

1st July, 2002

F.NO. 6/39/2000 - CX 1

Government Of India
Ministry Of Finance
Department Of Revenue
Central Board Of Excise & Customs

Subject : Clarification of doubts under the new Valuation Rules

I am directed to refer to Board's letter F.No.354/81/2000-TRU dated 30th June 2000 clarifying certain points relating to the new valuation provisions made effective from 1.7.2000.

2. The Board has received a number of references from the field formations as well as representations from the trade associations about certain doubts still persisting in the minds of the field officers. These points of doubt are being clarified in the Table enclosed.

3. Field formations may be suitably informed.

4. Hindi version will follow

5. Receipt of this Circular may kindly be acknowledged.

Sd/-
(A.K.PRASAD)
DIRECTOR (CX I)
3092812

Clarifications on points of doubt under The New Valuation Provisions introduced w.e.f. 1.7.2000

Sl no.	Points of doubt	Clarification
1.	What is the scope of the term "greatest aggregate quantity" used in Rule 2(b) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The definition does not indicate the time period over which the quantity is to be computed. Further, it is not clear whether it refers to the largest quantity sold to any particular assessee during the period or to the goods sold to the largest number of buyers.	The term "greatest aggregate quantity" has been used to define the term "normal transaction value" used in Rules 7 and 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Seen in this context the time period should be taken as the whole day and the 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 buyers. In case the "normal transaction value" from the depot or other place is not ascertainable on the day identical goods are being removed from the factory/warehouse, the nearest day when clearances of the goods were affected from the depot or other place should be taken into consideration.
2.	Freight charges:- 1. How is the cost of transportation to be deducted in case of vehicles owned by the manufacturer ?	(a) In such cases the cost of transportation can be calculated through costing method following the accepted principles of costing. A cost certificate from a certified Cost Accountant/Chartered Accountant/Company Secretary, may be accepted. The cost of

	<p>2. If manufacturer/transporter charges cost of transportation both for outward journey up to the point of delivery and return therefrom, whether the cost of transportation for the return journey of the empty truck/vehicle should also be allowed as deduction ?</p> <p>3. Whether transit insurance can be allowed as deduction as being part of transportation cost?</p>	<p>transportation should, however, be separately shown in the invoice.</p> <p>(b) As per Rule 5 of the Valuation Rules the actual cost of transportation from the place of removal up to the place of delivery is only to be excluded. If the assessee is recovering an amount from the buyer towards the cost of return fare of the empty vehicle from the place of delivery, this amount will not be available as a deduction. If, however, only the cost of transportation has been indicated in the invoice without any breakup for the forward and return journey, normally it should be accepted as the cost of transportation from the place of removal to the place of delivery.</p> <p>(c) Yes, the Apex Court in the case of Bombay Tyres International has held that the cost of transportation will include the cost of insurance also during the transportation of the goods. But the transit insurance should either be shown separately in the invoice or can be included in the transportation cost shown separately.</p>
<p>3.</p>	<p>(a) Whether abatement of sales tax and other taxes can be allowed based on average tax actually paid by the assessee as supported by costing certificate? [Circular No 20/90 CX 1 dt 30.8.1990]</p> <p>(b) As per Board's Circular No.2/94-CX.1 dt.11.1.94 (F.No.6/20/94-CX.1) the sales tax set-off available in respect of inputs is to be ignored while computing the sales tax payable. Whether this is still valid?</p>	<p>1. No. As per definition of "transaction value" taxes are deductible only on actual basis either paid or payable by the assessee. Attention is invited to paras 10 and 11 of Board's letter F.No.354/81/2000-TRU dt 30.6.2000.</p> <p>2. No. The Circular dt.11th Jan.1994 was based on the definition of 'duty of excise payable' given in Explanation to the erstwhile Sec.4(4)(d)(ii). The new sec.4 does not incorporate any such Explanation. The "transaction value" will exclude the sales tax actually paid or payable on the goods. Thus, for example, if the effective sales tax on cum-duty price of Rs.100 is 4% and the assessee is eligible for set-off of sales tax of, say, Rs.10 paid/suffered on the inputs, the actual sales tax paid/payable would be Rs.40-10 = Rs.30 and this will be the amount permissible as deduction from the "transaction value" and not Rs 40/-. Attention is also invited to paras 10 and 11 of Board's letter F.No.354/81/2000- TRU dt 30.6.2000.</p>
<p>4.</p>	<p>Packing:-</p> <ol style="list-style-type: none"> whether cost of secondary packing is to be excluded from the transaction value ? How is the cost of reusable containers to be determined for inclusion in the transaction value? Whether rental charges or cost of maintenance of reusable metal containers like gas cylinders etc. are to be included in the transaction value? What about cost of containers supplied by the buyer? 	<p>(a) No. There is no provision for such a deduction in the concept of transaction value</p> <p>(b) Normally the cost of reusable containers (glass bottles, crates etc.) is amortized and included in the cost of the product itself. Therefore the question of adding any further amount towards this account does not arise, except where Audit of accounts reveals that the cost of the reusable container has not been amortised and included in the value of the product</p> <p>(c) Yes, since the amount has been charged by reason of, or in connection with the sale of goods, this amount will be added to the transaction value</p> <p>(d) Since in such cases the price will not be the sole consideration for the sale, the valuation would be governed by Rule 6 and the cost of such packing, whether durable or not, will be included in the transaction value of the goods. In respect of packing which can be used repeatedly the cost will have to be amortized over the life span of the packing material as is done in the case of dies, moulds etc. supplied by the buyer.</p>
<p>5.</p>	<p>How will valuation be done in cases of captive consumption (i.e consumed within the same factory) including transfer to a sister unit or another factory of the same company/firm for further use in the manufacture of</p>	<p>For captive consumption in one's own factory, valuation would be done as per rule 8 of the Valuation Rules i.e. the assessable value will be 115% of the "cost of production" of the goods.</p> <p>If the same goods are partly sold by the assessee and partly</p>

	goods?	<p>consumed captively, the goods sold would be assessed on the basis of "transaction value" [provided they meet the conditions of sec.4(1)(a)] and the goods captively consumed would be valued as per Rule 8 of the Valuation Rules. This is because, as per new section 4, transaction value has to be determined for each removal.</p> <p>Where goods are transferred to a sister unit or another unit of the same company valuation will be done as per the proviso to rule 9.</p>
6.	Whether advertisement and publicity charges borne by the dealers/buyers are to be excluded from the assessable value	<p>No. Even where the dealings are on principal to principal basis but there is an agreement either written or oral that the buyer will incur certain expenditure for advertising the goods of the assessee, the cost of such advertisement and publicity will be added to the price of the goods to determine the assessable value. In such cases since price would not be sole consideration for sale, the transaction value would be covered by Rule 6 of the Valuation Rules</p> <p>As per definition, "transaction value" has to include the cost which the buyer incurs, or makes provision for, or on behalf of the assessee, for advertising or publicity charges.</p> <p>Court judgements delivered on this issue under the earlier Section 4, or the Rules made thereunder, will not apply w.e.f. 1.7.2000, in view of the definition of "transaction value"</p> <p>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). [Also refer Board's Circular 619/10/2002 CX dt 19.2.2002]]</p>
7.	What about the cost of after sales service charges and pre delivery inspection (PDI) charges, incurred by the dealer during the warranty period ?	<p>Since these services are provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealer's margin (or reimbursed to him). This is one of the considerations for sale of the goods (motor vehicles, consumer items etc.) to the dealer and will therefore be governed by Rule 6 of the Valuation Rules on the same grounds as indicated in respect of Advertisement and Publicity charges. That is, in such cases the after sales service charges and PDI charges will be included in the assessable value.</p>
8.	Will delayed payment charges be excluded from the transaction value?	<p>Yes, since " transaction value" relates to the price paid or payable for the goods. In this case the delayed payment charge is nothing but the interest on the price of the goods which is not paid during the normal credit period. However, to be admissible as deduction it should be separately shown or indicated in the invoice and should be charged over and above the sale price of the goods. Attention in this regard is invited to Board's Circular No. 194/28/96-CX dated 29.3.1996 which is still relevant so far as this element is concerned. [Also refer to para 8 of Board's letter F.No.354/81/2000-TRU dt 30.6.2000]</p>
9.	Is cash discount an admissible deduction?	<p>Since valuation is now based on "transaction value" the cash discount, if actually passed on to the buyers, will be allowed as deduction, the transaction being on principal to principal basis.</p>
10.	Should erection, installation and commissioning charges be included in the assessable value	<p>If the final product is not excisable, the question of including these charges in the assessable value of the product does not arise. As for example, since a Steel Plant, as a whole, is an immovable property and therefore not excisable, no duty would be payable on the cost of erection, installation and commissioning of the steel plant. Similarly, if a machine is cleared from a factory on payment of appropriate duty and later on taken to the premises of the buyer for</p>

		<p>installation/erection and commissioning into an immovable property, no further duty would be payable. On the other hand if parts/components of a generator are brought to a site and the generator erected/installed and commissioned at the site then, the generator being an excisable commodity, the cost of erection, installation and commissioning charges would be included in its assessable value. In other words if the expenditure on erection, installation and commissioning has been incurred to bring into existence any excisable goods, these charges would be included in the assessable value of the goods. If these costs are incurred to bring into existence some immovable property, they will not be included in the assessable value of such resultant property.[Refer Board's 37B Order No 58/1/2002 - CX dt 15.1.2002]</p>
11	How will valuation be done in cases of job-work?	<p>Please also refer to Board's Circular No.619/10/2002 - CX dt 19.2.2002.</p> <p>Cost of transporting the raw materials/inputs to the premises of the job-worker will also be added to determine the cost of the raw material/input.[1997(071)ECR381(TRIB)]</p>
12	How will valuation be done when goods are sold partly to related persons and partly to independent buyers?	<p>There is no specific rule covering such a contingency. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per section 4(1) transaction value is to be determined for each removal. For sales to unrelated buyers valuation will be done as per section 4(1)(a) and for sale of the same goods to related buyers recourse will have to be taken to the residuary rule 11 read with rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are to be related to buyers only.</p>
13	How will valuation of samples be done which are distributed free, as part of marketing strategy, or as gifts or donations?	<p>Since the goods are not sold section 4(1)(a) will not apply and recourse will have to be taken to the Valuation Rules. No specific rule covers such a contingency. Except rule 8 all the other rules cover contingencies where sale is involved in some form or the other. Therefore, the residuary rule 11 will have to be adopted along with the spirit of rule 8. In other words, the assessable value would be 115% of the 'cost of production or manufacture' of the goods.</p>
14	How will valuation be done when inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, under the erstwhile sub rule (1C) of rule 57AB of the Central Excise Rules, 1944, or under rule 3(4) of the Cenvat Credit Rules, 2001 or 2002?	<p>Where inputs or capital goods, on which credit has been taken, are removed as such on sale, there should be no problem in ascertaining the transaction value by application of sec.4(1)(a) or the Valuation Rules. [provided tariff values have not been fixed for the inputs or they are not assessed under Section 4A on the basis of MRP]</p> <p>There may be cases where the inputs or capital goods are removed as such to a sister unit of the assessee or to another factory of the same company and where no sale is involved. It may be noticed that sub rule (1C) of Rule 57AB of the erstwhile Central Excise Rules, 1944 and Rule3(4) of the Cenvat Credit Rules, 2001(now 2002), talk of determination of value for "such goods" and not the "said goods". Thus, if the assessee partly sells the inputs to independent buyers and partly transfers to its sister units, the transaction value of "such goods" would be available in the form of the transaction value of inputs sold to an unrelated buyer (if the sale price to the unrelated buyer varies over a period of time, the value nearest to the time of removal should be adopted).</p> <p>Problems will, however, arise where the assessee does not sell the inputs/capital goods to any independent buyer and the only removal of such input/capital goods, outside the factory, is in the nature of transfer to a sister unit. In such a case proviso to rule 9 will apply and</p>

		<p>provisions of rule 8 of the valuation rules would have to be invoked. However, this would require determination of the 'cost of production or manufacture', which would not be possible since the said inputs/capital goods have been received by the assessee from outside and have not been produced or manufactured in his factory. Recourse will, therefore, have to be taken to the residuary rule 11 of the valuation rules and the value determined using reasonable means consistent with the principles and general provisions of the valuation rules and sub-section (1) of sec.4 of the Act. In that case it would be reasonable to adopt the value shown in the invoice on the basis of which CENVAT credit was taken by the assessee in the first place. In respect of capital goods adequate depreciation may be given as per the rates fixed in letter F.No.495/16/93 -Cus VI dated 26.5.93, issued on the Customs side.</p>
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