

MRP VALUATION – FOR UNSOLD GOODS AT DEPOTS DURING PRICE REVISION

By

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Under Sec.4A, is differential duty need be paid for the stocks lying unsold at depots at the time of upward price revision?

Obviously department's answer is yes on account of:

-- Higher price would be realised (on sale of goods involving a price increase) as compared to the MRP (retail sale price) adopted for payment of duty at the time of removal of such goods from the factory.

However differential duty cannot be demanded legally on the following grounds:

1. Retail price means "the maximum price at which the excisable goods in 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, as the case may, and the price is the sole consideration for such sale." The word used in the definition is only **ultimate consumer and not ultimate price**. If the word 'ultimate price' is used in the statute, there would be the possibilities of chasing the goods and duty may be demanded based on such interpretation. Since it is ultimate consumer, the goods shall be assessed at the factory read with rule 5 of CER 2002.

2. The charging section 3 has not undergone any change after the introduction of Section 4A of CEA. While section 3 is the charging section, the measure of the levy is specified in section 3(2) in respect of commodities with tariff values and in section 4 and section 4A in respect of goods chargeable to duty on ad valorem basis.

3. The Rule 5 of Central Excise Rules, 2002 reads as follows:

Rule 5(1) "The rate of duty or tariff value applicable to any excisable goods, other than khandsari molasses, shall be the rate or value in force on the date when such goods are removed from a factory or a warehouse, as the case may be." The date for determination of duty and place of removal is specified in the said rule. Hence, Section 4A has to be read with Rule 5 to determine the duty payable at the place of removal. As the date of removal is the key factor for determining the rate of duty or tariff value, the same (date of removal) should apply for determining the value also. Therefore the assessable value has to be determined with reference to the price prevailing at the **"Place of Removal"** on the **"Date of clearance"** of goods from the factory. **Once assessment is made accordingly there is no scope to collect any differential duty in respect of stocks lying at stock points, even after price revision.** The revised retail prices need to be adopted only for goods that are removed from the effective date of price revisions.

4. Sections 4, 4A and 3(2) have to be read with Rule 5 to determine the duty payable at the time of removal. As long as duty has been paid at the retail price prevailing at depot points on the date of removal, there is no scope for any demand of differential duty. In this connection, kind attention is drawn to the CBEC Circular NO.255/89/96 CX. Dt.29.10.96 wherein clarified that no differential duty need be paid on stocks lying unsold in the depot subsequent to price revision. This is in accordance with the judgement of Hon'ble Supreme Court in the MRF case. **Inasmuch as sec.4, 4A and 3(2) is covered by charging section, department could not take different stand that the said case is applicable only in case of sec.4 and not 4A of CEA, 1944.**

5. Section 4A (1) of CEA, 1944 reads as follows:

" The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of **such goods**, to which the provisions of sub-section (2) shall apply."

This term 'such goods' is used both in Section 4 and Section 4A. This implies that the date on which goods are removed from the factory is the relevant date and the value that will be applicable is the value that is in force on the date when such goods are removed from the factory. In the case of MRP goods the assessable value will be reckoned with respect to the MRP prevailing on the date when such goods are removed from the factory. This implies that goods may be subsequently sold at a different price but that does not mean that retail price will be made retrospectively applicable from the date of removal. The expression of "such goods" has its own significance. Thus differential duty can not be demanded for the stocks held at stock points during price revision since the word used in the statute is only '**such goods**' and not '**said goods**'.

6. Sec.4A of CEA, 1944 is applicable in respect of those goods falling under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law for the time being in force. There exists a provision in the Standards of Weights and Measurement Act to sell the goods at revised retail prices for the stocks held at the stockiest/dealers. Rule 23 (4) of packaging commodities Rules, 1977 permits the sale of goods at revised prices in the case of increase in the local taxes after giving an advertisement in one or more newspapers and also by circulation of notices to the dealers and to the Director in the Central Government and Controllers of Legal Metrology in the state intimating the revised prices of such packages. **Inasmuch as price revision is permissible in packaging commodity rules, excise duty cannot be demanded on the revised retail prices for the stocks held at stock points during upward price revision.**

7. An amendment was effected in Section 4A under the Finance Act 1999 through a new sub-section that reads as follows:

" (4) If any manufacturer removes from the place of manufacture any excisable goods specified under sub-section (1) without declaring the retail sale price of such goods on the packages or declares a retail sale price which does not constitute the sole consideration for such sale, or tampers with, obliterates or

alters any such declaration made on the packages after removal, such goods shall be liable to confiscation”.

This amendment to Section 4A only seeks to curb malafide transactions. In effect, the amendment requires that the goods should be sold **without changing the price declared** on the product before removal from the factory. The goods are liable for confiscation in case there is an alteration in the price during price revision or otherwise also. But, there is no provision to raise a demand notice by the Department in terms of Sec.4A of CEA unless there is an alteration of price. It cannot be read to mean that differential duty has to be collected whenever there is a price increase. Further, the amendment to Section 4A does not employ any express language to lead to an inference that whenever higher prices are realised, differential duty is to be paid. As already stated above, section 4A is to be read with Rule 5 and only if malafides are proved, there could be a demand for differential duty. Inasmuch as proper stock accounts are maintained and price circulars issued to stockist/dealers and duty has been discharged, at the applicable MRP at the time of clearance of the goods from the factory, department cannot draw any adverse inference for the stocks held at stock points during price revision.

8. Nowhere in the Excise Act and Rules it is specified that the goods have to be pursued till they are ultimately sold, for assessing the excisable goods. Therefore assessment need not be kept open till the date of sale of each consignment is known. In reality the stocks might remain unsold at the stock points ever after a lapse of one to two years from the date of removal from the factory. Therefore it cannot be held that after price revision in normal course of business, the old stocks cannot be sold at higher prices. For this reason, simply department can not demand differential duty from the manufacturer. Inasmuch as the manufacturer is not changing the price sticker after removal of goods, he is not liable to pay differential duty in case of sale on old stocks under revised prices.

9. Assuming but not admitting that differential duty is to be paid during price revision for the unsold stocks lying at depots, even **price reductions have to be considered and refund granted, subject to the provisions of Section 11B**. Packaging Commodity Rules is not permitting to change of price sticker once goods cleared from the factory. But there may be possibilities to bring the stocks in to the factory in terms of Rule 16 of central Excise Rules, 2002 and cleared after affixing the new sticker subject to re-labeling amounts to manufacture. Again this concept (re-labeling) is not applicable for all products covered under Sec.4A. Practically also it is not feasible to bring back the goods into the factory for the stocks lying thorough out the country. Hence propose to demand differential duty from the assessee but at the same time not permitting to change the price sticker is not fair to the department.

In view of the above legal provisions, am of the fair opinion that variation in prices subsequent to removal of goods from the factory, in the normal course of business would not affect the assessment of such goods and neither a demand for differential duty nor a refund could be envisaged.

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