Paper 10 – Applied Indirect Taxation

Q. 1.a) What is the Incidental & Ancillary Process in relation to Central Excise Act, 1944?

b) Mr. Ram use to purchase duty paid MS tubes from its manufacturers and cut the same into requisite length. Thereafter, put it in the swaging machine for undertaking swaging process whereby dies fitted in the machine imparted "folds" to the flat surface of the MS tube/pipe. The Department took the plea that swaging process amounted to manufacture and hence duty was payable on the goods manufactured by Mr. Ram.

Answer 1.

a) **'Incidental'** means anything that occurs incidentally. It refers to occasional or casual process. **'Ancillary'** means auxiliary process, which unless pursued, shall not result into manufacture of the product. The definition of 'manufacture' under section 2(f), includes the processes which are incidental or ancillary to the completion of a manufactured product'. A process can be regarded as incidental or ancillary to the completion of the manufactured product, if it comes in relation to the finished product. It is immaterial whether the process is significant or inessential. On the other hand, where a process is not connected to the manufacture of the final product, it cannot be termed as incidental or ancillary.

b) As per Section 2(f) of the Central Excise Act, 1944, Manufacture includes 'any process incidental or ancillary to the completion of a manufactured product'. However, input and output must be different with each other. Therefore, the process of swaging amounts to manufacture. Mr. Ram was liable to pay the duty. *[Prachi Industries v CCEx., Chandigarh* 2008 (225) ELT 16 (SC)]

Q. 2. a) Explain whether waste and scrap will be liable to duty of excise.

b) Whether waste resulting from repair, etc. of plant is excisable ?

Answer 2.

a) Earlier there was a lot of controversy regarding dutiability of waste and scrap. The manufacturers contended that they did not manufacture waste and scrap and it arises incidentally during the course of manufacture of the main product. They argued that, as they did not intentionally produce the waste, they should not be unnecessarily burdened with excise duty on the same.

The new tariff has put an end to all such controversies by incorporating individual headings in relation to such process waste and scrap in numerous chapters in order to levy duty on waste and scrap.

Thus, if waste and scrap is –

i. Manufactured product
ii. Movable
iii. Commercially marketable and
iv. Listed in the tariff,

Then, it will be liable to duty of excise.

Waste, parings and scrap arising in the course of manufacture of exempted goods (i.e. goods chargeable to "NIL" rate of duty or goods exempted from whole of excise duty, other than goods exempted under SSI- exemption) and falling within the Schedule to the Central Excise Tariff Act, 1985 are exempt from the whole of the duty of excise leviable thereon. However, this exemption shall not be available to waste, parings and scrap cleared from a factory in which any other excisable goods other than exempted goods are also manufactured.

b) The facts of this case are identical to that in Grasim Industries Ltd. vs. UOI 2011 (273) E.L.T. 10 (S.C.) wherein it was held that

- To be an 'incidental or ancillary process' u/s 2(f)(i), the same should bring about a change I raw material leading to creation of a new product. Alternatively, it must be such a process without which the manufacture of the end product is not possible.
- The process of repairing etc. of plant, and machinery is not a process of manufacture of end product. Further, the welding electrodes, metals etc. used in such repair work are not raw material that are converted into end product. Hence, metal waste arising from such repairing work not a manufactured product u/s 2(f)(i) of the CEA, 1944.

- The waste is also not a subsidiary or by-product because if doesn't arise in the normal course of business of manufacture of cement; it only arises when repair, etc. of plant is undertaken.

The waste arising from repair, etc. of plant and machinery is not a manufactured product and is, therefore, not liable to duty. The Department's notice is invalid in law.

Q. 3. a) Raj & Co. furnish the following expenditure incurred by them and want you to find the assessable value for the purpose of paying excise duty on captive consumption. Determine the cost of production in terms of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and as per CAS-4 (cost accounting standard) (i) Direct material cost per unit inclusive of excise duty at 12.36% - ₹ 1,320, (ii) Direct wages - ₹ 250, (iii) Other direct expenses - ₹ 100, (iv) Indirect materials - ₹ 75, (v) Factory Overheads - ₹ 200, (vi) Administrative overhead (25% relating to production capacity) ₹ 100 (vii) Selling and distribution expenses - ₹ 150, (viii) Quality Control - ₹ 25, (ix) Sale of scrap realized - ₹ 20, (x) Actual profit margin - 15%.

b) Discuss the dutiability of packaged/canned software

Answer 3

a) Particulars	**Amount (₹)**
(i) Direct Material (exclusive of Excise Duty) [1,320 x 100/110]	1174.80
(ii) Direct Labour	250.00
(iii) Direct Expenses	100.00
(iv) Works Overhead [indirect material (75) plus Factory OHs (200)]	275.00
(v) Quality Control Cost	25.00
(vi) Research & Development Cost	Nil
(vii) Administration Overheads (to the extent relates to production activity)	25.00
Less: Realizable Value of scrap	(20.00)
Cost of Production	1,829.80
Add 10% as per Rule 8	183.00
Assessable Value	2,012.80

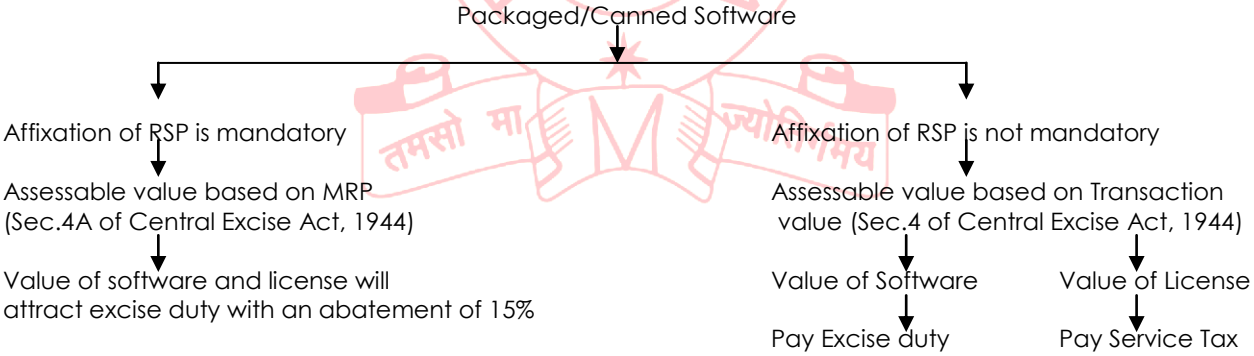
b) Duties on packaged/canned software [Notification No. 14/2011, dated 1-3-2011]:

Retail Sale Price (RSP) of packaged/canned software consist of two components namely

(i) Value of the software and

(ii) License (right to use)

The Central Board of Excise and Customs (CBE&C) issued Circular No. 15/2011 -Cus, dated 18.3.2011 to clarify the levy of Excise, Service Tax and Customs duties on packaged/canned software.



Note: if the packaged/canned software imported then the additional customs duty (CVD) under section 3(1) of the Customs Tariff Act, 1975 would be charged on value on the basis of MRP under section 4A of the Central Excise Act, 1944 provided affixation of RSP is mandatory. Otherwise additional customs duty (CVD) will be charged on the basis of Sec. 4 of the Central Excise Act, 1944.

Q. 4. a) State in brief the provisions under the Customs Act, 1962 that seek to prohibit the import of goods infringing intellectual property rights (IPR)

b) A manufacturer has appointed brokers for obtaining orders from wholesalers. The brokers procure orders for which they get brokerage of 5% on selling price. Manufacturer sells goods to buyers at ₹ 250 per piece. The price is inclusive of State Vat and Central excise duty. State Vat rate is 4% and excise duty rate is 12% plus education cess and SAH education cess as applicable. What is the AV, and what is duty payable per piece?

Answer 4.

a) The Government of India has an international obligation to protect Intellectual Property Rights (IPR) at the stage of import in terms of an agreement arrived at the WTO. Under clauses (n), (o) and (u) of section 11 of the Customs Act, 1962 the Government has been empowered to prohibit, absolutely or conditionally, import or export of goods for the purpose of patent protection, trade marks or copyrights or for prevention of deceptive practices. For this purpose, Intellectual Property Rights (imported goods) Enforcement Rules, 2007 have been notified.
The said rules provide that in case of goods infringing such IPRs, as are registered with the Commissioner of Customs, their import shall be prohibited. The import clearances of goods, which appear to be infringing goods, shall be suspended and the goods will be detained pending complete enquiry and examination. The goods ultimately found to be infringing goods are either to be destroyed or to be disposed of outside normal channels of commerce. The infringing goods cannot be re-exported.

b) Assume that Assessable Value = x. No deduction is available in respect of brokerage paid to third parties from Assessable Value.
Since Excise duty is 12%, education cess is 2%, SAH education cess is 1% and State Vat rate is 4%, price including excise will be 1.1 236x.
State Vat @ 4% of 1 .1236x is 0.0449x. Hence, price inclusive of sales tax and excise duty will be 1.1 685x.
Now, 1.1685x = ₹ 250.00
Hence, *X* = ₹ 213.95
Check the answer as follows –
Assessable Value = ₹ 213.95
Add duty @ 12.36% of ₹ 213.95 = ₹ 26.44
Add State Vat @ 4% on ₹ 240.39 (213.95+26.44) = ₹ 9.62
Total Price (Including duty and tax)
(213.95+26.44+9.62) = ₹ 250.00

Q. 5. a) One of the plants of the tax-payer produces ferrous sulphate, chromium sulphate and sulphur-di-oxide during the prepration of khaki dye. These are intermediate goods/semifinished goods and are not marketable. Central excise authorities demand excise duty on the ground that the tax-payer was manufacturing these goods and clearing them for internal consumption. Your advice as a consultant is sought by the tax-payer.

b) What is the place of provision of a service where the location of the service provider and that of the service receiver is in the taxable territory?

Answer 5.

a) In CCE vs. Ambalal Sarabhai Enterprises (1989) 43 ELT 214(SC), the Supreme Court declared that intermediate product will not be dutiable if it cannot be marketed in that condition. On the facts of the given case, which is similar to the case sited above, the Central Excise Authorities are not correct in their view.

b) The place of provision of a service, which is provided by a provider located in the taxable territory to a receiver who is also in the taxable territory, will be the location of the receiver.

Q. 6. a) An assessee made an application u/s 32E of the Central Excise Act, 1944 to the settlement commission. The settlement commission was not satisfied saying that the applicant had not made a true and full disclosure of his duty liability and the manner in which same was arrived at was also not correct and rejected the application. The assessee contended that obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not before that. Is plea taken by the assessee acceptable in law? Explain in brief, with the help if a decided case law, if any.

b) Sun Academy Pvt. Ltd., is providing commercial training services since, 2009. During the year 2011-12 service tax liability arises to pay was ₹ 12,00,000. However, service tax paid was paid ₹ 8 lacs after adjustment of CENVAT CREDIT of ₹ 4 lacs. In the month of April 2012, 60 students were joined for pursing Point of Taxation Rules (from 1st April'12 to 1 0th April'12). Fee per student is ₹ 3,000 (inclusive of Service tax) paid by all students the month of June 2012. Service Tax @12.36% paid on 5th July 2012. Calculate the following:
(i) Point of Taxation
(ii) Due Date
(iii) Service Tax liability
(iv) Interest if any
(v) Penalty under Sec. 76 of the Finance Act, 1994, if any.

Answer 6.

a) The applicant is not correct.
The matter of the case is similar to the case of Customs & Central Excise Settlement Commission v. Mars Therapeutics & Chemicals Ltd. 2008 (223) ELT 363 (HC). The High Court held that the application made u/s 32E of the Central Excise Act, 1944 could be admitted and proceeded with only when Settlement Commission is satisfied that the application has made true and full disclosure of the duty liability and the manner in which the same was arrived at.
The High Court clarified that the onus is on the applicant to make full and true disclosure of the duty liability and the manner in which the same was arrived at and the Settlement Commission will admit the application only when it is satisfied on the true and full disclosure of the duty liability and the manner it was arrived at. Further, the object behind the enactment of the provisions of Settlement Commission is the creation of a forum of self surrender and true confession and to have matter settled once for all. It is not a forum to challenge the legality of the order passed under the provisions of the Act.

b) (i) Point of taxation = April 2012
(ii) Due date = 6th May 2012
(iii) Service tax = ₹ 19,800 (i.e. 3,000 x 60 x 12.36/112.36)
(iv) Interest = ₹ 586 (i.e. 19,800 x 18/100 x 60/365)
(v) Penalty = ₹ 6,000
i.e. ₹ 100 x 60 days = ₹ 6000 or ₹ 391 (19,800 x 12/1 00x 60/365) whichever is higher

Q. 7. State briefly with reasons whether credit under the CENVAT Credit Rules, 2004 would be available in the following cases :
(a) Inputs are pilfered from the store-room
(b) Final product is cleared in durable and returnable packing material
(c) Assessee was purchasing chlorine gas in cylinders, but, after use, a small part of it was left in cylinders (unavoidable) and returned to supplier. Duty was paid on full quantity of chlorine gas purchased. Does quantity left and returned in cylinders qualify as 'input'?
(d) Inputs used in trial runs
(e) Cenvat credit of ₹ 20,000 was taken on certain inputs. Due to long-storage, they have become unfit and were sold as scrap for ₹ 5,000 and excise duty is 12.36%

Answer 7.

a) NO. Goods must be used within factory of production and must have some relation with manufacture so as to qualify as 'input' under rule 2(k). Since input "pilfered" (theft) are never "used", hence, they are not input and credit is not admissible.

b) YES. Goods must be used within factory of production and must have some relation with manufacture so as to qualify as 'input' under Rule 2(k). Cost of durable and returnable packing a part of

cost of production, which forms part of value liable to duty. Further, packing is a part of process of manufacture. Hence, it is 'input' and credit is admissible.

c) YES. Goods must be used within factory of production and must have some relation with manufacture so as to qualify as 'input' under Rule 2(k) . Since it was impossible to use total quantity of chlorine gas and some quantity left out was unavoidable, hence, quantity left out was "used" within factory. Hence, credit was admissible on left out portion also – CCEx v. Andhra Paper Mill Ltd. 2011 269 ELT 79 (AP).

d) YES. As inputs used in trial runs are necessary for manufacture, hence, they are eligible as 'input'.

e) Since input were never used for production, question of their qualifying as input doesn't arise. Hence, credit taken earlier must be reversed.

Q. 8. a) Determine the taxable turnover, input tax credit and net VAT payable by a works contractor from the details given below on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 12.5%:

	₹ lakhs
(*i*) Total contract price (excluding VAT)	**100**
(*ii*) Labour charges paid for execution of the contract	**35**
(*iii*) Cost of consumables used not involving transfer of property in goods	**5**
(*iv*) Material purchased and used for the contract taxable at 12.5% VAT (VAT included)	**45**

The contractor also purchased a plant for use in the contract for ₹ 10.4 lakhs. In the VAT invoice relating to the same VAT was charged at 4% separately and the said amount of ₹ 10.4 lakhs is inclusive of VAT. Assume 100% input credit on capital goods. Make suitable assumption wherever required and show the working notes.

b) When VAT Registration can be cancelled ?

Answer 8.

a)

	₹ lakhs
Total contract price (excluding VAT)	100.00
Less: Labour charges paid for execution of the contract	(35.00)
Less: Cost of consumables used not involving transfer of property in goods	(5.00)
Taxable Turnover	60.00
VAT @12.50% on ₹ 60 lakhs	7.50
Less: ITC ₹ 45 lakhs x 12.50/112.50	(5.00)
Less: ITC ₹ 10.40 lakhs x 4/104	(0.40)
Net VAT payable	2.10

b) Registration can be cancelled in the following cases

i. Dealer ceases to exist for which he got registered under respective state VAT Act.
ii. Dealer got insolvent
iii. Change of business constitution.
iv. Amalgamation or liquidation of company
v. Sale of entire business.

Q. 9. a) Briefly explain whether the following units are eligible for the benefits under Not. Nt. 8/2003-CE dated 1.3.2003 during the financial year 2012-13 as Small Scale Industry.

(i) ABC Ltd. Had registered a turnover for the purposes of the above Notification of ₹ 4.2 crores in the financial year 2011-12. Due to recession in the industry, they anticipate a fall in turnover of 20% in 2012-13, when compared to the year 2011-12.

(ii) MNP Ltd. Has started its manufacturing operations in the year 2012-2013 with an investment of ₹ 3.5 crores in plant and machinery and hope to achieve a sales turnover of ₹ 2 crores in 2012-13.

b) A Ltd. provided services valuing ₹ 8 lakhs during the financial year 2011-12. During 2012-2013, it has provided taxable services valuing ₹ 10 lakhs and has received payments towards payable services ₹ 8.5 lakhs. It has also received services in the nature of transport of goods by road on 1-4-2012, valuing ₹ 50,000 (exclusive of service tax), in respect of which it is the person liable to pay service tax. Freight has been paid on 10-6-2012. Compute the service tax, if any, payable by A Ltd. for the financial year 2012-2013. It is given that goods transport service is exempt to the extent of 75% of value thereof.

Answer 9.

a) (i) No, ABC Ltd. Will not be eligible for SSI exemption in F.Y. 2012-13, as turnover of preceding year 2011-12 exceeded ₹ 400 lakhs

(ii) Yes, MNP Ltd. Is eligible for SSI exemption during 2012-13 (being first year of its operation) because turnover during preceding year 2011-12 cannot be said to exceed ₹ 400 lakhs.

b) Value of transport services received = ₹ 50,000
Less: abatement 75% on ₹ 50,000 = ₹ 37,500
Taxable services ₹ 12,500
Service tax liability in the hands of A Ltd (2012-13) = ₹ 1,545 (i.e. ₹ 12,500 x 12.36/100)
Note:
i) The company is eligible for small service provider exemption during the financial year 2012-13, as the value of taxable services provided during financial year 2011-12 does not exceed ₹ 10 lakhs.
ii) For the value of taxable services provided during the financial year 2012-13, no tax liability would arise, as the payments received or services provided do not exceed ₹ 10 lakhs. However, for goods transport agency services received, in respect of which M/s. A Ltd. is the person liable to pay service tax, the company cannot claim for small service provider exemption.

Q. 10. a) How will the value be determined in case the excisable goods are sold at a place other than the place of removal ?

b) An importer imported some goods on 1st January, 2012 and the goods were cleared from Mumbai port for warehousing on 8th January, 2012 by submitting Bill of Entry, exchange rate was ₹ 50 per US $. FOB value US $ 10,000. The rate of duty on 8th January, 2012 was 20%. The goods were warehoused at Pune and were cleared from Pune warehouse on 31st May, 2012, when rate of basic customs duty was 15% and exchange rate was ₹ 48.75 per 1 US $. What is the duty payable while removing the goods from Pune on 31st May, 2012? CVD @10% and Special CVD 4% are applicable.
You are required to find:
i) The total Customs duty payable?
ii) The interest if any payable?

Answer 10.

a) In case all the requirements of Section 4(1)(a) are satisfied except one, that is, if the excisable goods are sold for delivery at the place other than the place of removal, then the value shall be determined as per Rule 5 of the Central Excise Valuation Rules, 2000. Accordingly, in such circumstances, the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

The term, cost of transportation includes :

i. The actual cost of transportation; and

ii. In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Thus, exclusion shall be available not only on account of actual cost of transportation but also on average freight or equalised freight from the place of removal to the place of delivery, provided the same is computed as per the principles of costing. Moreover, cost of transportation is excludible from the transaction value irrespective of whether the same is separately shown in the invoice or not.

However, the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded from the assessable value of goods.

Thus, where the goods are sold from a depot, premises of consignment agent or any other place or premises from where the goods are sold after the clearance from the factory, the cost of transportation

form the factory to the point of depot or any other place from where the goods are sold shall be included in the transaction value.

b)	(US $)
FOB	10,000.00
ADD: 20% Freight on FOB	2,000.00
ADD: 1.125% Insurance on FOB	112.50
CIF	12,112.50
ADD: 1% on CIF	121.125
ASSESSABLE VALUE	12,233.63

	(₹)
ASSESSABLE VALUE	6,11,681.25 (i.e. 12,233.625 x ₹ 50)
Add: BCD 15%	91,752.19 (i.e. 6,11,681.25 x 15%)
Balance	7,03,433.44
Add: CVD 10%	70,343.34 (i.e. 703,433.44 x 10%)
Balance	7,73,776.78
Add: 2% Ed. Cess	3,241.91 (i.e. 1,62,095.63 x 2%)
Add: 1%SAH Ed. Cess	1,620.96 (i.e. 1,62,095.63 x 1%)
Balance	7,78,639.65
Add: Spl. CVD 4%	31,145.59 (i.e. 7,78,639.65 x 4%)
Value of import	8,09,785.24
Amount of Customs duties	1,98,104.00
Interest:	
(i.e. ₹1,98,104 x 15% x 55/365)	4,478.00

Jan 24 days + Feb 29 days + Mar 31 + April 30 days + May 31 days= 145 days
145 days –90 days = 55 days

Q. 11. a) A show cause notice demanding customs duty was issued case of clearances made by 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area (DTA). Is the show-cause notice defective in law ?

b) Compute the VAT liability of Mr. X for the month of January 2013, using 'invoice method' of computation of VAT, from the following particulars:-
Purchase price of the inputs purchased from the local market (inclusive of VAT) ₹ 52,000
VAT rate on purchases 4%
Storage cost incurred ₹ 2,000
Transportation cost ₹ 8,000
Goods sold at a profit margin of 5% on cost of such goods
VAT rate on sales 12.5%

Answer 11.

a) In case where goods manufactured or produced by 100% EOU are cleared to DTA, proviso to section 3 of the Central Excise Act, 1944 provides for the levy of central excise duty equal to customs duty. The duty levied is excise duty, but only quantum thereof is equal to customs duty.
Hence, the show-cause notice demanding "customs duty" is defective law.

b) Cost of Purchases = ₹ 52,000 x 100/104 =	₹ 50,000
Add: Storage cost and transportation cost =	₹ 10,000
Total cost =	₹ 60,000
Addl profit 5% on Cost (₹ 60,000 x 5%) =	₹ 3,000
Taxable Turnover =	₹ 63,000
Add; VAT on Taxable Turnover (₹ 63,000 x 12.50%) =	₹ 7,875
Net VAT Tax liability	
VAT payable on Sales =	₹ 7,875
Less: ITC (₹ 52,000 – ₹ 50,000) =	₹ 2,000
Net VAT liability payable by Mr. X for the month of Jan 2013 =	₹ 5,875

Q. 12. a) State with reasons in brief whether the following statement is true or false with reference to the provisions of Service Tax.
Mr Rahim, an interior designer has received an advance amount of ₹ 5,16,300, after deduction of Income Tax of ₹ 53,100. The Service Tax is payable on ₹ 5,16,300.

b) Determine PoP in the given case - An architect based in Kolkata provides his service to an Indian Hotel Chain (which has business establishment in Mumbai) for its newly acquired property in Muscat.

Answer 12.

a) Service Tax is to be paid on the value of Taxable Service, which is charged by a Service Tax Assessee. Income Tax deducted at source is included in the charged amount. Service Tax is, therefore payable on the total amount inclusive of the Income Tax deducted at source.
Hence, the given statement is false. Service tax is payable on 5,16,300 + 53,100 = ₹ 5,69,400.

b) If Rule 5 (Property Rule) were to be applied, the place of provision would be the location of the property i.e., Muscat (outside the taxable territory). With this result, the service would not be taxable in India.
Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. Mumbai. Place of provision being in the taxable territory, the service would be taxable in India.
By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision. The service would be taxable in India.

Q. 13. a) A manufacturer of cameras sells leather cases/soft cases and instruction manuals along with the cameras. The cost of such cases and manuals were being charged separately apart from the cost of the camera. The excise department has claimed that the cost of such cases and manuals should be included in the assessable value of the camera. According to the excise department as per Rule 5 of the Interpretative Rule for Central Excise Tariff brought into force from 28.2.2005, cases for camera, musical instruments, drawing instruments, necklaces etc. specially shaped for that article, suitable for long-term use will be classified along with that article, if such articles are normally sold along with such cases. Examine briefly with the help of decided case law, if any, whether stand taken by department is correct.

b) Write short notes on duty deferment under the Customs Act, 1962.

Answer 13.

a) Concept of valuation is different from that of classification. Goods are valued in the condition in which they are removed from the place of removal.
The facts of this case are identical to that in CCEx v. PHIL Corporation 2005 180 ELT 311 (SC) wherein it was held that –

- Classification under same heading : As per Rule 5 of Interpretative Rules of the Tariff, camera cases were classified in the same heading as the camera.
- Camera case was accessory and was to be valued separately : Leather cases/ soft cases and instruction manuals supplied with cameras which were charged separately by the assessee were not components but were merely accessories. Hence, they were to be valued separately.

Stand taken by Department as regards classification was correct, but as regards valuation was incorrect.

b) Section 143A authorizes AC/DC of Customs to permit clearance of certain materials without payment of duty.
The materials are imported under an Import Licence belonging to the category of the Advance Licence granted under the Imports and Exports (Control) Act, 1947, subject to the condition that the goods are exported within the specified time mentioned in the said licence.
On export of the goods, the duty payable on the imported goods are to be adjusted against the duty drawback admissible to the exported goods.
If however, the duty (import duty) cannot be adjusted due to failure of meeting the export obligation, the importer has to pay such duty along with simple interest @ 12% p.a., from the date of grant of permission u/s 143A till the date of actual payment.

While permitting clearance, the AC/DC of Customs may require the importer to execute a bond with suitable surety or security.

Q. 14. a) 'Smartphone' is in the business of providing mobile telephone service. The assessee sells 'SIMCARDS" to its mobile telephone subscribers for a price. 'Smartphone' pay service tax on the activation and other charges. On the 'SIMCARDS' sold to the customers, VAT under the applicable State Law is paid. The department's view is that the 'SIMCARD' is used for provision of mobile services and is a part of the service and therefore the value of the 'SSIMCARD' has to be included in the category of 'telecommunication services' for purpose of service tax.
Explain with a brief note and reference to decided case law whether the view taken by the department is correct in law.

b) M/s. ABCL, providing management consultancy to its client, do not maintain any separate accounts and have paid ₹ 1,50,000 as service tax and excise duty towards input services and input material/ capital goods used by them. They have used the inputs for partially exempted and partially taxable services. They are now providing the output services for which current tax liability is ₹ 2,00,000. How much credit out of ₹ 1,50,000 can be available by them for paying output service tax liability, if they do not maintain any separate accounts ?

Answer 14.

a) Yes, the view taken by the Department is correct is law. The facts of the above case are similar to the case of CCEx v. Idea Mobile communications Ltd. 2010 19 STR 18 (Ker.). The High Court, while examining the functioning of a SIM Card, admitted that SIM Card is a computer chip having its own SIM number on which telephone number can be activated. SIM card is a device through which customer gets connection from the mobile tower. Unless the SIM card is activated, service provider cannot give service connection to the customer because signals are transmitted and conveyed through towers and through SIM Card communication signals reach the customer's mobile instrument. Hence, it can be inferred that it is an integral part required to provide mobile service to the customer.
Further, SIM Card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. Thus, the Court accepted the view that SIM cards, were not goods sold or intended to be sold to the customer, but supplied as part of service. Consequently, it held that the value of SIM card supplied by the assessee would form part of the value of taxable service on which service tax was payable by the assessee.

b) With effect from 1.4.2011, Rule 6(3) of the Cenvat Credit Rules, 2004 inter alia provides that where common input/ input services are used for providing taxable as well as exempted services and separate accounts are not maintained, the output service provider has the following options at his disposal :

(i) Pay an amount equal to 6% of the value of exempted services; or

(ii) Pay an amount as determined under Rule 6(3A) of CCR, 2004 i.e., Reverse the Cenvat Credit attributable to the inputs and input services used for providing exempted services.

(iii) Maintain separate accounts for inputs as provided for in Rule 6(2)(a) of CCR, 2004 and take credit of only those inputs which are used for provision of output services excluding exempted services. In addition, a service provider has to pay an amount determined in accordance with Rule 6(3A) in respect of input services.

In absence of any details to that effect, the relevant calculations cannot be made.
There is no other restriction as to utilization of Cenvat credit availed.

Q. 15. a) A manufacturer having a factory at Mumbai has uniform price of ₹ 2,000 per unit (exclusive of taxes and duties) for sale anywhere in India. During the financial year 2012-13, he made the following sales:

Particulars	Quantity sold in units	Cost of transportation (₹)
Goods sold at factory in Mumbai	1,000	Nil
Goods sold from New Delhi	500	12,000
Goods sold from Chennai	600	48,000
Goods sold from Kolkata	900	30,000

Find assessable value per unit and total excise duty payable by the manufacturer. Excise duty @12% plus

2% education cess and 1% Secondary and Higher Education cess.

b) M/s. A Ltd. Used to label its products with a foreign brand and claimed exemption under a notification. The classification list was approved by the department after carrying out verifications and all returns were regularly filed. The invoice containing description of goods were also regularly approved by the department. The department denied the benefit of exemption to the assessee by invoking extended period of limitation under section 11A on the ground that it failed to declare the particulars regarding affixing of labels. Is the department justified ?

Answer 15.

a) (Rule 5 of valuation rule)

Selling price per unit = ₹ 2,000
Less: cost of equalized freight = ₹30
Assessable value per unit = ₹ 1,970
Total excise duty payable = ₹ 7,30,476 (3,000 units x ₹ 1 ,970 per unit x 12.36%)

Working note:

(1)

Particulars	Quantity sold in units	Cost of transportation (₹)
Goods sold at factory in Mumbai	1,000	Nil
Goods sold from New Delhi	500	12,000
Goods sold from Chennai	600	48,000
Goods sold from Kolkata	900	30,000
Total	3,000	90,000

(2) Cost of equalized freight = ₹ 30 (₹ 90,000/3,000 units)
(3) The aforesaid equalized freight has to be certified by the Cost Accountant/Chartered Accountant/ Company Secretary in practice.

b) The Supreme Court in Pahwa Chemicals Private Ltd v. CCEx 2005 189 ELT 257 (SC) has held that mere failure to declare the particulars does not amount to mis-declaration or willful suppression. Some positive act on the part of the assessee to establish either willful mis-declaration or willful suppression is must. In the instant case, there was no willful mis-declaration or willful suppression as all the facts were within the knowledge of the department and the assesses did not make the declaration on the belief that affixing of a label made no difference. Thus, since all the facts were within the knowledge of department, hence extended period of limitation was not invokable.

Q. 16. a) Mr. X a composer of a song having the copyright for his song. When he allow the recording of the song on payment of some royalty by a music company for further distribution, if so Mr. X is required to pay service tax on the royalty amount received from a music company?

b) X Ltd. provided cargo handling services for ₹ 15,00,000 in the month of 15th May, 2012. Invoice issued on 1st July 2012. 50% has been received on 1st April, 2012 and balance on 5th July, 2012.
You are required to find out due dates of payment of service tax.

Answer 16.

a) No, as the copyright relating to original work of composing song falls under clause (a) of subsection (1) of section 13 of the Indian Copyright Act, 1957 which is exempt from service tax. Similarly an author having copy right of a book written by him would not be required to pay service tax on royalty amount received from the publisher for publishing the book. A person having the copyright of a cinematographic film would also not be required to pay service tax on the amount received from the film exhibitors for exhibiting the cinematographic film in cinema theatres.

b) As per rule 3 of the Point of Taxation Rules, 2011, point of taxation for the first 50% of receipt is 1st April, 2012 (i.e. date of completion of service or date of receipt of payment whichever is earlier, since, invoice has not been issued within 30 days of completion of service).

Therefore, due date of payment of service tax is 5th May, 2012. Point of taxation for the balance 50% is 15th May, 2012 (i.e. date of completion of service or date of receipt of payment whichever is earlier, since, invoice has not been issued within 30 days of completion of service).
Therefore, due date of payment of service tax is 5th June, 2012.

Q. 17. a) M/s. Sun Industries imported finishing agents, dye-carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for Additional duty of customs (CVD) leviable u/s 3 of the Customs Tariff Act, 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the 'same factory' for manufacture of textile articles. The Department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the 'same factory'. You are requested to comment upon the contention of Department, with reference to a decided case law, if any.

b) Mrs. Indu, a resident of India and carrying out her profession in USA, returned back to India after 2 years of stay and brought –
(i) Used personal effects (including jewellery ₹ 40,000) - ₹ 80,000
(ii) Professional equipments - ₹ 1,50,000 (including personal computer - ₹ 50,000)
(iii) Used household articles - ₹ 25,000
(iv) Other articles not falling under Annexure I - ₹ 35,000
Determine duty payable by Mrs. Indu

Answer 17.

a) Additional duty of customs leviable u/s 3(1) of the Customs Tariff Act, 1975 is equal to excise duty leviable in India. If goods are exempt from excise duty in India, such goods cannot be charged to additional duty of customs. The expression "used in the same factory for manufacture of textile articles" means –

- Imported articles must be used in the factory in which textile articles were manufactured; and
- It didn't mean that imported article must have been manufactured in same factory in which textile articles were manufactured, which was impossible, as the imported article was manufactured outside India.

Since, in this case, Sun Industries imported finishing agent, dye-carriers, printing paste etc. to be used for manufacture if textile articles, hence, in view of exemption, they are not liable to additional duty of customs. The Department contention, is, therefore, incorrect in law.

b) Computation of customs duty – Mrs. Indu is eligible for allowance under Rules 3,5 (professional equipments) and 6 (jewellery)

Particulars	Rule 3	Rule 5	Rule 6
Used personal effects (jewellery covered by Rule 6, not Rule 3)	Exempt	-	40,000
Professional equipments (personal computer is not professional equipment, but is covered by GFA under Rule 3; other professional equipments are covered by Rule 5)	50,000	1,00,000	-
Used household articles – covered by allowance under rule 5	-	25,000	-
Other articles not falling under Annexure I (covered by Rule 3)	35,000	-	-
Total	85,000	1,25,000	40,000
Less : Duty free allowance [under Rule 5 : ₹ 12,000 for household articles and ₹ 40,000 for professional equipments, as stay is more than 6 months. Further, allowance under Rule 6 is available as stay abroad is more than 1 year]	35,000	52,000	20,000
Dutiable Value	50,000	73,000	20,000
Total dutiable value			1,43,000
Duty @ 36.05%			51,552

Q. 18. a) state with reasons in brief, whether Service Tax is payable in the following cases –
(i) Services provided to SEZ and SEZ Developer, except where services are wholly consumed within SEZ
(ii) Services provided by SEZ to DTA (Domestic Tariff Area)
(i) Services provided by Indian Agents undertaking marketing in India of goods of a Foreign Seller.

b) An importer has imported certain goods, which are not eligible for import as per Import Policy. The offending goods have been confiscated. The importer wishes to re-export the goods. Can permission be given for re-export? State briefly what are the other consequences of such Import.

Answer 18. a)

Question	Solution
Services provided to SEZ unit and SEZ Developer, except where services are wholly consumed within SEZ	ST shall be charged, collected & paid by Service Provider. However, refund of service tax paid is given to service receiver, where the services are not wholly consumed within SEZ
Services provided by SEZ to DTA	Provision of services by units in SEZ to units in DTA shall be liable to service tax [C. No. 105/8/2008 dated. 16.09.2008] The same is considered as Import of Services and the receiver of service shall be liable on reverse charge basis
Services provided by Indian Agents undertaking marketing in India of goods of a foreign seller	Booking of orders for foreign supplier, for supply of goods in India, cannot be treated as Export of services, because service was not provided outside India and not used outside India. Hence, the same is liable for service tax. [Cani Merchandising P Ltd (2008) 11 STR 10 (Tri-Del.)]

b) The goods are not eligible for import as per import policy. But the re-export of such goods is permitted under the Foreign Trade Policy with the following consequences –
Section 112 (a) – Penalty for improper importation of goods etc. – Penalty not exceeding – (i) value of goods, or (ii) ₹ 5,000 whichever is higher
Section 125 – Redemption fine in lieu of confiscation – Maximum fine : Market Price – Import duty thereon.

Q. 19. a) How to identify the Rule to be applied for a given Service under POPS Rules ?

b) A Fashion Designer firm undertakes fashion designing contracts for various events. The Firm provided services to Sundaram Ltd., who is a manufacturer of Cosmetics. The Firm received a Cosmetics Packs as gift.
Find the Taxable Value of service if : (i) For similar services the Firm charges ₹ 5,00,000 or (ii) Consideration nor known.

Answer 19.
a) The rules to be applied as per the following :
- Rules of Interpretation as given in Section 66F shall be applicable
- As the rules are specifically identifiable with a particular service, the relevant rule has to be applied directly
- If a service is capable of differential treatment for any purpose based on its description, then the rule which gives the most specific description shall be preferred over the rule giving a general description. [Sec 66F(1)]
- However, if the service is still determinable in terms of more than one rule, then it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration [Rule 14]

b) Computation of taxable value

Case (i) - For similar services the Firm charges ₹ 5,00,000 – The taxable value of service = Gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade - ₹ 5,00,000 [deemed to be inclusive of service tax].

Case (ii) – Consideration not known – Value shall be determined by the service provider, i.e., the Firm. However, the value shall not be less than the cost for rendering such service.

Such value will have to be worked out on the basis of usual costing principles of normal costs and allocation of normal overheads, including reasonable profit thereon.

Q. 20. a) M/s. ABC manufacture footwear bearing the brand name "Rose" which is owned by M/s Rose Industries Ltd., for manufacture of detergent powder. When the department disallowed the benefit of small scale exemption under Notification No. 8/2003-CE on the ground that their goods bearing brand name of another person. M/s. ABC contended that M/s. Rose Industries Ltd. Owns brand bane 'Rose' only for detergent powder and not for footwear. Decide the case with reasons and mention case law, if any.

b) Mr. Sad, a service provider, has provided services of ₹ 2,00,00,000. Out of this, ₹ 1,40,00,000 are taxable output services and ₹ 60,00,000 are exempt output services. Mr. Sad has opted not to maintain separate inventory and accounts and pay prescribed amount on value of exempt output services.
Service tax paid on his input services excluding education cess and secondary and higher education cess is ₹ 12,00,000. Rate of service tax, excluding EC and SAHEC, is 12%
Calculate the total amount payable including Service tax, EC and SAHEC by Mr. SAD by GAR-7 challan.

Answer 20.

a) Notification No. 8/2003-CE, dated 01.03.2003 provides that the benefit of small scale industry exemption shall not apply to the goods bearing a brand bane or trade name, whether registered or not, of another person. As per the notification, brand name or trade means a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark or without any indication of the identity of that person.

Supreme Court has held in the case of CCEx v. Bhalla Enterprises [2004] 173 ELT 225 (SC) that :

(i) Exemption notification debars those persons from the benefit of the SSI exemption who use someone else's name in connection with their goods, either with the intention of indicating, or in a manner so as to indicate a connection between their goods and such other person;

(ii) There is no requirement for the owner of the trade mark using the name or mark with reference to any particular goods;

(iii) The object of the Notification is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name.

In other words, if brand name of another person is used even in respect of goods of other class or kind (different from the nature of the goods of the owner of brand name), benefit of SSI exemption shall not be available.

In view of the aforementioned provisions, M/s. ABC will not be entitled to the SSI exemption as their goods bear the brand name "ROSE" owned by M/s. Rose Industries Ltd. The fact that M/s. ABC uses the brand name on footwear while the same is being used by M/r. Rose Industries Ltd. On detergent powder will have no relevance.

b) Since Mr. SAD has taken option to pay prescribed amount on value of exempted services viz., 6% on value of services under Rule 6(3)(i), hence, he can avail full credit.
The payment required to be made by him is as follows :

Particulars	CENVAT	EC	SHEC
Credit of service tax paid on input service	12,00,000	24,000	12,000
Less : 6% of value of exempted services ₹ 60 lakhs i.e., reversal (no EC/SHEC)	3,60,000		
Balance credit available	8,40,000	24,000	12,000
Service tax on taxable output services @ 12% on ₹ 140 lakhs	16,80,000	33,600	16,800
Total amount payable by Mr. SAD by GAR-7 challan	8,40,000	9,600	4,800

Q. 21. a) A Port Trust used cement concrete armour units in the harbor foe keeping water calm. Each unit weighted about 50 toms and is like a tripod and keeps water calm and tranquil. These units are essentially in prismoid form and were made to order. They are harbor or location specific. The Central Excise Department contended that the armour units are excisable goods and chargeable to duty. Examine the validity of the Department's contention in the light of decided case law.

b) In a particular case of import of goods, the seller in USA and the Indian buyer were found to be together controlling a third company in India. What are the conditions subject to which then transaction value of such goods would be accepted for customs purpose?

Answer 21.

a) Any product is liable to duty only if it is marketable in the condition in which Department wants to levy excise duty and the same is a manufactured product.
The fact of the given case are identical to that in Board of Trustees v. CCEx 2007 (216) E.L.T. 513 (S.C.) wherein it was held that –

- The cement concrete armour units were manufactured product. No issue as to whether there was manufacture or not was raised by the parties.
- The concrete armour blocks or units are made to order. They are of certain specifications. They are harbor or location specific. It would depend on the water level required to be maintained in the harbor. There is no evidence to show that these blocks could be used in any other harbor. There is no evidence that they are bought and sold in the market as a commodity.
- Since the goods are location specific and not bought and sold in the market, therefore, they are not marketable and not liable to duty.

The armour blocks/units are not marketable. The department's contention is invalid.

b) (A) Rule 2(2) of Customs Valuation Rules, 1989 specifies the situations in which persons shall be related. One of the specified situations is that the persons together directly or indirectly control a third person. It has been further clarified in the explanation to this sub-rule that the term' person' also includes legal persons. In view of the above, the seller and buyer are deemed to be related in the given case.
(B) As per Rule 3(3) of Customs Valuation Rules transaction value where buyer and seller are related are acceptable under the following cases –
(i) Price not influenced by relationship
(ii) Price shown to be closely approximate to transaction value/ deductive value/ computed value of identical or similar goods- Whenever the importer demonstrated that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time :

- The transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India
- The deductive value for identical goods or similar goods
- The computed value of identical goods or similar goods

However, in applying the values used for comparison, due account shall be taken of –

- Demonstrated difference in commercial levels, quantity levels
- Adjustments in accordance with the provisions of rule 10 and
- Cost incurred by the seller in sales in which he and the buyer are not related

(iii) substitute values shall not be established under the provisions of (ii) given above.

Q. 22. a) Compute taxable value and service tax from following sums received by M/s. High Power Ltd. (a state transmission utility)(exclusive of service tax) (Ignore small service provider's exemption)
Collections from transmission and distribution of electricity - ₹ 100 lakh
Rent from hiring of electricity meters - ₹ 25 lakhs

b) A particular Central Excise Notification grants full exemption to all products of printing industry including newspaper and printed periodicals. A Manufacturer, who is manufacturing Cardboard Cartons and subsequently doing varied printing on them, claims the benefit of the said exemption notification on the ground that every materials on which, printing work is done becomes a product of the Printing Industry. Is the claim of the manufacturer justified ? Give reasons.

Answer 22.

a) Computation of service tax liability

Collections from transmission and distribution of electricity - ₹ 100 lakhs – Covered within negative list u/s 66D(k) – not taxable
Rent from hiring of electricity meters - ₹ 25 lakhs- Has a close and direct nexus with transmission or distribution of electricity – Covered within negative list u/s 66D(k)- not taxable
Taxable value – NIL and service tax thereon – NIL.

b) The exemption notification is in respect of a product of printing industry. The cardboard carton is a product of packaging industry, and in common parlance the cardboard carton remains a carton only whether any printing is done on it or not. Where a packaging manufacturer also prints on the cardboard/ packaging manufactured by him, he will not be entitled for the benefit of exemption notification because, any amount of printing on cardboard will not make it a product of printing industry [Rollatainers Ltd. 72 ELT 793 (SC)].
Therefore, the claim of the manufacturer does not hold good.

Q. 23. a) Discuss briefly with reference to the decided case law whether the landing charges imposed after the landing of the goods, but prior to their clearance for custom purposes are to be included for determining the value under section 14 of the Customs Act, 1962 and arriving on the custom duty payable.

b) Vivitha & Co., is a dealer in an electronic product, chargeable to CST at 2%. For the year ended 31.3.2012, the dealer has shown total turnover (including CST) at ₹ 38,76,000. In the above, the dealer has treated the following amounts thus:
(i) Dharmada collected from buyers, shown separately in invoice ₹ 28,000.
(ii) Weighment Charges incidental to sale ₹ 14,000.
(iii) Central excise duty collected (including cess) ₹ 2,06,000.
The dealer has recorded the following amount in separate folios in the ledger:
(i) Packing charges (These have been collected from buyers through Debit notes) ₹ 45,000
(ii) Cash discount allowed to buyer ₹ 18,000
(iii) Indemnity/guarantee charges collected from buyer to cover loss during transit ₹ 12,000
(iv) Marine insurance premium for transporting goods to the premises of buyers, collected from buyers ₹ 32,000.
Determine the total and taxable turnover under CST Act 1956 for the financial year 2011-12. You are required to show the treatment of each and every item distinctly.

Answer 23.

a) In Garden Silk Mills Ltd. V. UOI [1999] 113 ELT 358 (SC) the Supreme Court held **that** in determining the deemed price **in international** trade the element of port charges, which are borne by the importer, have **to** be **added** in the assessable value.
As per the Customs Valuation Rules, 1988, handling charges are added in the CIF value @ 1% of CIF value irrespective of the actual **amount of** landing charges.

b) Determination of turnover for CST purposes

	(₹)
Turnover including CST as per books	38,76,000
Less: CST included in above 38,76,000 x 2/102	76,000
Turnover as per books excluding CST	**38,00,000**
Add: Packing Charges	45,000
Marine insurance	32,000
Taxable turnover	**38,77,000**
Add: CST @2% on 38,77,000	77,540
Total Turnover	**39,54,540**

Note:

The following items addable in the selling price, which has been added already in the sale price:

(i) Dharmada collected from buyers, shown separately in invoice ₹ 28,000.

(ii) Weighment Charges incidental to sale ₹ 14,000.

(iii) Central excise duty collected (including cess) ₹ 2,06,000.

The dealer has recorded the following amount in separate folios in the ledger:

(i) Packing charges (These have been collected from buyers through Debit notes) is ₹ 45,000. It is addable into the assessable value even though the same has been charged separately. The Honorable Supreme Court of India in *Rai Bhart Das and Brothers* v *CST* (1988) 71 STC 277 held that the packing charges realized by the dealer was an integral part of the sale price. (Service charges are different from charges for packing materials).

(ii) Cash discount allowed to buyer is ₹ 18,000, it is assumed to be already deducted from the sale price.

(iii) Indemnity/guarantee charges collected from buyer to cover loss during transit is ₹ 12,000 charged separately. Hence, not Included in the sale price.

(iv) Marine insurance premium for transporting goods to the premises of buyers, collected from buyers is ₹ 32,000 is included in the selling price, because Freight and insurance charges incurred by the assessee prior to the delivery of the goods at their places of business to their customers, form part of turnover.

Q. 24. a) What are the difference between Rule 3(5) and Rule 4(5) of CENVAT for Removal of Inputs from a factory?

b) AB Ltd., imported Super Kerosene Oil (SKO) and stored in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per rate prevalent as on the date of presentation of such bill of entry, and the order for clearance for home consumption was passed. On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use and the application was allowed. When the goods were actually removed from the warehouse, the rate of duty got increased. The department demanded the differential duty. The company challenged the demand. Whether it will succeed ? Discuss briefly taking support of decided case law, if any.

Answer 24.

a) Difference between Rule 3(5) and Rule 4(5) of Cenvat for Removal of Inputs from a factory

Particulars	Removal under 3(5)	Removal under 4(5)
Nature of removal	Inputs or capital goods are removed as such or after being used from the factory, or premises of the output service provider	Inputs or capital goods are sent to the job worker for further processing, testing, repair etc.
Purpose of removal	Goods are removed for any purpose other than job work, e.g. sale	Goods are to be removed specifically for job work
Cenvat credit	An amount equal to the cenvat credit availed on the inputs has to be paid at the time of removal	No duty is payable at the time of removal of goods but if these goods are not returned within 180 days, the credit availed on such goods has to be paid.

b) Yes, the company will succeed. The facts of the given situation are similar to the case of CC v Biecco Lawrie Ltd. 2008 223 ELT 3 (SC) wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods removed in smaller lots have to be treated as cleared for home consumption and importer would not be required to pay anything more. Further, section 49 of the Customs Act, 1962 inter alia also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer that the same cannot be cleared within a reasonable time shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

Q. 25. a) Sun Industries Ltd. sent certain goods by a ship from Kolkata to Colombo in Sri Lanka under claim for drawback on the said goods u/s 75 of the Customs Act, against shipping bill. The ship had passed beyond the territorial waters of India and the engine developed trouble while the ship was in the high seas falling within the ambit of expression 'taking out to a place outside India'. The ship returned back and ran a ground in Indian territorial waters at the port of Paradeep. The fittings, stores and cargo were salvaged. Discuss the admissibility of claim for drawback by the company.

b) Can department file appeal in respect of same assessee, if in respect of same years, no appeal was filed involving identical dispute ?

Answer 25.

a) Since goods had crossed territorial waters of India; it could be said that the "export" was complete inasmuch as the goods had reached a place outside India. Merely because the ship returned back and ran a ground in the territorial waters doesn't affect the fact of "export", which was complete – Sun Industries v CC 1988 (35) ELT 241 (SC).

b) It was held in C K Gangadharan v. CIT 2008 228 ELT 497 (SC) that if the Revenue has not filed an appeal against any order/ judgment in one case, it would not be allowed to file an appeal in another case when the same issue is involved due to the reasons that it cannot pick and choose and certainty in law should be ensured.

However, the Revenue can file an appeal in another case involving same/similar issue –

(i) Where there is just cause in doing so (e.g. where appeal was not preferred earlier in view of small amount involved or where earlier case was revenue-neutral); or
(ii) Where it is in public interest to do so; or
(iii) For a pronouncement by higher court when divergent views are expressed by Tribunals/High Courts

Section 35R of the Central Excise Act also provides that the Board may issue orders or instructions or directions fixing monetary limits for the purposes of regulating the filing of appeal, etc. by the Department. If Department has not filed an appeal, etc. as per circular fixing monetary limits, the Department may file any appeal, application or revision in any other case involving the same or similar issues or questions of law and the assessee cannot contend that the Department has accepted the decision on the disputed issue by not filing the appeal.

Q. 26. a) Compute taxable value in following case in respect of transport of goods by vessel (assume option to pay at abated value has been taken) (all sums exclusive of taxes)-
Transport of goods from Dubai to Indian Customs clearance Station - ₹ 100 lakh
Transport by Inland waterways - ₹ 30 lakh
Transport of food stuff within India - ₹ 400 lakh
Transport of export goods from India to Dubai - ₹ 400 lakh
Transport of goods in other cases - ₹ 300 lakh

b) M/s. PIL Ltd. Claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All industry rates under the customs and Central Excise duties Drawback Rules, 1995 were fixed taking into account the incidence of customs duty on imported product inputs. Explain briefly with reference to Rule 3(1)(ii) of the said rules whether the claim of M/s. PIL will merit consideration by the authorities.

Answer 26.

a) Computation of taxable value

Transport of goods from Dubai to Indian Customs clearance Station - ₹ 100 lakh – covered within negative list u/s 66D(p)
Transport by Inland waterways - ₹ 30 lakh - covered within negative list u/s 66D(p)
Transport of food stuff within India - ₹ 400 lakh – exempt
Transport of export goods from India to Dubai - ₹ 400 lakh – Place of provision is place of destination of goods viz. Dubai as per Rule 10 of PoP Rules, 2012. Since PoP is outside India, hence, it is not liable to service tax in India
Transport of goods in other cases - ₹ 300 lakh – Taxable
Taxable sum = ₹ 300 lakh; Taxable value (net of abatement) = 50% of 300 = ₹ 150 lakhs.

b) Drawback is allowed under rule 3 based on average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods. Hence, such drawback at average rate viz. All Industry Rate is allowed even if some non-dutiable or non-duty-paid inputs are used in manufacture of export goods.
But, if no duties have been paid on imported/excisable material, then, Rule 3 itself disallows any drawback. In this case, 97% of inputs were non-excisable i.e., not liable to excise duty. Merely because duty is paid on 3% of the inputs, it cannot be said that duty-paid materials have been used so as to allow drawback at average rates under Rule 3. Hence, drawback under Rule 3 will not be allowed to M/s. PIL.

Q. 27. a) M/s. ABC Ltd. Imported certain goods at US $ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US $ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e., at US $ 20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, viz transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any.

b) M/s. High Tech Co. imported laptops with Hard Disc Drivers (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued u/s 25(1) of the Customs Act, 1962. Decide whether the action proposed by the department is correct in law.

Answer 27.

a) No, the Department's action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules 2007 inter alia provides that persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has no where been defined under the said rules. As per the common parlance, the control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company does not exercise a control over the assessee. So, the two parties cannot be said to be related. The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable. The same has been judicially decided by Supreme Court in CC v. Initiating Explosives Systems (I) Ltd. 2008 224 ELT 343 (SC). In the light of foregoing discussion, it could be inferred that Department's action is not sustainable in law.

b) The action proposed by the Department is correct in law. The facts of the case are similar to CC v Hewlett Packard India Sales (P) Ltd. 2007 215 ELT 484 (SC). In this case, the Supreme Court observed that the pre-loaded operating system recorded in HDD in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit and assessed accordingly.

However, if the operating system had been imported as packaged software like an accessory, then the benefit of exemption notification would have been available on it.

Q. 28. a) c) Mr. Dev manufactures product X out of raw material A. the cost of raw material A is ₹ 2.5 lakhs. The labour and other manufacturing expenses are ₹ 4.5 lakhs. The manufacturing process requires a machinery of ₹ 30 lakhs (subject to VAT @ 12.5%). The useful life of the plant is 5 years with no salvage. The expected output of product X is 10,000 units. Mr. Dev fixes a profit margin of ₹ 250 per unit.
Compute the selling price of product X and its cost to consumer if –

(i) No credit is allowed on the capital goods;

(ii) Credit is allowed on the capital goods. The VAT rate on final product is 12.5%. There is no VAT on raw material.

b) Explain the special rule for determining Point of Taxation for Intellectual Property Rights.

Answer 28.

a) Computation of selling prices under two cases (amount in ₹)

Particulars	No credit allowed	Credit is allowed
Cost of raw material A	2,50,000	2,50,000
Labour and other manufacturing expenses	4,50,000	4,50,000
Depreciation on machinery [WN]	6,75,000	6,00,000
Total cost	13,75,000	13,00,000
Number of units	10,000	10,000
Cost per unit	137.50	130.00
Profit margin per unit	250.00	250.00
Selling price per unit	387.50	380.00
Add : VAT @ 12.5%	48.00	47.50
Cost to customer	435.50	427.50

Thus, non-availment of credit of VAT paid on capital goods will increase the final price of the product

Working note : Calculation of depreciation

(ii) When no credit is allowed on capital goods = (₹ 30 lakhs + 12.5% VAT) ÷ 5 = ₹ 6,75,000

(iii) When credit is allowed on capital goods = ₹ 30 lakhs ÷ 5 = ₹ 6,00,000

b) In respect of royalties and payments pertaining to Copyrights, trademarks, designs or patents, where –

- The whole consideration is not ascertainable at the time of performance of service, or
- The consideration is determined based on subsequent usage or the benefit of these services by the Service Receiver

Point of taxation – Date of receipt of consideration or date of invoice, whichever is earlier.

Q. 29. a) Bose Fibres had filed an appeal to the High Court on August 11, 2012 u/s 35G of CEA, 1944 aggrieved by an order passed by the Appellate Tribunal. The order appealed against was received by the Assessee on January 2012.
M/s. Bose Fibres urged before the High Court that the delay in presenting the appeal ought to be condoned. State briefly whether High Court could condone the delay.

b) M/s. Nirmal Marketing supplies 14 bottles of mineral water in a single package to High Fly Airways (airline company), Maximum retail price was printed on the package. However, individual bottle of 200 ml. each did not carry such maximum retail price (MRP) as these were to be distributed to the passengers by the airline company and not intended for resale. M/s. Nirmal Marketing pays duty of excise assessing the goods under section 4 of the Central Excise Act, 1944.

The Department has taken a view that the package of 14 bottles is not a wholesale package. The airline company itself is the ultimate consumer. Hence, the package of 14 bottles itself is a 'retail package' and duty is payable on the basis of MRP u/s 4A of the Central Excise Act, 1944.
Examine briefly, whether the stand taken by the Department is correct in law.

Answer 29.

a) Under section 35G, the appeal should be filed to High Court against the order of CESTAT within 180 days from the date of receipt of the order of the CESTAT.
Under section 35G(2A) of the Central Excise Act, 1944, the High Court can condone the delay in filing the appeal after the expiry of 180 days, if it is satisfied that there was sufficient cause for not filing the same within that period.
So in the given case, the High Court can condone the delay in filing the appeal.

b) No, the stand taken by the Department is not valid in law. Section 4A(2) of the Central Excise Act, 1944 stipulates that value of the goods notified by the Central Government u/s 4A(1) of the Act shall be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow. For the purpose of valuation u/s 4Aof the Central Excise Act, 1944, there should be requirement under the provisions of the Legal Metrology Act, 2009 or the rules made there under or any other law to declare the retail price of such goods on the package.
As per Legal Metrology (Packaged Commodities) Rules, 2011, MRP is not required to be printed in case of sale to institutional consumers. Institutional consumers have been defined as those consumers who buy packaged commodities directly from the manufacturers/packers for service industry like airways, railways etc. Thus, High Fly Airways, being an institutional consumer, package of mineral water bottles meant for them is not required to bear any MRP. Hence, in the present case, the goods are to be valued u/s 4 and not u/s 4A of the Central Excise Act, 1944.

Q. 30. a) Refund effected by the Central Excise Department pursuant to orders of court in respect of a bank guarantee towards disputed excise duty encashed by the department, would be subject to the provisions of section 11B of Central Excise Act, 1944 relating to 'unjust enrichment". Discuss

b) from the following information provided by M/s. Akash Ltd., registered under the VAT law on the State of Maharashtra as dealer in consumer goods, compute the amount of VAT payable for the month of June 2012.
Purchase of raw material (within the State)

Item	Amount (₹)	Rate of VAT
Goods 'A'	7,50,000	Exempt
Goods 'B'	25,00,000	1%
Goods 'C'	35,00,000	12.5%

Sales

Particulars of finished goods sold	State in which goods are sold	Value (₹)	VAT/CST rate %
Produced from goods 'A'	Maharashtra	5,00,000	12.5% VAT
	Interstate sales to Gujarat	6,00,000	2% CST
Produced from goods 'B'	Maharashtra	30,00,000	Exempt
Produced from goods 'C'	Maharashtra	40,00,000	4% VAT

Raw materials, valued at ₹ 5 lakhs of goods 'C' have been transferred to the branch in Andhra Pradesh during the month. Assume 2% reduction in input credit on account of such transfer.
Make assumptions where required and provide suitable explanations.

Answer 30.

a) It was held in Oswal Agro Mills Ltd. V. CCEx [1994] 70 ELT 48 (SC) that –

(i) Bank guarantee is merely a security to the department so that revenue would be collected if assessee loses;
(ii) Furnishing of bank guarantee is not a payment of duty;
(iii) Section 11B applies to refund of "duty paid" earlier;
(iv) Since furnishing of bank guarantee or encashment thereof doesn't amount to "duty paid", hence, there is no question of any "refund", because there is no "duty paid" earlier;

(v) Hence, section 11B doesn't apply to refund of bank guarantee encashed by department and, accordingly, the principle of unjust enrichment is also not applicable.

b) Computation of VAT payable (amounts in ₹) :

Computation of output VAT :

Sale within Maharashtra – Manufacture from 'A' [₹ 5 lakhs x 12.5%]	62,500
- Manufacture from 'B' [Exempt]	exempt
- Manufacture from 'C' [₹ 40 lakhs x 4%]	1,60,000
Inter-state sales to Gujarat [WN -1]	12,000
Total output VAT [A]	2,34,500

Computation of Input VAT :

RM 'A' [WN - 2]	Nil
RM 'B' [WN – 3]	Nil
RM 'C' [₹35 lakhs x 12.5%]	4,37,500
Less : Retention of Credit in respect of RM C transferred to branch [5 lakh x 2%] [WN -4]	- 10,000
Total Input VAT [B]	4,27,500
Net VAT credit be carried forward [B – A]	1,93,000

Note : The balance lying in input VAT credit is due to inverted tax structure, where RM 'C' is liable to VAT @ 12.5% and finished goods manufactured therefrom are liable to VAT @ 4%.

Working notes :

1. CST leviable on inter-state sales to Gujarat = 2% of ₹ 6 lakhs = ₹ 12,000. Credit of Input VAT credit can be used to pay CST on output sales.
2. Since RM A is exempt, there is no question of any credit
3. Since RM B has been used in manufacture of finished goods which are exempt from VAT, hence, no credit can be availed in respect of RM B.
4. If inputs are used in the manufacture of finished goods, which are stock/ branch transferred, then, tax paid on such inputs/ goods will be available as input tax credit subject to retention of 2% out of such tax by the State Government.