VALUATION AUDIT UNDER CENTRAL EXCISE ACT, 1944

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Under sec 14A and 14AA of the Central Excise Act, 1944, as proposed by clause 104 of the Finance (No.2) Bill, 2009, now the Chartered Accountants shall also be eligible to conduct the audit either on account of valuation to be completed within specified period during any stage of enquiry, investigation or any other proceedings before any Adjudicating Authority, who could be appointed after getting the approval from the Chief Commissioner in jurisdiction by such Adjudicating Authority or on account of CENVAT Credit because of reasons to believe by the Commissioner of Central Excise in jurisdiction that the credit of duty availed or utilized is not within normal limit after considering the nature of the goods or due to fraud, collusion or any wilful mis-statement or suppression of facts.

Now the issue is how to conduct such audit and for the same, the essential provisions of sec. 3 (2), sec. 4A and 4 of the Central Excise Act, 1944 read with the Central Excise Valuation Rules, 2000 shall be considered strictly and then all the relevant techniques about analysis of transaction with the evidences and documents to ascertain the real character and consideration shall be applied accordingly.

Under the Central Excise Act, 1944, where the excise duty has been charged on advalorem basis, there are three methods of valuation – one is tariff value under sec. 3 (2), second is valuation based on MRP and the last method is the valuation based on transaction value.

Tariff Value

Section 3(2) of the Act, 1944 provides that the Central Government may, by notification in the Official Gazette, fix for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general heading, in the [Schedule to the Central Excise Tariff Act, 1985] as chargeable with duty advalorem and may alter any tariff values for the time being in force.

Section 3(3) has pointed out that the different tariff values may be fixed:

(a) For different classes or description of the same excisable goods, or

(b) For excisable goods of the same class or description:

(i) Produced or manufactured by different classes of producers or manufacturers; or

(ii) Sold to different classes of buyers.

The proviso to Section 3(3) points out that in fixing different tariff values in respect of excisable goods falling under Sub Section (3) (b) (i) or sub-clause (ii) regard shall be had to the sale prices charged by the different classes of producers or manufacturer or, as the case may be, the normal practice of the wholesale trade in such goods.

MRP Valuation

Under the system of value based on MRP [i.e. the maximum retail price], the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes local all otherwise, freight transport charges, commission payable to dealers and all charges towards advertisements, delivery, packing, forwarding and the like as the case may be, which is

required to be declared on the package as per the provisions of the Standards of Weights and Measures Act, 1976 [Act No. (60) of (1976)] or the Rules made thereunder or under any other law for the time being in force as prescribed under section 4A of the Act, 1944. in cases where the Standards of Weights and Measures Act, 1976 permits for not using any MRP like sale for industrial consumption, export sale, sec 4A and on the package, MRP has been reflected by the manufacturer.

Where goods are excisable goods and are packaged and further such packages are required to mention price thereof under Standards of Weights and Measures Act, 1976 or the Rules made thereunder or under any other law and further such goods are specified by Central Government by notification in the Official Gazette, then valuation of such goods would be on basis of retail sale price of such goods - Nature of sales not relevant for application of Section 4A. JAYANTI FOOD PROCESSING (P) LTD. Vs. CCE RAJ 2007 (215) E.L.T. 327 (S.C.).

Merely because the goods are specified items under sec 4A (1) of the Act 1944, that by itself is not sufficient, the requirement is the package of such goods are required under the Standards of Weight and Measures Act and rules made thereunder or under any other similar law to declare the M.R.P. If a particular item is required to be sold in packaged form, merely because the package of such item is required to be opened for testing, contract price is not applicable merely because of the feeling that the item is not a packaged commodity at the time of the retail sale- WHIRLPOOL OF INDIA LTD Vs. UOI 2007 (218) ELT-167 (SC). Merely because, small packages are packed in a carton, it could not be said that the carton is a package for retail sale to ultimate consumer. CCE Vs. KRAFTECH PRODUCTS 2008 (224) ELT-504 (SC).

When the duty is to be determined on such retail sale price, an abatement (as determined by the government by way of a Notification in the Official Gazette) shall be available on account of excise duty, sale-tax or other taxes because, such specific purpose of abatement irrespective of the quantum of various deductions, discounts, taxes or expenditure.

Explanation 2 to section 4A provides that,-

(a) where on the package of any excisable goods more than one retail sale price is declared , the maximum of such retail sale price shall be deemed to be the retail sale price;

(b) where the retail sale price, declared on the package of any excisable goods at time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;

(c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale 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.

It means where on the package of any excisable goods, more than one retail price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price Explanation 2 (a) of sec 4A. However, if on different packages, **only one MRP is declared, than the assessment** shall be based on such MRP declared [irrespective of the MRP declared on other packages.]

Now, each package based assessment prevails. Accordingly, on the package, if there is more than one price, and except one, all such other prices have been obliterates, it means there is only a single price on such package. What is relevant, the packaged MRP at the time of removal from the factory gate of the manufacturer should not be altered subsequently.

However, where there are more than one retail price of the same goods, but of course, because of combination package, group package, multi-piece package, etc then each such package has its own MRP and in such a situation , the Department should not say that the maximum of such MRP shall be the basis to charge duty in all cases because each package is a separate commodity as per the provisions under the Standards of Weights and Measures Act, 1976, read with the Standards of Weights and Measures (packaged Commodities) Rules, 1977. In other words, different class of goods calls for separate assessment. What is a different class must be determined by keeping the commercial considerations as well as the provisions of the law.

Where different retail sale prices are declared on different packages for the sale of any Excisable goods in packaged form in different areas, each such retail sale price shall be 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-[Explanation 2(c)].

In terms of Explanation 2 (b),where the retail sale price, declared on the package of any excisable goods at time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;

By Notification No 5/2001 CE (N.T) dt 1.3.2001 the Central Government has notified a series of goods on which section 4A is applicable. The abatement from the M.R.P. has been declared by the Central Government at different point of time.

When tariff value has not been fixed or the excisable goods are not assessed under Sec 4 A, then recourse of section 4 shall be called which means the measurement shall be in terms of assessable value based on the transaction price after certain specified adjustment.

Sec 4A(4) lays down that where any goods specified under sub section (1) are excisable goods and the manufacturer-

(a) removes such goods from the place of manufacturer, without declaring the retail sale price of such goods 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 subsection (1);or

(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of the manufacture,

Then, such goods shall be liable to confiscation and the Central Government shall ascertain the prescribed manner the retail sale price for the purposes of this section.

Explanation 1- to sec 4A points out that for the purposes of this section, “retail sale price” means the maximum price at which the excisable goods in the 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 and the price is the sole consideration for such sale:

Provided that in the case of the provision of the Act, rules or other law as referred to in subsection (1) require declaring on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

See also C.B.E. & C Circular No . 639/30/2002-CX, dated 24-5-2002-2002 (142) ELT –T33, &Circular No. 673/64/2002- CX, dated 28.10.2002-2002 (146) E.L.T. (T4), & Circular No. 625/16/2002- CX, dated 28-02-2002-2002 (140) ELT T36.

TRANSTACTION VALUE - Sec. 4

Sec.4 prevails only in the situation where sec 4 A [MRP Valuation] and sec 3 (2) [Tariff Value] is not applicable. For applicability of transaction value [as per Section 4 (1) (a)] in a given case, for assessment purposes, the following requirement must be satisfied:

(1) The goods are sold by an assessee for delivery at the time and place of removal. The earn "place of removal" has been defined basically to mean a factory or a warehouse;
(2) The transactions are at arm's length and the assessee and the buyer of the goods are not related ; and
(3) The price is the sole consideration for sale.

If any of the above conditions is not satisfied, then transaction value shall not be the assessable value and the value in such a case has to be arrived by applying the valuation Rules being notified in reference to section 4(1) (b) i.e. Notification No. 45/2000 C.E. (N.T) dt. 30/6/2000. i.e. the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000.

Section 4 essentially seeks to accept different transaction value for assessment based upon purely Commercial consideration. However, under this concept, not only the elements which enrich the value of the goods before their marketing have been included but several considerations after sale have also been included.

The term "Transaction value" means the price actually paid or payable for the goods, when sold, an 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 dose not include the amount of duty of excise, sales tax or other taxes, if any, actually paid or actually payable on such goods.

The expression "payable" refers the price which is to be paid because of sale on deferred payment basis for the consignment which is subject matter of assessment rather than the price of the other consignment- EICHER TRACTORS LTD Vs. CCE 2000 (122) ELT-321 (SC). Excise Duty cannot be levied indirectly on a product (by including the value of a non-dutiable product like software in the value of dutiable computer, because it is impermissible to levy tax indirectly-CCE Vs. ACER INDIA LTD 2004 (172) ELT -289 (SC).

The duty or tax means actually paid or payable on the goods under assessment, but dose not mean any tax or duty paid on inputs or raw-materials of such finished goods – KIRLOSKER BORS LTD Vs. UOI 1992 (59) ELT – 3 (SC). Any input credit or relief dose not mean any deduction on account of duty element, but it shall be an effect of the law, so the claim of the credit or relief shall not be includible in the assessable value. In other words, in put duty

credit shall not be a part of the assessable value.- DAH_CHI KARKARIA LTD 1999 (112) ELT – 353 (SC). Where sale price realized includes all types of duties & taxes, by necessary implication, it would mean, it includes excise duty also, the deduction on account of duty element must be given- CCE Vs MARUTI UDYOG LTD 2002 (141) ELT – 3 (SC); CCE Vs DUGAR TETENAL INDIA LTD 2008 (224) ELT – 180 (SC). In such a situation, the proper and appropriate method of determining the assessable value would be the following formula:-

Assessable Value = Cum-duty Selling Price – permissible deduction – (1+ Rate of Duty)

For example, if the Cum-duty Selling Price is known to be Rs. 3,200/- and the permissible deductions are known to be Rs. 200/- and the rate of excise duty is known to be 60%, the assessable value is computed as under:

Selling Price- permissible Deduction = Rs. 3,200/-- Rs. 200/- = 3,000/-

Assessable value is equal to difference in selling price and permissible deduction divided by 1 plus 60/1,000 which equal to 3,000/1.6 which is equal to Rs. 1,875/-

[Sec- GOVT. OF INDIA Vs MADRAS RUBBER FACTORY LTD 1975 (770 ELT 433 (SC).]

The most be significant term **"is liable to pay to or on behalf of the assessee " and " by reason of , or in connection with the sale" - ------ payable at the time of sale or at any other time",. "Including but not limited to",** so all the recoveries for, or in connection or because of the effect of the sale (i.e. incidental to sale shall be a part of the transaction value except the exemption / exceptions provided in the Valuation Rules or by the Central government by issuing the circulars.- see Circular No. M.F. (D.R.) F. No. 354/81/2000- TRU dt 30.6.2000 reported in 2002 (143) ELT-T39.

In a case where there is an additional consideration recovered separately, which requires redetermination of assessed value. In such a situation, the assessable value must be determined as a whole instead of charging the duty on such consideration- METAL BOX INDIA LTD Vs CCE 1995 (75) ELT-449 (SC).

RELATED PERSONS:

The assumption about transaction at arm's length is not applicable where the goods are sold to or through related persons. In such a situation rule 9 and 10 of the Central Excise Valuation (determination of Price of Excisable goods) Rules, 2000 shall apply.]

In terms of sec. 4 (3) (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 undertaking" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive trade Practices Act, 1969 (64 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).

The above definition may be converted into two parts:

Part – I

The first part of the concept stipulates a reciprocal interest in the business of each other i.e. one may have direct interest while other may indirect interest. The quantum and degree of interest is not significant. The significance is regarding interest in business of each other i.e. the manufacturer has direct or indirect interest in the promotion in the business of the buyer as well as the buyer has an interest directly or indirectly in the promotion of business of the manufacturer – UOI Vs. KANTILAL CHUNILAL AND ORS. 1986 (26) ELT 289 (SC); UOI Vs ATIC INDUSTRIES LTD 1984 (17) ELT 323 (SC), etc.

In the case of CCE Vs T.I. MILLERS LTD 1988 (35) ELT 8 (SC) has laid down that interconnected undertakings as per the provisions of the M.R.T.P. Act, is not relevant for the purpose of Section 4 [because section 4 has it's own concept if they are otherwise not related – see rule 10 of the Valuation Rules 2000]. Similarly transactions between two partnership firms may be called as the transactions between related person would ultimately depend upon the fact and circumstances of the each case – MOHANLAL BHAVSAR [DECEASED] THROUGH L.R.S. AND ANOTHERS Vs. UOI 1986 (23) ELT 3 (SC).

Similarly transactions between two partnership firms may be called as the transactions between related persons would ultimately depend upon the facts and circumstances of the each case - MOHANLAL BHAVSAR [DECEASED] THROUGH L.R.S. AND ANOTHERS Vs. UOI 1986 (23) ELT 3 (SC).

Part – II

This part points out that the holding company, subsidiary company, a relative and distributor, shall be a part of the related person.

The Supreme Court in the case of UOI Vs BOMBAY TYRE INTERNATIONAL LTD. 1983 (14) ELT 1986 (SC) has laid down that the words "a relative and a distributor of the assessee" do not refer any distributor but they are limited only to a distributor who is relative of the assessee – within he meaning of the Companies Act, 1956. However, if a distributor is not buyer but are agent of the manufacturer, than the transactions between them would be on account of related person – SNOW WHITE INDUSTRIAL CORPORATION Vs CCE 1989 (41) ELT 360 (SC).

And it must be remembered that the common share-holding is not a relevant factors. If the directors are also common, it does not have any relevance if the transactions are at arms length and the price is sole consideration for the sale. Similarly transaction between the subsidiary companies of a holding company will not be on account of the related person if both the companies have no interest in the business of each other- UOI Vs HIND LAMPS

LTD 1989 (43) ELT 161 (SC); UOI Vs PLAY WORLD ELECTRONICS PVT. LTD. -1989 (41) ELT 368 (SC), etc.

The Apex Court in the case of JOINT SECRETARY V. FOOD SPECIALITIES LTD. 1985 (22) ELT 324 (SC), AIR 1986 SC 685; SIDHOSONS & ANR. V. UNION OF INDIA & OTHER- 1986 (26) ELT 881 (SC); UOI V. PLAY WORLD ELECTRONICS PVT. LTD. 1989 (41) ELT 368 (SC); UOI V. HIND LAMP LTD. -1989 (43) ELT 161 (SC) ; CIBATUL LTD. – 1985 (22) ELT 302 (SC) has expressed that merely because the goods are produced with the brand name of the customer and the entire production are sold to him, it cannot be said that the buyer is a related person, therefore, the goods cannot be assessed on the basis of the market value obtained by the buyer who also aids to the value of the manufactured goods as the value of their own property in the goodwill of the brand name. In other words, where the seller has manufactured goods on its own account and not on behalf of the buyer, then merely because of using the trade mark of the buyer, it could not be said that the goods were manufactured on account of the buyer if the transactions are at arms length and the price charged is sole consideration of sale.

However the share-holder of a limited company does not, by reason only of their share holding, have an interest in the business of the company. Equally, the fact that two public limited companies have common directors does not mean that the one company has an interest in the business of the other- ALEMBIC GLASS INDUSTRIES LTD Vs CCE&C 2002 (143) ELT-244 (SC). However, in case of private limited companies, where both the companies are family concerns and are beneficiaries of their ventures and that the benefit of both the concerns are share by member of one and the same family. The conclusion about mutuality of interest is inevitable- CCE Vs I.T.E.C. (P) LTD 2002 (145) ELT-280 (SC).

And in case of co-operative societies and federation of such societies, though societies being member of the federation may have interest in the federation but does not have vice versa- UOI Vs KAIRA DISTT. CO-OP. MILK PRODUCERS UNION LTD 2002 (146) ELT 502 (SC), the stipulation of related person is not applicable.

***Now, the treatment of few recoveries or costs is as follows*:-**

(A) <u>Specific inclusion</u>: In the transaction value by sec. 4(3) like publicity, marketing, selling, advertising, warranty (irrespective of optional or mandatory) expenditure etc. if recovered separately from the buyer directly or indirectly, shall be included. However, where the brand name/copyright owner gets his goods manufactured from outside (on job-work or otherwise), the expenditure incurred by the brand name/copyright owner on advertisement and publicity charges, in respect of the said goods, will not be added to the assessable value, as such expenditure is not incurred on behalf of the manufacturer- assessee [sec CBEC Circular No. 619/10/2002 CX dt 19-2-2002].

(B) <u>Interest on delayed payment</u>: In case of recovery of interest on delayed payment after allowing the normal period of credit sales without interest shall not be included in the transaction value if-

1. the interest charges are clearly distinguished from the price actually paid or payable for the goods;

2. the financing arrangement is made in writing; and

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

Where there is a security deposit given by the buyer to the manufacturer - assessee the notional interest is not includible if it is proved that it is not in connection with or by reason of sale and the price of the goods has not been reduced because of such security deposit. Thus, interest i.e. cost of finance for delayed payment, when not exorbitant, is to be granted abatement whether availed or not under new sec 4 also- CCE Vs.ARVIND MILLS LTD 2006 (204) ELT -570 (T- LB).

Explanation 2 to rule 6 lays down that where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixations 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.

Illustration 1 – X, an assessee sells his goods to Y against full advance payment at Rs. 100 per piece. However, X also sells such goods to Z without any advance payment at the same price of 100 per piece. No notional interest on the advance received by X is includible in the transaction value.

Illustration 2 – A, an assessee, manufactures and supplies certain goods as per design and specification furnished by B at a price of Rs. 10 lakhs. A takes 50% of the price as advance against these goods and there is no sale of such goods to any other buyer. There is no evidence available with the Central Excise Officer that the notional interest on such advance has resulted in lowering of the prices. Thus, no notional interest on the advance received shall be added to the transactions value."
Thus, notional interest on advance deposit will not be included in the case of goods made to specification of the buyer unless there is specific evidence that such deposit has the effect of lowering the price.

(C) <u>Trade Discount</u>: Sec. 4 or the Rules are silent about the same. However, the Circular stipulates that if any transaction, a discount is allowed on declared price of any goods and actually passes on to the buyers of goods as per the common practice, the question of including the same in the transaction value does not arise.

The differential discounts extended as per commercial consideration on different transactions to unrelated buyers if extended cannot be objected to and different actual prices paid or payable for various transactions are to be accepted for working out the assessable value. It is also not the required condition to quantify the same at the time of preparation of invoice-CCE Vs. DCM TEXTILES 2006 (195) ELT -129 (SC).

Where the assessee claims that discount of any description for a transaction is not readily know but would be know only subsequently, the assessment for such transaction may be made. However, the assessee has to disclose the intention of allowing such discount to the Department and make a request for provisional assessment. In case, after issuing an invoice, any subsequent reduction of sale price would have no affect unless:-

(i) price was provisional ; and

(ii) there was a provisional assessment in terms of Rules 7. The effect of Rule 5 must also be kept in mind in which there is no provision of reassessment of assessed goods.

(D) Packing Charges: Rule 6 clearly includes vale of any packing materials supplies by the buyer [free of cost or at the concessional rates] into the transaction value irrespective of the fact i.e. whether it is ordinary or special. Similarly, whatever amount is charged from the buyer for packing will be a part of the transaction value.

There is no exclusion on account of cost of durable & returnable packing., Notf No. 313/77 CE grants an exemption for conclusion of cost of durable packing supplied by buyer for Glucose, Petroleum products, acids, resins and some other notified products. And if on account of return of packing if a supplier wants to a deduction of the amount returned to the buyer, he must follow the procedure to assume as trade discount. However Packing material cost is not liable for inclusion if it is not sold-TATA CHEMICALS LTD 2006 (204) ELT-359 (SC).

(E) Transportation Cost: Rule 5 stipulates that where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstance in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of delivery of such excisable goods.

Explanation 1 – "cost of transportation" includes -

(1) the actual cost of transportation; and

(2) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2 – For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods.

Thus, averaged freight, determined in accordance with generally accepted principles of costing, would be admissible for deduction in respect of transportation beyond the place of removal, where price at the place of removal is not known.

Delivery to the carrier at factory gate depot is delivery to the buyers and element of freight and transit insurance are not includible in the assessable value- At that point, ownership of goods has no relevance- ESCORTS JCB LTD Vs. CCE 2002 (146) ELT- 31 (SC); PRABHAT ZARDA FACTORY LTD Vs. CCE 2002 (146) ELT -497 (SC).

Any profit element on transportation is not includible in the assessable value – CCE Vs. GR CABLES LTD 2007 (208) ELT A 40 (SC) read with BARODA ELECTRIC METERS LTD Vs. CCE 1997 (94) ELT -13 (SC).

Compensation to customers for breakage or losses in transit cannot be treated as an insurance or cost of transportation- CCE Vs. SURYA ROSHNI LTD 2002 (122) ELT- 3 (SC).

(F) Depot Transfer: Such transfer is now based on "normal transaction value" i.e. the transaction value at which the greatest aggregate quantity of goods from the depots etc. are sold at or about the time of removal of the goods being from the factory or ware-house. If, however, the identical goods are not sold by the assessee from depots or consignment agents place on the date of removal from the factory or warehouse, the nearest date on which such goods were sold, shall be taken into account –see Rule 7

The terms transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day irrespective of the number of buyer.

And additional recoveries from depot by providing some extra service shall not provide any effect because of Rule 5 of the CE Rules, 2002 read with Sec. 4 (3) (c) in which a depot is not a place of removal. Moreover, the CBEC Circular F. No. 139/08/2000 – CX 4 dt 3-1-2001 stipulates that such additional service should not amount to manufacture.

(G) Cost of materials, service etc. freely supplied by the buyer or at the concessional rates, such additional consideration to that extent shall be includible – see Rule 6.

Few examples of such suppliers/ service provided without charging any thing or at the concessional rates are:-

- Value of materials, components, parts and similar items relatable to such goods;
- Value of tools. dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;
- Value of material consumed, including packing materials, in the production of such goods;
- 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.

where the transaction is on principal to principal basis, advertisement expenses borne by the bulk buyer (buying 98 % of the production) is not includible in assessable value- ALEMBIC GLASS INDUSTRIES Vs. CCE 2006 (201) ELT-161 (SC).

Now any additional consideration i.e. the difference in price between the price at which goods actually sold and the offer price [CCE Vs. IFGI REFRACTORIES LTD 2005 (186) ELT – 529 (SC)] equivalent to money value in terms of goods and services provided free or at reduced cost by or on behalf of the buyer to the supplier – manufacturer – assessee shall be included in the assessable value.

(H) Interconnected Undertakings [see Rule 10]: The interconnected undertakings are covered under the definition related persons. Remaining part is same as defined sec. 4 (4) (C) in existence prior to 1-7-2000. So far that aspect, old decisions are also relevant to the extent of adjustment about interconnected undertakings as defined in the MRTP Act. However, even if the assessee and the buyer are interconnected undertakings, the transaction value shall be rejected only when they are "related" in the sense of any clauses (ii), (iii) or (iv) of sec. 4(3)

(b) or the buyer is a holding company or a subsidiary company. In other words, while dealing with transactions between interconnected under-taking, if the relationship as described in clauses (ii), (iii) or (iv) does not exist and the buyer is also not a holding company or a subsidiary company, then for assessment purposes, they will not be considered as related persons. In other words, the new definition would not be much different from that covered under the old Sec. 4 definition.

(I) <u>Dealings with related-persons</u>: - [see rule 9]

(1) Now the dealings with related persons are equalized with the dealings at the depots or consignment agent. The rule says that the value of goods shall be the normal transaction at which these are sold by the related persons at the time of removal (to buyers not being related persons).

(2) In case where goods are not sold to such buyers, the transaction value shall be the value at which these goods are sold by the related person at the time of removal to the buyers (being related persons), who sells such goods in retail.

(3) In case, where related person does not sell the goods but uses or consumes such goods in the production or manufacture of other articles, the value shall be determined in the manner specified in Rule 8 i.e. 11% of cost of production.

Rule 9 prevails only in such a such a situation when goods are sold exclusively to the related persons. If the independent price is available, the same to be applied – 2007 (209) ELT- 185 (T-LB); CCE Vs. AQUAMALL WATER SOLUTIONS LTD 2006 (193) ELT –A 197 (SC).If the transaction price is not influenced by the relationship, the transaction value to be accepted-CCE Vs. BHARTI TELECOM LTD 2008 (226) ELT-3 (SC).

(J) <u>Cost of production – Rule 8</u>: Where transaction value is not known, but there is removal for assessment under sec. 4, as a measure of simplification, it has been stipulated that the assessable value shall be taken at 115% of the cost of manufacture of goods even if identical goods on comparable prices are available in the hands of the manufacturer. Cost of production means the cost based on general principles of costing as given by Cost Accounting Standard CAS 2, 3 and 4.

(K) <u>JOB WORK</u>: Rule 10 A of the Valuation Rules 2000 inserted by Notification No. 9 / 2007 C.E.(N.T.) dt. 1/3/2007 stipulates that where the excisable goods are produced or manufactured by a job worker on behalf of a person(hereinafter referred to as principal manufacturer), then,-

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

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

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

Provided that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

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

(L) <u>SALES TAX SET OFF</u>: Any set of scheme of sales tax does not change the rate of Sales tax Payable/ Chargeable on the finished goods, the set off is not to be taken into account for calculating the amount of sales tax permissible as abatement for arriving at the assessable value. It means only that amount of sales tax will be permissible as deduction under section 4 as is equal to the amount legally permissible under the local sales tax law to be charged/ billed from the customer/buyer- see CBEC Circular No. 671/62/2002-CX dt. 9-10-2002 reported in 2002 (1450 ELT- T 85]. However, where the set off is to be adjusted on consignment wise, the net sales tax (i.e. the amount permissible to be billed) will only be eligible for abatement.- See Circular No. 643/34/2002 CX dt. 1-7-2002, reported in 2002 (143) ELT – T 39.

In case, where the price is not the sole consideration for sale, but other requirements of section 4(1)(a) are satisfied, then value shall be determined as per the provisions of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. this provided for adding to the transaction value, the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.- see rule 6

The practical implication of the new valuation system could be seen from a composite contract made by the Railway or any other buyer in which total contract consideration has been provided for all the supplies and service provided after sale. In such service some materials are to be supplied by the buyer. Now what would be the value for the supplies of such goods manufactured which is subject to various operations at the place of buyer, by consideration the expressions employed in sec. 4 (3) (d) e.g. “by reason of, or in connection with sale payable at the time of sale or at any other time”-------“by including but not limited to----------“. Really we are in trouble because of giving such so-called organic structure of the statute. However, a relief is in the Circular No. CBE & C F. No. 136/08/2000-CX-4 dt. 3-1-2001. based the decision of the Supreme Court in the case of M/s SIDDHARTH TUBES

LTD 2000 (115) ELT 32 (SC); and J.C. GLASS LTD 1998 (97) ELT 5 (SC). In the circular, the Revenue i.e. the law Ministry has advised that the judgement of the SIDDHARTH TUBES LTD 2000 (115) ELT 32 (SC) does not enable the Department to charge duty on value addition outside the factory of clearance on account of certain processes not amounting to manufacture of manufactured goods in a separate/ other unit of the same group or by any independent Job- worker [See 2001 (128) ELT-T44 -45]. And it is needless to point out that the Revenue can not challenge the effect of such circular- DHIREN CHEMICAL INDUSTRIES LTD 2001 (47) RLT 881 (SC).

In other words, if the expenditure on erection, installation and commissioning has been incurred to bring into existence any excisable commodity, these charges would be included in the assessable value of the goods. If these cost are incurred to bring into existence of an immovable property, they will not be included in the assessable value of such resultant property- Circular No. 58/1/2002/CX Dt. 15-1-2002 also Circular No. . 643/34/2002 CX dt. 1-7-2002.

(M) "place of removal" means -

(i) a factory 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.

(N) **Residuary Rule**- Rule 11 of the Valuation Rules because of residuary one is not applicable independently without considering other rules – CADILA PHARMACEUTICALS LTD Vs. CCE 2008 (232) ELT – 245 (T-LB).

And at the end, because of machinery provision in organic manner, it requires high degree of interpretative approach as well as full disclosure requirement in audit report, because of the appointment made by Central Excise Authority, our attempt should be oriented to disclose all such interpretation adopted by the assessee while valuing the goods, so that the excise authority could decide whether there is a case of undervaluation or not rather than by us.

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