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**CA FINAL NOVEMBER 2016 EXAM**

**INDIRECT TAX LAWS**

**Test Code - F N J 6 0 2 8**

**BRANCH - (MUMBAI) (Date :24.07.2016)**

**Head Office : Shraddha, 3<sup>rd</sup> Floor, Near Chinai College, Andheri (E), Mumbai – 69.**

**Tel : (022) 26836666**

**Answer-1 :**

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 Rs1,350 +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>	
<b>Total</b>		<b>2,350</b>	
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>
<b>Duty payable @ 12.5%q</b>	<b>[A]</b>		<b>1,47,81,250</b>

**(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>
<b>Duty payable @ 12.5% [B]</b>			<b>2,25,00,000</b>
<b>Total excise duty payable [(A) + (B)]</b>			<b>3,72,81,250</b>
Less: CENVAT credit [Rs 150 * 1,00,000 units]			<u>1,50,00,000</u>
<b>Duty payable in cash</b>			<b>2,22,81,250</b>

**(10 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-4].

**(4 x 0.5 = 2 Marks)****Answer-2 (a) :**

The relevant computations are as under -

- (i) Product "A" is movable, marketable & excisable. If excise duty is payable on final product, then excise duty is not payable on intermediate product used in manufacture of such final product.

- Intermediate product "A" is used for manufacture of Product "B" which is exempted from duty as per notification. So, Excise Duty is payable by M/s. Akash Ltd. on Product A only.
- (ii) Invoice is required for removal of excisable goods if it is dutiable, even for captive consumption. So it is required to issue invoice for intermediate product "A", as it is excisable.
  - (iii) Captive Consumption does not mean sale. Hence, captive consumption of product "A" is not covered under VAT.
  - (iv) As per rule 5 of Central Excise Rules 2002, in case of captive consumption, the date of issue of intermediate product for use within factory is deemed to be the date of removal. So, in this case the intermediate product "A" was issued for captive consumption for manufacture of product "B" on 2nd March 2016, which is to be treated as date of removal.
  - (v) The excise duty payable is as follows : The rate of duty applicable on the deemed date of removal i.e., on 2nd March, 2016 is 12.5%. Duty payable is Rs. 15 lakh x 12.5% = Rs. 187,500.

**(5 x 1 = 5 Marks)**

**Answer-2 (b) :**

As per Rule 7(4) of the Central Excise Rules, 2002, the assessee shall be liable to pay interest on any amount paid or payable on the goods under provisional assessment, but not paid on the due date specified under Rule 8(1) and the first proviso thereto, as the case may be, @ 15% p.a., for the period starting with the first day after the due date till the date of actual payment, whether such amount is paid before or after the issue of order for final assessment.

Thus, the interest liability shall be calculated as under

	Voluntary payment on 21-01-2017	Final payment on 15-02-2017
Duty paid	1,00,000	2,25,000
Due date of payment of duty	06.12.2016	06.12.2016
Interest period ends on the date of payment of duty	21.01.2017	15.02.2017
No. of days for which interest payable	46	71
Rate of interest notified u/ s 11AA of the Central Excise Act, 1944	15%	15%
<b>Interest liability</b>	<b>1,890</b>	<b>6,565</b>

**(5 Marks)**

**Answer-3 (a) :**

The facts of the given case are similar to the case of CCEx. v. Ciens Laboratories 2013 (295)ELT 3 (SC). In the instant case, the Supreme Court made the following significant observations:

- (i) When a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably the decisive factor in classification. The relevant factor is the curative attributes of such ingredients that render the product a medicament and not a cosmetic. **(1 Mark)**
- (ii) Though a product is sold without the prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over / across the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments. **(1 Mark)**
- (iii) Prior to adjudicating upon whether a product is a medicament or not, it ought to be seen as to how do the people who actually use the product, understand it to be. If a product's primary function is "care" and not "cure", it is not a medicament. Medicinal products are used to treat or cure some medical condition whereas cosmetic products are used in enhancing or improving a person's appearance or beauty. **(1 Mark)**
- (iv) A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients, even in small quantities, is to be treated as a medicament. **(1 Mark)**

Based upon the above observations, the Supreme Court held that presence of pharmaceutical ingredients in the cream showed that it was used for prophylactic and therapeutic purposes namely, for curing dry skin

conditions of the human skin and was not primarily intended to protect the skin; therefore, the same was classifiable as a medicament.

Applying the ratio of the above-mentioned decision to the given situation, it can be concluded that owing to the pharmaceutical constituents present in the cream Moisture -BN and its use for the cure of certain skin diseases, the same would be classifiable as a medicament and not as a cosmetic/toilet preparation.

(1 Mark)

**Answer-3 (b) :**

Computation of penalty u/s 76 and 78 of the Finance Act, 1994. -

- (1) Paresh Ltd. has paid service tax and interest within 30 days of receipt of show cause notice under Section 73 of the Finance Act, 1994 and short payment of service tax was not on account of fraud etc., hence, no penalty shall be payable under Section 76 of the Act.
- (2) Paresh Ltd. has paid service tax and interest within 30 days of receipt of order of adjudicating authority under Section 73 of the Finance Act, 1994 and short payment of service tax was not on account of fraud etc., hence, penalty payable under Section 76 of the Act shall be 25% of penalty imposed in that order. Thus the maximum penalty that can be levied will be 25% of Rs. 60,000 [10% of Rs. 6,00,000] i.e. Rs. 15,000. The benefit of reduced penalty shall be admissible if penalty is also paid within 30 days of adjudication order.
- (3) Paresh Ltd. has not paid service tax and interest within 30 days of receipt of order of adjudicating authority under Section 73 of the Finance Act, 1994 and short payment of service tax was not on account of fraud etc., hence, penalty payable under Section 76 of the Act shall extend to 10% of the amount of tax not so paid i.e. Rs. 60,000.
- (4) Paresh Ltd. has paid service tax and interest within 30 days issuance of notice and short payment of service tax was on account of fraud, hence, penalty shall be payable under Section 78 of the Act. Penalty = 15% of service tax of Rs. 6 lakh = Rs. 90,000 provided such penalty is also paid within 30 days of receipt of such notice. On payment of such penalty, the proceedings shall stand concluded.
- (5) Paresh Ltd. has paid service tax and interest within 30 days of adjudication order and short payment of service tax was on account of fraud, hence, penalty shall be payable under Section 78 of the Act. Penalty = 25% of service tax of Rs. 6 lakh = Rs. 1,50,000, provided such penalty is also paid within 30 days of receipt of such order.
- (6) Paresh Ltd. has paid service tax and interest within 90 days of adjudication order and short payment of service tax was on account of fraud, hence, penalty shall be payable under Section 78 of the Act. Penalty = 100% of service tax of ^ 6 lakh = Rs. 6,00,000.

(6 x 1 = 6 Marks)

**Answer-4 :**

**Revision by Central Government [Section 35EE of the Central Excise Act, 1944 / Section 129DD of the Customs Act, 1962]:**

- (1) **Revision application by assessee :** The Central Government may, on the application of any person aggrieved by any order of Commissioner (Appeals) passed under section 35A, where no second appeal lies to Appellate Tribunal annul or modify such order.  
However, the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed Rs. 5,000.  
(1 Mark)
- (2) **Time limit for making revision application - 3 Months :** An application shall be made within 3 months from the date of communication to the applicant of the order against which the application is being made.  
**Condonation of delay :** The Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of 3 months, allow it to be presented within a further period of 3 months.  
(1 Mark)
- (3) **Revision application by department:** The Principal Commissioner or Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.  
(1 Mark)

(1 Mark)

- (4) **Form and Fees for filing revision application** : An application shall be in prescribed form and shall be verified in prescribed manner and shall be accompanied by a fee of,-

**Case -**

**Fees**

Where the amount of duty and interest demanded and penalty levied by any officer of Customs/Excise in the case to which the application relates -

(i) Does not exceed Rs. 1,00,000

Rs.200

(ii) Exceeds Rs. 1,00,000

Rs. 1,000

However, no such fee shall be payable in the case of departmental application.

**(1 Mark)**

- (5) **Suomotu power of revision** : The Central Government may, of its own motion, annul or modify any order of Commissioner (Appeals) referred above.

**(1 Mark)**

- (6) **Restriction on enhancing penalty / redemption fine etc.:** No order enhancing any penalty or fine in lieu of /- confiscation or confiscating goods of greater value shall be passed under this section,-

(a) in any case in which an order passed by Commissioner (Appeals) under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

**(1 Mark)**

- (7) **Show cause notice to be issued for raising duty demand** : Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 11A.

**Note** : The orders passed by Commissioner (Appeals) where no second appeal lies to Appellate Tribunal are as under -

(1) **In case of Central Excise** : Any order of Commissioner (Appeals), which relates to,-

(a) case of loss of goods during transit or during their processing in a warehouse or in storage in a factory or a warehouse

(b) rebate of excise duty on export goods or on excisable materials used in the manufacture of export goods;

(c) Goods exported outside India (except to Nepal or Bhutan) without payment of duty,

(d) CENVAT credit which is utilized for payment of excise duty on final products.

**(2 Mark)**

(2) In case of customs : Any order of Commissioner (Appeals), which relates to,-

(a) Any goods imported or exported as baggage;

(b) Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

(c) Payment of drawback as provided in Chapter X, and the rules made thereunder.

**(2 Mark)**

**Answer-5 (a) :**

**Presumption as to documents in certain cases [Section 36A of the Central Excise Act, 1944/Section 139 of the Customs Act, 1962]** : This section contains the following provisions for presumption as to documents in certain cases,-

Where any document-is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,-

(a) unless the contrary is proved by such person, presume,-

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's

handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(2 Marks)

- (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

(1 Mark)

**Note :** In case of Customs the above presumption shall apply in respect of any document which has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act. "Document" includes inventories, photographs and lists certified by a Magistrate under section 110 of Customs Act, 1962.

**Answer-5 (b) :**

The provisions relating to offences and penalties under Central Excise Act, 1944 are as under -

(1) **Offences and penalties [Section 9]:** Offence means any act or omission made punishable by any law for the time being in force. Whoever commits any of the following offences shall be liable to punishment under section 9 of the Excise Act -

- (a) contravenes any of the provisions -
- (i) of section 8 (dealing with restriction on possession of tobacco, not in force now); or
  - (ii) of a rule made under section 37(2)(iii) (dealing with restriction on transit of excisable goods from one part of India to other part); or
  - (iii) of a rule made under section 37(2)(xxvii) (dealing with registration of persons);
- (b) evades the payment of any duty payable under this Act;
- (bb) removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal;
- (bbb) acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder; (bbbb) contravenes any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;
- (c) (i) fails to supply any information which he is required by rules made under this Act to supply, or (ii) supplies false information, unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true;
- (d) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section.

(1 Mark)

(2) **Punishment:** The punishment for the above offences is as under,-

Case	Punishment
In case of an offence relating to any excisable goods, where the duty leviable thereon under the Act exceeds Rs. 50,00,000.	Imprisonment for a term, which may extend to 7 years and with fine. (However, such punishment shall not be for less than 6 months unless special and adequate reasons to the contrary are recorded in the judgment of the court.)
In any other case	Imprisonment for a term, which may extend to 3 years or with fine or with both.

(1 Mark)

(3) **In case of second and subsequent offence [Section 9(2)] :** If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to 7 years and with fine. However, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than 6 months.

(1 Mark)

(4) **Application of Section 562 of the Code of Criminal Procedure, 1898 and of the Probation of Offenders Act, 1958 - Offences by minors [Section 9E of the Central Excise Act, 1944/Section 140A of the Customs Act, 1962]:** If the offence is committed by a minor i.e. less than 18 years of age, then

only, the provisions of Probation of Offenders Act, 1958 and Section 562 of the Code of Criminal Procedure, 1898 shall apply.

**(1 Mark)**