plant. This activity involved procurement, supply, fabrication, transportation of various duty paid components and finally putting up a civil construction and erection of the waste water treatment plant and commissioning the same. The entire fabrication is done at site. The pressure testing was then carried out. The plant cannot function as such until it was wholly built.

The Excise Department has issued a show cause notice contending that the fabrication at site amounted to manufacture of excisable goods since the plant came into existence in an unassembled form as per drawings and designs approved by the client, M/s. XYZ Co., before the same was installed and assembled to the ground with civil work. Therefore, according to the Department, excise duty was payable on the value of the plant excluding the value of the civil work.

Briefly discus with reference to a decided case law, if any, whether the show cause notice is sustainable in law.

Answer

No, the show cause notice is not sustainable in law. The facts of the case are similar to the case of *Larsen & Toubro Ltd. v. UOI 2009 (243) E.L.T. 662 (Bom.)*. The High Court opined that mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site, does not amount to manufacture of a plant. Simply collecting together at site the various parts would not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts.

In the present case, the petitioner had stated that the waste water treatment plant did not come into existence unless all the parts were put together and embedded in the civil work.

Thus, the Court held that no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. Accordingly, since waste water treatment plant was not a separate movable marketable goods and came into existence only on assembly of parts in the civil work, there was no question of levying excise duty on it.

Question

M/s. Cool and Kool Ltd. has two units, one in Jaipur and another in Delhi. Jaipur unit manufactures condensing units which are cleared to Delhi unit on payment of appropriate excise duty. Delhi unit procures cooling units manufactured locally and combines the same with such condensing units. After conducting quality control test and affixing the brand name, the Delhi unit clears the complete units along with pipe kits, electrical cord, remote control, etc.

The Department contends that the process being carried out by Delhi unit amounts to manufacture as it is not a mere process of assembly whereas, the assessee argues that putting together various duty paid articles in a carton with a brand name to be marketed as „air conditioner is not manufacture. No process is involved except that all the items are put together in one box.

Explain, with the help of decided case law, whether the contention of the Department is correct in law?

Answer

Yes, the contention of the Department is correct in law. The facts of the given case are similar to the case of *Fedders Lloyd Corporation Ltd. v. CCEx. (2008) 221 ELT 3 (SC)* wherein it was held that neither the condensing unit nor the cooling unit by itself, was a complete air conditioner. It was only when these two were put together that the complete unit of air conditioner fit for use came into existence. The air conditioner, so cleared by Delhi unit was a commercially new article. Hence, the process amounted to manufacture.

Processing and assembly of various parts and components may amount to manufacture if a new and identifiable product known in the market emerges, which is movable and marketable.

Question

Prakhat Ltd. manufactured cigarettes. It used duty paid paperback aluminum foil in the roll form for the purpose of packing cigarettes. In the process, the roll of aluminum foil was cut horizontally to make separate pieces of the foil and word „PULL was embossed on it.

Thereafter, fixed number cigarettes were wrapped in it. An aluminium foil being resistant to moisture was used as a protector for the cigarettes and to keep them dry.

Revenue issued a show cause notice to Prakhat Ltd. alleging that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was used as a shell for cigarettes to protect from them moisture; the nature, form and purpose of foil were changed.

Briefly discuss with reference to a decided case law, if any, whether the show cause notice is sustainable in law.

Answer

No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of *CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)*.

The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value to the foil and only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture as per section 2(f) of the Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity and renders marketable value can be called manufacture.

Question

WM Ltd. is manufacturing a product which is captively consumed to produce a final product, which is exempt from the payment of excise duty. The intermediary product is having a distinct market of its own. The company is of the view that since the final product is exempt; no duty liability arises on intermediary product also. The Department objected to the view of the assessee.

Discuss with reference to a decided case law, if any, whether the view of company is justifiable?

Answer

The duty of excise is a duty on manufactured goods which are movable and marketable. If any manufactured goods satisfy the movability and marketability conditions, it would become dutiable even if it is an intermediate product and the final product is not dutiable. Therefore, in the given case the intermediate product would be dutiable even though it is captively consumed and the final product is not dutiable as it has a distinct market of its own and is marketable. Therefore, the company s view is not justifiable and the Department s view is acceptable.

It may, however, be noted that *Notification No. 67/95 CE dated 16.03.95* grants exemption from excise duty payable on capital goods and inputs (except light diesel oil, high diesel oil and petrol) manufactured in a factory and used within the factory of production in or in relation to manufacture of final products, if duty is payable on such final products.

Question

Alpha Ltd. is engaged in the activity of cutting/slitting of jumbo rolls of toilet paper of a width exceeding 36 cms. The jumbo rolls are purchased on payment of excise duty from various suppliers. The process undertaken by Alpha Ltd. reduces the width of the jumbo rolls to less than 36 cms. The rolls with width exceeding 36 cms and with width less than 36 cms fall under different tariff headings. The excise department contends that such reduction of width amounts to manufacture. The Excise Department has assessed and demanded duty from Alpha Ltd. on the basis of the heading covering jumbo rolls of width less than 36 cms.

Answer

The facts of the problem are similar to the case of *CCEx. New Delhi – I v. S.R. Tissues Pvt. Ltd. 2005 (186) ELT 385 (SC)*. In this case, the Supreme Court has held that slitting/cutting of jumbo rolls of plain tissue paper into smaller size does not amount to manufacture as its character and end-use viz., household purposes, do not undergo any change on account of winding, cutting/slitting and packing. Further, slitting and cutting of toilet paper cannot be termed as deemed manufacture as the said process is not treated as manufacture by legislature under any of the Section/Chapter Notes of the Central Excise Tariff.

The Apex Court has elaborated that mere mention of a product in a tariff heading does not necessarily imply that said product is obtained by process of manufacture. Just because raw material and finished product come under two different headings, it cannot be presumed that process of obtaining finished product from such raw material automatically constitute manufacture. Therefore, slitting/cutting of jumbo rolls of toilet tissue paper into v arious shapes and sizes shall not amount to manufacture merely because tissue paper in jumbo roll of size exceeding 36 cms fall in one entry and toilet roll of a width not exceeding 36 cms fall in a different entry. The Supreme Court further explained that value addition on account of transport charges, sales tax, distribution and selling expenses and trading margin without any change in name, character or end-use by mere cutting/ slitting of jumbo rolls cannot constitute the criteria to decide what is “manufacture”.

In view of the abovementioned decision, the contention of the Excise Department does not hold good.

Question

Whether production of mustard oil and oil cake from mustard seeds amounts to manufacture?

You are required to examine the situation with the help of a decided case law.

Answer

The activity of producing mustard oil and oil cake from mustard seeds amounts to manufacture. This particular issue has been decided by the Supreme Court in the case of *Jai Bhagwan Oil and Floor Mills v. UOI 2009 (239) ELT 401 (SC)*. In the instant case, the Apex Court held that the true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture.

When mustard seeds were subjected to the process of extraction whereby mustard oil and oil cake were produced, the process involved manufacture of mustard oil as also the manufacture of oil cake. It was certainly not a mere process of cleaning, repairing, reconditioning, recycling or assembling. Oil cake had a distinct and different identity from mustard seeds and it had a separate name, character and use different from mustard seed. Oil cake was not a waste to be thrown away, but was a valuable product with a distinct name, character, use and marketability. Resultantly, it can be concluded that the said process amounts to manufacture.

Question

Healthcare Ltd. is manufacturer of patent and proprietary medicines. Physician samples were distributed to medical practitioners as free samples. The Central Excise Department raised the demand of excise duty on such samples.

The assessee contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, the same could not be considered to be marketable and hence were not liable to excise duty.

Examine, with the help of a decided case law, whether the contention of the assessee is valid in law.

Answer

The facts of the given case are similar to the case of *Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.)*. In the instant case, the Supreme Court observed that merely because a product was statutorily prohibited from being sold would not mean that the product was not marketable. Sale is not a necessary condition for charging duty as excise duty is payable in case of free supply also. The Supreme Court observed that since physician samples were capable of being sold in open market, the same were marketable and thus, liable to excise duty.

Moreover, since the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in two different fields, the restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act.

Therefore, in view of the above-mentioned ruling of the Supreme Court, the contention of the assessee is not valid in law.

Question

M/s. Amar Ltd. is a manufacturer of cement. It carried out repair and maintenance of its worn out cement manufacturing plant by use of welding electrodes, mild steel, cutting tools, angles etc. In this process of repair/ maintenance, some metal scrap and waste were generated, which were cleared by the assessee without paying any excise duty.

The Department issued a show cause notice demanding excise duty on such metal scrap and waste contending that these were 'excisable goods' as these were marketable and movable; and since it arose during a process incidental/ancillary to manufacture viz., repair of plant, the process of generation of scrap and waste amounted to manufacture in terms of section 2(f) of the Central Excise Act, 1944.

You are required to answer the following questions briefly, citing case law, if any:

(i) What is 'manufacture' in central excise as per section 2(f)(i) and (ii) of the Act?

(ii) What are the major conditions for levy of duty on waste & scrap?

(iii) Whether waste & scrap resulting from repair/maintenance of plant is liable to duty?

Answer

The facts of the given case are similar to the case of *Grasim Industries Ltd v. UOI 2011 (273) ELT 10 (SC)* decided by the Supreme Court.

(i) As per clause (i) and (ii) of section 2(f) of the Central Excise Act, 1944, manufacture includes any process-

  (i) incidental or ancillary to the completion of a 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.

(ii) The Supreme Court in the case of *Grasim Industries Ltd.* held that the following conditions must be satisfied conjunctively for levy of excise duty on waste and scrap:-

  (i) Waste and scrap ought to be excisable goods under section 2(d) of the Central Excise Act, 1944; and

  (ii) Waste and scrap should be manufactured goods i.e., they should arise as a result of manufacture in terms of section 2(f) of the Central Excise Act, 1944. In other words, it ought to be a by-product of the final product.

(iii) The Supreme Court in the *Grasim Industries Ltd.* case observed that a process incidental or ancillary to manufacture can be a process in manufacture or process in relation to manufacture of the excisable end product, which involves bringing some kind of change to the raw material at various stages by different operations.

The Apex Court held that since the repair and maintenance of plant has no contribution/effect on the process of manufacturing of cement (the end product), the same cannot be called as part of manufacturing activity in relation to the production of end-product. Thus, the metal scrap and waste generated from repair/ maintenance of plant cannot be said to be a by-product of the final product but the by-product of repairing process.

Therefore, in view of the above discussion, it can be inferred that waste and scrap resulting from repair/ maintenance of plant (not being a process incidental to the manufacture of end-product) is not liable to excise duty.

Question

The assessee was carrying on construction of metro railway. He manufactured pre-fabricated components of metro rail at one site to be used at different inter-connected metro construction sites. The assessee claimed exemption under Notification No. 1/2011 CE (NT) dated 17.02.2011 which exempts the goods covered under specified Chapter Headings for a specified period, manufactured at the site of construction for use in construction work at such site. Department contended that the assessee was not entitled to exemption as he did not fulfil the condition of manufacture at the site of the construction.

Examine the validity of the Departmental contention citing a decided case, if any.

Answer

No, the contention of the Department is not valid in law. The assessee is entitled to exemption under *Notification No. 1/2011 CE (NT) dated 17.02.2011* as all the metro construction sites were inter-connected.

This view has been endorsed by the High Court in the case of *CCEx v. Rajendra Narayan* 2012 (281) E.L.T. 38 (Del.). In the instant case, the assessee constructed pre-fabricated components at the construction site allotted to it by the metro railway from where the components had been moved to different inter-connected metro construction sites. The High Court observed that construction site was not located at one place but spread all over.

Question

With reference to the provisions of Central Excise Act, 1944, explain whether the following items can be considered as excisable goods:

(i) Huge metal tanks erected at site for storing petroleum products in oil refineries. Such tanks are not embedded in earth, but once erected they cannot be physically moved and will have to be necessarily dismantled in case of sale/disposal.

(ii) Turn key projects

Answer

As per section 2(d) of Central Excise Act, 1944, excisable goods means goods which are specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. Further, for being called goods, items ought to be movable and marketable.

Section 37B *Order No. 58/1/2002 CX dated 15.01.2002* issued by CBEC has specifically dealt with the excisability of, *inter alia,* the two given items. Therefore, in the light of the above provisions and the said order, the excisability of the two items are discussed below:

(i) The afore-mentioned order, inter alia, provides that if items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods.

The said order clarifies that though such huge metal tanks are not embedded in the earth, they are erected at site, stage by stage, and after completion they cannot be physically moved. Further, on sale/disposal they have to be necessarily dismantled and sold as metal sheets/scrap and it is not possible to assemble the tank all over again.

Therefore, such tanks are not moveable and cannot be considered as excisable goods.

(ii) As per the said order, turn key projects like steel plants, cement plants, power plants etc. involving supply of large number of components, machinery, equipments, pipes and tubes etc. for their assembly/installation/erection/integration/inter-connectivity on foundation/civil structure etc. at site, will not be considered as excisable goods for imposition of central excise duty. However, their components would be dutiable in the normal course.

Question

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

Answer

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

Question

Briefly explain the situations where transaction value does not apply.

Answer

According to section 4(1)(a) of the Central Excise Act, 1944, following four conditions are required to be satisfied individually and cumulatively for valuing excisable goods on the basis of transaction value:

(a) There should be sale of goods.

(b) The goods sold should be for delivery at the time and place of removal.

(c) The assessee and the buyer of the goods should not be related persons.

(d) The price should be sole consideration for the sale.

In those cases where any of the above requirements are not fulfilled, the assessable value is required to be determined on the basis of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 [Section 4(1)(b)].

Question

M/s. Well Welders manufactures welding electrodes that are put first in polythene bags and then packed together in cardboard cartons. They sell electrodes at the factory gate packed in cardboard cartons where such electrodes are also packed in wooden boxes when sold to outstation customers.

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

Answer

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

Hence, charges for the wooden packing that are being recovered by M/s. Well Welders will form part of assessable value even though such packing is special or secondary.

Question

Beta Ltd. (BL) sold refractories to Omega Steel Plant (OSP) under a contract at a particular price. OSP held the Advance Licence (now authorization) for import of refractories. It surrendered the said authorisation to enable BL to get the Advance Interme diate Licence.

Consequently, BL could import the inputs without payment of customs duty as well as could get them at a lower price than what they would have paid had they purchased the same in India.

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

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

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

Answer

Yes, the contention of the Excise Department is correct in law. The facts of the given case are similar to that of the case of *CCEx. Bhubaneshwar-II v IFGL Refractories Ltd. 2005 (186) ELT 529(SC)*. In this case, the Supreme Court held that surrendering of licences (now called authorization) by buyer and as a result thereof, assessee getting licences has nothing to do with any Import and Export policy (now called Foreign Trade Policy). This is directly a matter of contract between two parties which has resulted in additional consideration by way of "Advance Intermediate Licence" flowing from buyer to the assessee.

The Apex Court stated that had the seller procured the advance intermediate licence on its own i.e., without buyer having to surrender its licence for the purposes of the contract, then there would have been no additional consideration. However, since the licence is obtained in pursuance of the contract of sale, there is directly a flow of additional consideration from the buyer to seller. Thus, the Supreme Court held that the value thereof has to be added to the price of the refractories.

The Apex Court did not accept the assessee s submission that where parties take advantage of policies of the Government and the benefits flowing therefrom, such benefit cannot be said to be an "additional consideration".

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

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

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

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

Question

The Pious India Pvt. Ltd. (Pious) was the manufacturer of motor cars. They were selling Pious XYZ model cars below cost and were making losses. The purpose was penetration of market and competing with other manufacturers of similar goods. The prices were not based on manufacturing cost and profit. The cost of production of the cars was much more than their price. This was happening over the period of five years.

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

You are required to determine the veracity of the Department s contention with reference to the Central excise law.

Answer

No, Department s contention is not valid in law. As per section 4(1)(a) of the Central Excise Act, 1944, the assessable value of the excisable goods is the transaction value where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale. If any of these ingredients is missing, the price cannot be considered as transaction value.

In case price is not the sole consideration for sale with all other ingredients being present, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee [Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].

However, where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, the value of such goods shall be deemed to be the transaction value provided no additional consideration is flowing directly or indirectly from the buyer to such assessee [Proviso to rule 6].

In the given case, although *Pious India Pvt. Ltd.* is selling the cars at a price less than manufacturing cost and profit, no additional consideration is flowing from the customer to Pious. Thus, the value of such goods shall be deemed to be the transaction value.

Question

Compute the assessable value and amount of excise duty payable under the Central Excise Act, 1944 and rules made thereunder from the following information:

	Particulars	No. of units	Price per unit at factory*	Price per unit at depot*	Rate of duty ad valorem
(i)	Goods transferred from factory to depot on 8th March, 20XX	1000	Rs. 200	Rs. 200	12.5%
(ii)	Goods actually sold at depot on 18th March, 20XX	750	Rs. 225	Rs. 225	12%

*Note: Assume it to be the price at which the greatest aggregate quantity of goods are sold.

Answer

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

Assessable Value = 1,000 units × Rs. 220 = Rs. 2,20,000

Calculation of central excise duty:-

Basic excise duty @ 12.5% (Rs. 2,20,000 × 12.5%) [Refer note below]	Rs. 27,500
Duty payable	Rs. 27,500

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

Question

Robust Engineers Ltd. removed goods from their factory at Delhi on 20.04.20XX for sale from their depot at Mumbai. On that date, the normal transaction value of goods at Delhi factory *was* Rs. *20,000 while the normal transaction value at Mumbai depot was* Rs. *19,000. The rate of* duty was 12.5% ad-valorem. The said goods were sold from Mumbai depot on 15.05.20XX.

On that date, the normal transaction value at Mumbai depot was Rs. *22,000 and rate of duty was 16%. M/s. Robust Engineers Ltd. paid the duty on* Rs. *20,000 at the rate of 12.5%.*

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

Examine whether Department s claim is correct.

Answer

The Department s claim is not correct in the instant case. Rule 7 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000, *inter alia,* provides that where excisable goods are not sold at the factory gate but are transferred to a depot, the assessable value for the goods cleared from factory is the normal transaction value of such goods at the depot at or about the same time at which the goods as being valued are removed from the factory or warehouse.

In the given case, Rs. 20,000 represents value on 20.04.20XX (time of removal), but it is not the value prevalent at the depot. Similarly, Rs. 22,000 represents depot price, but then it is not the price prevalent on 20.04.20XX (time of removal).

The correct value to be adopted in this case is the depot price of such goods (normal transaction value) on 20.04.20XX i.e., Rs. 19,000.

Further, the applicable rate of duty shall be the rate of duty in force on the date when such goods are removed from the factory. Hence, the correct rate of duty will be 12.5% and not 16%.

Question 8

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

	Rs.
Cost of direct materials (includes central excise duty Rs. *1,875*)*	*16,875*
Cost of direct employees	*12,300*
Consumable stores and repairs	*8,400*
Quality control cost	*4,300*
Research & development cost	*2,700*
Administrative cost:	
Production related	*3,000*
Others	*1,500*
Selling and distribution cost	*3,600*
Scrap value realized	*1,500*

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

Answer

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

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

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

Particulars		**Rs.**
Cost of direct materials	Rs. 16,875	
Less: Central excise duty	Rs. 1,875 (Note-1)	15,000
Cost of direct employees		12,300
Consumable stores and repairs		8,400
Quality control cost		4,300
Research and development cost		2,700
Administrative cost (production related) [Note-2]		3,000
Total		45,700
Less: Scrap value realized		1,500
Cost of production as per CAS-4		44,200
Value of excisable goods [' 44,200× 110%]		48,620

Notes:

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

Question

An assessee sold certain goods to PQR Ltd. for Rs. *20,000 (excluding excise duty and other* taxes) on 09.09.20XX. The buyer, PQR Ltd., is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. It did not sell the goods, but used it as intermediary *product. The cost of production of the said goods determined as per CAS-4 was* Rs. *16,000.*

Determine the assessable value in the given case.

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

Answer

The proviso to rule 9 of the Central Excise Valuation (Determination of Excisable Goods) Rules, 2000 lays down that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value thereof shall be determined in the manner specified in rule 8 of the Valuation Rules which provides that the value will be 110% of the cost of production or manufacture of such goods.

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

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

Question

Hema Manufacturers gets its product manufactured on job work basis from Meltex Ltd., an independent processor. The details of the transaction are as follows:

	Amount (Rs.)
Cost of material sent to job worker for processing	5000
*Processing charges (*Rs. *1000 processing charges &* Rs. *500 profit)*	*1500*
Transportation charges for sending the goods to the premises of the Meltex Ltd.	200

After processing, goods are sold by Hema Manufacturers at Rs. 8,000 from the premises of Meltex Ltd. Ascertain the assessable value of the goods as per section 4 of the Central Excise Act, 1944 read along with relevant rules.

Answer

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

Question

Machine India Ltd. is engaged in the manufacture of machines. It has supplied one machine to *M/s. Z & Co. at a price of* Rs. *8,50,000 (excluding taxes and duties). Cash discount @ 2% on* price of machinery is allowed to M/s. Z & Co. Further, following additional amounts have been charged from M/s. Z & Co.:

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

M/s Z & Co. has supplied material worth Rs. 10,000 free of charge to Machine India Ltd. for being used in production of machine. Determine the total amount of central excise duty payable thereon from the aforesaid information. Rate of excise duty is 12.5%.

Answer

Computation of central excise duty payable thereon

Particulars	**Rs.**
Price of machine excluding taxes and duties	8,50,000
Installation and erection expenses [Note 1]	-
Packing charges [Note 2]	12,500
Design and engineering charges [Note 3]	4,000
Cost of material (used in production of machine) supplied free of charge by buyer [Note 4]	10,000
Pre-delivery inspection charges [Note 5]	1,000
Bought out accessories [Note 6]	-
Total	8,77,500
Less : 2% cash discount on price of machinery= ‘ 8,50,000 × 2% [Note 7]	17,000
Assessable value	8,60,500
Excise duty @ 12.5%	1,07,562.50
Excise duty payable [rounded off]	1,07,563

Notes:

While computing the assessable value:-

1. installation and erection expenses will not be included *[Circular No. 643/34/2002 CX* dated 01.07.2002].
2. amount charged from the buyer in relation to packing, whether primary or secondary, will be included *[Circular No. 354/81/2000 TRU dated 30.06.2000].*
3. design and engineering charges will be included as such payment is „in connection with sale.
4. cost of material supplied free of charge by buyer will form part of assessable value as it is an additional consideration flowing from buyer to seller [Explanation 1 to Rule 6 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000].
5. since pre-delivery inspection charges are charged by the manufacturer, they are includible *[Tata Motors Ltd. v. UOI 2012 (286) E.L.T. 161 (Bom.)]* .
6. bought out accessories, supplied along with the machinery, will not be included *[Shriram* Bearing Ltd. v. CCE 1997 (91) ELT 255 (SC)].
7. cash discount will be allowed as deduction if actually passed on to the buyer and if transaction is on principal to principal basis *[Circular No. 643/34/2002 CX dated 01.07.2002].*

Question

A sold to B a machine at the sale price (excluding taxes and duties) of Rs. 2,00,000. Rate of excise duty is 12.5%.

Determine the total amount of excise duty payable on the machine using additional details given below:

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

Answer

Computation of total amount of excise duty payable:-

Particulars	Rs.
Sale price of the machine excluding taxes and duties	2,00,000
Add : Design and development charges (Note-3)	20,000
Add: Warranty charges (Note-4)	5,000
Assessable value	2,25,000
Excise duty @ 12.5% payable on the machine	28,125

Notes:

1. Sales tax is not included since the definition of transaction value as per section 4(3)(d) specifically excludes sales tax paid or payable on the goods.
2. Since the cost of durable and returnable packing has been amortised and is included in the cost of the product, it is not required to be added again [*Circular No. 643/34/2002-CX dated 01.07.2002]*.
3. Design and development charges are essential for the purpose of manufacture and to make the product marketable. Hence, they have to be included in the assessable value, since the payment is „in connection with sale.
4. As per the definition of the transaction value under section 4(3)(d) of the Central Excise Act, 1944, warranty charges are includible in the assessable value.

Question

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

Contracted sale price for delivery at depot Rs. *9,00,000*

The contracted sale price includes the following elements of cost:

(i) Cost of moulds and dies used in production of the goods, supplied by buyer	Rs. 4,000
(ii) Cost of primary packing	Rs. 3,000
(iii) Cost of packing at buyer's request for safety during transport	Rs. 7,000
(iv) Excise duty	Rs. *1,11,200*
(v) VAT (Sales tax)	Rs. 37,000
(vi) Octroi	Rs. 9,500
(vii) Freight and insurance charges paid from factory to depot	Rs. 20,000
(viii) Actual freight and insurance from depot to buyer's premises	Rs. 42,300

Answer

Computation of assessable value of the excisable goods

	Rs.	Rs.
Contracted sale price		9,00,000
Less:		
Excise duty (Note – 1)	1,11,200	
VAT (Note – 1)	37,000	
Octroi (Note – 1)	9,500	
Actual freight from "place of removal" to buyer premises (Note – 2)	42,300	2,00,000
Assessable value		**7,00,000**

Notes - In the given question, for the purpose of determining the assessable value of the excisable goods:-

1. the duty of excise, sales tax and other taxes, if any, actually paid or payable on the excisable goods have to be excluded [Section 4(3)(d) of the Central Excise Act, 1944].
2. the cost of transportation from the place of removal up to the place of delivery of the excisable goods has to be deducted [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
3. the cost of transportation, worth Rs. 20,000, from the factory to the place of removal would not be excluded [Explanation 2 to rule 5 of the Valuation Rules].
4. cost of packing, Rs. 3,000 and Rs. 7,000 would not be deducted. In this regard, it has been clarified that as per section 4 of the Central Excise Act, 1944, packing charges would form part of the assessable value whether packing is ordinary or special, or primary or secondary *[Circular no. 354/81/2000 dated 30/6/2000].*
5. The cost of moulds and dies used in the production of the goods, supplied by buyer, worth Rs. 4,000 would not be deducted [Explanation 1 to rule 6 of the Valuation Rules].

Question

Dharma Manufacturers, engaged in the manufacture of machines, sold a machine to Asha Ltd. The sale price of the machine (including excise duty but excluding VAT) is Rs. *5,80,000. Trade discount of* Rs. *24,000 is given on the sale price of* Rs. *5,80,000. Rate of* excise duty is 12.5%.

The above sale price includes the following charges:

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

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

Answer

Computation of assessable value of the machine

Particulars	**Rs.**	**Rs.**
Sale price of the machine (including excise duty but excluding VAT)		5,80,000
Less: Trade discount [Note 3]	24,000	
Cost of return fare of vehicles [Note 5]	4,500	28,500
Cum-duty price for excise duty purposesæ		5,51,500
Assessable value= $\frac{\text{Rs. } 5,51,500}{112.5}$ x Rs. 100 (rounded off)		4,90,222

Notes:

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

Question

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

Particulars	Amount (Rs.)
Contracted sale price for delivery at factory	
The contracted sale price includes the following elements of cost:-	2,42,000
(i) Cost of containers supplied by the buyer	15,200
(iii) Loading and handling charges incurred after removal from the factory	6,000
(iii) Dharmada charges	2,100

Answer

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

Particulars	Amount (Rs.)
Contracted sale price for delivery at factory	2,42,000
Less: Loading and handling charges incurred after removal from thefactory	6,000
Assessable value of the goods	2,36,000

Notes:-

While computing the assessable value,

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

Question

State the procedure for valuing excisable goods that are to be sold from depot/branch or premises of a consignment agent under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Answer

As per rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sa le, the value 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 goods under assessment.

Question

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

Answer

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

(a) The excisable goods to be valued are covered under the Legal Metrology Act, 2009 or related rules or under any other law and such law requires declaration of the retail sale price on the package of such goods and

(b) The Central Government has notified the said goods as goods in relation to which the payment of excise duty will be on the basis of the MRP less such deductions/abatements as it may allow in the notification.

Question

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

Discuss the validity of the statement.

Answer

The statement is valid. The Central Excise Department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form *[ITC Ltd. v. CCEx., New Delhi 2004 (171) ELT 433 (SC)].*

Question

M/s Ganga Marketing supplies 12 bottles of mineral water in a single package to Speed Airways (airline company). Maximum retail price was printed on the package. However, individual bottle of 200 ml. each did not carry such maximum retail price (M.R.P) as these were to be distributed to the passengers by the airline company and not intended for resale. M/s Ganga Marketing pays duty of excise assessing the goods under section 4 of the Central Excise Act, 1944.

The Department has taken a view that the package of 12 bottles is not a wholesale package. The airline company itself is the ultimate consumer. Hence, the package of 12 bottles is a retail package and duty is payable on the basis of MRP under section 4A of the Central Excise Act, 1944.

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

Answer

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

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

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

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

Hence, in the present case, the goods are to be valued under section 4 and not under section 4A of the Central Excise Act, 1944.

Question

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

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

Answer

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

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

Question

With reference to rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, discuss the provisions relating to valuation of excisable goods when the price is not the sole consideration.

Answer

As per Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, when price is not the sole consideration for sale, the value of excisable goods is deemed to be the aggregate of the transaction value and the amount of mon ey value of any additional consideration flowing directly or indirectly from the buyer to the assessee, provided all the other conditions of section 4(a) of the Central Excise Act, 1944 are fulfilled.

However, where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value.

Further, the value of following goods and services supplied free or at reduced cost by the buyer should be added to the transaction value of the finished goods: (i) value of materials, components, parts and similar items relatable to such goods; (ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods; (iii) value of material consumed, including packaging materials, in the production of such goods; (iv) value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods [Explanation 1 to rule 6].

Notional interest on advance payment received against delivery of any excisable goods should not be added to the value of the goods unless the price of the goods has been reduced under the influence of such advance deposit [Explanation 2 to rule 6].

Question M/s. Dental Care Ltd. has introduced a new product "CLOVE" toothpaste, notified under section 4A of the Central Excise Act, 1944, with a notified abatement of 30%. Determine the central excise duty payable if rate of duty is 12.5% (i) 1,000 pieces having retail sale price (RSP) Rs. 70 per piece are sold in retail packages to wholesale dealer at Rs. 50 per piece. (ii) 2,500 pieces having RSP Rs. 70 per piece are sold in retail packages, but buyer is charged for 2,400 pieces only at Rs. 50 per piece (100 pieces have been given free as quantity discount).

(iii) 50 pieces were given away as free samples, without any RSP on the pack.

(iv) 200 multi-packs were cleared at Rs. 90 per pack, each containing two toothpaste tubes and one tooth-brush free (without any RSP on it). Each tooth paste tube was having RSP Rs. 70, which was scored out and each multi-pack had RSP of Rs. 130.

Answer Computation of central excise duty payable by M/s. Dental Care Ltd.

Particulars	**(Rs.)**	**Amount (Rs.)**
Retail sale price of 1,000 pieces (1000 × Rs. 70)	70,000	
Less: Abatement @ 30%	21,000	
Assessable value (A) [Note 1]		49,000
Retail sale price of 2,500 pieces (2,500 × Rs. 70)	1,75,000	
Less: Abatement @ 30%	52,500	
Assessable value (B) [Note 2]		1,22,500
Retail sale price of 50 pieces (50 × Rs. 70)	3,500	
Less: Abatement @ 30%	1,050	
Assessable value (C) [Note 3]		2,450
Retail sale price of 200 muti-packs (200 × Rs. 130) [Note 4]	26,000	
Less: Abatement @ 30%	7,800	
Assessable value (D)		18,200
Total assessable value (A) + (B) + (C) + (D)		1,92,150
Excise duty @ 12.5%		24,018.75
Excise duty payable (rounded off)		**24,019**

Notes:

1. The assessable value of products notified under section 4A of the Central Excise Act, 1944 is the retail sale price declared on the package less abatement, if any.
2. Provisions of section 4A override the provisions of section 4. Therefore, assessable value will be retail sale price declared on the package less abatement irrespective of the quantity discounts offered to the buyer [Indica Laboratories v. CCE (2007) 213 ELT 20 (CESTAT 3 Member Bench)].
3. Free samples of the products covered under MRP based assessment are valued under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 by taking into consideration the deemed value under section 4A [Circular No. 915/05/2010-CX dated 19.02.2010].
4. Retail sale price (RSP) of the multi-pack (Rs. 130) is considered and product supplied free (tooth-brush) in the multi-pack is not assessed separately. Further, since scored out RSP cannot be considered as RSP either by seller or by buyer, the same (Rs. 70) is not taken as the RSP for the purpose of valuation of excisable goods.

Question

Vibhuti Motors Ltd. were the manufacturers of cars. They used to enter into an agreement with the dealers wherein they notified the maximum amount for which their car could be sold by the said dealer. The dealer paid to Vibhuti Motors Ltd. a particular price quoted by them.

According to Vibhuti Motors Ltd., this price was the assessable value and excise d uty was paid on it. The amount charged by the dealer to his customer minus the amount charged by Vibhuti Motors Ltd. to such dealer was the dealer's margin.

Further, on account of the dealership agreement, the dealer was required to carry out Pre Delivery Inspection (PDI) before the car was actually delivered to the customer. After the car was delivered to the customer, the dealer was required to conduct specified number of free services of the said car as set out in the Owner's Manual [hereinafter referre d to as "said services"]. A customer could get the benefit of terms of warranty from Vibhuti Motors Ltd. only when it got the car duly inspected as per the PDI requirements and also availed the said services.

Relying on clause 7 of circular No. 643/34/2002 dated 01.07.2002 & circular No. 681/72/2002 CX dated 12.12.2002, the Revenue issued a show cause notice to Vibhuti Motors Ltd. alleging that costs incurred by the dealer towards PDI and said services was also includible in the assessable value.

However, Vibhuti Motors Ltd. contended that they were required to pay excise duty on the amount charged by them to the dealer while selling the car to the dealer. The expenses to conduct PDI and said services would not be included in the assessable value as Vibhuti Motors Ltd. did not reimburse these expenses to the dealer.

You are required to examine whether the costs incurred by the dealer towards PDI and said services is includible in the assessable value?

Answer

No, the costs incurred by the dealer towards PDI and said services is not includible in the assessable value in the given case. The facts of the given case are similar to the case of Tata Motors Ltd. v. UOI 2012 (286) E.L.T. 161 (Bom.) wherein the High Court observed as follows:-

1. The High Court accepted the contention of the petitioners that it did not charge the dealer for the expenses incurred by the dealer towards PDI and said services. It further stated that when a car was sold by the petitioner to dealer, price was the sole consideration and the petitioners and dealer were not related to each other. Hence, since the requirements of section 4(1)(a) were being complied with, the assessable value would be the transaction value [determined as per section 4(3)(d)]. Accordingly, the expenses incurred for PDI and said services should not be included in the transaction value of the car.
2. The High Court rejected the Revenue?s claim that the expenses incurred for PDI and after sales services must be included in the transaction value for the reason that the warranty given by the petitioners was linked with such expenses. The Court observed that it only implied that petitioner would undertake the responsibility to provide the benefit of warranty to customer only when the customer had availed PDI and after sales services. However, it had no bearing on assessable value.
3. The High Court opined that in Clause 7 of Circular No. 643/34/2002 CX dated 1st July, 2002, reference to rule 6 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 was not correct. Valuation Rules, in the first place, would not apply in the instant case as this transaction did not fall within the ambit of section 4(1)(b) because the transaction of sale of a car between the petitioners and the dealer was governed by the provisions of section 4(1)(a).
4. The Court noted that the said circular wrongly held that the expenses incurred by dealer towards PDI and said services were on behalf of manufacturer. Thus, such expenses could not be said to form as one of the considerations for sale of goods. Expenses incurred towards PDI and said services could not be equated with advertisement and publicity charges. It was contrary to the provisions of section 4(1)(a) read with section 4(3)(d).

In the light of the above discussion, the High Court held that Clause No. 7 of Circular No. 643/34/2002 CX dated 1st July, 2002 and Circular No. 681/72/2002 CX dated 12th December, 2002 (where it affirms the earlier circular dated 1st July, 2002) were not in conformity with the provisions of section 4(1)(a) read with section 4(3)(d) of the Central Excise Act, 1944.

Further, as per section 4(3)(d), the PDI and free after sales services charges could be included in the transaction value only when they were charged by the assessee to the buyer.

Thus, in the given case, the contention of Vibhuti Motors Ltd. is valid.

Note: The aforesaid case law was appealed to Supreme Court in 2015 (319) ELT A176 (Supreme Court) wherein the appeal was admitted thereon.

Question

Write a note on the valuation of goods on the basis of retail sale price under section 4A of the Central Excise Act, 1944.

Answer

The provisions of section 4A are as follows:

(a) Excisable goods are valued on the basis of retail sale price when they are packaged and it is required under Legal Metrology Act, 2009 or Rules or under any other law to declare on such packages the retail sale price thereof. The Government may notify the products for the purpose of this section.

(b) The assessable value shall be deemed to be the retail sale price declared on the package less amount of abatement. Abatements can be given by the Central Government through notifications after taking into account the amount of duties and taxes payable on such goods.

(c) The retail sale price has been defined to mean the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer inclusive of all taxes and expenses and price is the sole consideration for such sale.

However, if the provisions of the Act, rules or other law as referred to in (a) above require the retail sale price to exclude any taxes, local or otherwise, the retail sale price shall be construed accordingly.

(d) Where there is more than one retail sale price, the maximum of such retail sale price will be deemed to be the retail sale price for the purpose of this section.

(e) Where different retail sale prices are declared on different packages for different areas, each such retail price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.

(f) The excisable goods shall be confiscated and the retail sale price will be ascertained in the manner prescribed by the Central Government if the manufacturer:

- tampers, alters or obliterates the retail sale price declared on the package of goods after their removal, or
- removes such goods without declaring the retail sale price on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in (a) above.

(g) If the retail sale price declared on the package of goods at the time of removal is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price.

Question

Write a short note on "place of removal".

Answer

As per section 4(3)(c) of the Central Excise Act, 1944, "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 excisable goods are to be sold after their clearance from the factory; from where such goods are removed.

Question

Briefly explain the following in the context of valuation of excisable goods:

(i) Specific Duty

(ii) Compounded levy scheme

(iii) Tariff Value

(iv) Duty based on production in respect of notified goods

Answer

(i) Specific Duty: It is the duty which is payable on the basis of certain unit like weight, length, volume, thickness etc. In the case of some goods, duty is payable on the basis of certain unit, length, weight, volume, etc. For instance, duty payable on cigarettes is on the basis of length. However, this method of levying duty demands frequent revisions in order to increase revenue since while the prices may be increasing, the duty would remain the same quantum when based on length. Since specific duties do not keep pace with inflation, more and more tariff entries are designed based on advalorem duty structure.

(ii) Compounded levy scheme: Rule 15 of Central Excise Rules, 2002 empowers Central Government to specify [by notification in the Official Gazette] the goods in respect of which an assessee shall have the option to pay duty of excise on the basis of specified factors [such as size of equipment employed, number and types of machines used for manufacture etc] relevant to production of such goods at specified rates. The prescribed is required to be paid by the concerned manufacturers for the specified period. The advantage of this scheme is that it frees the manufacturer from observing day to day Central Excise Formalities and maintenance of detailed accounts after making the lump sum periodic payment. Hence, this scheme is quite useful for small manufacturers. The Central Government has notified stainless steel pattas/patties and aluminium circles for the purpose of compounded levy scheme. These articles are not eligible for SSI exemption.

(iii) Tariff Value: The Central Government is empowered to notify the values of goods which will be chargeable to ad valorem duty as per Central Excise Tariff Act, 1975. In such a case, the task is easy since the value is already fixed. For example, Central Government has fixed tariff value for jewellery (other than sliver jewellery) under heading 7113 and branded readymade garments under Chapter 61 and 62. The Central Government has also got the power to alter the tariff value once fixed.

The Central Government may fix different tariff values for different classes or descriptions of the same excisable goods. The Central Government can also fix different ariff values for same class or description of the goods but produced or manufactured by different classes of producers or manufacturers or sold to different classes of buyers.

Such tariff values may be fixed on the basis of wholesale price or average price of various manufacturers as the Government may consider appropriate.

(iv) Duty based on production in respect of notified goods: According to section 3A of Central Excise Act, 1944, in order to safeguard the revenue the Central Government may notify goods on which excise duty shall be levied and collected on the basis of production capacity of the factory. The annual capacity fixed will be deemed to be annual production of such goods from the factory. If the factory does not operate for a part of the year, annual production will be calculated on proportionate basis. Further, if factors on the basis on which annual capacity is determined undergo change during the year, the annual capacity will be re-determined. This scheme has so far been notified in respect of Pan Masala, Gutka, tobacco etc. Further, this scheme does not apply to EOU.

Question

Explain briefly, how the value of goods will be ascertained for purpose of excise duty where the assessee sells the goods partly to a related person and the balance to unrelated third parties.

Answer

Rule 9 provides that where whole or part of the excisable goods are sold by the assessee to or through a person who is related in the manner specified in any of the sub-clauses (ii), (iii) or (iv) of section 4(3)(b) of the Central Excise Act, 1944, the value of such goods sha ll be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail.

Thus, each clearance is required to be assessed according to section 4(1)(a) or the relevant rule dealing with the circumstances of clearance of the goods, as the case may be.

Thus, for sales to unrelated third parties, valuation will be done as per section 4(1)(a) and for sales of the same goods to related person, rule 9 will be applicable

Question

Explain retail sale price in the light of provisions of section 4A of Central Excise Act, 1944.

Answer

Explanation 1 to section 4A of the Central Excise Act, 1944 defines the retail sale price as the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

However, in case the provisions of the Central Excise Act, rules or Legal Metrology Act 2009 or the Rules made thereunder or under any other law for the time being in force require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Question

What legal/penal actions can be taken in case the retail sale price is not mentioned or is unduly tampered after the removal?

Answer

If the retail sale price is not mentioned on the excisable goods or is unduly tampered after the removal, then

(i) such goods shall be liable to confiscation and

(ii) the retail sale price of such goods shall be ascertained in the manner prescribed by the Central Government and such price shall be deemed to be the retail sale price.

Question

Explain briefly the significance of rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 relating to goods produced or manufactured by a job worker.

Answer

Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 provides 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 past p ractice where the value was taken as cost of raw material plus the job charges.

Where the goods are sold by the principal manufacturer from the factory of the job worker?s factory, the price charged by the principal to his customer will be the value on whi ch duty will be paid at the applicable rate. If the buyer is related to the principal manufacturer, the valuation will be done as in case of clearances to related parties. Where the goods are not removed for sale from the job worker?s factory but cleared to some other premises of the principal from where the goods are sold, the valuation at the time of removal from the job worker's premises will be similar to what is followed under rule 7.

Question

What is the meaning of "normal transaction value" acco rding to Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000?

Answer

As per rule 2(b) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, "normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold.

Question

M/s. Fresh Bakery manufactures biscuits named as "Choconuts". Biscuits are notified under section 4A of the Central Excise Act, 1944 with an abatement of 30%. The following information has been furnished by M/s. Fresh Bakery with regard to clearances of packs of "Choconuts":

(i) 2,500 packs having MRP Rs. 70 per pack were sold in retail packages, but buyer is charged for 2,400 packs only at Rs. 50 per pack (100 packs have been given free as quantity discount).

(ii) 50 packs were given away as free samples, without any MRP on the pack.

(iii) 400 packs manufactured on job work basis for Modern Bakers, another bakery company, were cleared after putting MRP of Rs. 70 each. Each such pack is sold by Modern Bakers at Rs. 60 to individual customers. Cost of raw material supplied by Modern Bakers is Rs. 12,000, job charges including profit of M/s. Fresh Bakery is Rs. 6,000, transportation charges of raw material to M/s. Fresh Bakery and biscuits to Modern Bakers is Rs. 2,000.

(iv) 80 packs of biscuits having MRP Rs. 70 each were packed in a single package for protection and safety during transportation and cleared at Rs. 5000. 500 of such packages were cleared.

Determine the central excise duty payable, if rate of duty is 12.5%.

Note: Turnover of M/s. Fresh Bakery in the previous financial year is Rs. 450 lakh.

Answer

Computation of central excise duty payable by M/s. Fresh Bakery

Particulars	**(Rs.)**	**(Rs.)**
Retail sale price of 2,500 packs (2,500 × Rs. 70)	1,75,000	
Less: Abatement @ 30%	52,500	
Assessable value (A) [Note 1]		1,22,500
Retail sale price of 50 packs given as free samples (50 × Rs. 70)	3,500	
Less: Abatement @ 30%	1,050	
Assessable value (B) [Note 2]		2,450
Retail sale price of 400 packs manufactured on job work basis (400 × Rs. 70)	28,000	
Less: Abatement @ 30%	8,400	
Assessable value (C) [Note 3]		19,600
Retail sale price of 500 packages containing 80 packs each packed for safety in transportation (80 x Rs. 70 x 500)	28,00,000	
Less: Abatement @ 30%	8,40,000	
Assessable value (D) [Note 4]		19,60,000
Total assessable value (A) + (B) + (C) + (D)		21,04,550
Excise duty @ 12.5% of Rs. 21,04,550		2,63,068.75
Excise duty payable (rounded off)		**2,63,069**

Notes:

1. Provisions of section 4A of Central Excise Act, 1944 override the provisions of section 4 of the said Act. Therefore, assessable value will be retail sale price declared on the package less abatement irrespective of the quantity discounts offered to the b uyer [Indica Laboratories v. CCE (2007) 213 ELT 20 (CESTAT 3 Member Bench)].

2. Free samples of the products covered under MRP based assessment are valued under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 by taking into consideration the deemed value under section 4A [Circular No. 915/05/2010-CX dated 19.02.2010].

3. Provisions of section 4A override the provisions of section 4. Therefore, assessable value will be retail sale price declared on the package less abatement and not the value as determined under rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 [viz. the price at which the principal manufacturer sells the goods].

4. Outer packaging for protection/safety during transportation is not wholesale package.

   Such packaging does not require details like name/address, cost, month year etc. [State of Maharashtra v. Raj Marketing (2011) 272 ELT 8 (SC)] . Therefore, valuation of such package will be done on the basis of section 4A i.e., RSP less abatement.

5. Since the turnover of M/s. Fresh Bakery in the previous financial year is Rs. 450 lakh, it will not be entitled to SSI exemption available under Notification No. 8/2003 CE dated 01.03.2003 in the current year.

Question

Alpha Ltd, a manufacturer of excisable goods, has two production units-Unit A and Unit B. Unit A of Alpha Ltd. manufactures product "X?. 80% of such production is consumed captively by Unit B to further manufacture product "Y? and the remaining 20% is sold to unrelated buyers at Rs. 75 per unit. In April, 20XX, Unit A has manufactured 1000 units of product "X?. Assuming that there is no opening and closing inventory of product X, compute its assessable value (entire production) for the purpose of central excise duty from the following information provided by Alpha Ltd. in relation to Unit A for the month of April, 20XX-

Particulars	**Rs.**
Cost of direct materials (inclusive of central excise duty @ 12.5%)*	22,500
Cost of direct salaries (includes house rent allowance of Rs. 12,000)	30,000
Consumable stores and repairs	8,400
Depreciation of machinery	500
Quality control cost	4,300
Research & development cost	2,700
Administrative cost:	
Production related	2,000
Project management related	1,800
Interest and financial charges	2,400
Cost incurred due to break down of machinery	1,300
Amortised cost of moulds and tools received free of cost from the production unit "B?	600
for being used only in the manufacture of goods to be consumed by unit "B?	
Selling and distribution cost	4,600
Scrap value realized	1,500

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

Answer

Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, has been amended vide Notification No. 14/2013 CE (NT) dated 22.11.2013 to provide that where whole or part of the excisable goods are not sold by the assessee but are used for captive consumption, the value of goods meant for captive consumption shall be 110% of the cost of production or manufacture of such goods.

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

Since in the present case, only a part of the excisable goods are used for captive consumption (80% of 1,000 units i.e., 800 units), assessable value of such 800 captively consumed units will be determined in accordance with rule 8 of Valuation Rules. The assessable value of remaining 200 units sold to unrelated buyers will be determined under section 4 of Central Excise Act, 1944 i.e., transaction value.

Computation of cost of production as per CAS-4 and value of product 'X'

S. No.	Particulars	Rs.
1.	Material consumed:	
	Cost of direct materials Rs. 22,500	
	Less Central exsice duty = $\frac{\text{Rs. 22,500}}{112.5}$ X 12.5 Rs. 2,500 (Note 1)	20,000
2.	Direct wages and salaries:	
	Cost of direct salaries (including house rent allowance of Rs. 12,000)	30,000
3.	Works overheads:	
	Consumable stores and repairs	8,400
	Depreciation of machinery	500
4.	Quality control cost	
5.	Research & development cost	
6.	Administrative overheads (relating to production activity):	
Total	Less: Scrap value realized Cost of production of 1,000 units of product "X? Rs. 66,400	1,000
	4,300 2,700 2,000 67,900 1,500 66,400 53,120	

Computation of cost of production as per CAS-4 and value of product 'X'

S. No.	Particulars	Rs.
1.	Material consumed:	
	Cost of direct materials Rs. 22,500	
	Less Central exsice duty = $\frac{\text{Rs. } 22{,}500}{112.5}$ X 12.5 Rs. 2,500 (Note 1)	20,000
2.	Direct wages and salaries:	
	Cost of direct salaries (including house rent allowance of Rs. 12,000)	30,000
3.	Works overheads:	
	Consumable stores and repairs	8,400
	Depreciation of machinery	500
4.	Quality control cost	4,300
5.	Research & development cost	2,700
6.	Administrative overheads (relating to production activity):	2,000
	Total	67,900
	Less: Scrap value realized	1,500
	Cost of production of 1,000 units of product "X"	66,400
	Cost of production for 800 units of product "X" $\frac{66{,}400}{1{,}000}$ x 800	53,120
	Add: Amortised cost of moulds and tools received free of cost from unit "B?	600
	for being used only in the manufacture of goods to be consumed by unit "B?	53,700
	Cost of production of "X" produced for captive consumption	
	Value of 800 units of product 'X' consumed captively [Rs. 53,720 × 110%]	59,092

Notes:

1. Since CENVAT credit is available on central excise duty paid on direct materials, it has been deducted from the cost of direct materials in accordance with the Cost Accounting Standard-4 [CAS-4].
2. Administrative overheads in relation to activities other than manufacturing activities like project management activities have not been included in cost of production [CAS -4].
3. Interest and financial charge being a financial charge has not been considered to be a art of cost of production [CAS-4].
4. Abnormal cost like break down of machinery does not form part of cost of production [CAS-4].
5. Selling and distribution cost have not been considered while computing the cost of production as they are not in relation to production activity [CAS-4].

Value of 800 units of product "X" consumed captively for the purpose of excise duty is Rs. 59,092.

Value of 200 units of product "X" sold to unrelated buyers for the purpose of excise duty is Rs. 15,000 (200 units x Rs. 75) [Section 4 of Central Excise Act, 1944].

Question

Arvin Ltd. sold a machine to Isha Ltd. The ex-factory price of the machinery is Rs. *4,00,000* (excluding taxes and duties). A cash discount of 3% was allowed on such price to Isha Ltd.

The following additional amounts were charged from Isha Ltd:

Sr. No.	***Particulars***	***Amount (*Rs.)**
1	Expenses pertaining to installation and erection of the machine at IshaLtd.'s premises (Machine was permanently fixed to earth)	20,000
2	Cost of durable and returnable packing (such cost has been amortised and included in the cost of the machine)	5,000
3	Actual freight and insurance from factory to buyer's premises	25,000

Determine the total amount of excise duty payable on the machine. Assume transaction is on principal to principal basis and sale is an ex-factory sale. Excise duty rate is 12.5%.

Answer

Computation of amount of excise duty payable by Arvin Ltd.

Particulars	**Rs.**
Price of machine excluding taxes and duties	4,00,000
Less: 3% cash discount on price of machinery = Rs. 4,00,000 × 3 % [Note 4]	12,000
Assessable value	3,88,000
Excise duty payable @ 12.5%	**48,500**

Notes:

While computing assessable value:

1. installation and erection expenses are not included as the same result into an immovable property at the buyer s premises *[Circular No. 643/34/2002 CX dated 01.07.2002].*
2. cost of durable and returnable packing is not required to be added again as it has already been amortised and included in the cost of the product *[Circular No. 643/34/2002-CX dated 01.07.2002].*
3. cost of freight and insurance from the place of removal up to the place of delivery of the excisable goods are not includible [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
4. cash discount is allowed as deduction since transaction is on principal to principal basis and cash discount is actually passed on to the buyer *[Circular No. 643/34/2002 CX dated* 01.07.2002].

Question

Happy Ltd. sold 1,000 units of excisable goods manufactured by it @ Rs. *1,200 per unit to Mr. X on 31.03.2015. It had received interest-free advance of* Rs. *5,00,000 from Mr. X on 01.04.2014.*

Compute the assessable value of 1,000 units sold in following independent cases:-

(i) *The normal price charged from other buyers is* Rs. *1,150 per unit.*

(ii) The normal price charged from other buyers is Rs. *1,280 per unit.*

The normal rate of interest is 12% per annum.

Answer

As per Explanation 2 to rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall b e 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 by way of charging a lesser price from or by offering a special discount to the buyer who has made the advance deposit.

Therefore, the assessable value of 1,000 units in two independent cases will be computed as

under:

(i) Assessable value = Rs. 1,200 x 1,000 units = Rs. 12,00,000

[No addition of notional interest as price charged from the buyer who has given the advance is not less than the price charged from other buyers]

(ii) Assessable value = (Rs. 1,200 x 1,000 units) + (Rs. 5,00,000 x 12/100)

= Rs. 12,00,000 + Rs. 60,000 = Rs. 12,60,000

[Notional interest @ 12% will be added as price charged from the buyer who has given the advance is less than the price charged from other buyers]

Question

Surbhi Textile Ltd. (the assessee) is manufacturer of synthetic yarn, and is availing benefit of Sales Tax Incentive Scheme of State Government wherein it is allowed to retain 75% of sales tax amount collected from its customers and pay balance 25% to the State Government. The Central Excise Department has demanded inclusion of 75% portion of sales tax collected from customers and retained by the assessee, in transaction value of the goods whereas the assessee is contending that 75% portion of sales tax amount is an incentive to promote the industries and it has nothing to do with 'transaction value'.

Examine with the help of a case law (if any), whether Surbhi Textile Ltd. is liable to include 75% amount of sales tax in transaction value of the goods.

Answer

As per section 4(3)(d) of the Central Excise Act, 1944, transaction value, *inter alia*, excludes the amount of duty of excise, sales tax and other taxes, if any, **actually paid** or actually payable on such goods. Hence, the amount of sales tax is excludible from the transaction value of goods only when such amount is actually paid/ payable on such goods.

In the given case, since 75% of the sales tax amount collected from the customers had been retained by the assessee and not paid to the State Government (owing to a benefit under Sales Tax Incentive Scheme), same should form part of the transaction value of the goods.

The Supreme Court, in the case of *CCEx v. Super Synotex (India) Ltd. 2014 (301) E.L.T. 273 (S.C.),* has held that what is not payable/not to be paid as sales tax/VAT, should not be charged from the third party/customer, but if it is charged and is not payable or paid, it should not be excluded from the transaction value. Hence, unless the sales tax is actually paid to the Sales Tax Department of the State Government, no benefit towards excise duty can be given under the concept of "transaction value" i.e., it is not excludible.

Thus, Surbhi Textile Ltd. is liable to include 75% of the sales tax retained by it, in terms of the Sales Tax Incentive Scheme, in transaction value of goods.

Further, this view has also been endorsed in another decision of Supreme Court in *CCE v.* Maruti Suzuki India Limited 2014 (307) ELT 625 (SC).

Question

Cold Beverages Ltd. has removed the aerated water bottles without declaring the retail sale price under section 4A of the Central Excise Act, 1944. Discuss briefly how the retail sale price of these goods shall be ascertained.

Answer

As per rule 4 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008, where a manufacturer removes the excisable goods without declaring the retail sale price (RSP) on the package then, the RSP of such goods will be ascertained in the following manner, namely:

(i) if the manufacturer has manufactured and removed identical goods, within a period of one month, before or after removal of such goods, by declaring the RSP, then, the said declared RSP will be taken as the RSP of such goods;

(ii) if the RSP cannot be ascertained in the above manner, the RSP of such goods will be ascertained by conducting the enquiries in the retail market on sample basis where such goods have normally been sold at or about the same time of the remov al of such goods.

If more than one RSP is ascertained, then the highest of the RSP, so ascertained, will be taken as the RSP of all such goods.

Question

When will the accessories and goods used for providing free warranty would be eligible as Rs.inputRs. under rule 2(k) of the CCR, 2004?

Answer

As per rule 2(k) of the CCR , 2004:

(i) accessories would be eligible as input, if they are cleared along with the final product and their value is included in the value of the final product.

(ii) goods used for providing free warranty for final products would be eligible as input if warranty is provided by the manufacturer and its value is included in the price of the final product and is not charged separately from the customer.

Question

Whether a manufacturer of excisable goods, who has paid service tax under reverse charge on freight, can take credit of such service tax paid, if such transportation service has been used for bringing the inputs to the factory of manufacturer?

Answer

As per rule 2(l) of CCR, 2004, inward transportation of inputs or capital goods and outward transportation up to the place of removal are eligible input services for a manufacturer. Thus, service tax paid on inward freight by the manufacturer under reverse change can be availed as CENVAT credit since such transportation service has been used for inward transportation of inputs.

Question

M/s AJ imported some inputs and paid basic customs duty of Rs. 3 lakh and additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 of Rs. 3,75,000. Calculate the amount that it can claim as CENVAT credit. Would it make any difference, if M/s AJ is not a manufacturer but a service provider?

Answer

M/s. AJ can take credit of Rs. 3,75,000 i.e., of additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 (popularly known as CVD). Rule 3(1) of CENVAT Credit Rules, 2004 allows the credit of additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975. The credit of basic custom duty is not allowed.

It will not make any difference in respect of availment of CENVAT credit of CVD, if M/s AJ is a service provider as credit of additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 (CVD) can be availed both by the manufacturers and the service providers alike.

However, a service provider is not entitled to avail the credit of additional duty of customs leviable under section 3(5) of the Customs Tariff Act, 1975 (popularly known as special CVD).

Question

PQR Ltd., a manufacturer of excisable goods, purchased in the month of April, 20XX inputs for Rs. 1,00,000/- on which it pays excise duty of Rs. 12,500/-. The company utilised the aforementioned CENVAT of Rs. 12,500/- while discharging its excise duty liability for the month of April, 20XX. In June, 20XX before the said inputs are put into use, the company has written off Rs. 20,000 out of the total inputs. The balance inputs of Rs. 80,000 were not written off.

What economic consequences the company has to face for writing off of Rs. 20,000/-. However, subsequently, in the month of December, 20XX, the company puts to use the entire inputs of Rs. 1,00,000/-. Can the company get some economic benefit now?

Answer

Rule 3(5B) of CCR , 2004, inter alia, requires a manufacturer to pay an amount equivalent to the CENVAT credit taken in respect of inputs when the value of such inputs is written off fully before being put to use.

Thus, PQR Ltd. will have to pay an amount equivalent to the CENVAT credit taken on inputs valuing Rs. 20,000 (inputs written off) which is Rs. 2,500 (12,500/1,00,000 × 20,000) in June, 20XX.

However, proviso to rule 3(5B) provides that if the said inputs are subsequently used in the manufacture of final products, the manufacturer, shall be entitled to take credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of CCR, 2004.

Thus, in the present case, by virtue of proviso to rule 3(5B) when in December, 20XX, the company puts to use entire inputs of Rs. 1,00,000; it will be entitled to take credit of the amount equivalent to the CENVAT credit paid earlier i.e. Rs. 2,500/-.

Question

The goods manufactured by a company have been destroyed in a fire. The payment of duty on such destroyed goods has been ordered to be remitted. Is the company required to reverse the CENVAT credit taken on input services used in manufacture of such destroyed goods?

Answer

As per rule 3(5C) of the CENVAT Credit Rules, 2004, where on any goods manufactured by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules 2002, the credit taken on input services used in/in relation to manufacture or production of said goods has to be reversed.

Question

Ashish and Sons, a sole proprietorship firm, is engaged in the manufacture of final products.

It purchased following items during the current financial year:

Particulars	Amount (Rs.)
Jigs	1,00,000
Fixtures	1,50,000
Moulds and dies	2,00,000
Excise duty paid on above items @ 12.5%	56,250

It sent above-mentioned jigs, fixtures, moulds and dies to another manufacturer for the production of goods according to his specification. Will Ashish and Sons get CENVAT credit in respect of aforementioned jigs, fixtures, moulds and dies? Explain.

Answer

Rule 4(5)(b)(i) of CCR , 2004, inter alia, stipulates that CENVAT credit shall be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to another manufacturer for the production of goods, according to his specifications.

Since, in the given case Ashish & Sons has sent jigs, fixtures, moulds and dies to another manufacturer for the production of goods according to its specification, it is entitled to get CENVAT credit of excise duty of Rs. 56,250/- in accordance with the aforesaid provisions.

Question

Answer the following with reference to CCR , 2004:

(a) "A" uses petrol, among other inputs, to manufacture its final product - "X". Can he avail CENVAT credit on petrol?

(b) "B" is an outdoor caterer.

He has purchased a lorry for carrying utensils, tables, groceries, vegetables etc. to the place of provision of service. The lorry is registered in the name of "B". Can "B" avail credit of the excise duty paid by him on the purchase of the lorry?

(c) Inputs are received in the factory of the manufacturer on 10.11.20XX vide invoice dated 10.10.20XX, but are issued for the production process on 10.12.20XX. Can the manufacturer avail credit in the month of November, 20XX?

Answer

(a) No, "A" cannot avail CENVAT Credit on petrol as it is specifically excluded from the definition of "inputs" under rule 2(k) of CCR, 2004.

(b) Yes, as per rule 2(a)(B)(ii), motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for transportation of inputs and capital goods used for providing an output service are treated as capital goods.

(c) Yes, manufacturer can avail CENVAT credit on 10.11.20XX immediately on receipt of the inputs in the factory of the manufacturer [Rule 4(1)].

Question

With reference to CCR, 2004, discuss giving reasons whether the following statements are true or false:

(i) The manufacturer shall not be allowed to transfer unutilized CENVAT Credit availed on inputs and capital goods in case of transfer of ownership of the factory by way of sale of factory to a joint venture, along with the inputs, capital goods and liabilities of such factory.

(ii) A manufacturer availing CENVAT credit on inputs, capital goods or input services wrongly is liable to a penalty.

(iii) Credit of duties of excise on inputs will not be available if inputs are used in intermediate product, which is exempt from duty, even though the final product is dutiable.

(iv) A manufacturer can sell the inputs on which CENVAT credit has already been availed of, as such, provided he pays the amount equal to the credit availed.

Answer

(i) False. The manufacturer shall be allowed to transfer the credit lying unutilized in his accounts provided the transfer takes place with specific provision for transfer of liabilities of such factory [Rule 10(1) of CCR, 2004] and the said inputs and capital goods are duly accounted for to the satisfaction of the Deputy Commissioner of Central Exc ise or, as the case may be, the Assistant Commissioner of Central Excise. [Rule 10(3) of CCR, 2004]

(ii) True. Rule 15 of CCR, 2004 inter alia provides for levying a penalty for wrongful availment or utilization of CENVAT credit in respect of inputs/capital goods/input services. The wrongful availment/utilization of CENVAT credit on inputs or capital goods will be liable to a penalty not exceeding 10% of the duty on such goods or Rs. 5,000, whichever is higher. The wrongful availment/utilization of CENVAT credit on input services will be liable to a penalty not exceeding 10% of service tax on such services.

The quantum of such penalties can be reduced or even nullified depending on the time of payment of excise duty/service tax, interest and reduced penalty, as the case may be, in accordance with clause (a) or clause (b) of section 11AC(1) and section 76(1), as the case may be.

Similarly, penalty for wrongful availment/utilization of CENVAT credit by reason of fraud etc. with the intent to evade payment of excise duty or service tax will be governed in accordance with the provisions of clause (c), clause (d) or clause (e) of section 11AC(1) and section 78(1), as the case may be.

(iii) False. Central Board of Excise and Customs has clarified in its Excise Manual of Supplementary Instructions 2005 that the CENVAT credit will not be denied if the inputs are used in any intermediate product of the final product even if such intermediate product is exempt from payment of duty so long as the final product is dutiable. The basic idea is that CENVAT credit should be admissible so long as the inputs are used in or in relation to the manufacture of dutiable final products, whether directly or indirectly [Chapter 5 Para 3.7 of CBEC?s Excise Manual of Supplementary Instructions 2005].

(iv) True. Rule 3(5) of CENVAT Credit Rules, 2004 inter alia provides that a manufacturer of the final products can remove inputs on which CENVAT credit has been taken, as such, from the factory if he pays an amount equal to the credit availed in respect of such inputs and such removal is made under the cover of an invoice referred to in rule 9 of CENVAT Credit Rules, 2004.

Question

Discuss briefly the validity of the following statements with reference to the CENVAT Credit Rules, 2004:

(i) CENVAT credit can be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated 01.03.2011 is availed.

(ii) CENVAT credit can be utilised for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.

(iii) Credit of duty paid @ 2% on inputs in pursuance of Notification No. 1/2011-C.E. dated 01.03.2011 is available to the manufacturer as well as service provider who buys them.

(iv) CENVAT credit on inputs lying in stock or in process or contained in the final product shall be reversed when the final product is subsequently exempted unconditionally in terms of an exemption notification issued under section 5A of the Central Excise Act, 1944.

(v) An input service distributor has to furnish a half yearly statement in the form specified by the Board to the jurisdictional Superintendent of Central Excise.

(vi) CENVAT credit shall be allowed on inputs which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products, if they are received back in the factory within 180 days of their being sent to the job worker.

Answer

(i) Incorrect. According to second proviso to rule 3(4) of CCR, 2004, CENVAT credit cannot be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated 01.03.2011 is availed. It may be noted that in respect of goods covered under Notification No. 1/2011-CE dated 1-3-2011, concessional rate of excise duty of 2% is payable, subject to condition of non-availment of CENVAT credit on inputs and input services.

(ii) Incorrect. According to sixth proviso to rule 3(4) of CCR, 2004, CENVAT credit of any duty specified under rule 3(1) of the said rules cannot be utilised for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.

(iii) Incorrect. Proviso to clause (i) of rule 3(1) of CCR, 2004 lays down that CENVAT credit of excise duty will not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated the 1st March, 2011 is availed.

(iv) Correct. As per rule 11(3) of the CENVAT Credit Rules, 2004, when final product has been exempted absolutely under section 5A of the Central Excise Act, the manufacturer is required to pay an "amount? equal to CENVAT credit on inputs, lying in stock or in process or contained in final product (In effect, it amounts to reversal of CENVAT credit).

The balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product or for payment of service tax on any output service.

(v) Incorrect. Sub-rule (10) of rule 9 of the said rules provides that the input service distributor shall furnish a half yearly return in the form specified by the Board to the jurisdictional Superintendent of Central Excise. The return is required to be filed electronically.

(vi) Correct. Rule 4(5)(a) of the CCR, 2004 lays down that CENVAT credit shall be allowed on goods (being inputs or capital goods) sent to the job worker for further processing, testing, repair, reconditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, if they are received back in the factory within 180 days of their being sent to the job worker. In case they are not returned within 180 days the credit on such goods has to be reversed. However, credit can be retaken once the goods come back.

Question

Discuss with a brief note the validity of the following statements with reference to the C ENVAT Credit Rules, 2004.

(i) Credit of service tax paid on services used in the repairs or renovation of factory or office is not available.

(ii) Credit is available in respect of duty paid on capital goods used exclusively in the manufacture of dutiable goods cleared under Notification No. 1/2011 CE dated 01.03.2011.

(iii) Credit of duty paid on capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory is allowed.

(iv) If the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to the duty leviable on transaction value.

(v) All motor vehicles used in the factory of the manufacturer are eligible as capital goods for availing CENVAT credit.

Answer

(i) The given statement is not valid as the definition of input service under rule 2(l) of the CENVAT Credit Rules, 2004 specifically includes services used in relation to renovation or repairs of a factory or an office relating to such factory. Thus, credit on such services is available.

(ii) The said statement is not valid. As per rule 6(4) of the said rules, no credit can be availed on capital goods which are used exclusively in manufacture of exempted goods or in providing exempted service. Since, as per rule 2(d) of the said rules, goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE dated 01.03.2011 is availed are exempted goods, credit of capital goods used exclusively in manufacture of such goods is not allowed [Circular No. 943/04/2011-CX dated 29.04.2011].

(iii) The said statement is valid. Capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory are capital goods eligible for CENVAT credit. Such capital goods have been specifically included in the definition of capital goods as provided under rule 2(a) of the CENVAT Credit Rules, 2004.

(iv) The said statement is valid. As per rule 3(5A)(b) of the CENVAT Credit Rules, 2004, if the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to duty leviable on transaction value.

(v) The said statement is not valid. Rule 2(a) of the CENVAT Credit Rules, 2004 provides that motor vehicles falling under tariff headings 8702, 8703, 8704 and 8711 are not eligible as "capital goods? for CENVAT credit. Thus, following motor vehicles are specifically excluded from the ambit of the definition of capital goods:

(i) Motor vehicles for the transport of 10 or more persons, including the driver [Chapter heading 8702].

(ii) Motor cars and other motor vehicles principally designed for the transport of persons (other than those covered in (i) above), including station wagons and racing cars [Chapter heading 8703].

(iii) Motor vehicles for transport of goods [Chapter heading 8704] (iv) Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars [Chapter heading 8711].

Question

Enumerate the safeguards, conditions and limitations subject to which the refund of CENVAT credit shall be allowed under rule 5 of CENVAT Credit Rules, 2004.

Answer

As a general principle, refund of CENVAT credit is not permissible, but export of goods and services is an exception. A final/intermediate product is allowed to be cleared for export without payment of duty under bond/ LUT, or an output service is allowed to be exported without payment of service tax and CENVAT credit of duty paid on inputs and service tax paid on input services is available under rule 5. The manufacturer or service provider can utilize such CENVAT credit for payment of excise duty for clearances within India or service tax when he is providing service within India. If he is unable to utilize that CENVAT credit, he can claim refund of the excess CENVAT credit available with him. This is one of the ways of making exports of goods and services tax free.

Refund of CENVAT credit is allowed under rule 5 of the CENVAT Credit Rules, 2004 subject to the procedure, safeguards, conditions and limitations set out vide Notification No. 27/2012 CE (NT) dated 18.06.2012 as under:-

(i) Application in Form "A" signed by authorized signatory should be submitted to Assistant/ Deputy Commissioner. Application in Form A should be accompanied with certificate signed by auditor (statutory or any other) in form as given in Annexure A -1 and copies of Bank Realisation Certificates (BRC) in respect of services exported.

(ii) Only one refund claim will be submitted for every quarter. However, a person exporting goods and service simultaneously, may submit two refund claims - one in respect of goods exported and other in respect of the export of services - every quarter.

(iii) Quarter means a period of 3 consecutive months with the first quarter beginning from 1 st April of every year.

(iv) The value of the export goods cleared during the quarter will be the sum total of all the export goods cleared during the quarter as per the monthly/ quarterly return filed by the claimant.

(v) The total value of goods cleared during the quarter will be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly/quarterly return filed by the claimant.

(vi) The value of export services will be determined in accordance with rule 5 of the CENVAT Credit Rules, 2004.

(vii) The time of provision of non-export services will be determined as per the provisions of the Point of Taxation Rules, 2011.

(viii) Refund of input service credit will be 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 Rs. 100, total turnover is Rs. 500 and export turnover is Rs. 250, refund of input service tax credit will be only Rs. 50 (i.e. 50%, since export turnover is 50% of total turnover).

(ix) The amount of refund claimed should not be more than the amount lying in balance at the end of quarter or at the time of filing of the refund claim, whichever is less.

(x) The amount claimed as refund should be debited by the claimant from his CENVAT credit account at the time of making the claim.

(xi) If refund sanctioned is less than the amount of refund claimed, the claimant may take back the credit of the differential amount.

Question

Ascertain whether the refund of service tax paid on input services can be claimed with the help of following information available for the relevant quarter:

Total available credit of service tax paid on input services Rs. 6,000

Total turnover of output service exported Rs. 30,000

Further, the CENVAT credit balance at the end of quarter was Rs. 7,500. CENVAT credit balance at the time of submitting refund claim was Rs. 3,200. Assume that all the conditions prescribed vide rule 5 of the CCR, 2004 for availing the refund are fulfilled in the given case.

Answer

Rule 5 of CENVAT Credit Rules, 2004 inter alia provides that the CENVAT credit in respect of input services used in providing output services which are exported shall be allowed to be utilized towards payment of service tax on taxable output services. However, where such adjustment is not possible, the refund of credit shall be allowed.

In the given case, there is no service tax liability as the entire turnover of output services has been exported. Thus, refund can be claimed in respect of entire service tax of Rs. 6,000/- paid on input services.

However, refund should not be more than the amount lying in balance at the end of quarter for which refund is claimed or at the time of filing of the refund claim, whichever is less. Hence, the eligible refund claim is Rs. 3,200.

Question

Ascertain whether the refund of service tax paid on input services can be claimed in the following case:

Total available credit of service tax paid on input services Rs. 6,000

Total turnover of output service Rs. 30,000

Turnover of output service exported Rs. 20,000

Answer

Rule 5 of CENVAT Credit Rules, 2004 inter alia provides that the CENVAT credit in respect of the input services used in providing output services which are exported shall be allowed to be utilized towards payment of service tax on taxable output services. However, where such adjustment is not possible, the refund of credit shall be allowed.

In this case the service tax liability on taxable services of Rs. 10,000 (Rs. 30,000 -Rs. 20,000) is Rs. 1,400 @14%. Therefore, there is an excess credit of Rs. 4,600 (Rs. 6,000 - Rs. 1,400) which can not be utilized. Thus, the refund of such credit can be claimed. However, the refund will be restricted to the extent of ratio of export turnover to the total turnover for the given period, i.e.

Rs. 4,000 [Rs. 6,000 x (Rs. 20,000/Rs. 30,000)].

Question

Following transactions took place in the factory of JKA Ltd:

(i) An imported consignment of raw materials was received vide bill of entry dated 02.09.20XX showing the following customs duty payments: Basic customs duty Rs. 25,000; Additional duty (CVD) Rs. 20,000; Safeguard duty Rs. 5,800.

(ii) A consignment of 1,000 kg of inputs was received. The excise duty paid as per the invoice was Rs. 10,000. While the input was being unloaded, 50 kg were damaged and were found to be not usable.

(iii) A vehicle containing machinery was received. The machinery was purchased through a dealer and not from the manufacturer. The dealer?s invoice marked "original for buyer" certified that the excise duty paid by the manufacturer of machinery was Rs. 24,000. The dealer is registered with the Central Excise Authorities.

(iv) Some inputs for final product were received. The original or duplicate copy of invoice no. 286 pertaining to the same was not traceable. However, they were accompanied by a Xerox copy (photo copy) of invoice no. 286 indicating that excise duty of Rs. 6,400 had been paid on inputs. JKA Ltd. got the said xerox copy attested by the jurisdictional Range Superintendent of the supplier.

(v) A supplementary invoice for Rs. 1,00,000 together with service tax of Rs. 14,000/-was received on 15.09.20XX. The aforementioned supplementary invoice was in respect of business support services received during the month of May, 20XX and whose original invoice of Rs. 3,00,000 together with service tax of Rs. 42,000/- was received in the month of May, 20XX itself.

Would your answer in above case be different if the above supplementary invoice was issued consequent upon additional amount of tax becoming recoverable from the concerned provider of business support services on account of short-payment by reason of fraud with intent to evade payment of service tax.

(vi) Inputs were received on which excise duty of Rs. 10000 was paid vide Invoice No 1203 dated 5-04-20XX. The goods were received in the factory on 10-11-20XX.

Indicate the eligibility of CENVAT credit, in each case, under the CENVAT Credit Rules, 2004 with explanations where necessary. JKA Ltd. is not eligible for exemption available under Notification No.8/2003 CE dated 01.03.2003

Answer

(i) As per rule 3(1)(vii) of the CENVAT Credit Rules, 2004, CENVAT credit of the additional duty leviable under section 3 of the Customs Tariff Act, 1975 viz., Countervailing Duty (CVD) shall be allowed to a manufacturer or producer of the final products. Thu s, credit can be availed in respect of Rs.20,000 paid as additional duty (CVD). However, no CENVAT credit can be availed in respect of basic customs duty and safeguard duty.

(ii) Rule 2(k) of CENVAT Credit Rules, 2004 inter alia provides that input means all goods used in the factory by the manufacturer of the final product. Thus, the inputs lost before being issued for production cannot be termed as "used in the factory by the manufacturer of final product". Hence, CENVAT credit in respect of 50 kg of inp uts will not be available but CENVAT credit of Rs.9,500 on balance 950 kg of inputs can be availed.

(iii) Sub-clause (iv) of rule 9(1)(a) of CENVAT Credit Rules, 2004 provides that CENVAT credit shall be taken by manufacturer on the basis of an invoice issue d by a first/second stage dealer. Further, as per rule 9 of Central Excise Rules, 2002, a first/second stage dealer requires registration. Thus, in the given case, CENVAT credit can be claimed against dealer?s invoice since the dealer is registered with Central Excise Authorities.

However, CENVAT credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [Rule 4(2) of CENVAT Credit Rules, 2004].

Hence, CENVAT credit of Rs.12,000 will be available in the current financial year. Balance credit of Rs.12,000 can be availed in any subsequent year.

(iv) The High Court in the case of CCEx & Cus. Vadodara II v. Steelco Gujarat Ltd. 2010 (255) ELT 518 (Guj.) has held that mere xerox copy by itself should not be made the basis of allowing the credit but where the assessee has made efforts to get the said xerox copy attested by the Range Superintendent of the supplier?s end and has established beyond doubt that the duty stands paid on the goods and the goods stand received by him, denial of credit on this procedural irregularity would not be ju stified.

Since in the given case also the invoice has been certified by the jurisdictional Range Superintendent and there is no doubt about goods being received in the factory of JKA Ltd., CENVAT credit of Rs. 6,400 can be availed on the basis of photocopy of invoice no. 286.

However, such orders can be passed only by High Court under its writ powers, based on facts of the case. Otherwise, CENVAT credit is not permissible on basis of Xerox copy.

(v) Clause (bb) of sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004 provides that CENVAT credit can be availed on the basis of a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994. Thus, in the given case CENVAT credit can be availed on the basis of supplementary invoice received on 15.09.20XX in respect of business support services received during the month of May, 20XX.

However, rule 9(1)(bb) also specifies that CENVAT credit in relation to supplementary invoice, bill or challan shall not be available if the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short- levy or short-payment by reason of fraud, collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of Finance Act or the rules made there under with the intent to evade payment of service tax.

Therefore, when the supplementary invoice is issued consequent upon additional amount of tax becoming recoverable from the concerned provider of business support services on account of short-payment by reason of fraud with intent to evade payment of service tax, CENVAT credit cannot be availed on the basis of such supplementary invoice.

(vi) With effect from 01.03.2015, a duty paying document is valid only for one year from date of invoice. Since the inputs were received within one year from the date of invoice, credit of excise duty can be availed.

Question

Write a brief note on monthly return of information relating to principal inputs submitted in Form ER 6.

Answer

ER-6 is a monthly return of receipt and consumption of each of principal inputs with reference to the quantity of final products manufactured by a manufacturer of final products. It is to be submitted to the Superintendent of Central Excise by the assessee within ten days from the close of each month. Further, ER-6 is required to be filed electronically irrespective of the duty paid in the preceding year.

As per Explanation to rule 9A, "principal inputs" means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final product.

Only those assessees who are required to submit ER-5 return are required to submit ER-6 return. Further, only assessees manufacturing goods under specified tariff heading are required to submit the return. The specified Chapters are - 22, 28 to 30, 32, 34, 38 to 40, 48, 72 to 74, 76, 84, 85, 87, 90 and 94; and tariff headings are - 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 Rs. one crore or more during the preceding financial year (either through current account or CENVAT credit) are required to submit ER-6.

Question

Discuss in detail whether interest can be recovered from an assessee who wrongly takes the CENVAT credit but reverses the same before its utilization.

Answer

According to rule 14 of CCR, 2004 where the CENVAT credit has been taken and utilised 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 11AA of the Central Excise Act, 1944 or sections 73 and 75 of the Finance Act, 1994 shall apply mutatis mutandis for effecting such recoveries.

Hence, interest cannot be recovered from an assessee who wrongly takes the CENVAT credit but reverses the same before its utilisation. Thus, interest cannot be recovered for mere wrongful availment of the CENVAT credit but for wrongful availment and utilization thereof.

Question

17 XYZ Ltd, a output service provider, has misused the service tax credit. Discuss the actions that can be taken by the Department against XYZ Ltd.

Answer

The following actions can be taken by the Department in case of misuse of service tax credit:

(i) The wrongful availment/utilization of CENVAT credit on input services will be liable to a penalty not exceeding 10% of service tax on such services. The quantum of such penalty can be reduced or even nullified depending on the time of payment of service tax, interest and reduced penalty, as the case may be, in accordance with clause (a) or clause (b) of section 76(1). [Rule 15(1) of the CENVAT Credit Rules, 2004]; (ii) The penalty for wrongful availment/utilization of CENVAT credit by reason of fraud etc.

with the intent to evade payment of service tax will be governed in accordance with the provisions of clause (c), clause (d) or clause (e) of section 11AC(1) and section 78(1), as the case may be.

(iii) Prosecution proceedings can be initiated against XYZ Ltd. for mis-utlisation of CENVAT credit. Such offence is a non-cognizable and bailable offence. Where the amount involved in the offence exceeds Rs.50 lakh, the person in default can be arrested.

(iv) Special audit prescribed under section 72 of the Finance Act, 1994 can be ordered where credit of service tax availed and utilized is not within the normal limits etc.

Question

M/s. ABC Ltd. was a cement manufacturer. The company used ropeway system for bringing crushed lime-stone from the mines located 4 - 5 kms away from the factory. A part of ropeway system was installed in the factory and the system was controlled from the factory.

M/s ABC Ltd. availed CENVAT credit on parts/spares for ropeway system treating the same as capital goods. It also availed CENVAT credit on other capital goods used in the mines. No supplies are made to the cement factories of other aseessees from such mines.

The Central Excise Department denied CENVAT credit on parts/spares for ropeway on the ground that ropeway is used for transporting raw materials from the mines to the factory and cannot be considered as material handling system within the factory premises. It also denied credit on other capital good as they were not used in the factory.

Examine with the help of a decided case law, whether the stand taken by the Department in denying credit on

(i) parts/spares for ropeway; and

(ii) other capital goods used in mines is correct in law.

Answer

Rule 2(a) of CENVAT Credit Rules, 2004, inter alia, provides that capital goods means goods "used in the factory of the manufacturer of final products". Thus, the issue to be considered is whether the ropeway used for transporting raw material from mines located 4-5 kms away could be said to have been used in the factory.

The facts of the given case are similar to the case of M/s. Birla Corporation Ltd. v. CCE 2005 (186) ELT 266 (SC). In the instant case, the Apex Court followed the principle laid down in case of J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II 2002 (147) E.L.T. 996 wherein the same question arose for consideration and the facts were almost identical. It was held in aforementioned case that the assessee was entitled to the CENVAT credit of the spares of the ropeway system because the ropeway system, which was used to bring the crushed lime stone from the mines to the factory, could be covered under the expression "precincts of the premises" in the definition of the term "factory" under section 2(e) of the Central Excise Act, 1944.

Further, in Vikram Cement v. CCE 2006 (197) ELT 145 (SC) , it has been held that CENVAT credit on capital goods used in mines is available only when mines are captive mines i.e. they constitute one integrated unit with the main cement factory. Credit would not be availab le if the supplies from the mine are made to various cement factories of different assessees.

Applying the ratio of the abovementioned judgements, the ropeway system used by ABC Ltd.

would be taken to be used within the factory and therefore, parts/spares thereof would be covered under the definition of capital goods. Likewise, capital goods used in the mines will be eligible to CENVAT credit as the mines are captive mines.

Hence, the stand of the Department is not correct.

Question

I Ltd. was a manufacturer of polyester yarn. A ground plan of the factory was provided by the assessee to the jurisdictional Central Excise Officer and the same was approved. The ground plan showed the area in which the manufacturing is carried out as also the areas occupied for purpose of storage godowns, cycle sheds, canteen as well as the housing complex for staff and workers. The assessee had a captive power plant in the approved area. The electricity generated was supplied to the housing complex as well as for use in the manufacturing activity.

I Ltd. claimed CENVAT credit of the duty paid on furnace oil consumed in generation of electricity supplied to housing complex on the ground that the same was used captively within the factory (housing complex being part of the factory). However, the Central Excise Department refused to allow such credit.

Examine whether the Department?s action is correct in law.

Answer

The definition of input under rule 2(k) of CCR, 2004 specifically excludes any goods such as food items, goods used in a guest house, residential colony, club or a recreation facility when such goods are used primarily for personal use or consumption of any employee. Since, in the given case, the electricity generated captively is used in the housing complex of the employees of I Ltd., the furnace oil consumed therefor will not be an eligible input. Thus, Department?s action in denying CENVAT credit on the duty paid on furnace oil consumed in generation of electricity supplied to housing complex of employees is correct in law.

Furthermore, the definition of input also specifically excludes any goods which have no relationship whatsoever with the manufacture of a final product. In the given case, furnace oil used for generation of electricity which is supplied to the housing complex of employees of the factory has no relationship whatsoever with the manufacture of a final product. Thus, due to this specific exclusion also, furnace oil would not fall within the scope of term input and thus, credit cannot be availed of the duty paid thereon.

However, CENVAT credit will be available in respect of furnace oil used for generation of electricity supplied within the factory, on proportionate basis.

Question

The assessee is engaged in the manufacture of various types of packaging machines . The machines are made to order according to the specification of individual customers and such machines, before dispatch, are to be tested at the manufacturer?s premises for the customer?s satisfaction. After the satisfaction of the customer, the assessee makes the entry in the RG-1 register (DSA) declaring the machine as manufactured and ready for clearance. For testing the machine, assessee procures certain excisable goods and avails CENVAT credit of the duty paid thereon by treating them as inputs used in the manufacture of packaging machines.

The Department, however, denied such credit on the basis of the following contentions:

(i) The said excisable goods were used only for testing and as such, they cannot be treated as inputs used in manufacturing the final product.

(ii) Testing takes place only after manufacture of final product and any goods used in the process subsequent to manufacture cannot be termed as inputs under rule 2(k) of CENVAT Credit Rules, 2004.

Discuss whether the department is justified in denying the CENVAT credit. You may refer to decided case law, if any, in support of your decision.

Answer

No, the contention of the Department to deny the CENVAT credit is not justified.

The facts of the given case are similar to the case of Flex Engineering Ltd. v. Commissioner of Central Excise, U.P. 2012 (276) E.L.T. 153 (S.C.) . In this case, the Supreme Court held that the process of manufacture would not be complete if a product is not saleable, as a non - saleable product is not marketable.

The Apex Court held that the process of testing the customized packaging machines was inextricably connected with the manufacturing process. Until this process was carried out as per customer?s satisfaction, the manufacturing process was not complete and the machines were not fit for sale. Therefore, manufacturing process was completed only after testing of the said machines.

Thus, in the given case also, the excisable goods used for testing the packaging machines are inputs used in relation to the manufacture of the final product namely packaging machines and the assessee is eligible to avail CENVAT credit of the duty paid on such excisable goods.

Question

M/s. XYZ Ltd. shifted its factory from Sitapur to Rampur and transferred all the available inputs and capital goods to the new site. The inputs, capital goods and the balance of unutilised CENVAT credit were duly received and accounted for in the registers of the new unit. The balance of unutilized CENVAT credit transferred was Rs. 8,00,000 but the quantum of CENVAT credit attributable to the inputs and capital goods so transferred to the new site was only Rs. 6,00,000.

The Department contended that the assessee was entitled to transfer only Rs. 6,00,000 of CENVAT credit and not the entire balance of unutilized credit of Rs. 8,00,000. Explain, with the help of a decided case law, if any, whether Department's plea is justified in law?

Answer

As per rule 10 of the CENVAT Credit Rules, 2004, if a manufacturer of the final product shifts his factory to another site with the specific provision for transfer of liabilities of such factory, he shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to the new site if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of Central Excise.

The Madras High Court in the case of CCE, Pondicherry vs. CESTAT 2008 (230) ELT 209 (Mad.) [decision maintained by the Supreme Court in Commissioner v. CESTAT - 2009 (237) E.L.T. A48 (SC)] has also affirmed this position. In this case, the High Court has held that erstwhile rule 8 of the CENVAT Credit Rules, 2002 (new rule 10 of the CENVAT Credit Rules, 2004) does not provide that the assessee could transfer the CENVAT credit corresponding only to the quantum of inputs or capital goods transferred to the new factory.

Thus, the plea of Department is not justified presuming that M/s. XYZ Ltd. shifted its factory from Sitapur to Rampur with the specific provision for transfer of liabilities of such factory and the inputs or capital goods on which credit has been availed of are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of the Central Excise.

Question

M/s Smart Ltd. manufactures excisable goods that are exempt from duty in terms of a notification provided CENVAT credit of duty paid on inputs is not taken by the manufacturer. M/s Smart Ltd.

had taken the credit of duty paid on inputs, but reversed the same before its utilization.

However, the department denied the benefit of exemption on the ground that once the cred it is taken it is immaterial whether the same is reversed before or after utilization of such credit.

State briefly whether the action of the department is correct with reference to decided case law, if any.

Answer

The facts of the given case are similar to the case of CCEx. v. Bombay Dyeing & Mfg. Co. Ltd. (2007) 215 ELT 3 (SC), wherein it was held by the Apex Court that since the entry for credit was reversed before utilizing the same, it would amount to not taking of credit. Hence, in view of this decision, M/s Smart Ltd. is entitled to claim the benefit of exemption notification.

Consequently, the Department's action is not correct.

Question

XYZ & Co. is engaged in the manufacture of water pipes. From the following details, compute the CENVAT credit admissible to XYZ & Co. under the CENVAT Credit Rules, 2004: Excise duty paid on purchases is detailed below:

Particulars	Amount (Rs.)
Raw steel	22,000
Water pipe making machine	18,000
Spare parts for the above machine	7,500
Grease and oil	2,800
Office equipment	20,000
Light Diesel Oil	12,000

XYZ & Co. is not eligible for SSI exemption.

Provide explanation for treatment of various items.

Answer

Computation of CENVAT credit available

Particulars	Amount (Rs.)
Raw Steel	22,000
Water pipe making machine (Rs. 18,000 × 50%) (Note-1)	9,000
Grease and Oil	2,800
Spare parts for the machinery (Rs. 7,500 × 50%) (Note-1)	3,750
CENVAT credit admissible	37,550

Notes: In respect of:-

1. Water pipe making machine and spare parts, being capital goods, only 50% of CENVAT credit is available since XYZ & Co. is not eligible for SSI exemption [Rule 2(a) along with rule 4(2)(a) of the CCR, 2004].
2. A manufacturer cannot avail credit on office equipment since the definition of capital goods under rule 2(a) of the CCR, 2004 specifically excludes equipment/ appliance used in an office.
3. No credit is available on light diesel oil since the definition of input under rule 2(k) of the CCR, 2004 specifically excludes the same.

Question

X, a manufacturer, purchased 500 kgs of inputs on 01.10.2014. Total assessable value of inputs was (Rs. 10,000 (excluding excise duty) and excise duty of 12.5% was paid on the inputs.

On the day of receipt itself, inputs were sent to the job worker. Job worker sent back 50% of the inputs on 01.04.2015 and balance 50% on 31.05.2015. X received the processed inputs on same days respectively.

Calculate the CENVAT credit required to be reversed or availed on relevant dates and net availment and reversal in the financial years 2014-15 and 2015-16.

Answer

As per rule 4(5)(a) of CCR, 2004, a manufacturer is entitled to claim CENVAT credit on the inputs that are cleared to a job worker for further processing, testing, repair, re -conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose provided the goods are received back in the factory within 180 days of their being sent to the job worker.

If inputs are not returned within 180 days, the manufacturer has to pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise [which means by making payment through cash/ cheque/ internet banking].

However, the manufacturer can take the CENVAT credit again when the inputs or capital goods are received back in his factory.

In the light of above provisions, present problem is solved as under:

Particulars	**Amount ((Rs.)**
Financial Year 2014-15	
CENVAT credit availed on 1.10.2014 ((Rs. 10,000×12.5%).	1,250
Further, since goods are not received back within 180 days of their being sent from factory,	
i.e. 30.03.2015, CENVAT credit of (Rs. 1,250 to be reversed on 30.03.2015.	
Financial year 2015-16	
CENVAT credit availed on 1.4.2015 (50% of (Rs. 1,250)	625
[Since 50% of the goods sent to job worker are received back in factory,	
CENVAT Credit on such goods is taken]	
CENVAT credit availed on 31.5.2015 (50% of (Rs. 1,250)	625
[Remaining 50% of the goods sent to job worker received back in factory]	
Total CENVAT credit availed in financial year 2015-16	1,250

Question

ABC Ltd. procured the following items during the month of June. Determine the amount of CENVAT credit available by giving necessary explanations for treatment of various items.

Items	Excise duty paid [Rs.]
Raw materials	52,000
Manufacturing machine	1,00,000
Light diesel oil	40,000
Greases	10,000
Office equipment	20,000
Paints	5,000

ABC Ltd. is not eligible to avail SSI exemption under Notification No. 8/2003-CE dated 01.03.2003.

Answer

Computation of CENVAT credit available:

Particulars	Amount ((Rs.)
Raw materials	52,000
Manufacturing machine (1,00,000 × 50%) (Note - 1)	50,000
Greases	10,000
Paints	5,000
Total CENVAT credit available	1,17,000

Notes:

1. As per third proviso to rule 4(2)(a) of the CENVAT Credit Rules, 2004, assessee eligible for SSI exemption can avail CENVAT credit of the whole amount of the duty paid on the capital goods in the same financial year in which such goods are received. However, since ABC Ltd. is not eligible for SSI exemption, CENVAT credit of only up to 50% of the duty paid can be availed in respect of the manufacturing machine in the year of purchase by virtue of rule 4(2)(a).
2. Light Diesel Oil is not an eligible input as per the definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004. Hence, it is not eligible for CENVAT credit.
3. Office equipment is not an eligible capital goods for a manufacturer as per the definition of capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.

Question

M/s R & Co. Ltd. have cleared their manufactured final products during June and the duty payable for the month is Rs. 2,40,000. Given below are the details of excise duty/service tax paid by them during the month at the time of purchase of goods/procurement of input services respectively:

S. No.	Particulars	Amount (Rs.)	
(i)	On inputs "A"	1,00,000	(Inputs pertaining to all purchases have been received by assessee in June except invoice dated 2nd July for excise duty of Rs, 20,000 paid on Inputs "A" was th received on 4 July) .
(ii)	On input service	20,000	
(iii)	On welding electrodes for repairs and maintenance of capital goods	5,000	
(iv)	Fuel (excluding LDO/HSD/Petrol)	6,000	
(v)	Storage Tank	8,000	
(vi)	Tubes and Pipes (used in the factory)	14,000	
(vii)	Air-conditioner for the office of the Manager	12,000	

Note: M/s. R & Co. Ltd. is not eligible to avail exemption under the notification based on value of clearances in a financial year.

Find the total duty payable by the assessee for the month of June after taking into account the CENVAT credit available.

Answer

Excise duty payable for the month of June

S. No.	Particulars	Excise Duty/service tax [Rs]
1.	Inputs "A? [Refer Note 1]	80,000
2.	Input service	20,000
3.	Welding Electrodes [Refer Note 2]	5,000
4.	Fuel	6,000
5.	Storage Tank [Refer Note 3]	4,000
6.	Tubes and Pipes [Refer Note 3]	7,000
7.	Air-conditioner [Refer Note 4]	-
	Total credit available	1,22,000
	Excise duty payable for the month June	2,40,000
	Excise duty payable in cash after set off of the credit	1,18,000

Notes:

(1) Since invoice for inputs worth Rs. 20,000 was not received as on 30th June, credit thereon has not been considered [First proviso to rule 3(4) read with rule 9(1) of the CENVAT Credit Rules, 2004].

(2) CENVAT credit is available on welding electrodes as per Rajasthan High Cou rt?s decision in the case of Hindustan Zinc Ltd. 2008 (228) ELT 517.

(3) Storage tank and tubes and pipes are capital goods [Rule 2(a)(A)(vii) and Rule 2(a)(A)(vi) of the CENVAT Credit Rules, 2004 respectively]. Hence, only 50% credit is allowed [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].

(4) Air conditioner is not an eligible capital goods as it is used in the office of the factory manger [Rule 2(a)(A)(1) of the CENVAT Credit Rules, 2004].

Question

Determine the amount of CENVAT credit available with Gangotri Manufacturing Ltd. in respect of the following items procured by them in the month of October:-

Items	Excise duty paid (Rs.)
Raw materials	52,000
Capital goods used for generation of electricity for captive use within the factory	1,00,000
Motor spirit	40,000
Inputs used for construction of a building	1,00,000
Dairy and bakery products consumed by the employees	5,000

Note: The aggregate value of clearances for home consumption of Gangotri Manufacturing Ltd. for the preceding financial year is Rs. 450 lakh.

Answer

Computation of the amount of CENVAT credit available with Gangotri Manufacturing Ltd.:-

Items	Excise duty paid (Rs.)
Raw materials	52,000
Capital goods used for generation of electricity for captive use (50% of Rs. 1,00,000) (Note-1 & 2)	50,000
Motor spirit (Note-3)	Nil
Inputs used for construction of a building (Note-3)	Nil
Dairy and bakery products consumed by the employees (Note-3)	Nil
Total CENVAT credit available	1,02,000

Notes:-

1. Capital goods used for generation of electricity for captive use within the factory are eligible capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.
2. Since, aggregate value of clearances of Gangotri Manufacturing Ltd. in the preceding financial year is Rs. 450 lakh i.e. more than Rs. 400 lakh, it is not eligible for SSI exemption in the current financial year. Therefore, CENVAT credit of only upto 50% of the duty paid is available in respect of the eligible capital goods in the year of purchase [Rule 4(2)(a)].
3. As per the definition of inputs under rule 2(k), there is specific exclusion with regard to the following:-
   (i) motor spirit
   (ii) goods used for construction of a building or a civil structure or a part thereof
   (iii) any goods, such as food items used primarily for personal use or consumption of any employee.

Question

Determine the amount of CENVAT credit available with Satnarayan Manufacturing Ltd. in respect of the following items procured by them in the month of November:

	Item	Excise Duty paid [Rs.]
(i)	Raw materials	72,000
(ii)	Capital goods used outside the factory for generation of electricity for captive use within the factory	1,50,000
(iii)	Goods used in the guest house primarily for personal use.	40,000
(iv)	Inputs used for making structures for support of capital goods	1,25,000
(v)	Parts and components for use in the manufacture of final product	40,000
(vi)	Goods for providing free warranty - The value of such free warranty provided by Satnarayan Manufacturing Ltd. is included in the price of the final product and is not charged separately from the customer.	10,000
(vii)	Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer	3,50,000

Note : The aggregate value of clearances for home consumption of Satnarayan Manufacturing *Ltd. for the preceding financial year is* Rs. *480 lakh.*

Answer

Computation of CENVAT credit available with Satnarayan Manufacturing Ltd. for the month of November

Particulars	Amount [Rs.]
Raw materials	72,000
Capital goods used for generation of electricity for captive use within the factory [Rs. 1,50,000×50%] [Note 1 & 2]	75,000
Goods used in the guest house primarily for personal use [Note 3]	Nil
Inputs used for making structures for support of capital goods [Note 3]	Nil
Parts and components for use in the manufacture of final product [Note 4]	40,000
Goods for providing free warranty [Note 5]	10,000
Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer [‘ 3,50,000×50%] [Note 1 & 6]	1,75,000
Total CENVAT credit available	3,72,000

Notes:

1. Since its value of clearances in the preceding financial year is Rs. 480 lakh, Satnarayan Manufacturing Ltd. is not eligible for SSI exemption in current financial year. Hence, as per rule 4(2)(a) of the CENVAT Credit Rules, 2004, CENVAT credit of only upto 50% of the duty paid will be available in respect of the eligible capital goods in the year of purchase.
2. Capital goods used outside the factory for generation of electricity for captive use within the factory are capital goods eligible for CENVAT credit [Rule 2(a) of CCR, 2004].
3. As per the definition of inputs under rule 2(k) of CCR, 2004, there is specific exclusion with regard to the following:-
   (i) goods used in a guest house when the same are used primarily for personal use or consumption of any employee.
   (ii) goods used for making of structures for support of capital goods.

   Thus, CENVAT credit cannot be claimed in respect of the above goods.
4. Though definition of inputs under rule 2(k) specifically excludes capital goods, capital goods used as parts or components in the manufacture of a final product are included therein. Thus, CENVAT credit will be available on the same.
5. Since the value of the free warranty provided by Satnarayan Manufacturing Ltd. is included in the price of the final product and is not charged separately from the customer, the goods used for providing such free warranty will be inputs eligible for CENVAT credit [Rule 2(k) of the CCR, 2004].
6. Capital goods as defined under rule 2(a) of the CCR, 2004 includes motor vehicles other than the ones falling under tariff headings 8702, 8703, 8704, 8711, and used in the factory of the manufacturer. Thus, special purpose motor vehicle falling under tariff heading 8705 will be capital goods eligible for CENVAT credit.

Question

KSP Ltd. purchased a pollution control equipment for Rs. 15,14,240 which is inclusive of excise duty at 12.5%. The equipment was purchased on 01.09.2013 and was disposed of as second hand equipment on 10.10.2015 for a price of Rs. 12,00,000 (exclusive of excise duty). The excise duty rate on the date of disposal was 12.5%

(i) You are required to calculate the amount of CENVAT credit allowable for the financial year 2013-14 and 2014-15.

(ii) What is the amount payable towards CENVAT credit already availed, at the time of disposal of the equipment in the financial year 2015-16?

KSP Ltd. is not eligible for SSI exemption and the pollution control equipment has been received in the factory on 01.09.2013. The disposal price of the equipment is the transaction value which is exclusive of excise duty.

Answer

(i) Computation of amount of CENVAT credit allowable for financial years 2013-14 and 2014-15

		Amount [Rs.]
Cum duty price of Pollution Control Equipment	Rs.15,14,240	
Rate of excise duty	12.5%	
Excise duty paid on equipment = Rs. 15,14,240 $\times \frac{12.50}{112.50}$		1,68,248.89
Excise duty paid on equipment (rounded off)		1,68,249
CENVAT credit allowable on pollution control equipment for the		
Financial Year 2013-14 @ 50% [Note-1]		**84,124.50**
Financial Year 2014-15 @ 50% [Note 1]		**84,124.50**

(ii) Computation of amount payable towards CENVAT credit on disposal of equipment in the financial year 2015-16

Particulars		**Amount (Rs.)**
Total CENVAT credit availed on the equipment		1,68,249
Less:		
(i) First 50% credit = [Rs. 84,125 × 2.5%] × 10 quarters (credit availed on 01.09.2013)	21,031.25	
(ii) Next 50% credit = [Rs. 84,125 × 2.5%] × 7 quarters (credit availed on 01.04.2014)	14,721.88	35,753.13
Amount payable on disposal of machinery		1,32,495.87
Duty leviable on transaction value (Rs.12,00,000 × 12.5%)		1,50,000
Amount payable towards CENVAT credit on disposal of equipment [Note 2]		**1,50,000**

Notes:

1. Pollution control equipment is an eligible capital goods under rule 2(a) of the CCR, 2004 and credit upto 50% can only be taken in the financial year in which the capital goods is received. Balance credit can be taken in any subsequent financial year.

   [Clause (a) and (b) of rule 4(2) of the CCR, 2004].

2. As per rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods, on which CENVAT credit has been taken, are removed after being used, higher of the following two amounts has to be paid

   (i) an amount equal to the CENVAT credit taken on the said capital goods reduced by 2.5% by straight line method for each quarter of a year or part thereof from the date of taking the CENVAT credit

   OR

   (ii) duty leviable on transaction value.

Question

Mr. Happy, a service provider, has provided services valuing Rs. 1,00,00,000. Out of this, Rs. 70,00,000 are taxable output services and Rs. 30,00,000 are exempt output services. Mr.

Happy has opted not to maintain separate inventory and accounts for dutiable and exempt services. Instead, he has decided to pay prescribed amount on value of exempt output services as per rule 6(3)(i) of CCR, 2004.

Service tax paid on his input services is Rs. 6,00,000. Calculate the total amount payable including service tax by Mr. Happy in cash.

Answer

Calculation of service tax and total amount payable under rule 6(3)(i) of the CENVAT Credit Rules, 2004

Particulars	Amount (Rs.)
Service tax payable on taxable services (Rs. 70,00,000 × 14%)	9,80,000
Amount payable @ 7% of value of exempt services under rule 6(3)(i)	2,10,000
(Rs. 30,00,000 × 7%) [Note (1)]	
Total	11,90,000

Particulars	Service tax and amount payable under rule 6(3)(i) [Rs.]
Amount payable (A)	9,80,000+ 2,10,000 = 11,90,000
Less: CENVAT credit (B)	6,00,000
Net amount payable = (A) - (B)	5,90,000

Amount payable in cash = Rs. 5,90,000

Question

Vipin Ltd. purchased raw material 'A' 10,000 kg @ Rs. 80 per kg plus excise duty. The said raw material was used to manufacture intermediate product 'P'. The said intermediate product was captively used for the manufacture of finished product 'Z', which was exempt from excise duty.

The other informations are as under:

(i) Processing loss: 2% of inputs in manufacture of 'P'

(ii) Assessable value of "P": Rs. 100 per kg.

(iii) Assessable value of 'Z' : Rs. 20 lac (for total output) (iv) Other material 'M' used in the manufacture of 'Z': Rs. 2 lac plus excise duty.

(v) Duty on capital goods imported during the period and used in the manufacture of 'P': 4.27 - - - Basic customs duty Rs. 20,000; Additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 Rs. 10,000; and Additional duty of customs under section 3(5) of the Customs Tariff Act, 1975 Rs. 4,000.

(vi) Rate of central excise duty on 'A', 'M' and 'P': 12.5% Vipin Ltd. is not eligible for SSI exemption under Notification No. 8/2003-C.E.

Compute:

(i) Amount of CENVAT credit available, and

(ii) Central excise duty payable by M/s. Vipin Ltd.

Answer

(i) Computation of amount of CENVAT credit available

Particulars		**Rs.**
On inputs: Raw material "A" (10,000 kg x Rs.80 x 12.5%)	1,00,000	
[Note 1 and Note 2]		
Raw material "M" [Note 3]	Nil	1,00,000
On capital goods:		
Basic customs duty	Nil	
Additional duty of customs under		
section 3(1) of Customs Tariff Act, 1975 [Note 4]	5,000	
Additional duty of customs under		
section 3(5) of Customs Tariff Act, 1975 [Note 5]	4,000	9,000
Total credit available		1,09,000

(ii) **Computation of net central excise duty payable by Vipin Ltd.**

Particulars	
Central excise duty payable on intermediate product	Rs. 1,22,500
"P" (10,000 kg × 98% (2% processing loss) × Rs.100 x 12.5%) [Note 1]	
Central excise duty on exempt final product "Z"	Nil
Total central excise duty payable	1,22,500
Less: CENVAT credit available	1,09,000
Net central excise duty payable (in cash)	13,500

Notes:

1. Intermediate goods are exempt from payment of excise duty, if the same are consumed captively for manufacture of dutiable final products, vide Notification No. 67/1995 CE dated 16.3.1995. However, since in this case, final product "Z" is exempt, intermediate product "P" will be liable to duty.
2. Since input "A" is used in manufacture of dutiable intermediate product "P?, CENVAT credit will be available on the entire quantity of the same regardless of the processing loss as that quantity of inputs is also used in the manufacture of intermediate product.
3. Since raw material "M" is used in manufacture of final product "Z" which is exempt from payment of duty, credit will not be available on the same [Rule 6(1) of CENVAT Credit Rules, 2004]
4. Upto 50% of the credit in respect of additional duty of customs leviable under section 3(1) of Customs Tariff Act, 1975 can only be availed in the year in which capital goods are received in the factory of the manufacturer [Rule 4(2)(a) of CENVAT Credit Rules, 2004].
5. CENVAT credit in respect of additional duty of customs leviable under section 3(5) of Customs Tariff Act, 1975 is allowed immediately on receipt of the capital good s in the factory of a manufacturer [Second proviso to Rule 4(2)(a) of CENVAT Credit Rules, 2004].

Question

M/s. Honest Manufacturer furnishes the following information for the month of October, 20XX:

		(Rs.)
(i)	Assessable value of goods 'X' cleared (effective rate of duty 12.5%)	150 lakh
(ii)	Assessable value of goods 'Y' cleared (effective rate of duty 2% under Notification No. 1/2011-CE, dated 1-3-2011)	50 lakh
(iii)	CENVAT credit of input "P" (used only in manufacture of goods "X")	10 lakh
(iv)	CENVAT credit of input 'R' (used in manufacture of goods 'X' and 'Y' both)	6 Lakh

The assessee does not maintain separate accounts with respect to usage of input 'R' in goods "X" and "Y" and has opted to avail CENVAT credit under rule 6(3)(i) of CCR, 2004. Calculate the amount payable, if any, under the said rule. Further, compute the central excise duty payable by him and show separately the duty payable by availing CENVAT credit and in cash.

(Show the workings with explanation wherever required.)

Answer

Computation of central excise duty for the month of October, 20XX

Particulars	**Amount (Rs.)**
Excise duty payable on goods "X" [Rs.150 lakh × 12.5%]	18,75,000
Excise duty payable on goods "Y" [Rs. 50 lakh × 2%]	1,00,000
Total central excise duty payable	**19,75,000**

As per rule 2(d) of the CENVAT Credit Rules, 2004, goods cleared by paying excise duty @ 2% under Notification No. 1/2011 CE dated 01.03.2011 are exempted goods. Since, M/s.

Honest Manufacturer uses common input "R? in the manufacture of both dutiable goods "X" and exempted goods "Y", rule 6 of the CENVAT Credit Rules, 2004 will apply in its case.

Where common inputs are used for manufacture of both dutiable and exempted final products and separate accounts for the same are not maintained, rule 6(3)(i) of the CENVAT Credit Rules, 2004 provides an option to the manufacturer to avail full credit on common inputs by paying an amount of 6% of value of the exempted goods.

Computation of amount payable under rule 6(3)(i) and excise duty payable:

	Amount (Rs.)
6% of value of the exempted goods (Rs. 50 lakh × 6%)	3,00,000
Less: Duty of excise, if any, paid on the exempted goods [Note 1]	1,00,000
Amount payable under rule 6(3)(i) of the CENVAT Credit Rules, 2004	2,00,000
Excise duty payable on goods „X	18,75,000
CENVAT credit available [Note 2]	16,00,000
Duty payable in cash (Rs. 18,75,000 + Rs. 2,00,000 – Rs. 16,00,000) (A)	4,75,000
Excise duty payable on goods „Y in cash	1,00,000
[CENVAT credit cannot be utilized for discharging the excise duty liability on goods cleared under *Notification No. 1/2011-C.E. dated 01.03.2011]* (B)	
Total central excise duty payable in cash (A) + (B)	5,75,000

Notes:

1. Any excise duty paid on exempted goods has to be reduced from the amount payable under rule 6(3)(i) [First proviso to rule 6(3) of the CCR, 2004].
2. Since input "P" is used only in manufacture of dutiable goods "X", full credit thereof (Rs.10 lakh) will be available. Further, since option under rule 6(3)(i) is being exercised, full credit of common input "R" (Rs. 6 lakh) will also be available.

Question

Briefly explain the following with reference to the provisions of CCR, 2004 : (i) Exempted Goods (ii) Exempted Services (iii) Final products (iv) First stage dealer.

Answer

(i) **Exempted Goods:** As per rule 2(d) of the CCR, 2004, "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE, dated 01.03.2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012 CE dated 17.03.2012 is availed.

Note: Excise duty @ 2% is paid under Notification No.1/2011-CE dated 01.03.2011 and @ 1% on coal and fertilizers under Notification No. 12/2012 C.E. dated 17.03.2012.

(ii) **Exempted Services:** Rule 2(e) of CCR, 2004 provides that "exempted services" means a - (1) taxable service which is exempt from the whole of the service tax leviable thereon; or (2) service, on which no service tax is leviable under section 66B of the Finance Act; or (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken; but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

(iii) **Final Products:** As per Rule 2(h) of the CCR, 2004, "final products" means excisable goods manufactured or produced from input or using input service.

(iv) **First Stage Dealer:** As per Rule 2(ij) of the CCR, 2004 "first stage dealer" means a dealer who purchases the goods directly from - (a) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from 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, under cover of an invoice; or (b) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice.

Question

Based on the following particulars, arrive at the CENVAT credit available on clearance of goods to Domestic Tariff Area (DTA) from an Export Oriented Unit (EOU):

Particulars	
Assessable value	Rs. 20 lakhs
Basic customs duty	10%
Excise duty	12.5%
VAT is exempt under State VAT law	

Answer

As per Notification No. 23/2003 CE dated 31.03.2003, in case of clearance of goods by an EOU to DTA, 50% of basic customs duty is exempt. The amount of excise duty payable by EOU is calculated as under:

Calculation of duty payable by EOU

		Duty %	**Amount (Rs.)**	**Total Duty**
(A)	Assessable Value		20,00,000	
(B)	Basic Customs Duty (50% exempt)	5	1,00,000	1,00,000
(C)	Sub-total for calculating CVD [(A)+(B)]		21,00,000	
(D)	CVD [(C) x excise duty rate)]	12.5	2,62,500	2,62,500
(E)	Education cess of customs Secondary and	2	7,250	
(F)	Higher education cess of customs	1	3,625	
(G)	Sub-total for special CVD [(C)+(D)+(E)+(F)]		23,73,375	
(H)	Special CVD u/s 3(5) [4% of (G)] (Nil if State VAT paid)	4	94,935	94,935
(I)	Total excise duty payable [(B)+(D)+(E)+(F)+(H)]			4,68,310

Buyer who is manufacturer in DTA, is eligible to avail CENVAT Credit of (D) and (H) above.

As per second proviso to rule 3(7)(a) of CENVAT Credit Rules, 2004, the amount of CENVAT credit will be as under:

	Rs.
Additional duty of customs (CVD)	2,62,500
Special CVD u/s 3(5)	94,935
Total amount of credit available	3,57,435

Question

What are the provisions relating to the payment of excise duty on used capital goods cleared as second hand goods by an assessee on which CENVAT credit has been availed?

Answer

As per rule 3(5A) of the CCR, 2004, if the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely: -

S . No.	Type of Capital Goods	Percentage points calculated by straight line method	
1.	Computers and computer peripherals	For each quarter in Year 1 Year 2 Year 3 Year 4 & 5	Percentage 10% 08% 05% 01%
2.	Other capital goods	2.5% quarter for each year	

However, if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

Question

Parsvnath Financials Ltd., a Non-Banking Financial Company, is engaged in providing the "banking and other financial services?. It furnishes the following information for the month of August:

Particulars	Amount
CENVAT credit availed on inputs	Rs. 2,00,000
CENVAT credit availed on input services	Rs. 5,00,000
Service tax liability	Rs. 10,20,000

Determine the amount of CENVAT credit available to Parsvnath Financials Ltd. in the month of August. Also determine the net service tax payable by Parsvnath Financials Ltd. for the said month.

Note: Parsvnath Financials Ltd. is not eligible for small service providers? exemption under Notification No. 33/ 2012-ST dated 20-6-2012 in the current financial year.

Answer

According to rule 6(3B) of the CCR, 2004, notwithstanding anything contained in sub-rules (1), (2) and (3) of rule 6, a banking company and a financial institution including a non -banking financial company (NBFC), engaged in providing services by way of extending deposits, loans or advances, shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month. In other words, a banking company is entitled to utilise only 50% of the CENVAT credit in respect of the inputs and input services.

Computation of CENVAT credit available to Parsvnath Financials Ltd. for the month of August:-

Particulars	(Rs.)
CENVAT credit availed on inputs	2,00,000
CENVAT credit availed on input services	5,00,000
Total amount of credit availed	7,00,000
Less: Payment of 50% of CENVAT credit availed on inputs and input services by virtue of rule 6(3B)	3,50,000
Net CENVAT credit available for August	3,50,000

Computation of net service tax payable by Parsvnath Financials Ltd. for the month of August:-

Particulars	(Rs.)
Service tax liability for August	10,20,000
Less: Eligible CENVAT credit available on inputs and input services	3,50,000
Net service tax payable by Parsvnath Financials Ltd.	6,70,000

Question

"The CENVAT credit of duties, other than National Calamity Contingent Duty (NCCD) can be used to pay NCCD." Examine the correctness of the statement with the help of a decided case law, if any.

Answer

As per rule 3(1) of the CENVAT Credit Rules, 2004 [CCR], a manufacturer or producer of a final product is allowed to take CENVAT credit of National Calamity Contingent Duty (NCCD).

Rule 3(4) of CCR provides that CENVAT credit may be utilized for payment of any duty of excise on any final product. Therefore, CENVAT credit of NCCD may also be utilized for payment of any duty of excise on any final product in terms of rule 3(4) subject to rule 3(7).

Rule 3(7) of CCR limits the utilization of CENVAT credit in respect of NCCD as also other duties mentioned in rule 3(7)(b). Rule 3(7)(b) of CCR provides that CENVAT credit in respect of NCCD and other duties mentioned therein shall be utilized towards payment of duty of excise leviable under various statutes respectively.

However, the issue to be considered in the given problem is the opposite of the above inference i.e., whether CENVAT credit of duties, other than National Calamity Contingent Duty (NCCD), can be used to pay NCCD.

This issue has been dealt by the Guwahati High Court in the case of CCEx. v. Prag Bosimi Synthetics Ltd. 2013 (295) ELT 682 (Gau.). The High Court stressed upon the importance of the word "respectively" in rule 3(7)(b) as it confines the utilization of CENVAT credit obtained under a particular statute for payment of duty under that statute only. The High Court, however, categorically added that the converse does not follow from the above discussion.

The High Court, therefore, held that merely because CENVAT credit in respect of NCCD can be utilized only for payment of NCCD, it does not lead to the conclusion that credit of any other duty cannot be utilized for payment of NCCD.

Therefore, in view of the above-mentioned judgement, the given statement is correct.

Question

Dev Ltd., a manufacturer, has furnished the following information regarding inputs received in the factory and input service used for manufacture of excisable goods:

Sr. No.	Particulars		Excise duty/Service Tax (Rs.)
(1)	Raw material	Invoice dated 14 September, 20XX	31,500
(2)	Grease and Oil	Invoice dated 10 April of next year	5,000
(3)	Input service	Invoice dated 22 December, 20XX	19,500
(4)	Office Equipment	Invoice dated 25 November, 20XX	7,250
(5)	Light Diesel Oil	Invoice dated 2 April of next year	22,000
(6)	Paints	Invoice is missing	3,000

Determine the total CENVAT credit that can be availed during the month of November of next year. Show working notes with suitable assumptions as may be required. The company is not entitled to SSI exemption under Notification No. 8/2003 CE dated 01-03-2003.

Answer

Computation of CENVAT credit that can be availed by Dev Ltd. during the month of November of next year:

Particulars	Rs.
Raw material (Note 1)	-
Grease and oil (Note 1)	5,000
Input service (Note 2)	19,000
Office Equipment (Note 3)	-
Light Diesel Oil (Note 4)	-
Paints (Note 5)	-
Total CENVAT credit that can be availed during the month of November of next year	24,500

Notes:

1. A manufacturer can take CENVAT credit of inputs upto one year from the date of issue of invoice [Third proviso to rule 4(1) of CCR, 2004].
2. A manufacturer can take CENVAT credit of input services upto one year from the date of issue of invoice [Sixth proviso to rule 4(7) of CCR, 2004].
3. Office equipment is not an eligible capital goods for the manufacturer in terms of the definition of capital goods [Rule 2(a)(A)(1) of CCR, 2004].
4. Light Diesel Oil is not an input in terms of definition of inputs [Rule 2(k)(A) of CCR, 2004].
5. CENVAT credit cannot be availed without a valid invoice [Rule 9(1)(a) of CCR, 2004].

Question

Who is required to submit quarterly return under rule 9(8) of CCR, 2004? Explain briefly.

Answer

Following persons are required to submit quarterly return under rule 9(8) of the CCR, 2004:-

(a) a first stage dealer

(b) a second stage dealer

(c) a registered importer

Question

Paper Ltd. manufactures paper and paper boards in a remote area from where the nearest town with a railway station is located at a distance of 35 kms. As the factory works round the clock, Paper Ltd. has provided residential accommodation to its employees in the vicinity of the factory itself.

Discuss with the help of a decided case law (if any), whether Paper Ltd. is eligible to avail of CENVAT credit of service tax paid on the services pertaining to maintenance of staff colony.

Answer

Paper Ltd. can avail CENVAT credit of the service tax paid on the services pertaining to maintenance of staff colony. All services used by a 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 are covered under the definition of input service under rule 2(l) of CENVAT Credit Rules, 2004.

In the given case, if Paper Ltd. does not provide accommodation to its employees in that remote location (where its factory is situated), it would not be feasible for it to carry on its manufacturing activity.

Consequently, the services pertaining to maintenance of the staff colony ought to be considered as "input services' falling within the ambit of rule 2(l) of the CENVAT Credit Rules, 2004.

The Andhra Pradesh High Court, in CCus. & CEx. v. ITC Limited 2013 (32) STR 288, has also endorsed the said view holding that services crucial for maintaining the staff colony provided by the manufacturer are "input services? when the provision of staff colony is directly and intrinsically linked to the manufacturing activity.

However, Bombay High Court in CCE v. Manikgarh Cement 2010 (20) STR 456 has held that rendering taxable services at the residential colony established by the assessee for the benefit of the employees, is not an activity integrally connected with the business of the assessee and thus, credit is not allowed on the same. Gujarat High Court in the case of CCEx & Cus v.

Gujarat Heavy Chemicals Ltd. 2011 (22) S.T.R. 610 has also taken a similar view. Further, the definition of input service specifically excludes services provided to the employees, which are primarily used for their personal use or consumption. In that case, credit will not be allowed on maintenance services of staff colony.

Question

Mention the facilities which may be withdrawn and restrictions which may be imposed on a manufacturer of excisable goods under rule 12CCC of the Central Excise Rules, 2002 and rule 12AAA of the CENVAT Credit Rules, 2004.

Answer

As per Notification No. 16/2014 CE (NT) dated 21.03.2014 , following facilities may be withdrawn and restrictions may be imposed on a manufacturer of excisabl e goods under rule 12CCC of the Central Excise Rules, 2002 and rule 12AAA of the CENVAT Credit Rules, 2004:

(i) Assessee may be required to pay duty at the time of each removal of goods and monthly payment facility may be withdrawn.

(ii) Assessee may be required to pay excise duty without utilising CENVAT credit though he may continue to take CENVAT credit.

(iii) Assessee may be required to maintain records of the principal inputs on which CENVAT credit has not been taken.

(iv) Assessee may be required to intimate the Superintendent of Central Excise regarding receipt of principal inputs in the factory and the said inputs shall be made available for verification.

On committing any of the specified offences subsequently, every removal of goods from assessee?s factory may be ordered to be under an invoice countersigned by the Inspector/Superintendent.

Further, if any of the specified offence is committed for the first time, the period of imposition of restriction may not be for more than six months and on subsequent commitment of offence, restrictions may not be imposed for more than 1 year.

ILLUSTRATI0N : Eligible amount of credit : Hero Automobiles is engaged in the manufacture of motor cars/ Compute the amount of CENVAT credit admissible from the following particulars with suitable explanation where required : (May 2010,4 marlcs)

Goods Purchased	Duty paidht the time of purchase of the goods (Rs.)
(i) Raw Steel	5,00,000
(ii) Batteries	2,00,000
(iii) Cutting oil	70,000
(iv) Electric lamps for lighting manufacturing area	80,000

SOLUTI0N : computation of GENVAT credit admissible to assessee

[It is assumed that the ussessee is not etigible for SSI-exemption i.e,, its value of clearances during preceding year exceeds Rs. 400 lakhs, so that the credit of copital goods is admissrile onty upto 50% in the first year i.e, current year of acquisition and balance in the next year(s).]

Nature of item	Eligible as	Reason	Rs.
Raw steel	Input	Used in factory in manufacture of cars	5,00,000
Batteries	Inputs	Battery is an accessory of motor cars and since it is cleared along with motor car, its value must have been included in value of motor car; hence, credit is admissible as per Rule 2(kXii).	2,00,000
Cutting oil	Input	Used in factory and is related to manufacture	70,000
Electric lamps	Capital goods	It is electrical equipment faliing under Chapter 85of lst Schedule to CETA, hence, it is capital goods under Rule 2(a)(A)(i). Further, it is used within factory. Hence, eligible for credit. [50% of 80,000]	40,000
		Total CENVAT Credit admissible	**8,10,000**

ILLUSTRATI0N : Eligible amount of credit : Based on the following information, determine the CFNVAT Credit available for use in the current year under CENVAT Credit Rules, 2OO4 - (nOV. 2002)

Goods	Excise Duty paid at the time of purchase of goods (Rs.)
(a) Pollution Controll Equipments	25,000
(b) Spares for pollution control equipments	5,000
(c) Equipments used in office	12,000
(d) Storage Tank	10,000
(e) Paints used for painting machinery used	6,000
(f) Packing Material	4,000
(g) Lubricating oils	8,000
(h) High Speed Diesel Oil	7,000

S0LUTI0N : computation of GENVAT credit admissible to assessee

[It is assumed that the assessee is not eligibte for SSl-exemption i.e., its value of clearances during preceding year exceeds Rs. 400 lakhs, so that the credit of capitat goods is admissrile onty upto 50% in the first year i.e. current year of acquisition and balance in the next year(s).]

Nature of item	Eligible as	Reason	Rs.
Pollution Control Equipments	Capital goods	Specifically included in capital goods under Rule 2(a)(A)(ii) [50% of 25,000]	12,500
Spares for pollution control equipments	Capital goods	Specifically included in capital goods under Rule 2(a)(A)(iii) [50% of 5,000]	2,500
Office equipment	Not eligible	Specifically excluded from capitalgoods [Rule 2(a)]	Nil
Storage Tank	Capital goods	Specifically included in capital goods under Rule 2(a)(A)(vii) [50% of 10,000]	5,000
Paints used for painting machinery used	Input	Used in factory and indirectly related to manufacture.	6,000
Packing Material	Input	All forms of packing are eligible as input, as their value forms part of assessable value and packing is a process incidental to manufacture.	4,000
Lubricating oils	Input	Used in factory and indirectly related to manufacture	8,000
High Speed Diesel Oil	Not eligible	Specifically excluded from 'input' [Rule 2(k)(A)]	Nil
Total CENVAT Credit admissible			**38,000**

ILLUSTRATION : Eligible amount of credit : ABC Co. Ltd. procured the following inputs during the month of January. Determine the amount of CENVAT credit available with nejcessary explanation for the treatment of various items.

Items	Excise duty paid (Rs.)
Raw materials	52,000
Manufacturing machine	1,00,000
Light diesel oil	40,000
Greases	10,000
Office equipment	20,000
Paints	5,000

(Note : M/s. ABC Co. Ltd. is not eligible to avail exemption under a notification based on value of clearances in a financial year) (May 2011, 5 marles)

SOLUTION : Computation of CENVAT Credit available during Jan.

[Since the assessee is not eligible for SSI-exemption i.e., its value of clearances durtng preceding year exceeds Rs.400 lakhs, hence, the credit of capital goods is admissible only upto 50% in the firct year i.e. current year of acquisition and balance in the next year(s).]

Nature of item	Eligible as	Reason	Rs.
Raw materials	Input	Used in factory and related to manufacture	52,000
Manufacturing machine	Capital goods	Used within factory [50% 0f 1,00,000]	50,000
Light dieseloil	Not eligible	Used within factory [50% 0f 1,00,000]	Nil
Greases	Input	Used ib factory and related to manufacture	10,000
Office equipment	Not eligible	Specifically excluded from capital goods [Rule 2(a)]	Nil
Paints	Input	Used ib factory and related to manufacture	5,000
Total CENVAT Credit admissible			**1,17,000**

ILLUSTRATION : Eligible amount of credit :Determine amount of CENVAT credit available to Gangotri Manufacturing Ltd. in respect of the following items procured by them in April month -

Items	Excise duty paid (Rs.)
Raw materials	52,000
Capital goods used for generation of electricity for captive use within the factory	1,00,000
Motor spirit	40,000
Inputs used for construction of a building	1,00,000
Dairy and bakery products consumed by the employees	5,000
Motor vehicle falling under Tariff Heading 8704	4,50,000

(Note : The aggregate value of clearances of Gangotri Manufacturing Ltd. for the preceding financial year is Rs.450 lakh) (RTP Nov. 2011)

SOLUTION: Computation of CENVAT Credit available

[Since the assessee is not eligible for SSI-exemption i.e., its value of clearances during preceding year exceeds Rs. 400 lakhs, hence, the credit of capital goods is admissible only upto 500h in the first year i.e. current year of acquisition and balance in the next year(s).]

Nature of item	Eligible as	Reason	Rs.
Raw materials	Input	Used in factory and related to manufacture	52,000
Capital goods used for generation of electricity for captive use within the factory	Capital goods	Speicifically eligible and included within capital goods under Rule 2(a) and eligible even if such capital goods used outside the factory. [50% 0f 1,00,000]	50,000
Motor Spirit	Not eligible	Specifically excluded from 'input' [Rule 2(k)(A)]	Nil
Inputs used for construction of building	Not eligible	Specifically excluded from 'input', as used for construction of building, etc. [Rule 2(k)(B)]	Nil
Dairy and bakery products consumed by the employees	Not eligible	Specifically excluded from 'input', as used primarily for personal use of employees [Rule 2(k)(E)]	Nil
Motor vehicle falling under Tariff Heading 8704	Not eligible	Specifically excluded from capital goods [Rule 2(a)(A)(viii)l (Assumed that they are not dumpers and tippers)	Nil
Total CENVAT Credit admissible			**1,02,000**

ILLUSTRATI0N : Imported goods - No credit of BCD - Extent of credit : M/s. AJ imported some inputs and paid Basic Customs Duty Rs. 5 lakhs, surcharge on customs duty Rs. 50,000 and CVD Rs. 1 lakh [Rs. 90,000 under section 3(1) of Customs Tariff Act,1975 and Rs. 10,000 under section 3(5) of Customs Tariff Act, 1975]. Calculate the amount that he can claim as Cenvat credit.

Would it make any difference, if the assessee is not a manufacturer, but a service provider?

(May 2006,3 marks) (Similar Nov. 2002 - 3 marks, Nov.2008 - 1 mark)

SOIUTION : The Cenvat Credit available is as follows :-

Particulars	Manufacturer 'AJ'	Service provider 'AJ'
Basic Customs Duty	Credit Not allowed to anyone	Credit Not allowed to anyone
CVD under Section 3(1)	Rs. 90,000	Rs. 90,000
Special CVD under Section 3(5)	Rs. 10,000	Credit of Special CVD is not allowed to service provider
Total	Rs. 1,00,000	Rs. 90,000

ILLUSTRATION : Credit fulty allowed even if buyer doesn't pay full invoice or supplier allows discount,except when supplier claims refund of duty. : A manufacturer purchased certain inputs from Z. The assessable value was Rs. 20,000 and the Central Excise duty was calculated at Rs. 3,296 making a total amount of invoice at Rs. 23,296. However, buyer-manufacturer paid only Rs. 20,800 to Z in full settlement of this bill.

How much CENVAT credit can be availed by manufacturer and why?

(Nov.2008, 3 marks) OR

Discuss the reversibility or otherwise of CENVAT credit in the following cases : If supplier gives reduction in price after clearance.

(May 2010, 2 marks)

SOLUTION : As per Rule 3(1) read with Rde 4(1) of the CENVAT Credit Rules, 2004, CENVAT Credit is allowed of duty paid on 'input' on receipt thereof in the factory.

CBEC Circular No. 877/15/2008-CX, dated 17-11-2005 has clarified that if -

- Manufacturer avails credit of amount of duty paid by supplier as reflected in excise invoice,
- But subsequently, after clearance, the supplier allows some trade discount or reduces the price, without reducing the duty paid by him,
- Then, the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit,
- However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit,
- Thus, it may be confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price.
- Thus, in view of above, even if manufacturer has paid only 20,800 to Supplier Z, he will be entitled to full credit of duty of Rs. 3,296.

ILLUSTRATION : EC/SHEC to BED - Rule 3(7Xb) : X Ltd. is a manufacturer cum sen ice provicler. They had a balance of ECISHEC credit of t 10,000 on l-3-2015 and general credit of Rs. 50,000. New credit of EC/ SHEC taken during March and April 2015 is Rs. 9,000 as manufacturer and Rs. 8,000 as service provider and general credit of BED/service Tax is Rs. 70,000. There were no clearances or service provicled in March. Duty on clearances of final product in April is Rs. 1,00,000 while service tax on output services is Rs. 3,00,000 (service tax) plus Rs. 9,000 EC/SHEC. Determine manner of use of credit of EC/SHEC.

	BED	Service Tax	EC / SHEC	
			That can be used for BED	Usable only for EC/SHEC
1. Sum payable				
(a) Excise	1,00,000	-	-	-
(b) Service tax	-	3,00,000	-	9,000
Total of (1)	1,00,000	3,00,000	-	9,000
2. Credit available				
(a) Opening	-	50,000	-	10,000
(b) New credit	-	70,000	9,000	8,000
(c) Use of EC/SHEC to pay BED	9,000	-	(9,000)	-
Total of (2)	9,000	1,20,000	-	18,000
3. Sum payable	91,000 payable	1,80,000 payable	-	9,000 credit balance

ILLUSTRATTON : CENVAT Credit - Availment and Utilization : M/s. R & Co. Ltd. have cleared their manufactured final products during April, 2Ol5,and the duty payable is Rs. 2,40,000 plus education cesses as applicable. Given below are the details of excise duty/service tax paid by them during the month at the time of purchase of goods/procurement of input services :

		(Rs.)
1.	On inputs (RM) [(Invoice for excise duty of Rs. 20,000 paid was received by the assessee on 04-05-2015)]	1,00,000
2.	On input service	20,000
3.	On welding electrodes for repairs and paintenance of capital goods	5,000
4.	Fuel (exluding HSD/Petrol)	6,000
5.	Storage Tank	8,000
6.	Tubes and Pipes (used in the factory)	14,000
7.	Air-conditioner for the office of the factory manager	12,000

Note : All the above payments are exclusive of education cesses as applicable.
Find the total duty payable by the assessee for the month of April, 2015 after taking into account the Cenvat credit available. (Nov. 2010, 8 marks)

SOLUTION : EC and SHEC are not levied on excise duty; hence, duty on inputs, capital goods and final product are not charged to EC/SHEC. However, EC/SHEC is levied on input services and credit of EC/SHEC on input service received on or after 1-3-2015 can be used to pay Basic Excise Duty. They all are aggregated under a single column termed ‘CENVAT’ in the table below.
Further, it is assumed that the assessee is not eligible for SSI-exemption for clearances upto Rs. 400 lakhs, hence, credit of capital goods shall be eligible only upto 50% of the duty.

Item	Treatment	CENVAT (Rs.)
1. Intputs (RM) [1,00,000-20,000)	Though credit may be availed on receipts of input, but credit is available only on strength of invoice. Since invoice is received in May, hence, credit not available in the month of April. - Rule 9(l) and Rule 4(1).	80,000
2. Input Service	Credit admissible under Rule 2(1) read rvith Rules 3(1) and 4(7). It is assumed that invoice thereof has been received.	20,600
3. Welding Eler:trodes used for rapair and maintenance of capital goods	Credit is admissible. Welding electrodes are covered under Chapter 83 of the Tariff, hence, it is not one of the listed capital goods. But, since it is used within factory and has relation with manufacture, it is eligiblc as'input' under Rule 2(k).	5,000
4 Fuel	Since fuel is excliuding HSD/petrol, hence, it is admissible as input under Rule 2(k) assuming its used has relation with manufacture.	6,000
5 Storage Tank	Specifically listed in capital goods under Rule 2(a)(A)(vii)-50% credit	4,000
6 Tubes and Pipes (used in the factory)	Specifically listed in capital goods under Rule 2(a)(A)(vii)-50% credit (It is assumed that they are not used as raw material in manufacture of final product in which case, they would be 'input')	7,000
7 AC in office	Equipment used in office are not 'capital goods' under Rule 2(a)	-
Total CENVAT Credit Availed		1,22,600
CENVAT /Excise Duty payable		2,40,000
Sum payable in Cash [Duty payable - Credit availed]		1,17,400

LLUSTRATION : CENVAT Credit ' Availment and Utilization : A Small Scale Industrial unit (SSI) is required to pay the following Central Excise duties by January 5,2016 for clearances effected from its factory in respect of final products manufactured during the month of December, 2015 :

Basic Excise Duty (B.E.D.) (in Rs.)	54,000
National Calamity Contingent Duty (N.C.C.D.) (in Rs.)	1,000

- Balance available as credit at the beginning December,20t5 were: B.E.D. : Rs. 24,000, N.C.C.D. Rs. 2,000
- No inputs were received during the month. However, certain inputs were received on January 1,2016 on which total duty paid by the suppliers of inputs was: B.E.D. : Rs. 16,000
- Excise duty paid on Capital goods received during the month was as follows: B.E.D. : Rs. 20,000. For the month of December, 2015 you are required to determine:

(i) The credit available for utilisation;

(ii) The permissible extent to which such credit availabre may be utilised against payment of B.E.D., N.C.C.D.;and

(iii) The B.E.D. payable through account currenr (P.L.A.).

(Nov. 2006, 4 + 2 + 2 = 8 marks)

SOTUTION : The relevant points/notes are-

- Separate column will be required for NCCD, which can be used only for payment of NCCD.
- Credit is available on inputs on receipt thereof in factory. Since input were received on 1- 1 -201 6, credit thereof cannot be taken in Dec., 2015. It can be taken only in January, 2016.

Coruputation of credit available, utilized and duty paid for Dec., 2015 by a SSI unit

Particulars	CENVAT (BED)	NCCD
Opening Balance	24,000	2,000
Add : credit on capital goods received in Dec. 2015 (Since assessee is an SSI unit, it is eligible for SSI exemption and, therefore, 100% credit on capital goods in available in the year of receipt)	20,000	Nil
Total credit available	44,000	2,000
CENVAT payable in Dec. 2015	54,000	1,000
Less : Credit set-off (to the extent of - • duty payable or • credit available, whichever is less)	44,000	1,000
Duty payable in cash through account current (Duty payable - Credit set-off)	10,000	0
Balance CENVAT Credit carried forward	0	1,000

ILLUSTRATION : Computation of amount of credit to be Wersed - Rule 3(5) ; PQR Ltd., Ghaziabad purchased plastic granules valued Rs. 1,16,000 (inclusive of central excise Rs. 16,000) for manufacture of plastic moulded chairs. It availed CENVAT credit of excise duty of Rs. 16,000 paid on the said inputs.It subsequent cleared the said inputs as such from the factory in the following manner -

(a)	Sales to Sansar Ltd. (purchase price : t 20,000)	Rs. 40,000
(b)	Sales to Krishna Trading Co. (purchase price: Rs.10,000)	Rs. 10,000
(c)	Clearance to PQR Ltd.'s own factory at Kanpur (purchase price : Rs. 70,000)	Free of cost

PQR Ltd. has sought your advice on the excise duty payable by it on the above clearances.

Give your advice in the matter. (CS June 2006)

SOLUTION : As per Rule 3(5), in case of removal of input as such, amount payable = CENVAT Credit availed on such input. Actual sale price, etc. are not relevant. Since whole of the input of (I lakh has been removed, hence, whole of the sum of credit of Rs. 16,000 shall be reversed. Separate invoices will be raised, which will indicate the amount payable on each removal as follows -

Sales to Sansar Ltd. [20% of inputs X Rs. 16,000 credit]	3,200
Sales to Krishna Trading Co. [10% of inputs X Rs. 16,000 credit]	1,600
Clearance to own factory at Kanpur [70% of inputs X Rs. 16,000 credit]	11,200
Total amount paid under Rule 3(5)	16,000

ILLUSTRATION : Input, Dutiable Intermediate Goods and Exempted Final Product - Cenvat Credit and Computation of duty payable in cash : M/s. Vipin Ltd. purchased raw material 'A' 10,000 Kg. @ Rs. 80 per kg. plus excise duty. The said raw material was used to manufacture intermediate product 'p'. The said intermediate product was captively used for the manufacture of finished product 'Z' which was exempt from excise duty. The other information are as under -

(i) Processing loss : 2% of inputs in manufacture of 'p'

(ii) Assessable value of 'P' : { 100 per kg.

(iii) Assessable value of 'Z' :(20 lac (for total output)

(iv) other material 'M'used in the manufacture of 'z' . 2 lac plus excise duty.

(v) Duty on capital goods imported during the period and used in the manufacture of 'p'

- Basic customs duty : Rs. 20,000
- Additional duty of customs under section 3(1) of the Customs Tariff Act,1975 : Rs. 10,000 ; and
- Additional duty of customs under section 3(5) of the Customs Tariff Act,1975 : Rs. 4,000.

(vi) Rate of Central excise duty on 'A', 'M' and 'P' : 12.50%.

M/s. Vipin Ltd. is not eligible for SSI exemption under Notification No. 8/2003-C.E.

Compute :

(i) Amount of CENVAT credit available, and

(ii) Central excise duty payable by M/s. Vipin Ltd. (May 2014, 5 marks)

Answer : The relevant computations are as follows -

A. Gross Excise Duty payable	
(a) Final Product 'Z'	EXEMPT
(b) Output ol intermediate product 'P' [10,000 Kg. - 2% loss]	9,800 kG.
(c) Value of intermediate product 'P' : 9,800 Kg. X Rs.100 per Kg	9,80,000
(d) Duty on intermediate product 'P' = 12.50% of Rs. 9,80,000	1,22,500
B. Cenvat Credit available	
(a) Raw Material A :12.50% of 10,000 Kg. A X Rs. 80 per Kg. [Processing loss of inputs will be eligible for credit.]	1,00,000
(b) Raw Materinl M:Used exclusively in manufacture of product 'Z', which is exempt, hence, will not be eligible for credit	NIL
(c) capital Goods imported during the period and used in the manufacture of 'P'- Credit allowable as follows:	
(i) Basic customs duty	Not Eligible
(ii) Additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 - Eligible for credit only upto 50% in 1st year [50% of Rs. 10,000 CVD]	5,000
(iii) Addilional duty of customs under section 3(5) of the Customs Tariff Act, 1975 - Eligible for 100% credit in the first year itself [100% of Rs. 4,000 Spl. CVD]	4,000
Total Credit	1,09,000
C. Cash payment [Rs. 1,22,500 - Rs. 1,09,000]	13,500

ILLUSTRATION : Job work : Determine cenvat credit treatment in following cases in hands of X Ltd. :

1. Inputs purchased on 5-3-2015 were directly sent to job-worker and received by him on 10-3-2015 under an invoice where X Ltd. was buyer and job-worker was consignee. Total credit on inputs was Rs. 50,000. The job-worker returned 60% inputs after processing on 1-9-2015 and balance 40% on 10-9-2015.
2. Inputs, first received in factory on 1-3-2015, were sent as such to a job worker on 2-3-2015 (received by job-worker on 6-3-2015) and were returned back by job-worker on 1-9-2015, assessable value being Rs. 20,000, Excise duty @ 12.5%.

(May 2007, 6 marks)

SOLUTION :

Case	Starting date	Due date = Starting date + 180 days	Actual Date of receipt by X Ltd.	Treatments
(1) Credit taken by X Ltd. on 10-3-2015 Rs. 50,000	10-3-2015 (60%)	6-9-2015	1-9-2015	No reversal
	10-3-2015 (40%)	6-9-2015	10-9-2015	Reverse 40% of 50,000 i.e., Rs. 20,000 on7-9-2015 (monthly due date being 5-10-2015) and take re-credit on 10-9-2015.
(2) Credit taken by X Ltd. on 1-3-2015 Rs. 2,500	2-3-2015	29-8-2015	1-9-2015	Reverse (2,500 on 30-8-2015 (monthly due date being 5-9-2015) and take re-credit on 1-9-2015.

ILLUSTRATI0N : Excise duty net of CENVAT; X Ltd. reports following transactions in October 2015:

(i) The manufacturer received inputs with invoice evidencing payment of duty of Rs. 42,800 on 2nd. The invoice was marked 'Original for Buyer'.

(ii) 400 pieces of Final products were dispatched under Invoice on 6th. Assessable value was Rs. 80 per piece and excise duty rate was 12.50%.

iii) 1,000 pieces of input 'I' were sent outside for job work on 10th. When the inputs were received, credit of duty of Rs. 15,000 was taken on those inputs.

(iv) Some inputs were purchased from a manufacturer in Chennai on 5-3-2015. These were diectly dispatched from factory of the supplier to factory of job worker and the inputs were received by the job-worker on 10-3-2015 (the job-worker was shown as consignee in the supplier's in the supplier's invoice and assessee-manufacturer was shown as the buyer). Duty paid on the inputs is Rs. 40,000. Out of those inputs, 45% of inputs were received after carrying out the job work, on 18th.

(v) An imported consignment of raw materiais was received on 19th. Material were not imported directly, but was purchased from an importer. The invoice of importer shows that customs duty paid was Rs. 26,000, special duty of Rs. 3,000, Additional customs duty paid was Rs. 13,200 and anti-dumping duty paid was Rs. 5,400. The importer is registered with Central Excise authorities.

(vi) Goods worth Rs. 2.00,000 were dispatched on 24th, rate of duty was 12.50%.

There was no opening balance in PLA but opening balance in Cenvat Account on 1st October was Rs. 40,000.

Calculate the amount of excise duty payable. (ICWN Inter Dec.2006)

SOLUTION :

The relevant computations, are -

(1)	Credit on inputs of which original invoice available and were received on 2nd	42,800
(2)	Input 1st sent outside for job-work on 1Oth (Input on which credit has been taken may he sent outside for job-work without reversal of credit as per Rule **afl@**. Since credit was taken earlier, hence, no reversal required)	-
(3)	Input directly sent to job-worker - As per Rule 4(5)(a) read with Rule 4(1) of the CCR, credit on inputs is allowed to manufacturer, if goods are sent directly to the job-worker from supplier's premises and job-worker is shown as consignee. The credit is allowed to manu-facturer on receipt of inputs by job-worker i.e., credit of (40,000 had been ailowed to manufacturer on l0-3-2015. Since inputs have not been received back within 180 days. from 10-3-2015 i.e., upto 6-9-2015, hence, credit wouid have been reversed on 7-9-2015 (payable on monthly basis on due date being 5-10-2015). This credit can be taken on subsequent receipt of inputs in the factory viz. on i8-10-2015 viz.45% of Rs. 40,000.	18,000
(4)	In case of imported goods, invoice of importer is also an eligible document. However, credit available of Additional dutyof customs (CVD)(13,200 and Special Additional Duty (SpecialCVD) Rs. 3,000. No credit is allowed of BCD and Anti-dumping duty.	16,200
(5)	Opening Balance in Cenvat Account { 40,000 on Ist October /e.ss Reversal under Rule a(5)(a) on due date 5-10-2015 viz. Rs. 40,000 (for reversal to be made on.7-9-2015) as per point (3) above.	NIL
Total CENVAT Credit [(l) + (2) + (3) + (4) + (5)]		77,000
Dutv payable [400 piece cleared on 6th Rs. 32000 + clearance on24th Rs. 2 lakh = 2,32,000] X 12.50%		29,000
Balance in CENVAT credit Account after paying excise duty [Rs. 72,000 - Rs. 29,000]		48,000

ILLUSTRATI0N : Exempted as well as taxable services: Mr. Happy, a service provider, has provided services of Rs. 1,00,00,000. Out of this, Rs. 70,00,000 are taxable output services and Rs. 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. Rate of service tax, excluding EC and SAHEC is l2%.

Calculate the total amountpayableincludingServicetax, EC and SAHEC byMr. Happy by GAR-7 challan. (May 2010,5 marks)

S0LUTI0N : Since Mr. Happy has taken option to pay prescribed amount on value of exempted senices viz. 6% on value of services under Rule 6(3)(i), hence, he can avail full credit.

The payment required to be made by hirn shall be (separate coltnrut t'or EC/SHEC, iuhich can be used. only

	CENVAT	EC	SHEC
Credit of service tax paid on input services	6,00,000	12,000	6,000
Less : 6% of value of exempted services Rs. 30 lakhs i.e., Reversal (no EC/SHEC)	1,80,000		
Balance Credit available	4,20,000	12,000	6,000
Ser-vice tax on taxable output services @ 12% on Rs. 70 lakhs	8,40,000	16,800	8,400
Total amount payable by Mr. Happy by GAR - Z Challan	4,20,000	4,800	2,400

ILLUSTRATION : Rule 6(3) : M/s TCCL Bank Ltd., engaged in providing services by way of extending deposits, loans or advances, do not maintain any separate accounts and have paid Rs. 1,00,000 as service tax and excise duty towards input services and input material used by them during the month of April, 2015 with EC Rs. 2,000 and SHEC Rs. 1,000. They have used the inputs/input services for partially exernpred and partially taxable services. They are now providing the output services for which current tax liabfity is Rs. 1,40,000 for April, 2015. How much credit out of Rs.1,00,000 can be availed by them for paying output service tax liability, if they do not maintain any separate accounts?

(Modified May 2007, 4 marks)

SOLUTI0N : Since the assessee is a bank and is engaged in providing services by way of extending deposits, loans or advances, hence, it need not maintain separate iccountsas per Rule O1Z;. es per Rule O13i;, m" amount payable shall be computed as follows -

	CENVAT	EC	SHEC
Credit of service tax/excise duty paid on input services and inputs	1,00,000	2,000	1,000
Less : 50% reversal under Rule 6(3)	50,000	1,000	500
Balance Credit available	50,000	1,000	500
Service tax on taxable output services	1,40,000	2,800	1,400
Amount payable in cash	90,000	1,800	900

ILLUSTRATION : Rule 6 - Service Provider : Planner Ltd. is pr:oviding taxable as well as exempted services. The value of taxable and exempted services is Rs.16 lakh and Rs. 24 lakh respectively. All the inputs / input services are used by the company in providing taxable as well as exempted services for which separate accounts are not maintained. The total input credit available is Rs. 3 lakh on inputs/input services and Rs. 6 lakh on capital goods. Find the amount payable by Planner Ltd. under the CENVAT Credit Rules, 2004. **(CS lune 2009, 5 marks)**

SOLUTION : The amount payable by Planner Ltd. under Rule 6 shall be -

1.	On inputs/input services [Rule 6 (3) / (3A) 1	Rule 6(3)(i) : Pay 6% of value of exempted services < 24 lakh	1,44,000
		Rute 6(3)(ii) read with Rule 6(3A) : Pay pro rata sum as follows : Total lnput Credit (3 lakhs X Value of exempted services t 24 lakhs - Total value of taxable as well as exempt services viz. (40lakhs	1,80,000
		Lower of the aforesaid two at cssessee's option [Data as to applicabilitlt of option under Rule 6(3)(iii) is not availablel	1,44,000
2.	On capital goods [Rule 6 (4) 1	No reversal required, as reversal is required only if capital goods are used exclusively in provision of exempted services, which is not the case.	NIL
		Total sum payable	1,44,000

ILLUSTRATION : Rule 11(3) - Goods exempted from 100%duty (unconditionaly) . Credit of inputs to be reversed : The goods manufactured by Royal ltd. have been exempted from excise duty with effect from 1st March, 2016. Earlier these goods were liable to duty @ 12.5%. Its inputs were liable to excise duty @ 20%. Following information is supplied on 1st March, 2016 :

What would be your answer if the balance in CENVAT receivable account as on lst March, 2016 is Rs. 26,800
(Modified CS Dec.2009, 8 marles)

(i) The inputs costing Rs. 1,44,000 (inclusive of duty) are lying in stock.

(ii) The inputs costing Rs. 76,800 (inclusive of duty) are in process.

(iii) The finished goods valuing Rs. 4,80,000 are in stock, input cost (inclusive of duty) is 50% of value.

(iv) The balance in CENVAT receivable accounr is Rs. 1,76,800.

The department has asked Royal ltd. to reverse the credit taken oninputs referred above. However, Royal Ltd' contends that credit once validly taken is indefeasible and not required to be reversed. Decide.
What would be your answer if the balance in CCr recevable amont as on 1st March, 2016 is Rs. 26,800 ?

SOLUTI0N : The solution has the following parts -

Part I : Royal Ltd contentions :

- Though Royal Ltd' contentions are correct that credit once validly taken is index feasible and not required to be reversed, but such contention stands only in absence of any specific provision of the Act or rules providing for reversal.
- Section 37 of the Central Excise Act, 1944 empowers Central Government to make rules for allowing credit of duty/tax and also empowers to make provisions for reversal/non-utilization/ lapsing of suct credit. In this case, final product of Royal appears to have been unconditionally exempted from duty, which exemption is mandatory as per section 5A(1), hence, as per Rule 11(3), reversal is also mandatory.
- Royal Ltd.'s contentions are not tenable in law.

Part II : Computation of amount reversible.'Since, the question itself says that the value of inputs is inclusive of duty, hence, duty will be calculated by making back calculations as follows -

	Amount (incl. of duty)	Rate of duty)	Duty = Cum-duty X Rate / (100 + Rate)
Inputs lying in stock	1,44,000	20.00%	24,000
laputs lyrng in process	76,800	20.00%	12,800
lnput content in finished goods (50% of 4,80,000)	2,40,000	20.00%	40,000
Amount to be paid by Royal Ltd.			76,800
Case I : Balance in CENVAT Receivable A/c			1,76,800
Balance of CENVAT credit after paying aforesaid sum. This shall LAPSE			1,00,000
Case 2: Balance in CENVAT Receivable A/c			26,800
Sum payable in cash after adjusting CENVAT Credit balance			50,000

ILLUSTRATION : Refund under Rule 5.' Ascertain whether the refund of Service tax paid on input services can be claimed in the following case -

Total credit of Service Tax on input services Rs. 6,000.Total turnover of output service Rs. 30,000.

Output service exported Rs. 20,000. (Marks 3, Nov, 2009)

SOLUTION : As per Rule 5, the refund shall be admissibletothe extent of amount computed as performula or the amount lying in balance. Hence, the two computations are below -

Part 1 - CENVAT Credit balance: Total credit taken	6,000
Less : Service tax on taxable services other than exports [30,000 - 20,000] x 12.36%	1,236
Balance	4,764
Part 2 - Formula based amount : $\frac{\text{(Export turnover of services)}}{\text{Total Turnover}}$ X Net CENVAT credit = $\frac{20,000}{30,000}$ X 6,000	4,000
Lower of the two is admissible as refund	4,000

The balance credit after refund under Rule 5 would be : Rs. 4,764 - 4,000 refunded : Rs. 764

ILLUSTRATI0N : CENVAT Credit & Refund under Rule 5: U&V Ltd. manufactures 10,000 units of Product 'W', assessable value of which is Rs. 400 per unit. Duty payable is 12.50%. Duty paid on raw material is Rs. 3,00,000. U&V Ltd. sells 2,000 units in India and 8,000 units are exported through a merchant exporter. What is CENVAT credit available and what is the duty payable through personal ledger account (PLA) ? Can U&V Ltd. get any refund of CENVAT credit ? (CS June 2004)

S0LUTION : As per Rule 5, the refund shall be admissible to the extent of amount computed as per formula or the amount lying in balance. Hence, the two computations are below -

Part 1 - CENVAT Credit balance: Total credit taken	3,00,000
Less : Excise duty paid using Cenvat on goods sold in India [2000 X 400 i.e. Rs. 8 lakhs] X 12.5%	1,00,000
Balance	2,00,000
Part 2 - Formula based amount : $\frac{\text{(Export turnover of services)}}{\text{Total Turnover}}$ X Net CENVAT credit = $\frac{8,000 \text{ X } 400 \text{ i.e. } 32 \text{ lakh}}{10,000 \text{ X } 400 \text{ i.e. } 40 \text{ lakh}}$ X 3 lakh	2,40,000
Lower of the two is admissible as refund	2,00,000

ILLUSTRATI0N : Distribution of credit : Power Rise Industrial Corporation (PRIC) provides services from its office located at Saurashtra while its head office is located at Gorakhpur. The excise duty paid at Saurashtra office of PRIC for the month of January is as follows:-

Excise duty / Service Tax paid on :-

Inputs used in providing output service 1,80,000

Capital goods purchased and involved in providing output service 2,50,000

Input services used in output service 4,20,000

The invoices in respect of aforementioned inputs, capital goods and input services are in the name of Gorakhpur office. Compute the amount of the CENVAT credit admissible to Saurashtra office of PRIC for the month of January. (RTP NEW June 2009)

S0LUTI0N : Computation of CENVAT credit adrnissible to Saurashtra office of PRIC for January

Case	Treatment	Rs.
Inputs	Invoice in name of Head Office Gorakhpur - HO must be registered & must issue an invoice/bill/challan to Saurashtra Office - Saurashtra Office can take credit on the basis of invoice issued by HO - Rule 7A	1,80,000
Capital goods	Invoice in name of Head Office Gorakhpur - Gorakhpur office must issue an invoice / bill / challan to Saurashtra Office - Saurashtra Office can take credit on the basis of invoice issued by H.O. - Rule 7A [50% credit in 1st year]	1,25,000
Input Services	Rule 7A doesn't apply to input service - But, Rule 7 applies - HO may be taken as ISD (registered) - Since service exclusively used for Saurashtra Office, hence, credit will be distributed to Saurashtra office only	4,20,000
	Cenvat Credit admissible	5,45,000

Question

Answer the following questions with reference to Notification No. 8/2003 -CE dated 01.03.2003 relating to small scale units:

(i) What is the eligible turnover for claiming exemption under the said notification?

(ii) How will the turnover be computed when the manufacturer has more than one factory?

(iii) What does 'value' mean for the purposes of the said notification?

(iv) Comment on the availability of CENVAT credit on capital goods under the said notification.

(v) What is the treatment in respect of 'clearances of excisable goods without payment of duty' as specified in the said notification?

Answer

(i) The eligible turnover for claiming exemption under the said notification is Rs.400 lakh. The units whose value of clearances computed in accordance with Notification No.8/2003 is less than or equal to Rs. 400 lakh (Rs.4 crore) in the previous financial year are eligible for the benefit of exemption in the current financial year.

(ii) When a manufacturer clears the goods from one or more factories, the turnover of all the factories have to be aggregated for the purpose of claiming exemption under the said notification.

(iii) The value for the purposes of the said notification would mean the value fixed und er section 4 or section 4A or the tariff value fixed under section 3(2).

(iv) The units availing the benefit of said notification cannot avail CENVAT credit on inputs.

However, they can avail CENVAT credit on capital goods but the same can be utilized for payment of duty on final products only after the turnover reaches Rs. 150 lakh.

(v) Paragraph 3A of the said notification lays down that for computing the value of clearances of all excisable goods for home consumption (Rs. 400 lakh), the following "clearances of excisable goods without payment of duty" shall not be taken into account, namely-

(a) to a unit in the Free Trade Zone

(b) to a unit in the Special Economic Zone

(c) to a 100% Export Oriented Undertaking

(d) to a unit in the Electronic Hardware or Software Park

(e) supplies to United Nations or an international organization for their official use or supplied to projects funded by them on which exemption of duty is available in terms of Notification No.108/95-CE dated August 28, 1995.

Question

An SSI manufacturer may like to pay full duty even when he is eligible for SSI exemption .

(a) Can he do so?

(b) Why he would like to pay full duty?

(c) What is the duty payable?

Answer

(a) Yes, the concerned manufacturer can do so. In such a situation, he can avail CENVAT credit on inputs.

(b) He would like to pay full duty if his customer wants to avail CENVAT credit and if duty paid on his inputs is quite substantial. As a result, the effective cost of the buyer w ill be reduced.

(c) Duty payable will be normal duty less concession, if any available under any other exemption notification.

Question

Explain any five instances when small scale exemption will be available to the excisable goods bearing the brand name of another person.

Answer

SSI Notification No. 8/2003 dated 01.03.2003 denies the benefit of the exemption on clearances bearing a brand name of another person. This means that such clearances would attract normal rate of duty. However, in the following exceptional situations small scale exemption will be available on the excisable goods bearing the brand name of another person:

(A) Manufacturers of components/parts of any machinery/equipment/appliances for use as original equipment in the factory Where the manufacturer manufactures components/parts of any machinery, equipment or appliance for use as original equipment in the factory even if such components have a trade name or brand name, the exemption would be available subject to provisions of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

(B) Goods bearing the brand name of KVIC/NSIC/SSIDC etc.

When the goods bear the brand name of Khadi and Village Industries Commission (KVIC) or a State Khadi and Village Industry Board or National Small Industries Corporation (NSIC) or a State Small Industries Development Corporation (SSIDC) or a State Sm all Industrial Corporation, such goods are entitled to SSI exemption.

(C) Account books, registers, writing pads and file folders: Account books, registers, writing pads and file folders falling under heading 4820 or 4821 of the First Schedule of the Central Excise Tariff are entitled to small scale exemption even if they bear a brand name or trade name whether registered or not, of another person.

(D) Packing materials: SSI exemption is available in case the specified goods are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear even if they bear the brand name of others.

(E) Goods manufactured in rural area Goods bearing the brand name of another person, when manufactured in a rural area, are eligible for SSI exemption.

Question

A small scale manufacturer had achieved sales of Rs. 89 lakh during the preceding year.

Turnover achieved during current year was Rs. 1.52 crores. Normal duty payable on the product is 12.5%. Find the total excise duty paid by the manufacturer during current year in each of the following cases:-

(A) If the unit has availed CENVAT credit.

(B) If the unit has not availed CENVAT credit.

Note: The manufacturer is ready to avail the benefit of any exemption notification as is available under the Central Excise law.

Answer

(A) If the unit has availed CENVAT credit: In this case, the unit is not eligible for SSI exemption under Notification No. 8/2003-CE dated 01.03.2003 and thus, is required to pay duty at normal rates on the entire turnover i.e. 12.5% on Rs.1.52 crores which works out to be Rs. 19,00,000/-.

(B) If the unit has not availed CENVAT credit: In this case, the unit is eligible for SSI exemption under Notification No. 8/2003-CE dated 01.03.2003 and assuming that the manufacturer has availed the benefit of SSI exemption, duty payable will be computed as under: On Rs. 150 lakhs = NIL (ii) On subsequent sales = Normal duty @ 12.5% i.e. 12.5% of Rs. 2,00,000 which works out to be Rs. 25,000/-

Question

(i) Is simultaneous availment of CENVAT credit under CENVAT Credit Rules, 2004 and SSI exemption under Notification No. 8/2003-CE dated 01.03.2003 permissible? Explain.

(ii) In order to be exempt from obtaining registration, a SSI unit has to give a declaration in the prescribed form when its turnover exceeds Rs. 140 lakh per annum. Is it true?

Answer

(i) No, simultaneous availment of CENVAT credit and SSI exemption is not allowed. In other words, a manufacturer cannot avail CENVAT credit in respect of some products manufactured by it and exemption for others at the same time. He can take only one benefit at a time in respect of all products manufactured, i.e. either CENVAT credit or SSI exemption.

This view has been upheld in CCE v. Ramesh Foods Products (2004) 174 ELT 310 (SC), where it has been held that simultaneous availment of CENVAT credit on some products and exemption on some other products is not permissible.

However, this restriction does not apply to inputs used in manufacture of specified goods bearing brand name or trade name of another person, which are ineligible for grant of SSI exemption in terms of proviso to para 2(iii) of Notification No. 8/2003-CE dated 01.03.2003.

Thus, if an SSI unit is manufacturing branded (with other?s brand) as well as unbranded/self branded goods, it can avail exemption in respect of unbranded/self branded goods. In respect of branded goods, he can avail CENVAT credit and pay duty on the final products.

(ii) No. As per Notification No. 36/2001-CE (NT) dated 26.06.2001, an SSI unit whose turnover exceeds Rs. 90 lakhs per annum has to give a declaration in the prescribed form, for availing exemption from obtaining registration .

Question

M/s. RKR manufactures footwear bearing the unregistered brand name "Lotus" which is registered by M/s. Lotus Industries Ltd. for manufacture of detergent powder. When the Department disallowed the benefit of small scale exemption to M/s. RKR, under Notification No. 8/2003-C.E. on the ground that their goods are bearing brand name of another person, it contended that M/s. Lotus Industries Ltd. owns brand name Lotus only for detergent power and not for footwear. Examine, with the help of a decided case law, if any, whether, in the instant case, SSI exemption is available to M/s. RKR.

Answer

No, SSI exemption is not available to M/s. RKR. The facts of the given case are similar to the case of CCE v. Rukmani Pakkwell Traders 2004 (165) E.L.T. 481 (S.C.). In the instant case, Supreme Court, on the basis of the following observations, reversed the Tribunal?s decision that SSI exemption is available to the assessee and held that the assessee is not so entitled to SSI exemption:- (i) Firstly, the Tribunal?s reliance upon Circular No. 88/88-CX.6 dated 30-12-1988 was erroneous. The circular clarified that if there were more than one registered owner in respect of the same trade mark, then merely because the other person had the same registered mark in some other goods, would not preclude the owner of the trade mark from getting the benefits of the SSI exemption.

Thus, said circular had no application to the facts of this case as the assessee was not the owner of the trade mark.

(ii) Secondly, the exemption notifications have to be strictly construed. The SSI exemption notification clearly provides that the exemption will not apply if the specified goods bear a brand or trade name of another person, but the notification nowhere stipulates that the specified goods must be same or similar to the goods for which the brand name or trade name is registered. Consequently, the benefit of exemption would be lost even if the brand name or trade name is used in respect of different goods.

In other words, even if brand name of another person is used in respect of goods of other class or kind (different from the nature of the goods of the owner of brand name), benefit of SSI exemption shall not be available.

In view of the aforementioned provisions, M/s RKR will not be entitled to the SSI exemption as their goods bear the brand name "LOTUS" owned by M/s. Lotus Industries Ltd. The fact that M/s. RKR uses the brand name on footwear while the same is being used by M/s. Lotus Industries Ltd. on detergent powder, is of no relevance.

Note: Circular No. 88/88-CX.6 dated 30-12-1988 clarifies that in case a manufacturer uses the brand name of another person in respect of a different product, the benefit of SSI exemption would be available to him provided both the brand name owners had registered the brand name for their respective products. In Rukmani Pakkwell Traders case referred above, the assessee was denied the benefit of the SSI exemption because the said circular was not applicable in this case as the assessee was not the owner of the trade mark. However, in case the assessee had got the trade mark registered, the benefit of SSI exemption would have been available to him.

Question

Small & Company, a small scale industry, provides the following details.

	Particulars	Rs. (Lakhs)
(i)	Total value of clearances during the preceding financial year (including 870 VAT Rs. 50 lakhs)	500
(ii)	Total exports (including for Nepal and Bhutan Rs.200 lakhs)	20
(iii)	Clearances of excisable goods without payment of duty to a unit in Software Technology Park	50
(iv)	Job work under Notification No. 84/94-CE dated 11.4.94 Job work under Notification No. 214/86-CE dated 25.3.86	50
(v)	Clearances of excisable goods bearing brand name of Khadi and Village Industries Commission	200

Clearances at point (ii), (iii), (iv) and (v) are included in clearances at point (i).

Determine the eligibility for exemption based on value of clearances for the current financial year in terms of Notification No. 8/2003-CE dated 1.3.2003. Make suitable assumptions and provide brief reasons for your answers where necessary.

Answer

Calculation of value of clearances during preceding financial year

Particulars	Rs. (in lakhs)
Total value of clearances during the preceding financial year	870
Less : VAT included in above	50
	820
Less: Exports excluding exports to Nepal and Bhutan Rs. (500-200) lakh	300
Clearances of excisable goods without payment of duty to a unit in Software Technology Park	20
Job work done under Notification No. 84/94-CE dated 11.04.94 and under Notification No. 214/86-CE dated 25.3.86 i.e..Rs. (50 + 50) lakh	100
Value of clearances during the preceding financial year	**400**

Notes:- While computing value of clearances during preceding financial year (as shown above),

1. export turnover has been excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as “clearances for home consumption”.
2. job work under *Notification No. 214/86 - CE* and *Notification No. 84/94-CE* is not taken into consideration.
3. clearances of excisable goods without payment of duty to a unit in Software Technology Park are deducted.
4. clearances of excisable goods bearing brand name of Khadi and Village Industries Commission are included.

In order to claim the benefit of exemption under *Notification No. 8/2003 – C.E.* in a financial year, the total turnover of a unit should not exceed Rs. 400 lakh in the preceding year. Since the value of clearances in the previous financial year does not exceed Rs. 400 lakh, Small & Company is eligible to claim the benefit of *Notification No. 8/2003 dated 1 st March, 2003* in the current financial year.

Question

CTL Ltd. has a manufacturing unit situated in Lucknow. In the preceding financial year, the total value of clearances from the unit was Rs. 450 lakh. The break up of clearances is as under:

(i) Clearances worth Rs. 50 lakh of certain non-excisable goods manufactured by it.

(ii) Clearances worth Rs. 50 lakh exempted under specified job work notification.

(iii) Exports worth Rs. 100 lakh (Rs. 75 lakh to USA and Rs. 25 lakh to Nepal).

(iv) Clearances worth Rs. 250 lakh of excisable goods in the normal course.

Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefit of exemption under Notification No. 8/2003-CE dated 1.3.03 for the current financial year.

Answer

In order to claim the benefit of exemption under Notification No. 8/2003 - C.E. in a financial year, the total turnover of a unit should not exceed Rs. 400 lakh in the preceding year. As per Notification No. 8/2003 CE dated 01.03.2003, for the purpose of computing the turnover of Rs. 400 lakh:-

(i) Turnover of non-excisable goods has to be excluded. Therefore, clearances of non-excisable goods of worth Rs. 50 lakh shall be excluded.

(ii) Clearances exempt under job work notifications are not considered. Therefore, exempt clearances of Rs. 50 lakh under job work notification will be excluded.

(iii) Export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as "clearance for home consumption". Therefore, clearances worth Rs. 75 lakh exported to USA will be excluded while clearances worth Rs. 25 lakh exported to Nepal will be included.

(iv) Clearances of excisable goods of Rs. 250 lakh in the normal course will be considered.

Therefore, the turnover of CTL Ltd. for claiming the SSI exemption will be:- = Rs. 450 lakh - (Rs. 50 lakh + Rs. 50 lakh + 75 lakh) = Rs. 275 lakh Since the turnover is less than Rs. 400 lakh, CTL Ltd. will be eligible for exemption under Notification No. 8/2003 - CE in the current financial year.

Question

A manufacturing unit has effected clearances of goods of the value of Rs. 475 lacs during the preceding financial year. The said clearances include the following:

(i) Clearance of excisable goods without payment of excise duty to a 100%	Rs. 120 lacs EOU
(ii) Job work in terms of Notification No. 214/86 CE, which is exempt from duty	Rs. 75 lacs
(iii) Export to Nepal and Bhutan	Rs. 50 lacs
(iv) Goods manufactured in rural area with the brand name of the others	Rs. 90 lacs

Examine with reference to the notification governing SSI exemption under the Central Excise Act, 1944 whether the benefit of exemption would be available to said unit for the current financial year.

Answer

A unit shall be eligible for benefit of exemption notification only if value of clearances during preceding financial year does not exceed Rs.400 lakhs.

The item wise treatment shall be as under -

1. Clearance to 100% EOU shall be excluded for calculating the limit of Rs. 400 lakhs.
2. Clearance under Notification No. 214/86 shall be excluded for calculating the limit of Rs. 400 lakhs.
3. Export to Nepal & Bhutan is considered as home consumption and thus, it shall be included for computing limit of Rs. 400 lakhs.
4. The turnover of goods manufactured in rural area with the brand name of the others shall be included for computing limit of Rs.400 lakhs.

Calculation of clearances during preceding financial year:

Particulars	**Rs.**	**Rs.**
Total value of clearances		475 lakhs
Less: Clearance to 100% EOU	120 lakhs	
Clearance under Notification No. 214/86	75 lakhs	195 lakhs
		280 lakhs

As the value of clearances for home consumption in preceding financial year does not exceed Rs. 400 lakhs, the benefit of exemption shall be available to the unit during current financial year.

Question

Saatvik Pvt. Ltd., which is engaged in the manufacture of excisable goods, started its business in July, 20XX. The following details are provided by Saatvik Pvt. Ltd. for finished product manufactured by it:

Particulars	**(Rs.)**
9,000 kg of input 'A' purchased @ Rs. 497.75 per kg (inclusive of central excise duty @ 12.5%)	44,79,750
13,500 kg of input 'B' purchased @ Rs. 995.50 per kg (inclusive of central excise duty @ 12.5%)	1,34,39,250
Capital goods purchased on 02.08.20XX (inclusive of excise duty at 12.5%)	45,10,000
Finished goods sold at uniform transaction value (exclusive of excise duty) throughout the year	3,00,00,000

Calculate the total amount of excise duty payable by Saatvik Pvt. Ltd. in cash, if any, during the current financial year. Rate of duty on finished goods may be taken at 12.5%. There is neither any processing loss nor any closing inventory of inputs and output.

Note: Saatvik Ltd. avails all the exemptions, whichever are applicable in its case.

Answer

Computation of excise duty payable by Saatvik Pvt. Ltd.

Particulars	**(Rs.)**	**(Rs.)**
Finished goods sold during the year		3,00,00,000
Less: Exemption of Rs. 150 lakh available under Notification No. 8/2003 CE dated 01.03.2003 [Note 1]		1,50,00,000
Dutiable clearances		1,50,00,000
Excise duty payable @ 12.5% (Rs. 1,50,00,000 × 12.5%)		18,75,000
Less: CENVAT credit available on inputs [Note 2]		
Proportion of inputs consumed in dutiable clearances - (1,50,00,000/3,00,00,000) = 0.5		
Total value of input "A" and input "B" inclusive of excise duty Rs. 1,79,19,000 (Rs. 44,79,750 + Rs. 1,34,39,250)		
Excise duty paid on inputs consumed in dutiable clearances = [(Rs. 1,79,19,000 x 12.5/112.5) x 0.5]	5,01,111	
Less: CENVAT credit available on capital goods [Note 3] [Rs. 45,10,000 x 12.5/112.5] (rounded off)		14,96,611
Excise duty payable in cash		**3,78,389**

Notes:

1. Clearances of excisable goods up to the aggregate value of Rs. 1.5 crore are exempt from excise duty in any financial year if the turnover of the unit does not exceed Rs. 4 crores in previous year. Since Saatvik Ltd. has started the manufacture of excisable goods in the current financial year, it will be eligible for SSI exemption as the aggregate value of clearances in the preceding financial year is "Nil" (less than Rs. 4 crore) [Notification No. 8/2003 CE dated 01.03.2003].
2. In respect of units availing SSI exemption, no CENVAT credit is available on inputs consumed in exempt clearances of Rs. 150 lakh [Notification No. 8/2003 CE dated 01.03.2003].
3. In respect of units availing SSI exemption, CENVAT credit on capital goods can be availed but utilized only after clearances of Rs. 150 lakh [Notification No. 8/2003 CE dated 01.03.2003]. Further, as per third proviso to rule 4(2)(a) of CENVAT Credit, Rules, 2004, entire credit on capital goods can be taken in the same financial year by such units.
4. Since there is neither any processing loss nor closing inventory of inputs and output, it implies that all goods manufactured have been sold and entire quantity of both the inputs has been used in manufacturing these goods.

Question

MNO Ltd. is engaged in the manufacture of both excisable and non-excisable goods in a factory building rented by them from October 1, 2014. From the following particulars for the period October 1, 2014 to March 31, 2015, state briefly with suitable explanations, whether MNO Ltd. could claim the benefit of exemption in terms of Notification No. 8/2003 -CE dated 01.03.2003 for the financial year 2015-16:

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

During the period April 1, 2014 to September 30, 2014, the previous tenant of the factory building presently occupied by MNO Ltd. had cleared excisable goods of the aggregate value of Rs. 120 lakh.

Answer

Computation of value of clearances for home consumption in the financial year 2014-15

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

Notes:

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

Conclusion: Since the value of clearances for home consumption exceeds Rs. 400 lakh in the financial year 2014-15, MNO Ltd. is not eligible to claim the benefit of exemption under Notification No. 8/2003 - C.E. dated 01.03.2003 in the financial year 2015-16.

Question

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

Particulars	Rs. (in lakhs)
Value of domestic clearance of goods with own brand name	120
Value of clearance of goods with the brand name of others	100
(including Rs. 30 lakhs in respect of goods manufactured in a rural area)	
Value of clearances for exports	50
Value of clearances for captive consumption (Final products are eligible for SSI exemption)	40
Value of clearances of goods exempted under notification other than Notification No. 8/2003	20
(Assume rate of excise duty at 12.5%)	

Answer

Computation of turnover of M/s. SSI & Co. eligible for exemption during the current financial year

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

Computation of excise duty payable

Particulars	Rs.
On 1st clearance of Rs. 150 lakh duty is	Nil
On clearances with brand name of others worth Rs. 70 lakh	8,75,000
(excluding rural area clearances) @ 12.5% [Note 3]	
Total excise duty liability	8,75,000

Notes:

1. As per Notification No. 8/2003 CE dated 01.03.2003 , export clearances, captive consumption and exempted clearances are not included in determini ng the limit of first Rs. 150 lakh for SSI exemption.
2. As per Notification No. 8/2003 CE dated 01.03.2003, the clearances with the brand name of others which are ineligible for SSI exemption has to be excluded while determining the limit of Rs. 150 lakh. However, clearances with the brand name of others manufactured in rural area are eligible for SSI exemption and hence, such clearances are included while determining the limit of Rs. 150 lakh.
3. Duty is not payable on export clearance and exempted clearances. Further, intermediate goods used captively in the manufacture of final products which are eligible for SSI exemption are also exempt from excise duty. Thus, duty will be payable only in respect of the goods manufactured with brand name of others.

Question

Arigo Ltd. is a small scale industrial unit which is producing 'Fast', a tonic for growing children.

Under the Annual Report for the current financial year, the SSI unit shows gross sales turnover* of Rs. 1,95,10,000, inclusive of excise duty and VAT. The product 'Fast' attracts excise duty @ 12.5% and VAT @ 1%. Calculate the duty liability under Notification No. 8/2003 dated 01.03.2003.

*Gross Sales Turnover of Rs. 1,95,10,000 is eligible for exemption under Notification No.

8/2003. Further, for the preceding year, the taxable clearances of SSI unit was Rs. 1,60,00,000.

Answer

Since, the turnover of previous year was less than Rs. 400 lakh, Arigo Ltd. will be eligible for SSI exemption under Notification No. 8/2003 CE dated 01.03.2003 during the current financial year.

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

Gross sales turnover is Rs. 1,95,10,000 which includes excise duty and VAT For first 150 lakh clearances, excise duty is Nil and VAT is 1%.

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

For balance sales (including excise duty and VAT) = Rs. 1,95,10,000 - (1,50,00,000 + 1,50,000) = Rs. 43,60,000 VAT = Rs. 43,60,000 x 1/101 = Rs. 43,168 (rounded off) Therefore, balance sales excluding VAT but including excise duty = Rs. 43,60,000 - Rs. 43,168 = Rs. 43,16,832

Hence, excise duty = Rs. 43,16,832 x12.5/112.5 = Rs. 4,79,648 Total duty payable = Rs. 4,79,648

Question

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

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

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

Answer

Calculation of value of clearances of Aggarwal and Company during preceding financial year

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

Notes:

In order to claim the benefit of exemption under Notification No. 8/2003 - C.E. in a financial year, the total turnover of a unit should not exceed Rs. 400 lakh in the preceding year.

As per Notification No. 8/2003 CE dated 01.03.2003, for the purpose of computing the turnover of Rs. 400 lakh:-

1. export turnover has to be excluded. However, export to Bhutan cannot be excluded as the same are treated as "clearances for home consumption".
2. clearances under specified job work notifications are excluded and Notification No. 214/86 CE and 84/94-CE are the specified notifications.
3. clearances of excisable goods without payment of duty to a 100% EOU are excluded.
4. clearances bearing the brand name or trade name of another person are excluded.

However, following clearances of excisable goods bearing brand name are included:-

(a) Goods bearing brand name/trade name of National Small Industries Corporation.

(b) Goods in the nature of packing materials and meant for use as packing material by or on behalf of the person whose brand name they bear.

Since, the value of clearances in the previous financial year does not exceed Rs. 400 lakh, Aggarwal & Company is eligible to claim the benefit of Notification No. 8/2003 dated 1st March, 2003 in the current financial year.

Question

MNO & Co. is the small scale unit located in a rural area which is eligible for exemption under Notification No. 8/2003-CE during the current financial year. You are required to determine the value of the first clearance of the unit and duty liability of MNO & Co. for the current financial year on the basis of particulars given below:

		Rs.
(i)	Total value of clearances of goods with own brand name	50,00,000
(ii)	Total value of clearances of goods with brand name of other parties	1,00,00,000
(iii)	Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances)	45,00,000
(iv)	Rate of excise duty - 12.5%	

(Make suitable assumptions where required and show the calculations with appropriate notes)

Answer

Computation of the value of first clearances and duty liability of MNO & Co.

S No.	Particulars	Amount (Rs.)
(i)	Clearances of goods with own brand name	50,00,000
(ii)	Clearances of goods with brand name of other parties [Note 1]	1,00,00,000
(iii)	Clearances of goods which are exempt under a notification other than exemption based on quantity or value of clearances [Note 2]	-
	Total value of clearances eligible for SSI exemption available under Notification No. 8/2003 CE dated 01.03.2003	1,50,00,000
	Less: SSI exemption [Note 3]	1,50,00,000
	Dutiable clearances	Nil
	Excise duty payable	Nil

Notes:

As per Notification No. 8/2003 CE dated 01.03.2003 -

1. Since MNO & Co. is situated in rural area, clearances of goods with brand name of other parties would also be eligible for SSI exemption.
2. Clearances of goods which are exempt (other than an exemption based on quan tity or value of clearances) under a notification are not included in the first clearances of Rs.150 lakh.
3. First clearances of Rs.150 lakh are exempt from payment of excise duty under SSI exemption.

Question

Veena Ltd. has two factories and supplies you the following information:

	Particulars	Factory 'A'	Factory 'B'
(i)	Assessable value of clearances from 1st April, 20XX to 31st December, 20XX	Rs. 90 lac	Rs. 60 lac
(ii)	Assessable value of clearances from 1st January to 31st March of next year	Rs. 60 lac	Rs. 40 lac
(iii)	Inputs purchased during the given financial year (including excise duty)	Rs. 112.36 lac	Rs. 55.15 lac
(iv)	Capital goods purchased on 14-09-20XX (including excise duty)	-	Rs. 11.03 lac
(v)	Effective rate of excise duty on inputs and capital goods purchased and output sold.	12.5%	10.3%

Veena Ltd. is availing SSI exemption under Notification No. 8/2003 -C.E. and inputs are used evenly throughout the year. There is neither any processing loss nor any inventory of input and output. You are required to calculate the amount of excise duty payable by Veena Ltd. in cash, if any, for the given financial year.

Answer Computation of central excise duty payable in cash by Veena Ltd. for given financial year

Particulars	**Factory 'A'**	**Factory 'B'**	**Total (Factory A + Factory B)**
	Rs. (in lakh)	**Rs. (in lakh)**	**Rs. (in lakh)**
Assessable value of clearances up to 31st December, 20XX	90	60	150
Less: SSI exemption under Notification No. 8/2003 [Note 1 & 2]			
Dutiable clearances up to 31st December, 20XX			Nil
Assessable value of clearances from 1st January to 31st March of next year			
Excise duty payable	60	40	100
Less: CENVAT credit on inputs used in dutiable clearances (computed on pro rata basis as the same have been used evenly throughout the year) [Note 3]	7.5 [60 x 12.5%] 5.0 $\left[12.36 \times \frac{12.5}{112.5} \times \frac{60}{150}\right]$	4.1 [40 x 10.3%] 2.06 $\left[55.15 \times \frac{10.3}{110.3} \times \frac{40}{100}\right]$	11.6 7.06
Less: CENVAT credit on capital goods [Note 4]		$\left[\text{Rs. } 11.03 \times \frac{10.3}{110.3}\right]$	10.3
		10.3	
Excise duty payable in cash	**2.5**	**1.03**	**3.536**

Notes: As per SSI exemption Notification No. 8/2003 CE dated 01.03.2003-

1. First clearances upto an aggregate value not exceeding Rs. 150 lakh made during a financial year are exempt from payment of excise duty.
2. Turnover of all factories belonging to same manufacturer have to be clubbed together for calculating SSI exemption limit of Rs. 150 lakh.
3. Units availing SSI exemption cannot avail CENVAT credit on inputs used in the manufacture of exempt clearances of Rs.150 lakh.
4. Units availing SSI exemption can avail CENVAT credit on capital goods but can utilize the same only after crossing the exemption limit of Rs. 150 lakh. Further, entire credit on capital goods can be taken in the same financial year in which such capital goods are received by such units [Third provison of rule 4(2)(a) of CENVAT Credit Rules, 2004].

Question

The assessee was engaged in the manufacture and sale of cookies from branded outlets of "Cookies Man". The assessee had acquired this brand name from a foreign compa ny. The assessee was selling some of these cookies in plastic pouches/containers on which the brand name described above was printed. No brand name was affixed or inscribed on the cookies.

Excise duty was duly paid on the cookies sold in the said pouches/containers. However, on the cookies sold loosely from the counter of the same retail outlet with plain plates and tissue paper, duty was not paid. The retail outlet did not receive any loose cookies nor did they manufacture them. They received all cookies in sealed pouches/containers. Those sold loosely were taken out of the containers and displayed for sale separately. The assessee contended that SSI exemption would be available on cookies sold loosely as they did not bear the brand name.

Department denied exemption on cookies sold loosely as claimed by the assessee.

Examine, with the help of a decided case law whether the manufacture and sale of specified goods, not physically bearing a brand name, from branded sales outlets would disentitle an assessee to avail the benefit of small scale exemption.

Answer

Yes, the manufacture and sale of specified goods not physically bearing a brand name, from branded sales outlets would disentitle an assessee to avail benefit of small scale exemption.

The facts of the given case are similar to the case of CCEx vs. Australian Foods India (P) Ltd.

2013 (287) ELT 385 (SC) wherein the Supreme Court held, that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods for the purpose of SSI exemption, after making following observations:

(i) Physical manifestation of the brand name on goods is not a compulsory requirement as such an interpretation would lead to absurd results in case of goods, which are incapable of physically bearing brand names viz., liquids, soft drinks, milk, dairy products, powders etc. Such goods would continue to be branded good, as long as its environment conveys so viz. packaging/wrapping, invoices, accessories etc.

(ii) The test of whether the goods is branded or unbranded, must not be the physical presence of the brand name on the goods, but whether it is used in relation to such specified goods for the purpose of indicating a connection in the course of trade between such specified goods and some person using such name with or without any indication of the identity of the person.

(iii) Once it is established that a specified good is a branded good, whether it is sold without any trade name on it, or by another manufacturer, it does not cease to be a branded good of the first manufacturer. Therefore, soft drinks of a certain company do not cease to be manufactured branded goods of that company simply because they are served in plain glasses, without any indication of the company, in a private restaurant.

Question

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

(Rs. in lakhs)

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

The unit seeks your advice as to whether they are eligible for SSI exemption for the current financial year.

Explain the basis for your conclusions.

Answer

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

(i) Captive consumption in the manufacture of excisable goods

(ii) Export to USA

(iii) Job work done under Notification No.214/86 CE Only the goods bearing the brand name of others, which are ineligible for the grant of SSI exemption, are excluded for the purpose of said limit. Since, goods manufactured in rural area with brand name of others are eligible for SSI exemption; the same will not be excluded for calculating the said limit.

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

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

Since turnover of the unit during the preceding financial year is less than Rs.400 lakh, the unit is entitled to SSI exemption from excise duty in the current financial year.

Question

PQR & Co. is eligible for exemption in terms of Notification No. 8/2003 CE dated 01.03.2003 for the current financial year. It provides the following particulars with regard to the clearances of goods effected during the said year:

Particulars	Rs. (in lakh)
Value of domestic clearance of goods with own brand name	210
Value of clearance of goods with the brand name of others	100
(including Rs. 40 lakh in respect of goods manufactured in a rural area)	
Value of clearances for exports	120
Value of clearances for captive consumption (Final products are eligible for SSI exemption)	160
Value of clearances of goods exempted under notification other than Notification No. 8/2003	40
(Assume rate of excise duty at 12.5%)	

Exports made by PQR & Co. are exempt from duty. Determine the total duty payable and duty payable in cash, if any, by PQR & Co. in respect of the current financial year.

Additional Information: Excise duty paid on inputs consumed in exempt and dutiable clearances in the current financial year is Rs. 2,25,000 and Rs. 4,50,000 respectively. Excise duty paid on capital goods purchased in the current financial year is Rs. 6,35,000.

Show your workings with explanations where required.

Answer

Computation of turnover of PQR & Co. eligible for exemption during the current financial year

Particulars	Rs. in lakh
Value of domestic clearances with own brand name	210
Value of clearances of goods with brand name of others manufactured in rural area [Note 1.(b)]	40
Total	**250**

Computation of excise duty payable

Particulars	Rs.
On 1st clearance of Rs. 150 lakh duty payable is	Nil
On balance clearance of Rs. 100 lakh i.e. (250-150) @ 12.5%	12,50,000
On clearances of Rs. 60 lakh with brand name of others	7,50,000
(excluding rural area clearances) @ 12.5% [Note 2]	
Total excise duty payable	20,00,000
Less: CENVAT credit available on inputs consumed in dutiable clearances	4,50,000
CENVAT credit available on capital goods [Note 1(d) and 3]	6,35,000
Excise duty payable in cash	**9,15,000**

Notes:

1. As per Notification No. 8/2003 CE dated 01.03.2003,
   (a) captive consumption (used in the manufacture of final products which are eligible for SSI exemption) and exempt and export clearances are not included in determining the limit of ` 150 lakh for SSI exemption.
   (b) clearances with brand name of others which are ineligible for SSI exemption has to be excluded while determining the limit of ` 150 lakh. However, clearances with the brand name of others manufactured in rural area are eligible for SSI exemption and hence, such clearances are included while determining the limit of ` 150 lakh.
   (c) in respect of units availing SSI exemption, no CENVAT credit is available on inputs consumed in exempt clearances of ` 150 lakhs.
   (d) in respect of units availing SSI exemption, CENVAT credit on capital goods c an be availed but utilized only after clearances of ` 150 lakh.
2. Duty is not payable on export clearance and exempt clearances. Further, intermediate goods used captively in the manufacture of final products which are eligible for SSI exemption are also exempt from excise duty. Thus, duty will be payable only in respect of the goods manufactured with brand name of others
3. Further, entire credit on capital goods can be taken in the same financial year by such units (Rule 4 of the CENVAT Credit Rules, 2004).

Question

From the following particulars for the preceding financial year, find out whether Smart Manufacturing Co. is eligible for small scale exemption under Notification No. 8/2003 -C.E.

dated 01-03-2003 for the current financial year:

Sr. No.	Particulars	Rs. (in lakhs)
1.	Clearance of excisable goods exempted from payment of duty under a notification other than Notification No. 8/2003- C.E.	100
2.	Clearance of account books bearing brand name of another person, falling under Heading 4820 of First Schedule to the Central Excise Tariff.	100
3.	Clearance of excisable goods to United Nations exempted from payment of duty under Notification No. 108/95-C.E.	50
4.	Total Exports [including export to Bhutan Rs. 50 lakh]. Other exports are to USA & UK	250
5.	Clearance of goods (duty paid based on annual capacity of production under section 3A of the Central Excise Act, 1944)	190

Show your calculations, workings and explanations clearly, wherever required.

Answer

In order to claim the benefit of exemption under Notification No. 8/2003 C.E. dated 01.03.2003 in a financial year, the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories should not exceed Rs. 400 lakh in the preceding financial year.

The aggregate value of clearances for home consumption of Smart Manufacturing Co. is Rs. 440 lakh in the preceding financial year [Refer computation given below]. Therefore, it is not eligible to claim the benefit of exemption under Notification No. 8/2003 C.E. dated 01.03.2003 in the current financial year.

Computation of aggregate value of clearances for home consumption of Smart Manufacturing Co. for preceding Financial Year

Particulars	Rs. (in lakh)
Clearances of excisable goods exempted from payment of duty under a notification other than Notification No. 8/2003 CE	100
Clearances of account books bearing brand name of another person [Note 1]	100
Clearance of excisable goods to United Nations exempted from payment of duty under Notification No. 108/95 CE [Note 2]	13.23
Exports to Bhutan [Note 3]	Nil
Clearances of goods on which duty has been paid under section 3A of the Central Excise Act	50
	190
Aggregate value of clearances in terms of Notification No. 8/2003 CE	440

Notes:

Notification No. 8/2003 C.E. dated 01.03.2003 provides that while determining the value of clearances of Rs. 400 lakh:-

1. clearances bearing the brand name of another person, which are ineligible for SSI exemption are excluded. However, account books falling under heading 4820 of the First Schedule of the Central Excise Tariff are entitled to small scale exemption even if they bear a brand name or trade name whether registered or not, of another person.

   Therefore, clearances of such account books will not be excluded.

2. clearances of excisable goods without payment of duty supplied to United Nations under Notification No.108/95 C.E. are excluded.

3. export turnover is excluded. However, exports to Bhutan are not excluded as these are treated as "clearance for home consumption".

Question

Please specify the circumstances in which clearances of two or more units shall be clubbed under the Central Excise Law.

Answer

Few circumstances in which clearances of two or more units shall be clubbed under the Central Excise Law are as follows:-

(i) common managerial control

(ii) common funding

(iii) same partners (beneficial interest)

(iv) common procurement or sale (common products and sales force)

(v) same/adjoining location

(vi) sharing of customers (vii) shared facilities (viii) sharing of expenses and incomes

(ix) interest free advances

(x) reason to start is due to customers not willing to pay the excise duty

(xi) working in tandem and as one unit

(xii) insufficient production/managerial capability

(xiii) free processing facility However, based on the above factors, the turnover of two units will be clubbed only if there is a flow back of profits or there is financial control by one unit over the other i.e., only when there is a mutuality of interest.