

**F. No. 354/02/2022-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)**

**Room No. 156, North Block
New Delhi, the 1st February, 2022**

To,

**All the Principal Chief Commissioners/ Chief Commissioners of Customs & GST,
All the Principal Directors General/ Directors General of Customs & GST**

Madam/Sir,

**Sub: Valuation of tobacco and tobacco products for the purposes of payment of
Basic Excise Duty and National Calamity Contingent Duty (NCCD) -reg.**

Representations have been received seeking clarification on the manner of computation of valuation, after admissible abatement, for the purposes of computation and payment of Basic Excise Duty and National Calamity Contingent Duty (NCCD). It has been argued that on calculation of excise duty and NCCD on the value arrived at after abatement on the retail sale price and thereafter computing Goods and Services Tax (GST) on such value inclusive of the excise duty and NCCD results in the total retail sale price of such tobacco and tobacco products overshooting the declared retail sale price, and accordingly, the rate of abatement is being questioned citing the increase in NCCD rates in the year 2020.

2.1 As per section 4A of the Central Excise Act, 1944, retail sale price based assessment has been prescribed for tobacco and tobacco products (like chewing tobacco, preparations containing chewing tobacco, Jarda scented tobacco, Pan masala containing tobacco) and an abatement of 55% on the retail sale price has been prescribed for such products. Accordingly, assuming the retail sale price to be Rs. 100, the basic excise duty and NCCD is computable on an assessable value of Rs 45. The cumulative basic excise duty (@0.5%) and NCCD combined being 25.5%, at present, on such products, the

amount of excise duty and NCCD payable would be Rs 11.475. It may be noted that abated value of Rs 45 in this case is a prescribed value for computation of basic excise duty and NCCD. It is not the prescribed sale price by the manufacturer. He is free to maintain his sale price, as appropriate, taking into account the relevant factors of costing and profit. Also, the abated value of Rs 45 (used only as measure for computation of basic excise duty and NCCD) is not relevant for computation of GST and Compensation Cess. Under the respective Acts, GST and Compensation Cess is payable on transaction value, that is price actually paid or payable for the supply of good including duties like basic excise duty and NCCD. Therefore, the value for the purposes of GST computation will be the transaction value plus basic excise duty, NCCD and any other amount as prescribed in section 15 of GST Act, 2017 [*i.e., in the above example, Value for computation of GST and Compensation Cess "V" = Transaction value as per the GST Act, 2017 + 11.475 (basic excise duty +NCCD)*]. Hence, consequent to an increase in NCCD rate (like in year 2020), a manufacturer of tobacco product had option to raise his retail sale price so as to retain the transaction value at a level that he wishes to recover from the consumer. Accordingly, in a regular transaction, at arm's length, the sale price of tobacco product would be value "V" plus GST and compensation cess. It is normally anticipated that the tax and duty increase, including excise duty and NCCD, would lead to increase in sale price.

2.2 As explained above, the present mechanism of retail sale price based assessment of basic excise duty and NCCD, as provided under section 4A of the Central Excise Act, 1944, does not pose any difficulty in assessment either of basic excise duty/NCCD or of GST/Compensation cess.

3. Further, issue has been raised that the notification No. 49/2008-Central Excise (N.T.), dated 24.12.2008, continues to contain a reference to the First Schedule to the Central Excise Tariff Act, 1985, even though the said Tariff Act has been repealed on introduction of GST. It is argued that this is a legal infirmity. In this context, it is to state that *vide* section 10 of the Taxation Laws (Amendment) Act, 2017 (18 of 2017), a section 38B has been inserted in the Central Excise Act, 1944, meant for saving of references to Chapter, heading, subheading and tariff item in Central Excise Tariff Act, 1985. The relevant section is reproduced as under:

"38B. Notwithstanding the repeal of the Central Excise Tariff Act, 1985 by sub-section (1) of section 174 of the Central Goods and Services Tax Act, 2017, any reference to the Chapter, heading, sub-heading or tariff item, as the case may be, in the First Schedule to the said Act or in any rules or regulations made thereunder, or in any notification, circular, order or instruction issued thereunder, shall mean a reference to the Chapter, heading, sub-heading or tariff item, as the case may be, in the Fourth Schedule."

Hence, there has been no legal infirmity in notification No. 49/2008-Central Excise (N.T.) dated 24.12.2008, as amended, in continuing with a reference to the First Schedule of the Central Excise Tariff Act, 1985.

4. Accordingly, it is directed to ensure that the valuation of the tobacco and tobacco products, as provided under the relevant notification(s), with reference to retail sale price declared on such goods less such amount of abatement as is notified, is done for the levy and collection of the basic excise duty and NCCD on such goods, as detailed above.

5. Hindi version shall follow.

Yours faithfully,

(Piyush Kumar Ankit)
Technical Officer (TRU-I)
01.02.2022