

# **CENTRAL EXCISE VALUATION**

## **CMA ASHOK B NAWAL**

**B.Com (Hons.), FCMA**

Chairman - Taxation Committee of Institute of Cost Accountants of India

Central Council Member of Institute of Cost Accountants of India

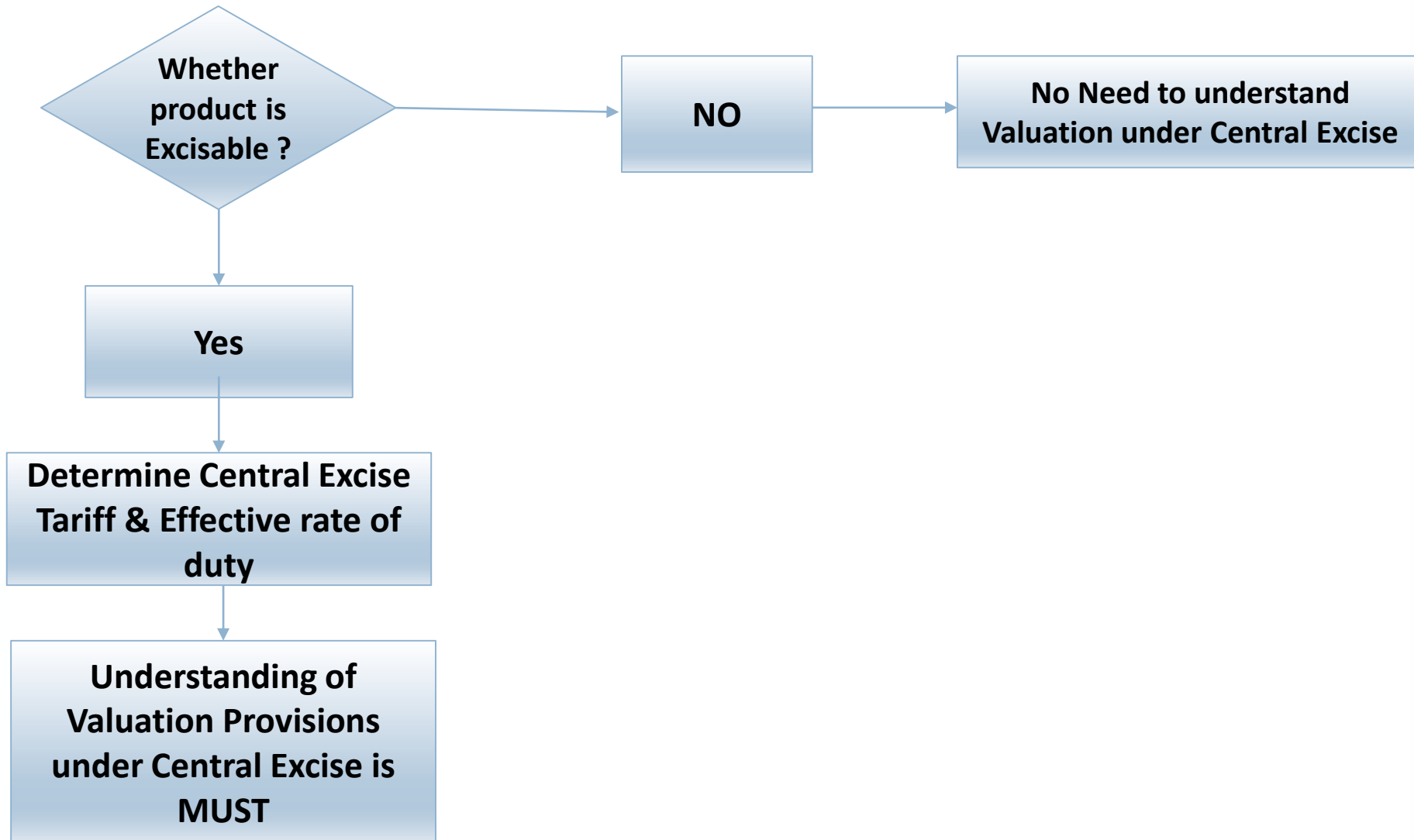
President – All India Exporter's Forum

Advisor - Confederation of Export units, New Delhi.

Trainer - Central Excise Officers of Various Commissionerate

Advisor - Laghu Udyog Bharati

Vice Chairman - Bizsolindia Services Pvt. Ltd.



Specific duty, based on some measure like weight, volume, length etc.	Duty is payable irrespective of any valuation
Duty as % of Tariff Value fixed under section 3(2)	Duty is payable only on Tariff Value as notified by Central Excise
Duty on basis of production capacity – section 3A of Central Excise Act	Duty is payable irrespective of any valuation
Duty based on basis of Maximum Retail Price printed on carton after allowing deductions - section 4A of CEA	Duty is payable on MRP less Abatement Value irrespective of Transaction Value to related or unrelated buyer
Duty as % based on Assessable Value fixed under section 4 (ad valorem duty) (If not covered in any of above)	Duty is payable on assessable value to be determined in accordance with Sec 4 of Central Excise Act read with Central Excise Valuation (determination of price of excisable goods) Rules, 2000

- In case of about 110 products, duty is payable u/s 4A of Central on basis of MRP printed on the package, after allowing abatement at specified rates. MRP should be inclusive of all taxes and duties.
- For example, if MRP is Rs 100 and abatement is 35%, 'value' will be Rs 65 for excise purposes, irrespective of sale price

- The provision applies only when product is package intended for retail sale **and** is specified in a notification issued u/s 4A of CEA.
- MRP provisions u/s 4A of CEA are overriding provisions (even for job work)
- Even in case of products covered u/s 4A, where MRP provisions are not applicable, valuation will be on basis of 'value' u/s 4 i.e. Assessable Value e.g. wholesale package, industrial or institutional consumers, exports
- Definition of 'retail sale' covers not only sale, but also distribution or delivery through sale agencies or any other instrumentalities.

- Applicability when not sold in retail or sale for the industrial purpose.
- Telephone instruments sold to telephone company, footwear to defense, soap to hotel
- MRP provisions do not apply to free samples, package less than 10gm/10 ml, wholesale package or package above 25 Kg (50 Kg in some cases)
- Samples to be valued on MRP basis if similar to normal product sold under MRP valuation basis – otherwise on section 4 basis
- Valuation in case of combopacks and free items given with main product
- When more than one MRP on the same package or when higher MRP scratched to show saving

- In case of goods covered under section 4A of CEA, packing or repacking and re-labelling is 'deemed manufacture'.
- Department can ascertain MRP if MRP not declared or incorrectly declared or obliterated. Penalty can be imposed [section 4A(4)(a) of Central Excise Act].
- Department cannot challenge MRP

- **Commissioner Vs. H&R Johnson (India) Ltd. 2015(319)E.L.T. A227(S.C.)** -Valuation (Central Excise) — MRP — Goods notified for MRP assessment supplied in standard retail packages to institutions/industries to be discharged under Excise Section 4A and not under Section 4-
- **MEGHDOOT CHEMICALS LTD. Versus COMMISSIONER OF CENTRAL EXCISE, THANE; 2015 (320) E.L.T. 643 (Tri. - Mumbai)**- Physician samples of medicines. No MRP declared thereon. MRP of medicines of which they are samples not to be treated as declaration of their MRP. Assessment thereof to be done under Section 4 of Central Excise Act, 1944 and not under Section 4A
- **VENKATESWARA CANS PVT. LTD. Versus COMMISSIONER OF C. EX., MUMBAI; 2015 (320) E.L.T. 651 (Tri. - Mumbai)**- Packages of Lipisticks of 10 grams or less - Since affixing MRP on such packages exempt under Rule 34(1)(e) of Standards of Weights and Measures (Packaged Commodities) Rules, 1977, Valuation thereof to be done under Section 4 of Central Excise Act, 1944.



- **GOA ANTIBIOTICS & PHARMACEUTICALS LTD. Versus COMMISSIONER OF C. EX., GOA; 2014 (314) E.L.T. 546 (Tri. - Mumbai) MRP based valuation** - Physician sample manufactured by job worker - Principal manufacturer dictating declaration of assessable value - Goods not meant for captive consumption, CAS-4 valuation scheme not applicable - Transaction between appellant, a job worker and principal manufacturer cannot be considered as on principal to principal basis - Goods to be valued on MRP of similar goods after giving prescribed abatement on proportionate basis - Section 4 of Central Excise Act, 1944.
- **WETH LTD. Versus COMMISSIONER OF CENTRAL EXCISE, NASHIK; 2014 (306) E.L.T. 517 (Tri. - Mumbai) Valuation (Central Excise)** - Retail Sale Price (RSP) based valuation - Sustainability of, for goods supplied as free samples - HELD : When goods are not meant for retail sale, question of their valuation under Section 4A of Central Excise Act, 1944 does not arise - Sections 4A and 35(1) *ibid.*

- Compounded levy scheme under rule 15 of Central Excise rules, provides for payment of duty on basis of production capacity. It is an optional scheme and not compulsory like production capacity basis scheme.
- The scheme is presently applicable to stainless steel pattas/patties and Aluminium circles. These articles are not eligible for SSI exemption.

- Section 3A of CEA provides for payment of duty on basis of production capacity, without any reference to actual production. Production capacity will be determined as per Rules. Scheme compulsory and not optional
- Pan masala , Gutkha and chewing tobacco are covered under these provisions.
- Reduction if factory closed for 15 days or more

- In some cases, tariff value is fixed by Government from time to time. This is a “*Notional Value*” for purpose of calculating the duty payable. Once ‘tariff value’ for a commodity is fixed, duty is payable as percentage of this 'tariff value' and not the Assessable Value fixed u/s 4. This is fixed u/s 3(2) of Central Excise Act.
- Presently, tariff values have been fixed for readymade garments falling under heading 61 or 62 as % of the retail sale price of such goods. In customs, tariff values fixed for edible oils

- **PAGE APPARELS PVT. LTD. Versus COMMR. OF C. EX. (APPEALS-I), BANGALORE; 2010 (249) E.L.T. 68 (Tri. - Bang.)**
- **Valuation (Central Excise) - Tariff value - Articles of apparel covered under tariff value under Notification No. 20/2001-C.E. (N.T.)** - Tariff value of 60% of retail sale price fixed for impugned goods - Retail sale price not affixed on impugned goods - Price list issued to dealer taken as basis for arriving at value of 60% and duty payment - Section 4 of Central Excise Act, 1944 not invocable for differential duty when tariff value fixed - Impugned order not sustainable - Sections 3, 4 and 11A of Central Excise Act, 1944. *[paras 2, 5.1]* **Valuation (Central Excise) - Statutory provisions - Transaction value v. tariff value - Provisions of Section 3(2) of Central Excise Act, 1944 having overriding effect over Section 4 ibid - Power to fix tariff value lies with government - Section 4 ibid not applicable for determination of value of goods governed by tariff value - Sections 3(2) and 4 ibid. *[para 5.1]***

- This is residual method of valuation
- Duty is payable on 'value' as per section 4 of Central Excise Act
- Section and Rules well drafted to avoid manipulation in 'value'
- Basic principle is that excise duty is payable on intrinsic value of goods – ownership is irrelevant

**Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -**

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

**Explanation.** - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

**Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -**

(3) For the purpose of this section,-

- a. "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;
- b. persons shall be deemed to be "related" if –
  - i. they are inter-connected undertakings;
  - ii. they are relatives;
  - iii. amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
  - iv. they are so associated that they have interest, directly or indirectly, in the business of each other.

**Explanation.** - In this clause -

- i. "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969); and
- ii. "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);



- If sale is partly to related person and partly to unrelated person, valuation shall be done on 'reasonable basis' by residual method under rule 11.
- If related person is only one of the buyers and substantial sales are made to unrelated persons at same price, that price can be considered for valuation in respect of sale to related person also.

**Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -**

(c) "place of removal" means -

- i. a factory or any other place or premises of production or manufacture of the excisable goods;
- ii. a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- iii. a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;  
from where such goods are removed;

(cc) "time of removal", in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory;

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

- The goods should be sold at the time and place of removal.
- Buyer and assessee should not be related.
- Price should be the *sole consideration* for the sale.
- Each removal will be treated as a separate transaction and 'value' for each removal will be separately fixed.

- Price actually paid or payable. Price is for the 'goods'
- Price includes any amount that the buyer is liable to pay to, or on behalf of assessee, i.e. payment to third party on behalf of assessee
- The payment should be 'by reason of, or in connection with the sale'.
- The amount may be payable at the time of sale or at any other time.
- Any amount relating to marketing etc, includible

- Amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods is deductible
- Only taxes actually paid or payable are allowed as deduction.
- If goods are cleared without payment of duty, the price is taken as 'cum duty' price and excise duty payable should be calculated by back calculations

- **COMMISSIONER OF C. EX., MUMBAI-III Versus EMCO LTD.; 2015 (322) E.L.T. 394 (S.C.) Valuation (Central Excise)** - Transportation and transit insurance charges on transformers - Specific condition in contracts with customers that they will be dispatched (i) freight pre-paid by road and up to destination of customers, (ii) insured by assessee up to customers' destination, and cost thereof included in price, (iii) in case of any damage during transit, assessee will lodge claim and obtain compensation from insurance company - Responsibility of goods was of assessee till their delivery to customer's premises - Commissioner had held that as property in goods passed on to customers only at destination, transportation and transit insurance charges were includible in transaction value - However, CESTAT had allowed appeal of assessee by cryptic non-reasoned order - Hence, matter remanded to CESTAT for fresh determination of place of removal after looking into terms and conditions of sale with buyer - Section 4 of Central Excise Act, 1944.
- **COMMISSIONER OF CENTRAL EXCISE, JAIPUR Versus NATIONAL ENGG. INDUSTRIES; 2015 (320) E.L.T. 27 (S.C.) Valuation (Central Excise)** - Sales tax benefit retained by assessee whether includible in the assessable value - Deduction from assessable value towards benefit of Sales tax retained by the manufacturer available to assessee till 30-6-2000 - Due to amendments in Section 4 of Central Excise Act, 1944 from 1-7-2000, the Sales tax benefit retained by the assessee would be includible in the assessable value of excisable goods - HELD : Since the period of disputed in the present case is prior 30-6-2000, the assessee is eligible for deduction for the benefit of Sales tax from the assessable value of excisable goods - Penalty set aside - Section 4 of Central Excise Act, 1944.

- **PUROLATOR INDIA LTD. Versus COMMISSIONER OF CENTRAL EXCISE, DELHI-III; 2015 (323) E.L.T. 227 (S.C.) Valuation (Central Excise)** - Discounts - Cash and Volume - Stipulated in agreement of sale between assessee and its buyers - Known at or prior to clearance of goods - Hence, they must be deducted from sale price in order to arrive at value of excisable goods “at time of removal” - After amendment of Section 4 of Central Excise Act, 1944 in 2000, there is no change to legal position as declared by Bombay Tyre International Limited [1984 (17) E.L.T. 329 (S.C.)], Madras Rubber Factory Ltd. [1995 (77) E.L.T. 433 (S.C.)] and C.B.E. & C. Bulletin for period January-March, 1975.
- **COMMISSIONER OF C. EX., JAIPUR Versus SHREE RAJASTHAN SYNTEX LTD; 2015 (318) E.L.T. 626 (S.C.) Valuation (Central Excise)** - Sales Tax Incentive Scheme - Though assessee collecting full incidence of sales tax from its buyers, 75% thereof was retained by respondents and only 25% of said sales tax collected was paid to State Government in terms of Incentive Scheme - *HELD* : Section 4 of Central Excise Act, 1944 amended w.e.f. 1-7-2000 - Assessee will not be liable to pay any Excise duty on sale tax amount which was retained under the Incentive Scheme up to 30-6-2000 - Component of sales tax which was retained by assessee after 1-7-2000 will be includible in arriving at the transaction value and sales tax to be paid thereon. [2014 (301) E.L.T. 273 (S.C.) followed].

- **COMMISSIONER OF C. EX., GHAZIABAD Versus BHUSHAN STEEL LTD.; 2015 (319) E.L.T. 347 (Tri. - Del.)** Refund - Eligibility - Trade discounts given to customers, quantified subsequent to removal of goods - Whether deductible from assessable value - *HELD* : As Tribunal in remand proceedings has held said trade discounts admissible, not open to Revenue to challenge the same - Discount policy known to customers at time of clearance of goods as proved by certificates given by customers and records showing discounts actually given to customers on attaining particular goal of quantum of purchase - Said customers certificate, though given subsequently, relate to relevant period - Non-uploading of discount policy on website not relevant as discount policy floated amongst customers by assessee - As discount deductions from assessable value admissible, assessee eligible for refund subject to provisions of Section 11B of Central Excise Act 1944 - Matter already remanded to adjudicating authority for verification of evidence in this regard - Section 35C of Central Excise Act, 1944.
- **J.K. PAPER LTD. Versus COMMISSIONER OF CENTRAL EXCISE, SURAT; 2013 (294) E.L.T. 594 (Tri. - Ahmd.) Valuation (Central Excise)** - Cash discount - Sales at factory gate as well as depots - Cash discount of 2% given if amount is paid within 10 days and 1%, if the payment is made within 20 days - No duty paid on cash discount not availed by buyers at depot - As per Larger Bench decision of Tribunal in the case of Arvind Mills Ltd. [2006 (204) E.L.T. 570 (Tribunal-LB)], cash discount whether availed of or not are to be granted as abatement - Stay of pre-deposit of duty, interest and penalty granted - Sections 4 and 35F of Central Excise Act, 1944.



- Payment should be by reason of or in connection with sale of goods
- Distinction between 'connection' and 'relation'. 'Connected with' means that connection must be direct and clear as between cause and effect and not remote and doubtful.
- Examples - Dealer deposit, erection charges, advance payments

- Packing charges and design charges related to manufacture.
- Price escalation after clearance, but not when price was final at the time of clearance – interest
- Transport charges upto place of removal are includible in assessable value.
- Notional interest on advances is includible only if there is evidence that it has depressed the selling price.

- Any Trade discount is allowable as deduction from assessable value.
- Taxes are not includible in 'value'

- '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 factory; from where such goods are removed. [section 4(3)(c)].

- ‘As per section 2(h) of Central Excise Act, ‘sale’ and ‘purchase’ with their grammatical variations and cognate expressions, means any transfer of possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuation consideration.

- Sale ex-works – As per section 39 of Sale of Goods Act, delivery of goods to carrier is *prima facie* delivery of goods to buyer
- If Price CIF and possession is transferred only when goods reach destination – then no ‘sale’ at factory gate
- Mere fact that freight is paid and insurance arranged by seller at request of buyer does not mean there is no ‘sale’ at factory gate
- Port is place of removal in case of exports

- Equalised freight is allowable as deduction – only if there is ‘sale’ at factory gate – CAS-5 for calculation of equalised freight
- If seller himself arranges transport of finished goods, reasonable profit on transport activity is allowable

- Price of Bought out goods supplied along with manufactured goods is includible, if these are essential parts of manufactured goods.
- Since goods are to be assessed in the condition in which cleared from factory, value of components not fitted is not required to be added in assessable value, even if they are essential
- Price of accessories and optional bought out items is not includible in Assessable Value
- Accessory means an object not essential in itself but adding to beauty, convenience or effectiveness of something else.



- If transaction value is not acceptable, valuation is required to be done as per Valuation Rules [Section 4(1)(b) of Central Excise Act and Valuation Rule 3]
- Valuation can be done on value of 'such' goods (i.e. goods of same class of same manufacturer) [Rule 4]
- Cost of transport upto 'place of removal' is includible in assessable value but not beyond that [Rule 5]

- **SUPREME PETROCHEM LTD. Versus COMMISSIONER OF CENTRAL EXCISE, RAIGAD; 2014 (306) E.L.T. 638 (Tri. - Mumbai)**  
**Valuation (Central Excise)** - Clearance of small portion of goods to sister concerns, rest sold to independent buyers - *HELD*  
: Assessable value to be determined under Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and not under Rule 8 ibid invoked in show cause notice as entire quantity of goods not used for captive consumption - As per said Rule 4, value of goods sold to independent buyers at nearest point of time to clearance of said goods to be the basis for re-determination of assessable value, immaterial of whether such value prior to or after removal of impugned goods - Said assessable value to include adjustments for reasons such as difference in grade/quality or quantum of sale, etc. - If more than one price to independent buyer available, lowest price to form basis of assessable value - As assessee not put to notice about basis of re-determination and same was done only as part of impugned order, matter remanded back to adjudicating authority for fresh consideration.
- **GANGOTRI ELECTROCASTINGS LTD. Versus COMMISSIONER OF C. EX. & S.T., PATNA; 2013 (293) E.L.T. 395 (Tri. - Kolkata)** Valuation (Central Excise) - Clearances to related person - Their valuation has to be on basis of sales of same goods to independent customers, as per Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and not under Rule 9 read with Rule 8 ibid - Section 4 of Central Excise Act, 1944.

- **INDIAN DRUGS MANUFACTURER'S ASSOCHN. Versus UNION OF INDIA; 2008 (222) E.L.T. 22 (Bom.) Valuation (Central Excise) –**
- Physician's free samples - Physician's samples not sold and valuation of such free samples to be made under Section 4(1)(b) of Central Excise Act, 1944 read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - Rule 8 ibid applicable where goods are not sold but are cleared exclusively for use and consumption in the manufacture of other articles - Impugned samples not cleared for captive consumption, hence Rule 8 ibid not applicable - Impugned samples identical or similar to goods cleared on sale in wholesale trade - Physician's samples distributed free are to be valued under Rule 4 ibid based on value of such goods sold and delivered at any other time nearest to the time and place of removal of such samples - Section 4 ibid. - *The fact that physician's samples may be distributed in a different pack or in a different bottle would not make them different from goods sold in the open market. [paras 2, 21, 24, 25, 27, 30]*
- Valuation (Central Excise) - Physician's free samples - Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is a general rule - Words "such goods" in Rule 4 ibid clearly mean that goods in question must be similar or identical to and have same quality or character to the goods sold and delivered - Valuation of physician's free samples under Rule 4 ibid reasonable and in consonance with principles followed in last three decades. - *By use of words "if necessary" in Rule 4 ibid it is made clear that adjustments shall be permitted, wherever necessary.* There is nothing in Rule 4 ibid to suggest that it applies only to goods sold but not delivered at the time and place of removal. [paras 25, 27, 28]

- Valuation of free samples on basis of price of similar goods. [Rule 4].  
If quantity is different, proportionate price may be adopted
- If goods are covered under MRP valuation basis (with abatement), then similar free samples will also be valued on basis of MRP less abatement
- If similar goods not available – then cost of production plus 10% basis

- If price is not sole consideration, money value of other consideration should be added e.g. cost of material, patterns, dies, designs etc. supplied by buyer is required to be added to Assessable Value [rule 6].
- Value of patterns, dies etc. should be added on pro-rata basis.

- **COMMISSIONER OF C. EX., NAGPUR-I Versus INDORAMA SYNTHETICS (I) LTD.; 2015 (323) E.L.T. 20 (S.C.);** Valuation (Central Excise) - Additional consideration - Discounted price charged from advance licence holder category of buyers by assessee because of saving in Customs duty on inputs due to benefit of Notification No. 31/97-Cus. - *HELD* : Source from where benefit of notification ibid ultimately reached assessee was advance licences held by their buyers - Act of invalidation made it possible for benefit to flow to assessee - It was additional consideration which was required to be added to assessable value of goods - Plea that discounted price was only condition for sale of goods and not consideration for sale of goods, rejected - Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - Section 4 of Central Excise Act, 1944.
- **SAHYADRI STARCH & INDUSTRIES PVT. LTD. Versus COMMR. OF C. EX., PUNE-ÍÍ; 2014 (313) E.L.T. 690 (Tri. - Mumbai) Valuation** (Central Packing material supplied free of cost by the buyer - Since HDPE barrels received free of cost the assessee has reduced the price to that extent - It is a consideration for determination of price though given by buyer indirectly in the form of free supply of packing materials - Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 provides that value of materials consumed including packing material in the production of goods has to form part of assessable value of goods - Prima facie case not made out for complete waiver of pre-deposit - Appellant directed to pre-deposit 50% of duty confirmed - Sections 11 and 35F of Central Excise Act, 1944. [*paras 6, 7*]

- **LEAR AUTOMOTIVE INDIA PVT. LTD. Versus COMMR. OF C. EX. & S.T., VADODARA-II; 2014 (311) E.L.T. 65 (Tri. - Ahmd.)** Valuation (Central Excise) - Tooling advance given by buyer to appellant-manufacturer for developing tools/moulds for manufacturing components and for further use in manufacture of seats - Amortised value of such tools/moulds to be treated as additional consideration and includible in assessable value of goods sold by appellants to buyer company - How appellants get the parts/components manufactured is irrelevant - Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.[2012 (286) E.L.T. 558 (Tribunal)].
- **JABIL CIRCUIT INDIA PVT. LTD. Versus COMMISSIONER OF C. EX., PUNE; 2014 (307) E.L.T. 891 (Tri. - Mumbai)** Demand and penalty - Manufacture and supply of Set Top Boxes (STB) by appellant - Supply of remote controls and smart/viewing cards to appellant, along with access to software to be downloaded into flash memory for being soldered to the populated printed circuit board of STB - Demand made, including value of these in the assessable value - Challenge to, rejected - *HELD* : As per Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 money value of goods supplied free of charge or at reduced cost by the buyer, is to be included and treated as an additional consideration flowing directly or indirectly from the buyer to assessee.

- In case of depot sale, duty is payable on basis of depot price prevailing at the time of removal of final product from the factory [Rule 7].
- Price at which the goods are actually sold subsequently from depot is not relevant.
- Differential duty is not payable even if goods are sold later at higher price from depot.



- In case of captive consumption, duty is payable on basis of cost of production plus 10%. Cost of Production should be calculated on basis of CAS-4 [Rule 8]

- **INDIAN HUME PIPE CO. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, TRICHY; 2015 (321) E.L.T. 460 (Tri. - Chennai)** Valuation (Central Excise) - Captive consumption - Pipes manufactured by assessee used in execution of turnkey contract awarded by a State Water Board - Project includes laying of pipes and subsequent maintenance for one year - Removal of pipes akin to captive consumption - Assessment to be done under Rule 11 read with Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - Matter remanded for determination of assessable value of goods afresh according to best judgment, in terms of Rule 11 ibid.
- **PRECOT MILLS LTD. Versus COMMISSIONER OF C. EX., CALICUT; 2014 (313) E.L.T. 789 (Tri. - Bang.)** Valuation (Central Excise) - Captive consumption - Goods cleared to sister unit/job worker/related person - HELD : Valuation of such goods had to be on cost of production method, as per Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - Section 4 of Central Excise Act, 1944. Valuation (Central Excise) - Goods cleared to sister unit/job worker/related person - CAS-4 certificates submitted by assessee for cost of production and remaining unchallenged by revenue - HELD : Fact that CAS-4 certificate could not be computed for each consignment at time of clearance could not mean that assessee was at liberty to remove goods to related person at approximate value - Valuation of such goods had to be on cost of production method, as per Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - Section 4 of Central Excise Act, 1944. [para 6]

- Transport charges upto depot and depot expenses are not allowable as deduction (These are already included in depot price).
- Transport charges from depot onwards are not includible in assessable value.
- Any value addition done at depot is not includible in assessable value, if activity is not 'manufacture' (the reason is that goods are to be assessed in the condition in which they are removed from factory).

- In case of products covered under MRP provisions, if packing in retail pack and labelling of MRP is done at depot/place of consignment agent, it will be 'deemed manufacture' and excise duty will be payable.

- Since excise duty is on manufacture, duty will be payable even if goods are manufactured on job work basis, on intrinsic value
- As per rule 10A of Valuation Rules, duty is payable on the basis of price at which raw material supplier sales the final product in the market.
- If product is covered under MRP, duty is payable as per section 4A.
- Supreme Court Decision –Ujagar Print.
- When Job worker have to determine the value ?

- Job work is exempt if material is sent to job worker under Cenvat Credit Rule 4(5)(a).
- Job work is exempt if material was sent under Cenvat provisions or under notification No. 214/86-CE.
- Service tax is payable on Job work if (a) Activity is not manufacture or (b) Material is not sent under Cenvat provisions

- An inter-connected undertaking will be treated as 'related person' for excise valuation only if there is holding subsidiary relationship.
- A holding and subsidiary are 'related persons', However, a mere distributor is not a related person.
- A company or firm is a separate legal entity and cannot be a 'related person' of other company or firm.

- Even if the buyer does not fall within the definition of 'related person', sale price to him can be rejected by piercing the corporate veil. His selling price can be considered if it is found, by piercing corporate veil, that the transaction is not at arms length i.e. price is not the sole consideration.



- If sale is partly to related person and partly to unrelated person, valuation shall be done on 'reasonable basis' by residual method under rule 11.
- If related person is only one of the buyers and substantial sales are made to unrelated persons at same price, that price can be considered for valuation in respect of sale to related person also.

## Impact of FIAT Judgement

- Transaction Value vis-à-vis Cost of Production ?
- Valuation in case of Deemed Export

## Commissioner of Central Excise, Nagpur-I Vs. M/s. Indorama Synthetics (India) Ltd. [Civil Appeal No. 1834 of 2006]

- Once the advance licence is invalidated, the said clearance to the buyers who were earlier holding the said licences need not be treated as deemed export and rightly the assessee had cleared the said goods to such buyers on payment of excise duty, but at lower value than the clearance made to the normal buyers. Thus, the assessee appeared to have derived double benefits in these transactions, i.e.
  - ✓ enhanced sale and paid less duty on lower value; and
  - ✓ imported duty free raw materials

- In this case, the right to procure duty free imported raw material is being transferred to supplier by the buyer. This indicates the flow back of additional considerations from the buyer of the said goods to the seller, which is the assessee. On the facts of this case, we are of the opinion that the Commissioner has rightly come to the conclusion with regard to the fact that additional monetary consideration, in addition to the price being paid for the goods, i.e. transfer of advance import licence in favour of the seller by the buyer enabling the seller of the goods to effect duty free import of the raw materials and bringing down the cost of production/procurement, is a consideration, the monetary value of which has to be considered under the provisions of the Rules, i.e. Rule 6 thereof.

**\* Commissioner of Central Excise , Jaipur – II Vs Super Synotex (India) Ltd. & Others**

- ✓ Exemption
- ✓ Retention
- ✓ Deferral
- ✓ Deferral Early Payment

- Sec 3 of Central Excise Act 1944 :  
Proviso to Sec 3(1)
- Applicability of Customs Act 1962 & Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

- **Sec 2(55) : Related Person** : Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 – Rule 2(2)
- **Sec 17 (1)** : Valuation where supplier and recipient of the supply are not related and the price is the sole consideration for the supply shall be transaction value : **Central Excise Act 1944 Sec 4**

**Sec 17(2) : Transaction Value shall include**

- a. Amount that the supplier is liable to pay but which has been incurred by the recipient of the supply and not included in the price
- b. Value of free supply of goods and service
- c. Royalties and licence fees related to the supply of goods and/or services to the extent not included in the price
- d. Any taxes, duties, fees and charges levied under any Statute other than the SGST Act or the CGST Act or the IGST Act
- e. Incidental expenses such as commission, packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be
- f. Subsidies provided in any form or manner, linked to the supply
- g. Any discount or incentive that may be allowed after the supply has been effected

- **Sec 17(3)** : Transaction value under sub-section (1) shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply.
- **Sec 17 (4)** : value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules
  - i. the consideration, whether paid or payable, is not money, wholly or partly
  - ii. the supplier and the recipient of the supply are related
  - iii. there is reason to doubt the truth or accuracy of the transaction value declared by the supplier
  - iv. business transactions in the nature of pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery
  - v. such other supplies as may be notified by the Central or a State Government in this behalf

- **Sec 17(5):** Value of a supply of goods made by a taxable person to any person other than a taxable person shall be deemed to be the retail sale price less the tax leviable under this Act on such goods, in a case where such price is required to be declared on the package thereof under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force



- **Rule 3 : Methods of determination of value—**

1. Subject to rule 7, the value of goods and/or services shall be the transaction value.
2. The “transaction value” shall be the value determined in monetary terms.
3. Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.
4. The transaction value shall be accepted even where the supplier and recipient of supply are related, provided that the relationship has not influenced the price.
5. Where goods are transferred from—
  - (a) one place of business to another place of the same business,
  - (b) the principal to an agent or from an agent to the principal, whether or not situated in the same State, the value of such supply shall be the transaction value.
6. The value of supplies specified in sub-section (4) of section 17 of the Act shall be determined by proceeding sequentially through rules 4 to 6.

**Rule 4 : Determination of value of supply by comparison—**

1. Where the value of a supply cannot be determined under rule 3, the value shall be determined on the basis of the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other customers, adjusted in accordance with the provisions of sub-rule (2).
2. In determining the value of goods and/or services under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-
  - a. difference in the dates of supply,
  - b. difference in commercial levels and quantity levels,
  - c. difference in composition, quality and design between the goods and/or services being valued and the goods and/or services with which they are compared,
  - d. difference in freight and insurance charges depending on the place of supply.

**Rule 5 : Computed value method**— If the value cannot be determined under rule 4, it shall be based on a computed value which shall include the following:-

- a. the cost of production, manufacture or processing of the goods or, the cost of provision of the services;
- b. charges, if any, for the design or brand;
- c. an amount towards profit and general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

**Rule 6: Residual method**— Where the value of the goods and/or services cannot be determined under the provisions of rule 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

**Rule 7: Rejection of declared value—**

(1)(a) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/or services, he may ask the supplier to furnish further information, including documents or other evidence and if, after receiving such further information, or in the absence of any response from such supplier, the proper

officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3.

(b) The reasons to doubt the truth or accuracy of the value of the supply declared by the supplier shall include, but not be limited to the following:

- (i) the significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- (ii) the significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of like kind and quality at the time of supply; or
- (iii) any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production.

## **Rule 7: Rejection of declared value -**

(2) The proper officer shall intimate the supplier in writing the grounds for doubting the truth or accuracy of the value declared in relation to the supply of goods and/or services by such supplier and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

(3) If after hearing the supplier as aforesaid, the proper officer is, for reasons to be recorded in writing, not satisfied with the value declared, he shall proceed to determine the value in accordance with the provisions of rule 4 or rule 5 or rule 6, proceeding sequentially.

Explanation: For removal of doubts, it is hereby declared that this rule by itself does not provide a method for determination of value. It provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value.

## Rule 8: Valuation in certain cases

### (1) Pure Agent

(a) Notwithstanding anything contained in these rules, the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods and/or services procured;

(ii) the recipient of service receives and uses the goods and/or services so procured by the service provider in his capacity as pure agent of the recipient of service; (iii) the recipient of service is liable to make payment to the third party; (iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and/or services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and (viii) the goods and/or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation: For the purposes of this sub-rule, “pure agent” means a person who—

## Rule 8: Valuation in certain cases

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods and/or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods and/or services so procured; and
- (d) receives only the actual amount incurred to procure such goods and/or services.

(2) Money Changer The value of taxable service provided for the services in so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money: Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.





Thank  
you



**Contact :**

[nawal@bizsolindia.com](mailto:nawal@bizsolindia.com)

Mobile No: 9890165001