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INDIRECT TAX LAWS

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Answer 1 (A):

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

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

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

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

(5 Marks)

Answer 1 (B)

Yes, the Department's contention is valid in law. The facts of the given case are similar to the case of *CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)*. In the instant case, the question which arose before the Apex Court for consideration was whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification.

The Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

Thus, Samar is not eligible to claim exemption as goods brought by him cannot be treated as imported goods since they were brought into India clandestinely without payment of duty.

(5 Marks)

Answer:2

If goods are captively consumed, there is no requirement of declaration of RSP. Section 4A is applicable only when RSP is required to be declared on the retail package as per Legal Metrology Act, 2009. Hence, section 4A shall not apply in case of captively consumed goods. The value will be determined as per section 4 read with Rule 8 of the Central Excise Valuation Rules, 2000.

Since in the present case, only a part of the excisable goods are used for captive consumption (50% of 1,00,000 units i.e., 50,000 units), assessable value of such 50,000 captively consumed units will be determined in accordance with rule 8 of Valuation Rules, 2000.

The assessable value of remaining 50,000 units, which are sold, will be determined u/s 4A of Central Excise Act, 1944 i.e., RSP less abatement. Thus, net excise duty liability of Solid Ltd. will be computed in the following manner:

Computation of excise duty payable, in cash, by Solid Ltd. (amount in Rs.) :

(I) Duty payable on goods used for captive consumption (50,000 units)			
Cost of direct materials	Rs. 1,350		
Less: Central excise duty Rs. 1,350 ÷ 112.5 x 12.5 [WN-1]	<u>Rs. 150</u>	1,200	
Cost of direct salaries (includes house rent allowance of Rs. 120)		300	
Depreciation of machinery		500	
Quality control cost		50	
Factory overheads		200	
Administrative cost (25% related to production capacity)	[WN-2]	100	
Selling and distribution cost	[WN-3]	-	
Cost incurred due to break down of machinery	[WN-4]	<u>-</u>	
Total			2,350
Less: Scrap value realized			<u>200</u>
Cost of production			2,150
Cost of production of 50,000 units used for captive consumption			10,75,00,000
Add: 10% as per rule 8		<u>215</u>	<u>1,07,50,000</u>
Assessable value of 50,000 units of 'Z' used for captive consumption		2,365	<u>11,82,50,000</u>
Duty payable @ 12.5%	[A]		1,47,81,250
(II) Duty payable on goods sold (50,000 units)			
Retail sale price		4,000	
Less: Abatement u/s 4A @ 10%		<u>400</u>	
Assessable value per unit of 'Z' sold		3,600	
Assessable value of total units of 'Z' sold (Rs. 3,600 x 50,000 units)			<u>18,00,00,000</u>
Duty payable @ 12.5%	[B]		2,25,00,000
Total excise duty payable [(A) + (B)]			3,72,81,250
Less: CENVAT credit [Rs. 150 x 1,00,000 units]			<u>1,50,00,000</u>
Duty payable in cash			<u>2,22,81,250</u>

(12 Marks)

Working Notes:

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

(10 Marks)

Answer 3

Although the accessories are supplied compulsorily along with the machinery, but since the price of the accessories is not included in the price of the machinery and is charged separately, the accessories will not be charged at the same rate as applicable to the machinery.

Hence, separate assessable values for the machinery and accessories have to be computed in accordance with the proviso (a) to section 19 of the Customs Act, 1962 read with Accessories (Condition) Rules, 1963 in the following manner:

Particulars	Accessories US \$	Machinery US \$
FOB price	600.00	6,000.00
Add: Ocean Freight	100.00	1,000.00
Add: Insurance charges	<u>6.75</u>	<u>67.50</u>
Total CIF value excluding agent's commission	706.75	7,067.50
Exchange rate is 1 US \$ = Rs. 62 [Note 1]		
	Rs.	Rs.
Total in Indian currency	43,818.50	4,38,185.00
Add: Local agent's commission (allocated on pro-rata basis)	<u>600.00</u>	<u>6,000.00</u>
CIF value	44,418.50	4,44,185.00
Add: Landing charges @1% of CIF value [Note 2]	<u>444.19</u>	<u>4,441.85</u>
Assessable value	44,862.69	4,48,626.85
Assessable value (rounded off)	44,863	4,48,627

Notes:

- (1) Rate of exchange notified by CBEC as prevalent on the date of filing of bill of entry would be the applicable rate [Third proviso to section 14(1) of the Customs Act,1962].
- (2) Even if there is no information regarding landing charges, still they are charged @ 1% of CIF value [Clause (ii) of first proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- (3) Cost of transport of the imported goods upto the place of importation is only includible in the assessable value. Thus, transportation charges from Indian port to factory of importer will not be included in the assessable value [Clause (a) of rule 10(2) of Customs (Determination of Value of Imported Goods) Rules, 2007].

(8 Marks)

Answer-4 (A) :

Transit	Transshipment
Section 53 of the Customs Act, 1962 provides for transit of goods.	Section 54 of the Customs Act, 1962 provides for transshipment of goods.
In case of transit of goods, goods are allowed to remain on the same conveyance.	(ii) In case of transshipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
(i) In case of transit of goods, there is continuity of records.	(iii) In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

(4 Marks)

Answer : 4 (B)

The stand taken by Revenue is valid. A similar issue has been dealt by the supreme Court in the case of Union of India V. Padam Narain Aggrawal , wherein the Apex Court has observed that the power to arrest by a Custom Officer u/s 104 of the Customs Act, 1962 is statutory in character and cannot be interfered with.

Supreme Court pronounced that the direction to issue 7 days prior notice before arrest even in case of a non-bailable offence could not be said to be legal or in consonance with law, Firstly the order passed by the High Court was a blanket one and granted protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructed, interfered and curtailed the authority of Customs Officers from exercising statutory power of arresting a person said to have committed a non-bailable offence by imposing a condition of giving 7 days' prior notice, a condition not warranted by law. Hence, the order of High Court was set aside.

Therefore, in given case, it can be concluded that the stand taken by the revenue is sustainable in law.

(4 Marks)

Answer: 4 (C)

Yes, as per section 20, imported goods would include re-imported goods as well and therefore the goods sent/ exported out of India and re-imported would also be liable to payment of duty.

However, in this connection, the Central Government has granted concessions.

Accordingly, the importer is liable to Pay basic customs duty as well as additional customs duty on the value= Fair Cost of repairs carried out including cost of material used in repairs+ Insurance and freight charges, both ways

Value for the purpose of levy of customs duty [Rs 9 Lakh + Rs 3 Laks]	12,00,000
Add: Basic Customs Duty @ 10%	1,20,000
Value for levy of additional duty of customs u/s 3(1)	13,20,000
Additional Duty of Customs u/s 3(1) 12.5%	1,65,000
Add: EC and SHEC @ 3% on Basic Customs Duty & Additional Duty of Customs	8,550
Total import duties of Customs [BCD+Additional Duty+ EC& SHEC]	2,93,550

(4 Marks)

Answer:5 (A)

The excise duty payable by M/s. Choti Ltd. during the financial year 2015-16 is as follows (Rs.) :

Clearances of finished goods made during the year	2,50,00,000
Less: Exemption of Rs.150 lakhs	<u>1,50,00,000</u>
Dutiable clearances	<u>1,00,00,000</u>
Duty @ 12.50%	[A] 12,50,000

CENVAT credit available on inputs used in the manufacture of dutiable clearances (No CENVAT credit available in respect of exempt clearances):

Final products cleared during the year (in Kgs.)	[WN-1]	15,000
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Uniform Transaction Value (Rs. 250 lakhs 15000 Kg.)	1,667
No. of units comprised in dutiable clearances (Rs. 150 lakhs + Rs.1667 approx)	6,000
Inputs consumed in manufacture of dutiable clearances (Kg.)	6,000
CENVAT credit attributable to 6000 Kg. of inputs (6000 x 1012.50 x 12.5 ÷ 112.5)	[B] 6,75,000

(Alternative Computation : Since 40% of clearances are dutiable, therefore, 40% of inputs are eligible for CENVAT credit. Hence, CENVAT credit = Rs.1,51,87,500x 40% x 12.5 ÷ 112.5 = Rs.6,75,000)

CENVAT credit availed on capital goods (C)

(100% of 45,00,000 x 12.5 ÷ 112.5)[WN-2 & 3]	<u>5,00,000</u>
Duty payable [A - B - C]	<u>75,000</u>

Working Notes:

- (1) Since there is neither any processing loss nor inventory of input and output, it implies that all goods manufactured have been sold and entire quantity of inputs has been used in manufacturing these goods.
- (2) In respect of units availing SSI exemption, no CENVAT credit is available on inputs consumed in exempt clearances of Rs. 150 lakh.
- (3) In respect of units availing SSI exemption, CENVAT credit on capital goods can be availed but utilized only after clearances of Rs. 150 lakh.

Further, entire credit on capital goods can be taken in the same financial year by such units.

(5 Marks)

Answer:5 (B)

Computation of CENVAT credit available:

Particulars	Amount (₹)
Raw materials	52,000
Manufacturing machine (₹1,00,000 × 50%) (Note – 1)	50,000
Light Diesel Oil (Note - 2)	Nil
Grease	10,000
Office equipment (Note - 3)	20,000
Paints (Note - 4)	<u>5,000</u>
Total CENVAT credit available	<u>1,37,000</u>

Notes:

1. As per third proviso to rule 4(2)(a) of the CENVAT Credit Rules, 2004, assessee eligible for SSI exemption can avail CENVAT credit of the whole amount of the duty paid on the capital goods in the same financial year in which such goods are received. However, since ABC Ltd. is not eligible for SSI exemption, CENVAT credit of only up to 50% of the duty paid can be availed in respect of the manufacturing machine in the year of purchase by virtue of rule 4(2)(a).

2. Light Diesel Oil is not an eligible input as per the definition of inputs under rule 2(k) of the CCR, 2004. Hence, it is not eligible for CENVAT credit
3. With effect from 01.04.2016, equipment or appliance used in an office located within the factory is eligible capital goods for a manufacturer as per the definition of capital goods under rule 2(a) of CCR. However, definition of inputs under rule 2(k) of the CCR, 2004 has been amended to include capital goods of value upto ` 10,000 per piece, within its ambit. Hence, entire CENVAT credit is available on office equipment.
- 4 Any input used in factory which has some relation with 'manufacture' (direct or indirect) is eligible for CENVAT credit.

(5 Marks)