

Solved Scanner Appendix

CA Final Gr. II
(Solution of November - 2014)

Paper - 8 Indirect Tax laws

Chapter - 3 : Valuation of Excisable Goods

2014 - Nov [2] (a) In the given case valuation will be done as per Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, which deals with the case of valuation when 'price is not sole consideration for sale'. As per the explanation 2 to Rule 6 of above valuation rule, when an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the CEO has evidence to the effect that the advance received has influenced the fixation of the price of goods.

Now the A.V. shall be determined as under:

- (i) Assessable value = ₹ 1,200 × 1,000 = ₹ 12,00,000
No notional interest shall be added as advance received has not influenced the price.
- (ii) Assessable value = (₹ 1200 + ₹ 80) × 1,000 = ₹ 12,80,000
Here ₹ 80 per unit will be added as notional interest (₹ 1280-1200) as the price charged is influenced due to the receipt of advance. Here the actual rate of interest is irrelevant.

2014 - Nov [3] (a)

The assessee will be liable to include 75% of the amount of sales tax in the transaction value of the goods. The inclusion can be confirmed by two ways as:

- (i) Firstly, as per Section 4(3)(d), only sales tax actually paid or payable by the assessee will not be included in the transaction value of the goods. In this case the assessee is actually paying just 25% of sales tax to the State Govt. and retaining 75% as incentive allowed by the State Govt. So, the retained amount of sales tax will form part of Transaction value and assessee will be liable to pay excise duty on such amount also.
- (ii) Secondly, in the case of **CCEx V. Super Synotex(India) Ltd[2014]**, the Supreme Court held similar view as point one, and held that “ the assessee will not be entitled for deduction of amount of Sales Tax collected from the customers retained with himself under incentive scheme provided by the Government. The same shall form part of the ‘Transaction value’ of the goods. Deductions of only that amount of sales tax will be available which is actually paid to the State Govt.

2014 - Nov [7] (a)

As per Rule 4 of “The Central Excise(Determination of Retail sale price of Excisable Goods) Rules,2008 , if a manufacturer removes the excisable goods specified under section 4A(1) of the Act without declaring the retail sale price of the goods, then the Retail sale price of the goods shall be determined as follow:

- (i) If the manufacturer has manufactured and removed identical goods, within a period of 1 month before or after removal of such goods, by declaring the retail sale price, then the said declared retail sale price shall be taken as retail sale price of such price.
- (ii) If the retail sale price can't be determined as per (i) above, the retail sale price of such goods will be ascertained by conducting the enquiries in the retail market where such goods have normally been sold at or about the same time of removal of such goods from the place of manufacture.

Chapter - 4 : CENVAT Credit Rules

2014 - Nov [3] (b) (i)

The given question in the case is based upon the case of “*CC & CEx v ITC limited*[2013]. In this case it was held that the staff colony maintained by the Company for accommodation of its employees was being directly and intrinsically linked to its manufacturing activity. So the services necessary for maintaining the staff colony will be considered as ‘Input Service’ as per Rule 2(l) of Cenvat Credit Rules, 2004. Consequently, the service tax paid on such input service will be available to the assessee as CENVAT credit.

2014 - Nov [4] (a)

Rule 12CCC of the Central Excise Rules, 2002 and Rule 12AAA of the CENVAT Credit Rules,2004 empowers the Central Government to specify these restrictions, in the public interest:

- (i) suspension of registration in case of a dealer,
- (ii) types of facilities to be withdrawn; and
- (iii) and procedure for issue of such order by the Chief Commissioner of Central Excise.

The CG has notified various restrictions under the aforesaid rule and the procedure for issue of an order in that regard. However, the provision of this notification shall be applicable only in a case where the duty or CENVAT credit alleged to be involved in the offences given therein exceeds ₹ 10 lakhs.

2014 - Nov [4] (b) (ii)

Refund of unutilized CENVAT credit shall be allowed under Rule 5B of CENVAT Credit Rules,2004, for providing following output services:

- (1) renting of a motor vehicle designed to carry passengers on non abated value, to any person who is not engaged in a similar business;
- (2) supply of manpower for any purpose or security services; or
- (3) service portion in case of execution of a works contract.

Chapter - 5 : General Procedures under Central Excise**2014 - Nov [5] (a)**

As per Rule 4(1) of Central Excise Rules, 2002, generally the person who produces or manufactures the goods is liable to pay excise duty, whether he is owner of such goods or just a job worker.

However Rule 4(1A) provides an exception where the excise duty is paid by supplier of raw material or the person who gets the goods manufactured by the job worker in case of the goods falling under Chapter 61 or 62 or 63 of the First Schedule to the Tariff Act, produced or manufactured on his account. It is to be noted that the above chapters deal with readymade garments and made up articles of textiles manufactured on job work basis.

Chapter - 12 : Warehousing**2014 - Nov [6] (Or) (a)**

The following exporters are eligible for the facility of export warehousing:

- (i) Status Holders as per FTP 2009-14
- (ii) The foreign departmental stores of repute and
- (iii) The automobiles manufacturers who have signed MOU with the DGFT in the ministry of Commerce and Industry.

Chapter - 13 : Exemption Based on Value of Clearances (SSI)**2014 - Nov [1] {C} (a)**

M/s. Smart Manufacturing Co. will be eligible for SSI exemption in F.Y. 2015-16 only if the aggregate value of clearance in the P.Y. i.e. 2014-15 does not exceeds of ₹400 lakhs.

Computation of value of clearance in the F. Y. 2014-15 (₹ in lakhs)

Particulars	Reasons	Amount (₹ in lakhs)
1. Clearance of excisable goods	The value of exempted goods (other than exports) will be included in the aggregate value of clearance of all excisable goods for home consumption	100

2. Clearance of accounts books bearing brand name of another person	Generally goods bearing brand name of another is excluded. However, in case of specified goods like account books, registers etc. are eligible for exemption.	100
3. Clearance of goods to UN	Expressly excluded as it being clearance of excisable goods without payment of duty	Excluded
4. Exports of ₹ 250 lakhs (₹ 50 lakhs to Bhutan)	Export to Nepal and Bhutan is treated as clearance of goods for home consumption.	50
5. Clearance of the goods notified u/s 3A of CE Act, 1944	These are also includible as clearance for home consumption.	190
Total Value of clearance		440

Since the value of clearance exceeds ₹ 400 lakhs in the preceding F.Y. i.e. 2014-15, so the assessee will not be eligible for SSI exemption for the F. Y. 2015-16.

2014 - Nov [6] (a)

In following circumstances the clearances of two or more units shall be clubbed under the Central Excise Law:

- (i) Where a manufacturer clears the specified goods from one or more factories;
- (ii) Where the specified goods are cleared by one or more manufacturers from one factory.

Chapter - 18 : Service Tax**2014 - Nov [1] {C} (b), (c)****(b)** Computation of value of taxable service and service tax thereon [Rule 2A(ii) Service Tax valuation Rules]

Particulars	Total Amount Charged	% of total amount charged	Taxable Value
(i) New construction	60,00,000	40%	24,00,000
(ii) Additions and alterations to damaged structures on land to make them workable(It is original works)	40,00,000	40%	16,00,000
(iii) Maintenance and servicing of goods(Since it is goods)	20,00,000	70%	14,00,000
(iv) Maintenance and repairs of immovable property	25,00,000	60%	15,00,000
(v) Glazing and plastering of an immovable property.	30,00,000	60%	18,00,000
Total Value of taxable services			87,00,000
Service Tax@ 12.36%			10,75,320

(c) Computation of value of taxable services and the service tax payable (for the month of September 2015)

Particulars	Amount (₹)
Advances received from clients for which no service has been rendered so far	10,00,000
Demurrage charges recovered from the provision of services beyond the agreed period	25,000
Security deposits forfeited for damages done by service receiver owing to negligence in the course of receiving a service	35,000
Payment received from a client	2,00,000

Gross Amount Charged(inclusive of service tax)	12,60,000
Value of taxable service(₹ 12,60,000×100/112.36)	11,21,395.51
Service tax liability (₹11,21,395.51×12.36/112.36) [Approx]	1,23,357

2014 - Nov [2] (b), (c)

(b) The given question is based upon exemption to developer/units located in SEZ as NN 12/2013-S. T., dated 01-07-2013. The amount of refund is shown below:

Particulars	Service tax paid (₹ in lakhs)	Refund (₹ in lakhs)
(i) Service tax paid on service exclusively used for authorized operations within SEZ	8	8
(ii) Service tax paid on service exclusively used within DTA	4	No refund
(iii) Service tax paid on services commonly used for SEZ and DTA units: Proportionate refund for service used in SEZ, which will be computed as ₹ 16 lakh×400 lakh/1200 lakh	16	5.3333
Total Amount available for refund		13.3333

(c) The HUF shall pay the Service Tax for March 2015 up to 31st March. However it has paid the service tax on 24th April, 2015 so there is a delay of 24 days in payment of service tax.

(i) **Calculation of interest u/s 75** : Since in this case the value of taxable services provided by the service provider in the preceding F.Y. does not exceed ₹ 60 lakhs, so reduced rate of interest @15% will be applicable.

Amount of Interest: = $4000 \times 15 \times 24 / 100 \times 365 = 39.45$

(ii) **Calculation of penalty u/s 76:** Higher of these 2 will be imposed as penalty:

(a) ₹ 100 per day for days of default i.e. $100 \times 24 \text{ days} = ₹ 2,400$

(b) 1% pm of service tax i.e. $4,000 \times 1\% \times 24/30 = ₹ 32$

So the amount of penalty will be ₹ 32 only.

2014 - Nov [3] (b) (ii)

The Commissioner (Appeals) by virtue of Sec.85 of Finance Act, 1994 may admit additional grounds raised by the appellant. Accordingly the Commissioner (Appeals) may, at the hearing of an appeal, allow an appellant to go into any grounds of appeal not already specified in the grounds of appeal, if the commissioner (appeals) is satisfied that the omission of that ground from the grounds of appeal was willful or unreasonable.

In this case the Commissioner (Appeal) will be justified in refusing additional ground, if the omission is willful or unreasonable otherwise not.

2014 - Nov [4] (b) (i)

No, service tax will not be levied in respect of service provided in the non-air-conditioned restaurant. As per Clarifications issued by the Department in this regard, following points are notable: "If in a complex, there is more than one restaurant, which are clearly demarcated and separately named but food is sourced from a common kitchen, then only the service provided by the restaurant having air conditioned or central air heating in any part, at any time during the year is liable to service tax and service provided in non air-conditioned or non centrally air heated restaurants will be treated as exempted service and credit entitlement will be as per the Cenvat Credit Rules.

2014 - Nov [5] (b) (i), (ii)

(i) 'Government Authority' is defined under 2(s) of Notification No. 25/2012-ST, dt. 20-6-2012. Accordingly "Government Authority" means an authority or a board or any other body;

- set up by an Act of Parliament or a State Legislature, or established by Government with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

- (ii) (a) **Option Available:** As per Rule 6(7) of Service Tax Rules, 1994, there is an option to 'Air Travel Agent' to pay reduced rate of service tax instead of normal rate of service tax @ 12%.
- (b) **Rate of Composition Scheme:** The person liable for paying the service tax in relation to the services of booking of tickets for travel by air provided by an air travel agent, shall have the option, to pay an amount calculated,-
- (i) @ 0.6% of the basic fare in the case of domestic bookings, and
 - (ii) @ 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the nominal rate specified in Section 66B and the option once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him shall not be charged during the financial year under any circumstances.

2014 - Nov [6](b) (i), (ii)

- (i) Presently, the rebate of service tax paid on taxable services received by an exporter of goods and used for export of goods is governed by NN 41/2012-ST. In 'Electronic Rebate' the service tax paid on the 'Specified Eligible Services' will be calculated electronically by the ICES system, by applying the rate specified in the schedule as a percentage(%) of the FOB value. Here following points are important:
- The exporter should have a central excise registration or service tax code number registered with customs ICES.
 - The exporter should declare his option to avail service tax rebate on the electronic shipping bill while presenting to the proper officer of the customs.
 - Minimum rebate for electronic shipping bill is ₹ 50.
 - An exporter claiming refund electronically can't claim it again on the basis of documents.

- (ii) In following circumstances the Commissioner of Central Excise may order for 'Special Audit' under section 72, if he has reason to believe that any person liable to pay service tax
- Has failed to declare or determine the value of a taxable service correctly; or
 - Has availed and utilized credit of duty or tax paid,-
 - (a) which is not within the normal limits having regard to the nature of taxable services provided, the extent of capital goods used or the types of inputs or input services used or any other relevant factors as he may deem appropriate; or
 - (b) by means of fraud, collusion or any willful misstatement or suppression of facts; or
 - Has operations spread out in multiple locations and it is not possible or practical to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said commissioner.

The Special Audit will be conducted by a Chartered Accountant or Cost Accountant to the extent and for the period as may be specified by the commissioner.

2014 - Nov [7] (b)(i), (ii)

- (i) No, presently M/s Pure Drugs Ltd, is not liable to pay service tax. W.e.f. 10-05-2013 as per amended Section 66D(f) of Finance Act, 1994 "Process amounting to manufacture or production of goods" means inter alia "a process on which duties of excise are leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. So the direction of the "Assistant Commissioner of Central Excise" is not valid in this case.
- (ii) **Rule 9 of "Place of Provision of Services Rules, 2012" specifies following services where place of provision is the location of the service provider:**
- (a) Services provided by a banking company, or a financial institution, or a non-banking financial company to account holders;
 - (b) Online information and database access or retrieval services;
 - (c) Intermediary services;
 - (d) Services consisting of hiring of means of transport, up to a period of 1 month.

Chapter - 19 : Basic Concepts of Customs

2014 - Nov [4] (c) (ii)

- **New Nomenclature:** The new nomenclature of “Custom House Agent” is “Custom Agent”. Accordingly, there is also amendment in Section 146 of the Customs Act, 1962.
- **Need:** The term “Broker” is more wider than the “Agent” ,so this new nomenclature was brought.

2014 - Nov [5] (c)

(1) **Conveyance:**

- **Definition:** As per Sec. 2(9) of Customs Act, 1962, conveyances is defined into inclusive manner and includes a vessel, an aircraft and a vehicle.
- **Features:**
 - (i) It defines the type of transport or vehicle for transportation of imported goods or export goods.
 - (ii) It helps to fix the liability of controller of conveyance i.e. person - in- charge.

(2) **India:**

- **Definition:** As per Sec. 2(27) of Customs Act, 1962, “India” includes the territorial waters of India, i.e. upto 12 nautical miles into the sea from the baseline or land-mass.
- Symbolically, India = Landmass + 12 nautical miles into the sea. (1 nautical mile = 1.85 Km)

Chapter - 23 : Valuation

2014 - Nov [1] {C} (d)

The above question is based upon Sec.20 of Customs Act, 1962 read along with NN 94/96-Cus., dated 16-12-1996. According to this Notification, the importer is liable to pay basic custom duty as well as additional customs duty on the value of “Fair cost of repairs carried out including cost of materials used in repairs(whether such costs are actually incurred or not) and insurance and freight charges both ways.

Now applying the above provisions total import duties of customs will be computed as:

Value for the purpose of levy of customs duty[₹ 9 lakhs + ₹ 3 lakhs]	12,00,000
Add: Basic Customs Duty@10%[A]	1,20,000
Value for the levy of additional duty of customs [Sec. 3(1)]	13,20,000
Additional duty of customs u/s 3(1)= Duty of excise@12%[B]	1,58,400
EC and SHEC@ 3% on Basic Custom Duty & Additional Duty of Customs [C]	8,352
Total Import Duties [A+B+C]	2,86,752

Chapter - 25 : Important, Exportation and transportation of Goods

2014 - Nov [4] (c) (i)

As per Rule 6 of the "Baggage Rules, 1998" a passenger returning to India shall be allowed clearance free of duty jewellery in *his bonafide* baggage to the extent as given below:

Condition	Amount of jewellery allowance
Indian passenger who has been residing abroad for over one year	(a) For a Gentleman passenger: Jewellery upto an aggregate value of ₹ 50,000; (b) For a lady passenger: Jewellery upto an aggregate value of ₹ 1,00,000.

Chapter - 27 : Demand and Appeals

2014 - Nov [3] (c)

In the instant case CESTAT is not justified in dismissing the appeal filed by the importer. Similar view was held in the case of "*Be Office Automation Products Ltd. V. CCEX [2014]*". It was held that " even the assessee had paid redemption fine to release the goods so as to save the goods from demurrage, interest or legal expenses, then also he can file an appeal to challenge not only confiscation but also imposition of the redemption fine on such goods.

Chapter - 29 : Duty Drawback**2014 - Nov [2] (d)****Amount of duty drawback:**

- (i) **Drawback admissible:** In this case the amount of drawback will be $80,000 \times 0.8\%$ i.e. ₹ 640 which exceeds ₹ 500.
- (ii) **Drawback Inadmissible:** Since the market price of the exported goods i.e. ₹ 48,000 is less than the amount of drawback i.e. $1000 \text{ kg} \times ₹ 50$ i.e. ₹ 50,000. So there will be no drawback in this case due to prohibition of Section 76.

Chapter - 32 : Advance Ruling**2014 - Nov [6](C) (i)**

“Activity” as defined under section 28E(a) of the Customs Act, 1962 means “import or export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter as the case may be.

Chapter - 35: Foreign Trade Policy**2014 - Nov [6] (c) (ii)**

In the instant case Mr. Hasmukh will be entitled to ‘Duty Credit Scrip’ equivalent to 10% of the net free foreign exchange earned during current financial year.

By applying the above principle, he will be entitled for a duty credit Scrip of ₹ 60,000 [₹ 6,00,000 × 10%]

2014 - Nov [7] (c)

The difference between ‘Duty Exemption Scheme’ and ‘Duty remission Scheme’ can be summarized as:

Basis of Diff.	Duty Exemption Scheme	Duty Remission Scheme
Scheme	It allow duty free import of inputs, fuel, oil, energy sources, catalyst required for production of export product. Provisions of Advance Authorization scheme applicable.	It enables post export replacement or remission of duty on inputs used in export product.

	Authorization issued for products for which SION (Norms) have been notified.	
Types	Duty Exemption Schemes consist of- (i) Advance Authorization Scheme (ii) Duty Free Import Authorization Scheme	Duty remission schemes consist of- (i) Duty Drawback (DBK) Scheme; and (ii) Duty Entitlement Passbook (DEPB) Scheme.

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FOR NOTES

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