REVISIONARY TEST PAPER

DECEMBER 2010

GROUP III

DIRECTORATE OF STUDIES

THE INSTITUTE OF
COST AND WORKS ACCOUNTANTS OF INDIA

12, SUDDER STREET, KOLKATA-700 016

GROUP - III

Paper-14

INDIRECT & DIRECT – TAX MANAGEMENT

FINAL EXAMINATION

(REVISED SYLLABUS - 2008)

GROUP - III

Paper-14 : INDIRECT & DIRECT – TAX MANAGEMENT

Q. 1. Discuss the Rules for Classification of Excisable Goods.

Answer 1.

The rules of classification of Excisable Goods are:

General Rules for Interpretation of Schedule to Central Excise Tariff and Customs Tariff are given in First Schedule to the Tariff. The rules are same for excise and customs. The highlights of rules are given below.

Rule 1

Classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or Notes do not otherwise require, according to other provisions of the rules.

First part of rule 2(a)

Any reference to complete goods also includes incomplete or un-finished goods, if such incomplete or un-finished goods have the essential characteristic of finished goods.

Second part of rule 2(a)

Heading will also include finished goods removed un-assembled or disassembled i.e. in SKD or CKD packs.

Second part of rule 2(b)

Any reference in heading to material or substance will also include the reference to mixture or combination of that material or substance with other materials or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in rule 3.

Rule 3

When by application of sub-rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as given in rule 3(a), 3(b) or 3(c).

Rule 3(a)

The heading which provides most specific description shall be preferred to heading providing a general description.

3(b)

If Mixture and Composite goods consisting of different materials or different components cannot be classified based on above rule i.e. rule 3(a), it should be classified as if they consisted of the material or component which gives it their essential character.

3(c)

If two or more headings seem equally possible and the dispute cannot be resolved by any of the aforesaid rules, if both the headings appear equally specific, the heading which occurs last in numerical order is to be preferred (i.e. latter the better).

Rule 4

If the classification is not possible by any of the aforesaid rules 1, 2 and 3, then it should be classified under the heading appropriate to goods to which they are most akin. [This is only a last resort and a desperate remedy to resolve the classification issue]

Rule 5

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. Further, packing materials and containers are also to be classified with the goods except when the packing is for repetitive use (This provision is obviously made to ensure that the packing and the goods are charged at same rate of duty).

Rule 6

Classification of goods in sub-headings shall be determined in terms of those sub-headings. Only sub-headings at the same level are comparable.

Q. 2. A manufacturer has to supply a machinery on following terms and conditions : (a) Price of machinery : 3,40,000 (net of taxes and duties) (b) Machinery erection expenses : 26,000 (c) Packing (normally done by him for all machinery) : 4,000 (d) Design and drawing charges relating to manufacture of machinery : 30,000 (Net of taxes and duties) (e) Central Sales Tax @ 4% (f) Central Excise Duty @ 10% plus education cess of 2% plus SAH education cess of 1% (g) Cash discount of Rs. 5,000 will be offered if full payment is received before dispatch of goods. (h) the machine will be supplied along with bought out accessories @ Rs. 8,500. The accessories were optional. You are informed that (a) The buyer made all payment before delivery. (b) The manufacturer incurred cost of Rs. 1,200 in loading the machinery in the truck in his factory. These are not charged separately to buyer. Find the 'Assessable Value' and the duty payable.

Answer 2.

Erection expenses are not includible in AV. Cash discount is allowable as deduction. Duty is not payable on optional bought out accessories supplied along with the machinery. The cost of Rs. 1,200 is already included in the selling price of machinery (as it is not charged separately) and hence is not to be added again. Hence, AV is Rs. 3,69,000 [Rs. 3,40,000 + 4,000 + 30,000 – 5,000]. Duty @ 10% will be Rs. 36,900, plus education cess @ 2% i.e. Rs. 738.00 and SAH education cess @ 1% i.e. Rs. 369.00.

Q. 3. A small scale manufacturer produces a product 'P'. Some of the production bears his own brand name, while some production bears brand name of his customer. The customer purchases the goods from the small scale unit and sales himself by adding 20% margin over his purchase cost.

Clearances of the SSI unit in 2007-08 was Rs. 3,53,00,000. He achieved clearances of Rs 445 lakhs in 2008-09 as per following break up. [These clearances are without considering excise duty and sales tax]

(*a*) Clearances with his own brand name : Rs. 80 lakhs. (*b*) Clearances of product bearing his customer's brand name : Rs. 365 lakhs. Normal excise duty of his product is 10% plus education cesses as applicable. The SSI unit intends to avail Cenvat benefit on inputs on goods supplied to the brand name owner but intends to avail SSI exemption on his own clearances.

(A) Find the total duty paid by the manufacturer in 2008-09, if (i) Inputs are common but SSI unit is able to maintain separate records of inputs in respect of final products under his brand name and those with other's brand name (ii) The inputs are common and SSI unit is not able to maintain separate records on inputs used in final products manufactured under his brand name and with other's brand name.

(B) What will be the rate of excise duty payable by him in April 2009 (*i*) on product bearing his own brand name *and* (*ii*) on product bearing his customer's brand name.

(C) Will there be any difference in duty payable in April 2009 if all his clearances of Rs. 445 lakhs in 2008-09 were of product under his own brand name?

Answer 3.

(A) SSI unit can avail Cenvat on final products cleared under other's brand name and avail SSI exemption in respect of his own production. (i) In the first case, he has to pay duty @ 10% on Rs 365 lakhs, i.e. Rs 36.50 lakhs plus education cess of Rs. 73,000 plus SAH education cess of Rs 36,500. He cannot avail Cenvat credit in respect of inputs used to manufacture product under his own brand name.

(ii) In the second case, since he is unable to maintain separate record of inputs, he will have to pay 10% 'amount' on Rs 80 lakhs as per rule 6(3)(b) of Cenvat Credit Rules. Thus, he has to pay duty of Rs 36.50 lakhs, plus education cess of Rs 73,000 plus SAH education cess of Rs 36,500, plus an 'amount' of Rs 8.00 lakhs. He can avail Cenvat of all the inputs. — Note that in respect of goods bearing customer's brand name, duty is payable on his selling price to the customer even if customer sells them subsequently at higher price.

The assessee has to carefully do his costing and decide (i) whether to avail Cenvat on all inputs, pay full duty on all final products and 10% 'amount' on final products cleared under his own brand name or (ii) Not avail Cenvat at all and avail exemption from duty on his own production with his brand name.

(B) The turnover of SSI during 2008-09 was over Rs. 4 crores. However, for purposes of calculating the upper limit of Rs. 4 crores, clearances with other's brand name are not to be considered. Hence, from 1st April 2009, he can clear goods bearing his own brand name upto Rs 150 lakhs without payment of duty, if he does not avail Cenvat credit on inputs used in such products. If he is unable to maintain separate records, he will have to pay 10% 'amount' on goods manufactured under his own brand name.

(C) If total turnover of Rs. 4.45 crores in 2008-09 was under his own brand name, the manufacturer is not eligible for any Small industry concession in April 2007, and he will have to pay duty at normal rates on his total clearances in April 2009.

Q. 4. "Returns to be filed"

Answer 4.

Form of Return	Description	Who is required to file	Time Limit
ER-1 [Rule 12(1) of Central Excise Rules]	Monthly Return by large units	Manufacturers not eligible for SSI concession	10th of following month
ER- 2 [Rule 12(1) of Central Excise Rules]	Return by EOU	EOU units	10th of following month
ER-3 [Proviso to Rule 12(1) of Central Excise Rules]	Quarterly Return by SSI	Assessees availing SSI concession	20th of next month of the quarter
R-4 [Rule 12(1) of Central Excise Rules]	Annual Finan-cial Information State-ment	Assesses paying duty of Rs. One crore or more per annuam through PLA	Annually by 30th November of succee-ding year
ER-5 [Rule 9A(1) and 9A(2) of Cenvat Credit Rules]	Information relating to Princi-pal Inputs	Assessees paying duty of Rs. one crore or more per annum thorugh PLA and manufactureing goods under specified tariff headings	Annually, by 30th April for the current year (e.g. return for 2005-06 is to be filled by 30.4.2005].
ER-6 [Rule 9A(3) of Cenvat Credit Rules]	Monthly return of receipt and con-sumption of each of Principal Inputs	Assessees required to submit ER-5 return	10th of following month

Q. 5. State whether the following elements are to be included or not as part of the 'Transaction value' under section 4 of the Central Excise Act, 1944.

(i) Erection and commissioning charges

(ii) System software etched in the computer system

(iii) Cylinder holding charges

(iv) After-sales warranty charges

Answer 5.

(i) Any payment made by buyer to assessee is includible in assessable value only if it is in 'connection' with sale. In case of erection and commissioning charges for erecting machinery at site, these are incurred after goods are removed from the factory. These may be in 'relation' to sales but are not in 'connection' with sales as there is no 'cause and effect' relationship between the two. Hence these are not includable in assessable value. This is also confirmed *vide* CBE&C Circular No. 643/34/2002-CX, dated 1-7-2002.

(ii) A computer manufacturer loads bought out computer software on computer while selling. Thus, the system software is loaded on computer while computer is cleared from the factory. Computer software as such is exempt from duty. Department had earlier clarified that value of computer software etched or loaded on computer will be includible. However, if computer software is supplied separately on floppy disc or tapes, its value will not be includible. [However, as per CBE&C circular dated 28-2-2003, value of computer software will not be includible in assessable value of computer].

(iii) In case of durable and returnable containers, the container is returnable after the gas or other material inside is used. Often, manufacturing companies take some deposit and charge some rent for the container. These are 'cylinder holding charges'. CBE&C, *vide* its Circular No. 643/34/2002-CX, dated 1-7-2002, has clarified that rental charges or cost of maintenance of reusable metal containers like cylinders etc. are to be included in assessable value. This view is correct as such rental charges and the sale of gas are so intrinsically connected that there can be no sale without such charges.

(iv) Compulsory after sales warranty charges are includible as the sale goods and such charges are inseparable. However, optional service charges are not includable as there is no connection between the sale of goods and the optional service charges.

Q. 6. Determine the transaction value and the Excise duty payable from the following information : (i) Total Invoice Price Rs. 18,000; (ii) The Invoice Price includes the following :

(a)	**Sales-tax**	**Rs. 1000**
(b)	**Surcharge on ST**	**Rs. 100**
(c)	**Octroi**	**Rs. 100**
(d)	**Insurance from Factory to depot**	**Rs. 100**
(e)	**Freight from factory to depot**	**Rs. 700**
(f)	**Rate of Basic Excise duty**	**10% ad valorem**
(g)	**Rate of Special excise duty**	**24% ad valorem**

Answer 6.

Let us assume that the Invoice Price of Rs. 18,000 is depot price. Thus, deduction of insurance and transport charges from factory to depot will not be available.

The deductions available will be :

- Sales Tax Rs. 1,000.
- Surcharge on Sales Tax Rs. 100 and
- Octroi Rs. 100

Thus, net price excluding taxes on final product (but inclusive of excise duty) will be Rs. 16,800.

The rate of excise duty is 34% [10% basic plus 24% special].

Hence, duty payable is as follows :

$$\frac{16{,}800 \times 34}{134} = 4{,}263$$

Assessable Value = 16,800 – 4,263 = Rs. 12,537

Check : Excise duty payable (basic plus special) is 34% of Rs. 12,537 i.e. Rs. 4,263.

Q. 7. A manufacturer in Gujarat has a depot in Bangalore. His factory gate price is Rs. 9,000. Transport charges from Gujarat to Bangalore are Rs. 500 per piece. The manufacturer's Karnataka depot price is Rs. 10,000 exclusive of excise duty and Karnataka Sales Tax. Karnataka Sales Tax on the goods is 10%. As per Karnataka Sales Tax Law, sales tax is payable on selling price plus excise duty. The manufacturer is planning to make direct sale to Bangalore buyers from his Gujarat factory, instead of selling from depot. Bangalore dealers want that their present cum-duty invoice price (excluding Karnataka Sales Tax) should remain unaffected even if goods are sold from Gujarat. The reason they are giving is that if goods are directly sold to them from Gujarat, they will have to pay Karnataka Sales Tax. The Bangalore dealers are registered under CST Act and are in a position to issue C form for their purchases. The manufacturer has agreed to the request of dealers. You are required to calculate the assessable value and excise duty and CST payable if goods are sold directly from Gujarat, assuming that dealers' request is accepted. The product is leviable to excise duty @ 10% plus education cess as applicable. If the product is sold in Gujarat State, the sales tax rate is 8%.

Answer 7.

Present selling price of the manufacturer from his depot is as follows –

Net Price	Rs. 10,000
Add : Excise Duty @ 10.30%	Rs. 1,030
Total Sales price	Rs. 11,030

It is desired that the price to dealer should remain unchanged.

Assume that Assessable Value if goods are sold from Gujarat is 'z'. Excise duty @ 10% plus Education Cess @ 2% and SAH Education Cess @ 2% will be 0.103z. CST @ 2% on 1.103z is equal to 0.02206z. Invoice price will be Rs. 1.12506z. Transport charges of Rs. 500 can be charged extra.

∴ 1.12506z + Rs. 500	= Rs. 11,030
or, 1.12506z	= Rs. 10,530
or, Z	= Rs. 10,530/1.12506
∴ Z	= Rs. 9,359.50

Check this as follows –

Z	=	Rs. 10,530/1.12560
Assessable Value	=	Rs. 9,359.50
Add : Excise duty @ 10.30%	=	Rs. 964.04
		10,323.54
Add : CST @ 2% on Rs. 10,323.53	=	Rs. 206.46
Add : Freight	=	Rs. 500.00
Total Invoice Price	=	Rs. 11,030.00

Q. 8. H Ltd. purchased a Boring-Drilling machine at a cum-duty price of Rs. 32,14,476. The Excise duty rate charged on the said machine was @ 10% plus education cess of 2% plus SAH education cess of 1%. The machine was purchased on 01.04.2008 and disposed of on 30.09.2009 for a price of Rs. 12 lakhs in working condition as second hand machinery. The company was claiming depreciation @ 25% following Straight Line Method. Using the said information, answer the following questions: (i) What is the Excise duty paid on the machine? (ii) What is the Cenvat credit allowable under Cenvat Rules? (iii) What is the amount of Cenvat credit reversible or duty payable at the time of clearance of the said machinery?

Answer 8.

Cum-duty price Rs. 32,14,476. Hence, Basic Price i.e. Assessable value = 32,14,476 × 100/110.30
= Rs. 29,14,302.81

Total duty paid = Cum Duty Price – Assessable Value
= Rs. (32,14,476 – 29,14,302.81) = Rs. 3,00,173.19

As per Cenvat Credit Rules, 50% Cenvat credit can be availed in current financial year and balance 50% of Cenvat is allowable only in following financial year, if the capital Goods are in possession and use. Hence, 50% Cenvat credit can be taken on 1-4-2008. Since the Capital goods were in use for six months in the year 2008-09, Cenvat of balance 50% is allowable on 1-4-2009.

As per second proviso to rule 3(5) of Cenvat Credit Rules, if capital goods are removed after use, the manufacturer or output service provider shall pay an 'amount' (not 'excise duty') equal to Cenvat credit taken on the said capital goods, reduced by 2.5% for each quarter of a year or part thereof from the date of taking the Cenvat credit. It is assumed that assessee took credit on 1-4-2008. Since machinery was disposed of on 30-9-2009, reduction for 6 quarters @ 2.5% per quarter i.e. 15% will be available. Thus, assessee is required to pay 'amount' equal to 85% of Rs 3,00,173.19 i.e. Rs 2,55,147.21.

Q. 9. An assessee cleared his manufactured final products during December 2009. The duty payable for the month on his final products was as follows: Basic duty – Rs. 44,000, NCCD – Rs. 2,000, Education cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows - Basic duty – Rs. 40,000 plus applicable education cess. Service tax paid on input services was as follows: Service tax – Rs. 8,000. Education cess – Rs. 160. There is no opening balance in his PLA account. How much duty the assessee will be required to pay through account current for the month of December 2009?

Answer 9.

Education Cess payable on final products is Rs 920 (2% of Rs 46,000). SAH education cess payable on final products is Rs 460.

Education cess on his inputs is Rs 800 (2% of Rs 40,000)> SAH education cess on inputs is Rs 400. The Cenvat credit available for the month of December 2009 is as follows –

Description	Basic duty Rs.	Service Tax Rs.	Education Cess Rs.	SAH Education Cess Rs.
Inputs	40,000		800	400
Input Service		8,000	160	80
Total	**40,000**	**8,000**	**960**	**480**

Credit of Rs 48,000 (40,000 + 8,000) can be utilised for payment of any duty.

Credit of education cess of Rs 960 can be utilised only for payment of education cess on final product.

Credit of SAH education cess of Rs 960 can be utilised only for payment of education cess on final product.

	Basic Duty Rs.	NCCD	Education Cess Rs.	SAH Education Cess Rs.
(A) Duty payable	44,000	2,000	920	460
(b) Cenvat Credit Credit (basic plus service tax)	48,000		960	480
Net amount payable (A-B)	(– 4,000)		(–40)	(–20)

The credit of basic duty and service tax of Rs 4,000 can be utilised for payment of NCCD of Rs 2,000. Hence for the month of January, 2008, assessee is not required to pay any duty through PLA.

He will carry forward following balances for February 2008 - Basic duty - Rs 2,000. Education Cess - Rs 40. SAH education Cess - Rs 20.

Q. 10. An actual user imports following goods from England per Mr. Harimohan : (1) Second hand numerically controlled horizontal lathe machine - Tariff heading – 84.5811, Value FOB - 1,000/- Pound Sterling (2). A. C. motors - Tariff heading – 85.0110, Value FOB - 500/- Pound Sterling. - - Other relevant data are: - Exchange rate 1 UK Pound = Rs. 65, Freight – 150 UK Pounds, Insurance – 25 UK Pounds. - - Rate of duty : Basic customs duty - 10%, CVD - 12%, Education Cess and Spl CVD at applicable rates. - - It is found that the lathe machine is undervalued. It is proposed to load the FOB value of the lathe machine by 25%. Party does not want show cause notice and personal hearing. Compute – (i) Assessable value; (ii) Total duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Answer 10.

Since FOB value of lathe machine is being loaded by 25% for under-valuation, the FOB Value of lathe machine for purpose of assessment is 1250 UK Pounds. Value of AC Motors is 500 UK Pounds. Thus, total FOB value for purposes of customs valuation is 1,750 UK Pounds. — Total insurance and freight is 175 UK Pounds [freight is 150 UK Pounds and insurance is 25 UK Pounds]. This will be allocated on lathe machine and AC motors in proportion to value (as no other basis is available).

	A/C Motors	Lathe Machine
FOB Value (UK $)	500.00	1250.00
Add : Allocated Total freight & insurance [@ 500 : 1250] $ 175	50.00	125.00
CIF Value	$ 550.00	$ 1,375.00
Exchange Rate per $	Rs. 65.00	Rs. 65.00
∴ CIF Value in INR	Rs. 35,750.00	Rs. 89,375.00
Add : Landing carhges @ 1%	Rs. 357.50	Rs. 893.75
Assessable Value	Rs. 36,107.50	Rs. 90,268.75
Rounded off	Rs. 36,107.00	Rs. 90,269.00

Calculation of duty payable is as follows :

		On Lathe Machine		On A/C Motor	
	Duty %	**Amount**	**Total Duty**	**Amount**	**Total Duty**
(A) Assessable Value Rs. 10,000		90,269.00	—	36,107.00	—
(B) Basic Customs Duty	10	9,026.90	9,026.90	36,610.70	36,610.70
(C) Sub-Total for calculating CVD '(A+B)'		99,295.90	—	39,717.70	—
(D) CVD 'C' × excise duty rate	12	11,915.51	11,915.51	4,776.12	4,776.12
(E) Education cess of excise – 2% of 'D'	2	238.31	238.31	95.32	95.32
(F) SAH Education cess of excise – 1% of 'D'	1	119.16	119.16	47.66	47.66
(G) Sub-total for edu cess on customs 'B+D+E+F'		21,299.88	—	8,519.80	—
(H) Edu Cess of Customs – 2% of 'G'	2	426.00	426.00	170.40	170.40
(I) SAH Education Cess of Customs – 1% of 'G'	1	213.00	213.00	85.20	85.20
(J) Sub-total for Spl CVD 'C+D+E+F+H+I'		1,12,207.88	—	44,882.40	—
(K) Special CVD u/s 3(5) – 4% of 'J'	4	4,448.32	4,448.32	1,795.30	1,795.30
(L) Total Duty			26,472.20		10,570.70
(M) Total duty rounded off			26,472.00		10,571.00

Notes : Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Q. 11. Mrs. & Mr. Kapoor visited Germany and brought following goods while returning to India on 8th February, 2009. (i) Their personal effects like clothes, etc., valued at Rs. 35,000. (ii) A personal computer bought for Rs. 36,000. (iii) A laptop computer bought for Rs. 95,000. (iv) Two litres of liquor bought for Rs. 1,600. (v) A new camera bought for Rs. 37,400. What is the amount of customs duty payable?

Answer 11.

Under Rule 3 of the Baggage Rules, 1998, Mrs. & Mr. Kapoor, being more than 10 years of age with stay of more than 3 days, is eligible for the following general free allowance :

(1) Uesd personal effects of any amount; and

(2) Other articles, other than those mentioned in Annexure 1, upto a valu of Rs. 25,000.

Personal effects and one laptop are exempt from customs duty. Two liters of liquor can be accommodated in General free Allowance. Hence, Mr. Kapoor can bring one personal computer and two litres of liquor on his account. Total value is Rs 37,600 (PC Rs 36,000 plus liquor Rs 1,600). He will get General Free Allowance of Rs 25,000 and duty payable will be on Rs 12,600. Customs Duty @ 35% of Rs 12,600 will be Rs 4,410 plus education cess of Rs 88.20 @ 2% of customs duty and SAH education cess of Rs 44.10 @ 1% of customs duty.

Mrs. Kapoor can bring one camera on her account. Total value is Rs 37,400. She will get General Free Allowance of Rs 25,000 and duty payable will be on Rs 17,400. Customs Duty @ 35% of Rs 17,400 will be Rs 6,090 plus education cess of Rs 121.80 @ 2% of customs duty and Rs 60.90 as SAH education cess.

Q. 12. Determine the assessable value and customs duty amount from the following data :

Name of the raw material X

FOB value Euro 1 million

Ocean freight Actual data not available

Ocean Insurance Actual data not available

Freight from sea port to godown paid in India Rs. 10,000

Transit insurance in India Rs. 2,000

Selling commission paid to agent in India 5%

Royalty on manufacture and sale of final product to foreign collaborator 5%

Interest payable on raw material imported at 180 days credit (on FOB value) 12% p.a.

Dividend paid to the foreign supplier of raw material on their equity participation for the year 2001-02 Rs. 2 per share on 1 million shares of face value Rs. 10/share.

Importer supplied design and drawings worth Euro 10,000 to the foreign raw material supplier. # Landing charges as per Customs provisions

Customs duty rates : BCD – 30%, ACD – 16%, SAD – 4%

Exchange rate : 1 Euro = Rs. 42.

Answer 12.

Since ocean freight is not available, it has to be taken at 20% of FOB. Insurance will have to be taken @ 1.125% of FOB Value.

Royalty on manufacture and sale of final products payable to foreign collaborators has no relation to goods imported. Hence, it it not includible in Assessable Value for customs. Similarly, dividend paid to foreign supplier has no relation with supply of raw materials. It is not includible in Assessable Value.

Interest payable for credit is not includible in assessable value for customs purposes, as it is not part of 'transaction value'.

Freight from seaport to godown and transit insurance in India are post-importation costs and are not includible.

It is assumed that selling commission to selling agent in India is payable on basis of CIF Value of goods including cost of drawings supplied by buyer.

As per rule 9(1*)(b)(iv)* of Customs Valuation Rules, cost of engineering drawings is includible only if work was undertaken outside India. Since, payment has been made in Euro, it is assumed that the design and drawing work was done outside India.

Landing charges will be 1% of CIF Value, as per Customs Valuation Rules.

Hence, calculation of customs duty will as follows –

(A) Value of goods in Euro	=	10,00,000 Euro
(B) Add – Freight @ 25% of FOB	=	2,00,000 Euro
(C) Add – Insurance @ 1.125% of FOB	=	11,250 Euro
(D) Total CIF Value (A + B + C)	=	12,11,250 Euro
(E) Add designing and drawing charges	=	10,000 Euro
(F) Total CIF Value	=	12,21,250 Euro
(G) CIF Value in Rupees @ Rs. 42.00	=	Rs. 5,12,92,500.00
(H) Local Agency Commission @ 5%	=	Rs. 25,64,625.00
(I) Total Value	=	Rs. 5,38,57,125.00
(J) Add – landing Charges @ 1% of I	=	Rs. 5,38,571.25
(J) Assessable Value (I +J)	=	Rs. 5,43,95,696.25
(K) AV Rounded upto	=	Rs. 5,43,95,696.00

Duty Payable :

Basic Customs Duty (BCD) @ 30% of AV	=	Rs. 1,63,18,708.00
CVD @ 16% is payable on AV + BCD	=	Rs. 1,13,14,304.77
SAD @ 4% is payable on AV + BCD + CVD	=	Rs. 32,81,148.38

Thus, total duty payable is Basic – Rs. 1,63,18,708.80, CVD – 1,3,14,304.77 Rs. And SAD Rs. 32,81,148.38. Thus, total duty is Rs. 3,09,14,161.95, rounded to Rs. 3,09,14,162.

Q. 13. A person make an unauthorized import of 1000 pieces of ophthalmic rough blanks CIF priced at $ 1 per piece by air from USA (Tariff heading 70.1510). The consignment is liable to be confiscated. Import is adjudicated. AC gives to the party an option to pay fine in lieu of confiscation. It is proposed to impose fine equal to 50% of margin of profit. The market price is Rs. 100 per piece of ophthalmic rough blank. The rates of duty are – Basic customs – 35%, CVD – nil, SAD – 4%, Exchange rate is - $ 1 = Rs. 45.

Compute : (i) Amount of fine; (ii) Total payment to be made by party to clear the consignment. What is the maximum amount of fine that can be imposed in this case? Quote section.

Answer 13.

As the declared CIF value of goods is $ 1 per piece and price for consignment of 1000 pieces will be $ 1000 (CIF). Rate of exchange is $ 1 = Rs. 45. Hence, CIF value is Rs. 45,000. Add landing charges @ 1%. Therefore, total Assessable Value in Rupees will be Rs. 45,450 [Rs. 45,000 CIF plus 450 landing charges]

Basic duty @ 35% will be Rs. 15,907.50 (35% of Rs. 45,450). There is no CVD. SAD @ 4% is payable on AV + Basic i.e. on Rs. 61,57.50 (45,450 + 15,907.50). Thus, SAD is Rs. 2,454.50. Therefore, total duty payable is Rs. 18,361.80 (15907.50 + 2,454.30) [rounded off to Rs. 18,362]

Total cost to the importer is price plus duty, i.e. Rs. 45,450 plus Rs. 18,362. Thus, total cost to the importer is Rs. 63,812. The market value is Rs. 100 per piece, i.e. Rs. 1,00,000 for the consignment. Therefore, his margin of profit is Rs. 36,188. Fine equal to 50% of Margin of profit will be Rs. 18,094.

Therefore, total amount payable will be –

Duty	Rs. 18,362
Fine	Rs. 18,094
Total	Rs. 36,456

The maximum amount of fine that can be imposed as per proviso to Sec. 125 will be the market value of goods less amount of duty.

Thus, the maximum fine that can be imposed in Rs. 81,638 (Market price Rs. 1,00,000 less amount of duty Rs. 18,362).

Q. 14. From the following details, compute the Central sales-tax payable by a dealer carrying on business in New Delhi :

Particulars	**Amount (Rs.)**
Total turnover for the year which included	**16,00,000**
Trade commission for which credit notes have to be issued separately	**48,000**
Installation charges	**25,000**
Excise duty	**80,000**
Freight, insurance and transport charges recovered separately in the invoices	**60,000**
Goods returned by dealer within six month of sale, but after the end of financial year	**40,000**
Buyer have issued C Form for all purchases.	

Answer 14.

Computation of Central sales-tax payable

Particulars	**Amount (Rs.)**
Gross turnover	16,00,000
Less :	
Trade Commission	48,000
Installation charges (assumed shown separately)	25,000
Excise Duty	60,000
Freight shown separately	40,000
Aggregate of Sale Price	14,27,000
CST rate	2%
CST	27,980

Q. 15. During 2008-09, the gross inter-State sales made by Strend Fast Ltd. of Jodhpur is Rs. 71,79,000. Although the central sales tax is not shown separately, the following information is available from the records of the company —

(i) The company sells machinery which makes copper wire rods. If is sold in the Rajasthan State, sales tax rate is 7 per cent [plus additional tax 10 per cent of sales tax]

(ii) Information regarding sales with and without C Form is as follows —

Particulars	***Inter-State sale with C Form***	***Inter-State sale without C Form***
Gross sales	**44,25,000**	**27,54,000**
It includes the following —		
Excise duty	**19,12,500**	**6,15,00**
Freight [not being shown separately]	**55,500**	**72,000**
Freight [shown separately]	**1,05,000**	**25,500**
Packing charges	**22,815**	**29,550**
Cost of installation [shown separately]	**1,38,000**	**1,59,000**
Insurance charge to cover the risk of the seller	**15,750**	**22,800**
Insurance charges for covering the risk of Buyer at the request of the buyer	**22,500**	**1,26,000**

The following items have not been deducted to calculate gross sales turnover

Particulars	***Inter-State sale with C Form***	***Inter-State sale without C Form***
Trade discount [given by way of credit note on March 31, 2009]	**27,000**	**30,000**
Goods returned within 6 months	**3,00,000**	**1,50,000**
Incentives bonus for additional sale	**37,500**	**30,000**
Ascertain the sales trunover and Central Sales Tax payable.		

Answer 15.

Computation of Sales Turnover & Central Sales Tax

Particulars	**Inter-State sale with C Form**	**Inter-State sale without C Form**
Gross Sales *Less* : Excise duty [not to be deducted]	44,25,000 —	27,54,00 —
Freight not being shown separately [not to be deducted]	—	—
Freight shown separately	1,05,000	22,500
Packing charges [not to be deductd]	—	—
Cost of installation shown separately	1,38,000	1,59,000
Insurance charges to cover the risk of the seller [not to be deducted]	—	—

Particulars	Inter-State sale with C Form	Inter-State sale without C Form
Insurance charges for covering the risk of buyer at the request of the buyer	22,500	1,26,000
Trade discount [as it is not deducted from gross turnover, it shall be deducted]	27,000	30,00
Goods returned within 6 months	3,00,000	1,50,000
Incentives bonus for additional sale [not to be deducted from sale price]	—	—
Aggregate sale price [Total : Rs. 60,96,000] [a]	38,32,500	22,63,500
Local sales tax rate [7% + 10% of 7%]	7.70%	7.70%
Central sales tax	2%	2%
Central sales tax [i.e., 2/102 of Rs. 38,32,500; $\frac{7.70}{107.70}$ of Rs. 22,63,500] [b]	75,147	1,61,829
Sales turnover [a+b] [Total : Rs. 58,59,024]	37,57,353	21,01,671

Q. 16. M/s Jyoti Industries, a registered dealer of VAT in the State of Rajasthan, furnishes the following details relating to it's sales and purchases during the quarter ended 31st August, 2010 :

Sales :

Sale of *Schedule C* (4%) goods in Rajasthan Rs. 8.32,000 inclusive of tax

Sale of *Schedule CA* (12.5%) goods in Rajasthan Rs. 4,50,000 inclusive of tax

Sale of *Schedule C* (4%) goods in Rajasthan Rs. 4,16,000 inclusive of tax

Sale of *Schedule A* (Exempted) goods in Rajasthan Rs. 85,000.

Sale, return of *Schedule CA* goods in April, 2010 for Rs. 20,000 inclusive of tax.

Freight and delivery charges included in turnover and not separately charged :

For *Schedule A* goods	**Rs.**	**5,000**
For *Schedule C* goods	**Rs.**	**30,000**
For *Schedule CA* goods	**Rs.**	**22,000**

Purchases :

***Schedule C* (4%) goods from dealers in Rajasthan Rs. 9,00,000 inclusive of tax**

***Schedule CA* (12.5%) goods in Rajasthan Rs. 3,50,000 inclusive of tax**

***Schedule A* (exempted) goods in Rajasthanl Rs. 70,000**

Purchase from unregistered dealer in Rajasthan for Rs. 2,000 goods used in regular business of the dealer (*Schedule CA* goods) 12.5%

Determine aggregate sale price, taxable turnover of sales, output tax liability, input tax credit and net VAT liability of the dealer.

Answer 16.

Computation of Net VAT Liability of M/s. Jyoti Industries Ltd. for the month of August, 2010.

	Output Tax
Output Tax Liability :	Rs.
1. On Turnover of Rs. 8,32,000 inclusive of 4% tax Rs. $8,32,000 \times \frac{4}{104}$	32,000
Sale Price Rs. 8,32,000 – Rs. 32,000 = Rs. 8,00,000 on which VAT is payable @ 4%	
2. On Turnover of Rs. 4,50,000 *less* returned goods Rs. 20,000	
Net turnover of Rs. 4,30,000 @ 12.5% Rs. $4,30,000 \times \frac{12.5}{112.5}$	47,778
Sale Price Rs. 4,30,000 – Rs. 47,778 = Rs. 3,82,222 on which VAT is payable @ 12.5%	
3. On Turnover of Rs. 4,16,000 inclusive of 4% tax Rs. $4,16,000 \times \frac{4}{104}$	16,000
Sale Price Rs. 4,16,000 – Rs. 16,000 = Rs. 4,00,000 on which VAT is payable @ 4%	
4. Tax on purchase from Unregistered Dealer [*Section 17*] Rs. 2,000 × 12.5%	250
Total Output Tax [A]	96,028

Input Tax Credit :	Rs.
1. On Purchase within Rajasthan @ 4% on Rs. 9,00,000	
Rs. 9,00,000 $\frac{4}{104}$	34,615
2. On Purchase of Rs. 3,50,000 @ 12.5%	
Rs. 3,50,000 $\frac{12.5}{112.5}$	38,889
3. On Purchase from Unregisterd Dealer (No credit is available)	Nil
Total Input Tax Credit [B]	73,504

Computation of Net VAT Liability

			Rs.
	Total Output Tax	(A)	96,028
Less :	Input Tax Credit	(B)	73,504
	Net VAT Liability		22,524

Notes : (1) No Input Tax Credit is available in purchase of exempted goods.

(2) No Input Tax Credit is available on purchase from unregistered dealer under *Section 22(5)* of the Act.

(3) Freight and delivery charges are included in the definition of 'Sale Price' under *Section 2(41)* of the Act and hence no deduction is allowed.

Q. 17. Ms. Parineeta retired from service after 28 years from ABC Ltd. Leave sanctioned by employer 45 days p.a. Leave availed during service 400 days. Leave encashment received: Rs. 4,30,000. Average salary for 10 months preceeding the month of retirement Rs. 15,000. Compute taxable amount of Leave encashment for the Previous year 2009-10.

Answer 17.

Since leave sanctioned by the employer is more than 30days p.a., the following calculation is required, to determine the amount of leave credit on the date of retirement.

Particulars	
(i) Leave credit available on the date of retirement	**860**
= Total Leave sanctioned during tenure of employment – Total leave availed during service	
= [(28 × 45) – 400]	**420**
Less : Excess leave sanctioned by the employer [(45 – 30 days) per year × 28]	
Leave credit on the basis of 30 days credit for completed years of service	**440**
(ii) Leave salary on the basis of 30 days credit = Step (i) × Average Salary = 440 × (15,000/30)	**2,20,000**

Taxable Leave Salary on Retirement

Particulars	Rs	Rs
Amount Received on Leave Encashment		4,30,000
Less: Exemption u/s 10(10AA) Least of the followings:		
(i) Actual amount of Leave encashment received	4,30,000	
(ii) Average salary of the individual for the past 10 months × 10 months	1,50,000	
(iii) Maximum Limit	3,00,000	
(iv) Leave at credit at the rate of 30 days p.a. for every Completed year of service as calculated in Step (ii)	2,20,000	1,50,000
Taxable Value of Leave Encashment		**2,80,000**

Q. 18. Mr. Sambhu was provided an accommodation in a hotel by his employer for 22 days before providing him a rent free accommodation which is owned by the employer. The hotel charges paid Rs.6,000. Salary for the purpose of accommodation for the period of 22 days is Rs.11,000. Compute the value of accommodation.

Answer 18.

In case of accommodation provided to the assessee on account of transfer, which is exceeding 15 days cumulatively, such shall be taxable as a perquisite. The company recovered Rs.1,000 from the employee. Compute taxability.

Lower of the following :

(i) 24% of salary paid/payable= 24% of 11,000 = 2,640	
(ii) Actual charges paid/payable = 6,000	2,640
Less Amount paid or payable by the employee	1,000
Taxable value of perquisite	**1,640**

Q. 19. Mr. Ritesh is provided with an accommodation in Kolkata since April 2009. Salary Rs. 40,000 p.m. Cost of furniture provided Rs. 80,000. On 1st September, 2009, following a promotion with a increase in Salary by Rs. 15,000, he was transferred to Jharkhand (population less than 25 lakhs but more than 10 lakhs),and was also provided an accommodation there. Mr. Ritesh was allowed to retain the Kolkata accommodation till March, 2010. Compute taxability.

Answer 19.

Phase 1: Value of Furnished Accommodation (Kolkata) (April to September 2009)

Particulars	Rs.
Value of unfurnished accommodation (15% of 40,000 × 6 months)	**36,000**
Add: Value of Furniture provided:	
• 10%p.a. of original cost of such furniture	
(10% of 80,000 x 6 months)	**8,000**
Value of Furnished Accommodation	**44,000**

Phase 2: Valuation of accommodation (October 2009 to December 2009)

(a) For the first 90 days of transfer: Where accommodation is provided both at existing place of work and in new place, the accommodation, which has lower value, shall be taxable.

(b) After 90 days: Both accommodations shall be taxable.

Computation for the first 90 days of transfer: (October 2009 to December 2009)

Lower of:

(i) Value of accommodation at existing place of work

(ii) Value of accommodation at new place

Value of accommodation at existing place of work (Kolkata)

15% of salary for 3 months (i.e. 90 days) = 15% of 55,000 x 3 months = 24,750

Add: Cost of furniture provided: 10% of 80,000 x 3 months = 24,000

Total Value of Perquisite **48,750**

Value of accommodation at new work place (Jharkhand)

10% of salary for 3 months (i.e. 90 days) = 10% of 55,000 x 3 months = 16,500

Therefore, the assessee shall be assessed to tax on Rs.16,500 (being the lower)

Phase 3: Valuation of accommodation (after 90 days) (January 2010 to March 2010)

For Kolkata accommodation: 15% of 55,000 x 3 months = Rs.24,750

Add: Cost of furniture provided: 10% x 80,000 x 3 months = Rs.24,000

Total value of perquisite **Rs.48,750**

For Jharkhand accommodation: 10% of 55,000 x 3 months = Rs.16,500

Total value of perquisite:

Particulars	Taxable value of perquisite
Phase 1: Accomodation in Kolkata	44,000
Phase 2: Accomodation in Jharkhand (being the lower during 90 days)	16,500
Phase 3: Accomodation in Kolkata	48,750
	16,500
Total Value of Taxable Perquisite	**1,25,750**

Q. 20. Shri A. Chakraborty, Director (Administration) in MNPC Ltd. He is entitled to a motor car (1.8 ltrs.) to be used for both official & private purposes.
Discuss the taxability of perquisite if :

(i) The car is owned by the employer, expenses paid by employer & it is a chauffeur driven car.

(ii) The car is owned by Sri Chakraborty. Expenses incurred Rs. 20,000 & chauffeur paid a salary of Rs. 60,000 provided by the employer.

Answer 20.

As per notification No. 24 dated 18.12.09, the taxable value of perquisite will be :

(i) Rs. 2,400 p.m + Rs. 900 p.m for chauffeur = Rs. 3,300 p.m × 12 months
= Rs. 39,600

(ii) **Value of Perquisite**	**Rs.**
Amount of expenses	20,000
(+) Salary to chauffeur	60,000
	80,000
Less : Value of Perquisite if the car was owned by the employer [as computed in (i) above]	39,600
	40,400

Q. 21. Dr.(Ms) Priyanka is the owner of a big house consisting of three units. Unit I consist of 40% area and Unit II and III are equal dimension, each occupying 30% area. The construction of house was completed on 1 April 2004 at a cost of Rs 10,00,000. The municipal value of the house for the previous year 2009-2010 has been fixed at Rs 2,00,000. Municipal taxes have been levied and paid @ 15% of rateable value. The rent under the Rent Control Act is Rs 1,50,000. Unit I is let out @ 10,000 p.m. for residential purposes. Unit II is self-occupied. Unit III is used by her for her professional purposes. The rent did not pay two months rent and conditions of Rule 4 are satisfied. She paid ground rent, Rs 9,000; interest on loan, taken during 2000-2001 for the construction of the house and payable during the PY 2009-2010 Rs. 1,50,000; insurance premium, Rs 6,000. She spent Rs 30,000 on repair of the house. Depreciation for the clinic portion is Rs 15,000. Her gross receipt from professional during the previous year 2009-2010 amount to Rs 5,60,000.

Compute her gross total income for the assessment year 2010-2011

Answer 21.

Computation of Income from House Property for the Assessment Year 2010-2011

Particulars	**House Let-out Rs.**	**House Self-occupied Rs.**
Gross annual value :		
(a) ALV : House let out		
(i) 40% of municipal value : Rs 80,000 or		
(ii) 40% of the standard rent : Rs 60,000		
ALV is restricted to Rs 60,000		
(b) Actual rent for 40% portion for 10 months : Rs 1,00,000	1,00,000	Nil
Gross annual value		

Particulars	House Let-out Rs.	House Self-occupied Rs.
Less : Municipal taxes paid by the owner for 40%		
Portion $Rs.\ 2,00,000 \times \frac{15}{100} \times \frac{40}{100} = Rs.\ 12,000$	12,000	Nil
Net annual value	88,000	Nil
Less : Deduction from net annual value (Sec. 24)		
1. Statutory deduction : 30% of net annual value	(-) 26,400	
2. Interest on loan : 40% of Rs. 1,50,000	(-) 60,000	(-) 30,000
Taxable income	**1600**	**(-) 30,000**
Computation of taxable income from profession :		
Gross professional income		5,00,000
Less : Expenses for 30% portion used for profession		
1. Municipal taxes $Rs.\ 2,00,000 \times \frac{15}{100} \times \frac{30}{100}$ (Sec. 30)	9,000	
2. Repair : 30% of Rs 30,000 (Sec. 30)*	9,000	
3. Ground rent : 30% of Rs 9000 (Sec. 30)*	2,700	
4. Interest on loan : 30% of Rs. 1,50,000 [Sec. 36(1)(iii)]*	45,000	
5. Insurance premium : 30% of Rs 6000 (Sec.30)*	1,800	
6. Depreciation (Sec. 32)	15,000	
	82,500	82,500
		4,17,500
Computation of total income :		
1. Income from house property :		
(a) Let out	1600	
(b) Self-occupied	(-) 30,000	
	(-) 28,400	(-) 28,400
2. Income from profession		4,17,500
Gross total income/total income		**3,89,100**

Q. 22. The Profit & Loss Account of Mr.Dipak Sinha for the previous year 2009-2010 is given below :

Particulars	*Rs.*	*Particulars*	*Rs.*
Cost of goods sold	16,00,000	Sales	34,70,000
Salaries wages	9,00,000	Rent of staff quarters	3,00,000
Rent of business premises, owned by the assessee	2,50,000	Sale price of machinery block on 31-03-2010	5,00,000
Repairs and renewals	1,40,000		
Income tax paid	60,000		
Excise duty paid	1,00,000		
Sales tax payable	2,00,000		

Particulars	*Rs.*	*Particulars*	*Rs.*
Legal expenses	3,00,000		
Municipal taxes payable for staff quarters	10,000		
Provision for bad debts	60,000		
Contingency reserve	1,00,000		
Employees contribution to recognised fund	50,000		
Net profit	5,00,000		
	42,70,000		**42,70,000**

Additional Information **:**

(i) Salaries include:

(a) Rs 1,20,000 was paid outside India to an employee, "resident" in India but neither tax was deducted nor tax has been paid thereon,

(b) Rs 90,000 was paid in India to an employee "resident" in India but neither tax deducted therefrom nor paid thereon.

(ii) Excise duty of Rs 50,000 for the assessment year 2009-2010 was paid on 1 January 2010 but it was not included in the profit and loss a/c.

(iii) Sales tax amounting Rs 1,30,000 was paid on 31 July 2010 and the balance was paid on 1 August 2010, the due date of furnishing return of income is 31 July 2010.

(iv) Repairs/renewals include remodelling and renovation costing Rs. 80,000.

(v) Legal expenses include:

(a) Lawyer fee of Rs 50,000 paid by bearer cheque to K, nephew of the proprietor. The Assessing Officer disallowed a sum of Rs.10,000, being found in excess of the desired qualifications;

(b) Gift of Rs 1,20,000, made to wife, a tax-advisor, but disallowed by the A.O.

(vi) Employees contribution include:

(a) Rs 30,000 credited to their account on due date under Provident Fund rules,

(b) Rs 20,000 credited to their account in November 2010.

(vii) Commission receipts of Rs 2,00,000 have not been credited to the profit and loss account as their recovery seems to be doubtful.

(viii) WDV of machinery on 01-04-2009 was Rs. 6,50,000.

(ix) WDV of business premises and staff quarters as on 01-04-2008: Rs 10,00,000 and Rs 30,00,000, respectively. Depreciation @ 10% on Business Premises and @ 5% on staff quarters.

Compute taxable profits for the previous year 2009-2010.

Answer 22.

Computation of Business Profits for the Assessment Year 2010-11

Particulars		Rs	Rs
Net profit as per profits and loss a/c			5,00,000
Add: Inadmissible Expenses:			
(i)	Rent of business premises owned by the assessee (Sec. 30)	2,50,000	
(ii)	Remodelling and renovation, being repairs of capital nature	60,000	
(iii)	Income tax paid [Sec. 40(a)(ii)l	60,000	
(iv)	Sales tax remaining unpaid up to due date of furnishing return of income	70,000	
(v)	Legal expense includes:		
	(a) Gift made to wife, Sec. 37(1)	1,00,000	
	(b) Fees paid to lawyer (being a relative) Sec. 40A(2)	10,000	
(vi)	Salaries paid outside India to a "resident" employee TDS [Sec. 40(a)(iii)]	1,20,000	
(vii)	Salaries paid in India to a resident employer without TDS	—	
(viii)	Municipal tax payable for staff quarters [Sec. 43B]	10,000	
(ix)	Provision for bad debts [Sec. 36]	60,000	
(x)	Contingency reserve [Sec. 37(1)]	1,00,000	
(xi)	Employees' contribution credited to their account after due date	20,000	
(xii)	Commission receipts which have accrued during the year but recovery seems doubtful seems doubtful	1,00,000	
(xiii)	Employees' contribution not credited to—profit and loss a/c	50,000	10,30,000
			15,30,000
Less: Inadmissible receipts/ admissible claims:			
(i)	Excise duty (Sec. 43B)	50,000	
(iii)	Sale price of machine, being capital receipts	5,00,000	
(iv)	Depreciation: (a) Staff quarters: 5% of 30,00,000	1,50,000	
	(b) Business Premises: 10% of 10,00,000	1,00,000	8,00,000
Taxable business profits			**7,30,000**

Note : Sale of machinery block*:* Sale of machinery block results into short-term capital loss of Rs 1,50,000 (Rs 6,50,000 -Rs 1,00,000) under Sec. 50.

No capital loss, whether short-term or long term, can be set- off against any income. It is to be carried forward for next 8 assessment years.

Q. 23. A company engaged in the manufacturing of fertilizer products, commenced its business on 01.04.2009. During the financial years 2006-2007 to 2008-2009 it had incurred Rs 4.00 lakh annually as expenditure on salaries and purchase of raw material for the purpose of research connected with its business. During the previous year 2009-2010 incurred on scientific research, revenue expenditure of Rs 3.00 lakh and a capital expenditure of Rs 4.50 lakh on purchase of plant and machinery. Since the result of the research was unsuccessful, the company sold it its plant and machinery on 31.12.2009 for Rs 8.00 lakh and closed its research activity. Compute the admissible deduction under Sec. 35 for the assessment year 2010-2011.

Answer 23.

Computation of deduction u/s 35 for Expenditure on scientific research:

Particulars	Rs.	Rs.
Expenditure incurred during the earlier 3 years on salaries and purchase of raw material for the purpose of research connected with the business— fully allowed in the year of commencement of business by virtue of Explanation to Sec. 35(1)(i) : [Rs 4,00,000 × 3]		12,00,000
Revenue expenditure on scientific research incurred during the previous year 2009-2010	3,00,000	
Capital expenditure on scientific research incurred during the previous year 2009-2010	4,50,000 7,50,000	
Total Weighted deduction © 150% on Rs. 7.50 lakh u/s 35(2AB)		11,25,00
Admissible deduction u/s 35 for the AY 2010-2011		23,25,000

Q. 24. A helds 15,000 shares (10% of total share holding) in B Ltd. which he had purchased on 10.2.92 for Rs. 6,00,000. The company went into liquidation on 16.7.2009 and paid a sum of Rs. 20 per share in cash and an asset whose market value as on the date of distribution i.e. 5.10.09 was Rs. 18,20,000 to A. the accumulated profits of the company were Rs. 15 lacs.

(a) Compute the income of A for the a.y. 2010-11 assuming that he has no other income.

(b) Compute the capital gain chargeable to tax if the asset of B ltd. Is sold by A for Rs. 15 lacs on 28.3.10.

Answer 24.

Computation of Capital Gains of Mr. B for the A.Y. 2010-11

	Rs.
(a) (i) Capital Gain on transfer of shares	
Total consideration (15,000×20+18,20,000)	21,20,000
Less : Proportionate amount of deeme dividend (10% of Rs. 12,82,106)	1,28,211
Less : Indexed Cost of Acquisition $6,00,000 \times \frac{632}{199}$	19,05,528
Long Term Capital Gains	**86,261**
(ii) **Income from others Sources**	
Dividiend from Indian Company	Exempted 86,261
(b) **Capital Gain on transfer of asset (B Ltd.)**	
Full Value of Consideration	15,00,000
Less : Cost of Acquisition (being the market value as on the date of distributions)	13,20,000
Short Term Capital Gains	**1,80,000**

Accumulated Profits	**15,00,000**
Dividend tax @ 16.995% (= 15% +10% Surcharge +2% Education on +1%) on the amount to be distributed/paid. Hence, the amount to be distributed plus tax @16.995% on such amount should be Rs. 15,00,000	
$\therefore$ Amount of tax = $15{,}00{,}000 \times \frac{16.995}{116.995}$ = 2,17,894	
$\therefore$ Profits available for distribution = Rs. (15,00,000 – 2,17,894) = Rs. 12,82,106.	

Q. 25. R purchased 1200 shares on 1.4.80 for Rs. 40 each. He was allotted 200 right shares on 1.5.80 for Rs.50 each. He was also allotted 2,400 bonus shares on 1.3.81. on 4.5.91, he was further allotted 4,800 right shares for Rs. 80 each. Again on 27.9.01, he was allotted 4,800 bonus shares. The fair market value of these shares on 1.4.81 was Rs.60 each. All the above shares are sold by R on 16.10.09 for Rs 400 per share. Compute the capital gains assuming :

(a) The above shares are not sold through recognized stock exchange.

(b) The above share is sold through recognized stock exchange and necessary securities transaction tax was paid by R.

Answer 25.

	Rs.
(a) Where Shares were not sold through recognised stock exchange	
Capital Gain on original shares purchased on 1.4.80	57,60,000
Consideration for transfer (14,400×400)	
Less : Indexed Cost of Acquisition	
(i) $1{,}200 \times 60 \times \frac{632}{100}$	4,55,040
(ii) $1{,}200 \times 60 \times \frac{632}{100}$	4,55,040
(iii) $2{,}400 \times 60 \times \frac{632}{100}$	9,10,080
(Bonus shares issued prior to 1.4.81 shall opt for Fair as on 1.4.81 and shall be allowed to be indeded)	
(iv) $4{,}800 \times 80 \times \frac{632}{199}$	12,19,538
(v) Cost of Acquisition for Bonus shares after 1.4.81	NIL
	27,20,302

(b) Where shares are sold through recognised stock exchange and securities transaction tax has been paid by the assessee, wntire long term capital gain on there share shall be exempted u/s 10(38)

Q. 26. Ravi owns a residential house which was purchased by him in 1975 for Rs. 80,000. The FMV as on 1.4.81 was Rs. 2,00,000. This house is sold by him on 16.7.2009 for a consideration of Rs.15,00,000. The brokerage and expenses on transfer was Rs. 15,000. Compute capital gains for the assessment year 2010-11 if.

He invests Rs.5,00,000 for purchase of a new house on 15.3.2010.

If the HP so purchased in 15.3.2010 is again sold in 21.10.10 for Rs. 9 lacs, what will be the tax liability?

Answer 26.

	Rs.
Consideration for transfer	15,00,000
Less : Expenses on transfer	15,000
Net Consideration	**14,85,000**
Less : Indexed Cost of Acquisition	
$2,00,000 \times \frac{632}{100}$	12,64,000
Long term Capital Gains	**2,21,000**
Less : **Exemption u/s 54**	
Cost of New HP Purchased Rs. 5,00,000	
(exemption restricted upto the balance of LTCG)	2,21,000
Taxable Long term Capital Gains	NIL

If the HP purchased in 15.3.2010 is again sold on 21.10.10 for Rs. 9 lacs, there share a rise short term capital gains. The cost of acquisition shall be adjusted to the extent of long term capital gains exemption already availed.

Computation of Capital Gains for the A.Y. 2011-12

		Rs.
Consideration for transfer	9,00,000	
Less : **Cost of Acquisition**		
Cost of purchase	5,00,000	
Less : Exemption u/s 54 availed during A.Y. 2010-11 now withdrawn	2,21,000	2,79,000
Short term Capital Gains		**6,21,000**

Q. 27. P ltd. owns an industrial undertaking manufacturing chemicals in Bangalore owns the following assets

(a) Plant and machinery (wdv Rs.5 lacs) sold for Rs.15 lacs.

(b) Building (WDV Rs. 12 lacs) sold for Rs. 60 lacs.

(c) Furniture and fixtures (WDV Rs. 50,000) sold for Rs. 1,80,000

(d) Land cost of acquisition Rs. 5,00,000 during 1984-85 and sold for Rs. 30 lacs

The industrial undertaking was shifted as per policy of the Government from urban area to other area. The new assets acquired during the period 1.1.10 to 31.10.10 are as under:

Plant and machinery Rs.20 lacs; Buildings Rs.40 lacs.

Compute capital gain chargeable to tax for the assessment year 2010-11.

Answer 27.

Short-term Capital Gains on Depreciable assets

		Rs.
(i) Plant & Machinery (15,00,000 – 5,00,000)	10,00,000	
(ii) Buildings (60,00,000 – 12,00,000)	48,00,000	
(iii) Furniture & Fixtures (1,80,000 – 50,000)	1,30,000	59,30,000
Long-term Capital Gains on Industrial Land :		
Consideration for transfer	30,00,000	
Less : **Indexed Cost of Acquisition**		
$5{,}00{,}000 \times \frac{632}{125}$	25,28,000	4,72,000
Total Capital Gains		64,02,000
Less : **Exemption u/s 54G**		
Plant & Machinery	25,00,000	
Building	40,00,000	
	65,00,000	
but restricted to Rs. 62,72,000 [= Rs. 64,02,000 —1,30,000, being STCG on furniture, not eligible for the purpose of claining exemption u/s 54G		62,72,000
Short term Capital Gains (on furniture)		1,30,000

Q. 28. D Ltd., a closely-held Indian company, is engaged in the business of manufacture of chemical goods (value of plant and machinery owned by the company is Rs. 55 lakh). The following informations for the financial year 2009-10 are given :

D Ltd. is engaged in the business of manufacture of garments.

	Rs.
Sale proceeds of goods (domestic sale)	**25,00,000**
Sale proceeds of goods (export sale)	**7,00,000**
Amount withdrawn from general reserve (reserve was created in 1996-97 by debiting P&L A/c)	**2,00,000**
Amount withdrawn from revaluation reserve	**1,50,000**
Total	**35,50,000**
Less : Expenses	
Depreciation (normal)	**6,16,000**
Depreciation (extra depreciation because of revaluation)	**2,70,000**
Salary and wages	**2,10,000**
Wealth tax	**10,000**
Income-tax	**3,50,000**
Outstanding customs duty (not paid as yet)	**17,500**
Proposed dividend	**60,000**
Consultation fees paid to tax expert	**21,000**
Other expenses	**1,39,000**
Net Profit	**18,56,500**

For tax purposes the company wants to claim the following :

—Deduction under section 80-1B (30 per cent of Rs. 14,56,500).

—Depreciation under section 32 (Rs. 5,36,000)

The company wats to set off the following losses/allowances :

	For tax purposes Rs.	For accounting purposes Rs.
Brought forward loss of 2001-02	**14,80,000**	**4,00,000**
Unbsorbed depreciation	**—**	**70,000**

Compute the net income and tax liability of D Ltd. for the assessment year 2010-11 assuming that D Ltd. has a (deemed) long-term capital gain of Rs. 60,000 under proviso (i) to section 54D(2) which is not credited in profit and loss account.

Answer 28.

	Rs.
Net profit as per P&L A/c	18,56,500
Add :	
Excess depreciation [i.e., Rs. 6,16,000 + Rs. 2,70,000 — Rs. 5,36,000]	3,50,000
Wealth tax	10,000
Income tax	3,50,000
Customs duty which is not paid	17,500
Proposed dividend	60,000
Total	26,44,000
Less : Amount withdrawn from reserve (i.e., Rs. 2,00,000+Rs. 1,50,000)	3,50,000
Business income	22,94,000
Less : Unabsorbed loss	14,80,000
Business Income	8,14,000
Long-term capital gain	60,000
Gross total income	8,74,000
Less : Deductions under section 80-IB [30% of Rs. 4,14,000]	1,24,200
Net Income (rounded off)	7,49,800
Tax liability (under normal provisions) [20% of Rs. 60,000 + 30% of Rs. 6,89,800, plus 3% of tax as cess]	2,25,508
Book profit	
Net Profit	18,56,500
Add :	
Depreciation (i.e. Rs. 6,16,000 + Rs. 2,70,000)	8,86,000
Wealth tax	Nil
Income-tax	3,50,000
Proposed dividend	60,000

Less : Amount withdrawn from general reserve	(–) 2,00,000
Unabsorbed depreciation	(–) 70,000
Depreciation (normal)	(–) 6,16,000
Amount withdrawn from revaluation reserve to the extent it does not exceed extra depreciation because of revaluation	(–) 1,50,000
Book profit	21,16,500
Tax liability (15.45% of book profit)	3,26,999

D Ltd. will pay Rs. 3,26,999 as tax for the assessment year 2010-11 as per section 115JB. Tax credit is however, available in respect excess tax (i.e., Rs. 1,01,491) under section 115JB.

Q. 29. GMK are partners in a firm assessed as an association of persons. They share profit and losses in the ratio of 4:3:3. The abridged profit and loss for the previous year 2009-2010 is as follows:

Particulars	Rs	Particulars	Rs
Business expenses	**5,00,000**	**Gross profits**	**6,85,000**
Salaries to partners		**Short-term capital gain**	**2,80,000**
G	**60,000**	**Interest on drawings**	
M	**40,000**	**G**	**5,000**
K	**50,000**	**M**	**20,000**
Bonus to partners:		**K**	**10,000**
G	**30,000**		
M	**20,000**		
Commission to K	**40,000**		
Interest to partners:			
G	**20,000**		
M	**15,000**		
K	**25,000**		
Net profit			
G	**80,000**		
M	**60,000**		
K	**60,000**		
	10,00,000		**10,00,000**

Business expenses include donation to Nalanda University Rs 50,000.

Compute the taxable income of AOP, its tax liability and tax liability of its members in the following :

Personal income of members	Case-I Rs	Case-II Rs
G: Interest on bank deposits	**40,000**	**1,00,000**
M: Interest on government securities	**65,000**	**1,20,100**
K: Income from house property	**50,000**	**1,10,000**
LIP paid by every member on a policy of Rs 1,00,000.	**20,000**	**20,000**

Answer 29.

(a) **Computation of taxable business profits**

Particulars	Rs.
Net profit as per Profit & Loss A/c	2,00,000
Add: (i) Donation to Nalanda University	50,000
(ii) Salaries to partners {Sec. 40(ba)] (60,000 + 40,000 + 50,000)	1,50,000
(iii) Bonus to partners 30,000 + 20,000	50,000
(iv) Interest on capital (Net of Interest on Drawings)	15,000
G 20,000 - 5,000 =	15,000
K 25,000-10,000 =	15,000
(v) Commission to K	40,000
	5,20,000
Less: Short-term capital gain	2,80,000
Taxable profits	
(a) Computation of total income	
Add: (i) Business profits	2,40,000
(ii) Short-term capital gain	2,80,000
Gross total income	**5,20,000**
Less: Deduction for charitabe donation (Sec. 80G)	
(a) Actual donation Rs.50,000 or,	
(b) 10% of gross total income: $\frac{10}{100} \times 5{,}20{,}000 = 52{,}000$	
whichever is less, is qualifying amount. It is Rs 50,000.	25,000
Amount of deduction 50% of qualifying amount	
Total income	**4,95,000**

Tax liability of AOP :

Particulars	Case I	Case II
(a) Tax on total income at slab rates including Education Cess and SHEC	**1,00,425**	—
(b) Tax on total income at maximum marginal rates including surcharge plus education cess plus SHEC	—	**1,68,251**
Tax payable	**1,00,425**	**1,68,251**
Tax payable rounded off (u/s 288 B)	**1,00,420**	**1,68,250**

Tax liability of members:

Case:(a) where AOP is taxed at slab rates:

Share of income from AOP: (Rs)	G (Rs)	M (Rs)	K (Rs)	Total
(i) Salary	60,000	40,000	50,000	1,50,000
(ii) Bonus	30,000	20,000	—	50,000
(iii) Commission	—	—	40,000	40,000
(iv) Interest	15,000	—	15,000	30,000
	1,05,000	60,000	1,05,000	2,70,000
(v) Divisible loss : (2,40,000-25,000)-270,000 = (-) 55,000	(-) 22,400	(-) 16,500	(-) 16,500	(-) 55,000
Shre of business profit	83,000	43,500	88,500	2,15,000
Share of short-term capital gain	112,000	84,000	84,000	2,80,000
Share of income from AOP	**1,95,000**	**1,27,500**	**1,72,500**	**4,95,000**

Total income and tax liability of members:

Particulars	G	M	K
Income from house property	—	—	50,000
Income from other sources	40,000	65,000	—
Share income from AOP:	1,95,000	1,27,500	1,72,500
Gross total income	**2,35,000**	**1,92,500**	**2,22,500**
Less: Deduction under Sec. 80C: LIP restricted to 20% of policy	20,000	20,000	20,000
Total income	**2,15,000**	**1,72,500**	**2,02,500**
Gross income tax at slab rate	17,000	8,500	10,500
Add: Surcharge	Nil	Nil	Nil
Add: Education Cess @ 2%	340	170	210
Add : SHEC @ 1%	170	85	105
	17,510	8,755	10,815
Less: Rebate on share of profit from firm at the average rate	15,881	6,471	9,213
Tax payable	1,629	2,284	1,602
Tax payable rounded off (u/s 288B)	**1,630**	**2,280**	**1,600**
Note 1: 17,510 ÷2,15,000 X 195000 = 15881			
Note 2: 8,755 ÷ 172500 X 1275000 = 6471			
Note 3: 10815 ÷ 202500 X 172500 = 9213			

Case (b) where AOP is taxed at maximum marginal rate:

	G	M	K
1. Share of profit from AOP; Since the AOP was assessed at the maximum marginal rate, share of income from AOP is exempt (Sec. 86)	—	—	—
2. Personal income:			
Income from other sources	1,00,000	1,20,100	1,10,000
Less: Deduction u/s 80C	(-) 20,00	(-) 20,000	(-) 20,000
Total income	80,000	1,00,100	90,000
	Nil	Nil	Nil
Total Income	Nil	Nil	Nil

Q. 30. Devdas Charitable Trust submits the particulars of its receipts and outgoing during the previous year 2009-2010.

	as below :	**Rs.**
(i)	**Income from property held under trust for charitable purposes**	**20,00,000**
(ii)	**Voluntary contribution (out of which Rs. 5,00,000 will form part of the corpus)**	**15,00,000**
(iii)	**Donations paid to blind charitable school**	**6,00,000**
(iv)	**Scholarship paid to poor students**	**4,00,000**
(v)	**Amount spent on holding free eye camps in urban slums**	**3,00,000**
(vi)	**Amount set apart for setting up an old age home by March 2013**	**10,00,000**

Compute the total income of the trust for the previous years 2008-2009 and 2014-2015 if it spends Rs 5,00,000 during the previous year 2013-2014 and Rs 3,00,000 during the previous year 2014-2015 in setting up the old age home.

Answer 30.

(a) Computation of the taxable income of the trust for previous year 2009-2010/AY 2010-2011.

	Particulars		**Rs.**
(i)	Income from property held under charitable trust		20,00,000
(ii)	Income from voluntary contributions (Rs 15,00,000-Rs 5,00,000)		10,00,000
	Total		**30,00,000**
	Less: 15% set apart for future application		45,00.000
	Balance		**25,50,000**
	Less: Income applied for charitable purposes:		
(i)	Donations to blind charitable school	6,00,000	
(ii)	Scholarship to poor students	4,00,000	
(iii)	Free eye camps in urban slums	3,00,000	
	Total	**13,00,000**	
	Amount set apart for old age home	**10,00,000**	23,00,000
	Taxable income		**2,50,000**
(b)	Previous year 2014-2015 /AY 2015-2016:		
	Amount set apart for old age home	10,00,000	
	Less:		
1.	Amount spent during 2013-2014	5,00,000	
2.	Amount spent during 2013-2014	3,00,000	
	Taxable income	**2,00,000**	

Q. 31. Dinesh Pally Cooperative Society Ltd. furnishes the following particulars of its income for the previous year ending on 31st March 2010:

(i)	**Interest on government securities**	**40,000**
(ii)	**Profits from banking business**	**3,50,000**
(iii)	**Income from purchase and sale of agricultural implement and seeds to its members**	**2,50,000**
(iv)	**Income from marketing of agricultural produce of its members**	**4,00,000**
(v)	**Profits and gains of business**	**2,20,000**
(vi)	**Income from cottage industry**	**3,50,000**
(vii)	**Interest and dividends (gross) from other cooperative societies**	**30,000**

Compute total income of the society and calculate the tax payable by it for the assessment year 2010-2011.

Answer 31.

Dinesh Pally Cooperative Society Ltd.

Computation of income of the for the previous year 2009-2010 relating to the Assessment Year 2010-2011 :

Particulars	Rs.	Rs.
1. Profits and gains of business or profession:		
a) Banking business	3,50,000	
b) Income from purchase and sale of agricultural implements and seeds to its members	2,50,000	
c) Income from marketing of agricultural produce of its members	4,00,000	
d) Profits and gains of business	2,20,000	
e) Income from cottage industry	3,50,000	15,70,000
2. Income from other sources:		
a) Interest on government securities	40,000	
b) Interest and dividends from other cooperatives	30,000	70,000
Gross Total Income		**16,40,000**
Less: Deduction allowable from gross total income under Sec. 8OP		
1. Banking business	3,50,000	
2. Income from purchase and sale of agricultural implement and seeds to its members	2,50,000	
3. Income from marketing of agricultural produce of its members	4,00,000	
4. Income from cottage industry	3,50,000	
5. Interest on government securities(not eligible for deduction)	Nil	
6. Interest and dividends from other cooperative societies	30,000	13,80,000
Total Income		**2,60,000**

Computation of Tax Liability:

Particulars	Rate	Rs
On first Rs 10,000	10%	1,000
On next Rs 10,000	20%	2,000
On balance Rs 2,40,000	30%	72,000
Income tax payable		75,000
Add: Education cess @ 2%		1,5000
Add: SHEC @ 1%		750
Tax payable		**77,250**

Q. 32. The following details have been supplied by the Karta of an HUF. You are required to compute its total income and tax liability for the assessment year 2010-2011.

Particulars	Rs.
(i) Profits from business (after charging Rs 1,00,000 salary to Karta for managing the business).	**15,00,000**
(ii) Salary received by the member of a family.	**60,000**
(iii) Director's fee received by Karta from B Ltd where HUF holds 20% shares but he became director because of his qualifications,	**40,000**
(iv) Rental income from house property (after deduction of municipal taxes Rs 2,000).	**78,000**
(v) Dividends (gross) from Indian companies	**15,000**
(vi) Long-term capital gain	**80,000**
(vii) Short-term capital gain	**30,000**
(viii) Donation to a school, which is an approved institution,	**1,00.000**
(ix) Deposits in Public Provident Fund	**20,000**
(x) NSC-VIII issues purchased on 15.3.2001.	**40,000**

Answer 32.

Computation of Total Income

Particulars	Rs.	Rs.
(i) Income from house property:		
Gross annual value (Rs 78,000 + Rs 12,000)	90,000	
Less: Municipal taxes paid	12,000	
Annual value	78,000	
Less: Statutory deduction: 30% ×78,000	23,400	54,600
(ii) Profits and gains from business		15,00,000
(iii) Capital gains (a) long-term + (b) short-term		1,10,000
(iv) Income from other sources—gross dividends from Indian companies: Exempt [Sec. 10(34)]		Nil
Gross total income		
Less:		
1. Contribution to approved savings (Sec. 80C)		
(i) Deposits in Public Provident Fund	20,000	
(ii) NSC-VIII Issue	40,000	
	60,000	
2. Donation to recognised school:		
(a) Actual donation: Rs 1,00,000 or		
(b) 10% of modified total income of Rs 15,24,600 (16,64,600 - 80,000 - 60000) whichever is less, is qualifying amount.		
Amount of deduction: : 50% of Rs. 1,00,000	50,000	1,10,000
Total income		**15,54,600**

Computation of tax liability:

Particulars of total income	Break up of Total Income	Rate of income tax	Rs.
	Rs.	*Rs.*	
(a) Long-term capital gain	1,10,000	20%	22,000
(b) Balance of total income: Rs 14,44,600			
(i) First	1,10,000	Nil	—
(ii) Next	40,000	10%	4,000
(iii) Next	1,00,000	20%	20,000
(iv) Balance	11,94,600	30%	358,380
Gross income tax			**3,80,380**
Add: 1. Surcharge on income tax @ 10%			38,038
surcharge			**4,18,418**
2. Education cess @ 2% on the aggregate of income tax and			8,368
3. SHEC @ 1%			4,184
Tax payable			**4,30,970**

Q. 33. Classic Exporters Ltd, runs a new industrial undertaking set up in 2003-2004 which satisfies the conditions of Sec. 80-IB. Given below is the profit and loss account for the previous year 2009-2010.

Particulars	*Rs.*	*Particulars*	*Rs.*
Stock	4,00,000	Domestic sales	24,00,000
Purchases	23,00,000	Export sales	43,00,000
Salaries and wages	9,70,000	Export incentives Sec. 28(iiia)/(iiic)	50,000
Entertainment expenses	1,30,000	Profit of foreign branch	2,50,000
Freights and insurance attributable to exports	3,00,000	Brokerage/commission/interest/ rent, etc	50,000
Travelling expenses	2,20,000	Transfer from contingency reserve	10,00,000
Depreciation	1,50,000	Stock	3,50,000
Selling expenses	1,20,000		
Income tax paid	90,000		
Income-tax penalty	20,000		
Wealth tax paid	10,000		
Custom duty payable against demand notice	30,000		
Provision for unascertained liabilities	20,000		
Provision for ascertained liabilities	50,000		
Proposed dividend	3,00,000		
Loss of subsidiary company	50,000		
Net profit	32,40,000		
	84,00,000		84,00,000

You are further informed :

(i) **Excise duty for 2008-2009, amounting Rs 1,20,000 was paid on 15 December 2009**

(ii) **Depreciation under Sec. 32 is Rs 2,20,000**

(iii) **During the year 2006-2007, contingency reserve, amounting Rs 10,00,000, debited to profit and loss a/c, was added back to the extent of Rs 4,00,000 in the computation of book-profits. The company has transferred the said reserve to the profit and loss a/c during the year.**

(iv) **Brought forward business loss/depreciation :**

PY	Accounting purposes		Tax purposes	
	Loss	Depreciation	Loss	Depreciation
2006-2007	(-) 10,00,000	(-) 1,00,000	(-) 5,00,000	(-) 2,50,000
2007-2008	(-) 2,00,000	(-) 3,00,000	(-) 1,00,000	(-) 2,00,000

Compute the following : (a) Total income, (b) Book-profits and (c) Tax liability.

Answer 33.

Compute the following: (a) Total income, (b) Book-profits and (c) Tax liability.

Computation of total income for the AY 2010-2011

Particulars	Rs.	Rs.
Net profit as per Profit & Loss A/c		32,40,000
Add:		
1. Income tax	90,000	
2. Wealth tax	10,000	
3. Custom duty payable	30,000	
4. Provision for unascertained liability	20,000	
5. Proposed dividend	3,00,000	
6. Loss of subsidiary company	50,000	
7. Income-tax penalty	20,000	5,20,000
		37,60,000
Less:		
(i) Withdrawals from contingency reserve	10,00,000	
(ii) Excise duty	1,20,000	
(iii) Depreciation	70,000	
(iv) Brokerage, commission, interest and rent, etc.	50,000	12,40,000
Business profits		**25,20,000**
Add: Income from other sources: Brokerage/ commission, etc.		50,000
Aggregated income		**25,70,000**
Less:		
(i) Brought forward losses (Sec. 72)	6,00,000	
(ii) Brought forward depreciation [Sec. 32(2)]	4,50,000	10,50,000
Gross Total Income		**15,20,000**
Less: Profit from industrial undertaking Sec. 80IB: 30% of		
Rs 15,20,000 as included in GTI		4,56,000
Total income		**10,64,000**

(b) Computation of Book Profits for the AY 2010-2011

Particulars	Rs.	Rs.
Net profits as per Profit & Loss A/c		32,40,000
Add: (i) Income tax	90,000	
(ii) Provision for unascertained liability	20,000	
(iii) Proposed dividend	3,00,000	
(iv) Loss of subsidiary	50,000	4,60,000
		37,00,000
Less: (i) Withdrawals from contingency reserve		
(ii) Brought forward business loss or depreciation whichever is less	4,00,000	
2005-2006 Depreciation	1,00,000	
2006-2007 Loss	2,00,000	7,00,000
Book-profits		**30,00,000**

(c) Computation of tax liability for the AY 2010-2011

Particulars	Rs.
(a) 30% × 10,64,000 = 3,19,200	
(b) 15% × 30,00,000 = 4,50,000	
Accordingly, tax liability is computed as under:	
(i) Income tax	4,50,000
(ii) Add: Surcharge on income tax @ 10%	45,000
	4,95,000
(iii) Add: Education cess @ 2%	9,900
(iii) Add: SHEC @ 1%	4,950
Tax payable	**5,09,850**

Note : (i) No adjustment is required for depreciation debited to profit and loss a/c because it is not on account of revaluation of any asset.

(ii) MAT credit available Rs. (5,09,850 – 3,19,200) = Rs. 1,90,650

Q. 34. Z Ltd is a qualifying shipping company which has got two qualifying ships during the previous year 2009-2010 :

Ship	Tonnage weight	No. of operational days
Ship A	**37,949 tonnes and 990 kg**	**300 days**
Ship B	**25,550 tonnes and 275 kg**	**365 days**

Compute its tonnage income under Tonnage Tax Scheme for the assessment year 2010-2011.

Answer 34.

Ship A	Ship B
(i) Tonnage consisting of kilograms is ignored.	(i) Tonnage consisting of kilograms is ignored.
(ii) If such tonnage is not a multiple of 100 tonnes and the last two digits are less than 50, the tonnage is reduced the tonnage is reduced to the previous lower tonnage which is a multiple of 100.	(ii) If such tonnage is not a multiple of 100, and last two degits are 50 or more, the tonnage is increased to next higher tonnage which is a multiple of 100
(iii) Tonnage rounded off = 37,900 tonnes	(iii) Tonnage rounded off - 25,600 tonnes

Income— computation under TTS		Income— computation under TTS	
Daily TI:	**Rs.**	**Daily TI:**	**Rs.**
First 1,000 tonnes = Rs 46 x 10 =	460	First 1,000 tonnes = Rs 46 x 10 =	460
Next 9,000 tonnes = Rs 35 x 90 =	3150	Next 9,000 tonnes = Rs 35 x 90 =	3150
Next 15,000 tonnes = Rs 28 x 150 =	4200	Next 15,000 tonnes = Rs 28 x 150 =	4200
Balance 12,900 tonnes = Rs 19 x 129 =	2451	Balance 600 tonnes = Rs 19 x 6 =	114
Daily TI:	10,261	Daily TI:	7,924
Total TI for the previous year Rs 10, 261 x 300 =	30,78,300	Total TI for the previous year Rs 7,924 × 365	28,92,260

Q. 35. Sania, a resident Indian, furnishes the details for the assessment year 2010-2011.

		Rs.
(1)	**Income from profession**	**1,04,000**
(2)	**Share income from a partnership in country X**	**40,000**
	(Tax paid in country X for this income in equivalent Indian rupees Rs 8,000)	
(3)	**Commission income from concern in country Y**	**30,000**
	(Tax paid in country Y at 20%) converted in Indian rupee)	
(4)	**Interest from scheduled banks**	**20,000**

Sania wishes to know whether he is eligible to any double taxation relief, if so, its quantum. India does not have any Double Taxation Avoidance Agreement with countries X and Y.

Answer 35.

(a) Computation of total income

Particulars	Rs	Rs
(a) Income from business:		
(i) Income from profession	1,04,000	
(ii) Share income in partnership firm in country X	40,000	1,44,000
(b) Income from other sources:		
(i) Interest from schedule bank	20,000	
(ii) Commission earned in country Y, assumed from other sources	30,000	50,000
Total income		**1,94,000**

(b) Computation of tax liability

	Particulars	Rs.
	Tax on total income of Rs 1,94,000	9.300
Add:	Surcharge on income tax	Nil
	Education cess @ 2%	9,300
	SHEC @ 1%	186
		93
		9,579
Less:	Dobule taxation relief : 70,000 × 4.94%	3,458
	Tax payable	**6,121**
	Rounded off u/s 288B	**6,120**
Note:	(i) Average rate of tax in the foreign country : 20%	
	(ii) Average rate of tax in India : $\frac{9579}{194000} \times 100 = 4.94\%$	

Q. 36. A is a musician deriving income from foreign concerts performed outside India, Rs 50,000. Tax of Rs 10,000 was deducted at source in the country where the concerts were given. India does not have any agreement with that country for avoidance of double taxation. Assuming that Indian income of A is Rs.2,00,000, what is the relief due to him under Sec. 91 for the assessment year 2010-2011.

Answer 36.

(a) Computation of total income:	**Rs.**
(i) Indian income	2,00,000
(ii) Foreign income	50,000
Gross total income or total income	**2,50,000**
(b) Computation of tax liability:	
Income tax on total income at slab rates:	
Add: (i) Surcharge on income tax	24,000
(ii) Education cess @ 2%	480
(iii) SHEC @ 1%	240
	24,720
Less : Double taxation relief under Sec. 91: Rs 50,000 x 9.9%	4,950
Tax payable	**19,770**

Note: 1. Average rate of Indian income tax: $= \frac{24,720}{2,50,000} \times 100 = 9.9\%$

2. Average rate of foreign income tax :

Relief is allowed either at the average rate of Indian income tax or te average rate of foreign income tax,

$\frac{10,000}{50,000} \times 100 = 20\%$

whichever is lower. Accordingly, the relief has been allowed at the average rate of Indian income tax.

Q. 37. Compute the net wealth of Nivedita, a resident individual as on 31.3.2010 from the following particulars furnished —

(a) She has a house property at Delhi, valued at Rs. 20,00,000 which is occupied by a firm in which she is a partner for its business purposes. Another house at Mumbai, valued at Rs.8,00,000 is being used for his own business.

(b) Vehicles for personal use - (i) Motor Car Rs.10,00,000 (ii) Motor Van — Rs.3,00,000 (iii) Jeep — Rs.5,00,000.

(c) Cash on hand - Rs.3,10,000

(d) Jewellery - Rs.10,00,000

(e) Nivedita has gifted to a Trust a residential property situated at Kolkata purchased 5 years back for Rs.20,00,000 for the benefit of the smaller HUF consisting of herself and her spouse and let-out for 8 months. Schedule-Ill, Rule 3 value as on 31.3.2010 is Rs. 14 Lakhs.

(f) She had transferred an urban house plot in February 1999 in favour of her niece which was not revocable during her life time. This niece died on 14.3.2009. Nivedita could get the title to the plot retransferred to her name only on 15.4.2009 despite sincere and honest efforts. The market value of the house as on 31.3.2010 is Rs. 10,00,000.

(g) Nivedita is the holder of an impartible estate in which urban agricultural lands of the value of Rs. 4,30,000 as on 31.3.2010 are comprised.

Answer 37.

Assessee: Ms. Nivedita Valuation Date: 31.3.2010 Assessment Year: 2010-11

Computation of Net Wealth

Nature of Asset	Amount Taxable	Reasons
House Property at Delhi used for business by a firm in which he is a partner	NIL	Property used for business purpose is not an asset u/s 2(ea) (Refer Note)
House Property at Mumbai used for his own business	NIL	Property used for business purpose is not an asset u/s 2(ea)
Vehicles for Personal Use		
1. Motor-car 2. Motor-van 3. Jeep	10,00,000 3,00,000 5,00,000	Vehicles used for personal purposes are asset u/s 2(ea)
Cash on Hand	2,60,000	For an Individual, cash in excess of Rs. 50,000 shall be chargeable to Wealth Tax u/s 2(ea) (Rs.3,10,000 -Rs.50,000)
Jewellery	10,00,000	Jewellery other than those held as stock-in-trade are asset u/s 2(ea)
Property at Kolkata transferred to a Trust 20,00,000 Less: Exemption u/s 5(vi) 20,00,000	NIL	Taxable u/s 4(1A). Value = Higher of Value as on Valuation Date Rs.14 Lakhs or Cost of Acquisition Rs. 20 Lakhs
Urban House Plot transferred to Niece	10,00,000	Taxable u/s 4(5) as the title to the property stands vested in Nivedita's hands immediately on niece's demise
Urban Agricultural Land	4,30,000	Holder of an impartible estate is deemed to be the owner of all properties comprised therein u/s 4(6)
NET WEALTH	**44,90,000**	
Less : Basic Exemption	30,00,000	
Taxable Net Wealth	14,90,000	
Taxable Payable @ 17%	14,900	

Q. 38. Romit Roy, a Not Ordinarily Resident in India seeks your advice with regard to the furnishing of his Wealth Tax Return. The value of assets held on 31.3.2009 is indicated below. You are requested to compute the Taxable Wealth.

- **Motor cars of foreign make held as Fixed Assets Rs.26 lakhs**
- **Gold bonds under Gold Deposit Scheme, 2000 Rs.25 lakhs**
- **Residential House Property at Kolkata let out w.e.f.10.2.2009 Rs.30 lakhs**
- **Jewellery held Rs.20 lakhs**

- **Lands purchased for industrial purpose: (a) on 1.1.2004 Rs. 7 lakhs (b)on 24.2.2009 Rs.10 lakhs**
- **Loans against the purchase of land : (a) on 1.1.2004 Rs. 4 lakhs (b) on 24.2.2009 Rs.5 lakhs**
- **Fixed Assets located in Abu Dhabi Rs. 80 lakhs**
- **Cash at Bank Rs.4 lakhs**
- **Cash in Hand Rs. 80,000**
- **Mrs. Roy acquired out of gifts received from her husband:**

(a) Shares and securities Rs.3,00,000

(b) Residential House property at Bangalore Rs.20,00,000

Answer 38.

Assessee: Romit Roy Valuation Date: 31.3.2010 Assessment Year:2010-11

Computation of Net Wealth

Nature of Asset	Rs.	Reasons
Motor-cars	26,00,000	Motor-car other than those used in the business of hire or held as stock-in-trade is an asset u/s 2(ea)
Gold Bonds, 1999	Nil	Not an asset under WT Act.
Residential House Property	Nil	Any residential house property let-out for 300 days or more is not an asset
Jewellery	20,00,000	Jewellery other than those held as stock-in-trade is an asset
Land purchased on 1.1.02 for Industrial Purpose	7,00,000	Land held beyond two years from the date of acquisition for industrial purposes is an asset
Land purchased 24.2.2009	Nil	Land held for first two years from the date of acquisition for industrial purposes is not an asset
Cash-on-Hand	30,000	Cash held beyond Rs. 50,000 is an asset
Cash-at-Bank	Nil	Not an asset under WT Act.
Fixed Asset located in Abu Dhabi	Nil	Not chargeable to tax for Not Ordinary Resident
Deemed Assets acquired and held by Mrs.Roy		
(a) Shares and Securities	Nil	Not an asset u/s 2(ea)
(b) Res.House Property at Bangalore 20,00,000		Asset u/s 2(ea).
Less: Exemption u/s 5(vi) (20,00,000)	Nil	One house or part of the house exempt u/s 5(vi)
Total Assets	**53,30,000**	
Less: Debts incurred on Taxable Assets		Wealth Tax Liability and Debts incurred in relation to exempted assets are not deductible
On Land acquired on 1.1.2004	(4,00,000)	
Net Wealth	**49,30,000**	
Less: Basic Exemption	**30,00,000**	
Taxable Net Wealth	**19,30,000**	
Tax Payable @ 1%	**19,300**	

Q. 39. From the following dated furnished by Mr.Soumitra, determine the value of house property built on leasehold land as at the valuation date 31.3.2010 :

Particulars	*Rs.*
Annual Value as per Municipal valuation	**1,40,000**
Rent received from tenant (Property vacant for 3 months during the year)	**1,08,000**
Municipal tax paid by tenant	**10,000**
Repairs on property borne by tenant	**8,000**
Refundable deposit collected from tenant as security deposit which does not carry any interest	**50,000**
The difference between unbuilt area and specified area over aggregate area is 10.5%.	

Answer 39.

Assessee: Mr. Soumitra Valuation Date: 31.3.2010 Assessment Year: 2010-11

Computation of Value of House Property

Step I : Computation of Gross Maintainable Rent (GMR)

Particulars	**Rs.**	**Rs.**
Actual Annual Rent- Rs. 1,08,000 x 12 Months/9 Months		1,44,000
Add: Municipal tax paid by the Tenant10,000		
l/9th of Actual Rent Receivable as repair expenses are borne by the tenant - Rs. 1,44,000/9	16,000	
Interest on Refundable Security Deposit- Rs. 50,000 x 15% x 9/12	6,000	32,000
GROSS MAINTAINABLE RENT (GMR)	**1,76,000**	

Step II: Computation of Net Maintainable Rent (NMR)

Particulars	**Rs.**	**Rs.**
Gross Maintainable Rent (GMR)		1,76,000
Less: Municipal Taxes levied by the local authority	10,000	
15% of Gross Maintainable Rent - Rs.1,76,000 x 15%	26,400	(36,400)
NET MAINTAINABLE RENT (NMR)		**1,39,600**

Step III: Capitalisation of the Net Maintainable Rent (CNMR) (Assumed that unexpired lease period is more than 50 Years)

NMR x Multiple Factor for an Unexpired Lease Period - Rs. 1,39,600×10 = Rs. 13,96,000

Step IV: Addition of Premium to SNMR in case of excess inbuilt area:

Particulars	**Rs.**
Add: Capitalisation of the Net Maintainable Asset	13,96,000
Premium for excess of 10.5% unbuilt area over specified area-30% of CNMR	4,18,800
Value of House Property as per Wealth Tax Act	**18,14,800**

Q. 40. Satender is aged 35 years. His father settled a property in trust giving whole life interest therein to Satender. The income from the property for the years 2006-07 to 2009-10 was Rs. 70,000, Rs. 84,000, Rs. 90,000, Rs. 108,000, respectively. The expenses incurred each year were Rs. 2,000, Rs. 4,000, Rs. 5,000 and Rs.6,000 respectively. Calculate the value of life interest of Mr. Jogi in the property so settled on the valuation date 31.3.2010, with the help of the factor of 9.267.

Answer 40.

Step	Procedure
1	Average Income for last three years = (Rs. 84,000+Rs. 90,000+Rs. 1,08,000)/ 3 = Rs. 94,000.
2	Average Expenses for the last three years = (Rs. 4,000+Rs. 5,000+ Rs. 6,000) / 3 = Rs. 5,000.
3	Maximum Permissible Expenses = Average Expenses **or** 5% of Average Income, whichever is less = 5% of Rs. 70,000 = Rs. 3,500
4	Average Annual Income = Rs. 94,000 Less Rs. 3,500 = Rs. 90,500.
5	Life Interest=Average Annual Income×Life Interest Factor = Rs. 90,500×9.267= Rs. 8,38,664.

Q. 41. Does demerger has same meaning both for company law and Income-tax law?

Answer 41.

Demerger is recognised for exemption from A.Y.2000-2001. While demerger under section 2(19AA) has to follow the procedure under provisions of sections 391 to 394, not all demergers recognised by company law will automatically qualify for exemption. It should satisfy the following conditions:

(i) It should involve transfer of an undertaking in the sense that it is transfer of a unit, division or activity.

(ii) Transfer should be on a going concern basis.

(iii) Transfer is at book value immediately before merger.

(iv) Consideration will be met entirely by issue of shares.

(v) All assets and liabilities of the undertaking will stand transferred.

(vi) Three-fourth of the shareholders of demerged company should continue in the demerged company.

(vii) It should satisfy the conditions to be notified under section 72A(5).

Q. 42. What is meant by reverse merger?

Answer 42.

Ordinarily, merger is of a prosperous company taking over a company, which is not doing well. Where the amalgamating company has carried forward losses and de-preciation, amalgamated company is permitted to avail such losses and depreciation of amalgamating company, subject to the conditions set out under section 72A of the Act. But the conditions can be by- passed, if the take over is of prosperous company by the company having losses and depreciation, so that the affluent company merges with the weaker company. This is known as reverse merger. However, in reverse merger, the losses will have to be absorbed within 8 year period while in a direct merger, where the conditions are satisfied, the losses and depreciation will be treated as those of the year of the merger, so that permissible time for set off is longer.

Q. 43. What is written down value to be adopted for the amalgamated company in cases, where the full eligible depreciation had not been availed by the amalgamating company?

Answer 43.

Explanation (2A) to section 43(1) provides that the written down value of the amalgamating company should be the actual cost for the amalgamated company. In *CIT* v *Hindustan Petroleum Corporation Ltd.* , it was held that the actual cost of the asset need be reduced only by the unabsorbed depreciation availed (absorbed) in the . hands of the amalgamating company for purposes of "actual cost" of such transferred assets in the hands of amalgamated company, unless it satisfies the condition under section 72A. This decision was followed in *CIT* v *Kothari Industrial Corporation Ltd.* The reasoning is that the requirement of Explanation 3 under section 43(1) is to allow depreciation only what is actually allowed and what is not merely taken in the computation of income by understanding "actually allowed" as "actually availed of. The decision has not taken into consideration Explanation 7, which reads as under: *"Explanation 7.—* Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated com-pany shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business." Since written down value will have to be taken as that of the amalgamated company, the decision would run counter to this statutory provisions. There is, however, no reaction from revenue to the decisions of the High Court, which should probably work in favour of the taxpayer.

Q. 44. Can wealth-tax payable by company be treated as a charge on book profits?

Answer 44.

Section 115J(1A) disallowed only the amount paid or payable by way of Income-tax under Explanation to that section so that there could be no disallowance of Wealth- tax. It was so found in *CIT* v *Echjay Forgings Pvt. Ltd.,* since such amount would ordinarily be charged to the P&L A/c and where it is so charged the Assessing Officer has no option except to accept the same for purposes of MAT.
Amendment by way of Finance Act, 2008 extending the meaning of income-tax does not include wealth-tax.

Q. 45. Set off of credit for tax paid as MAT under section 115JAA and shift from tax on book profits to tax on statutory income is sought to be given by the Assessing Officer after the credit for advance tax and tax deducted at source so that the credit is dwarfed to the net tax sparing while the credit does not become available at all where there is over payment of TDS and advance tax. This is sought to be done on the basis of the return form which provides for such adjustment of tax credit as per tax deter-mined before such adjustment. Is this right?

Answer 45.

The tax credit under section 115JAA is secured even against tax payable under section 115JB by an appropriate amendment to section 115JAA(5) by Finance Act, 2000 with effect from 1.4.2001. Such credit is given in the computation of tax pay-able in the main part of the statute u/s. 115JA itself before adjustment for advance tax or TDS paid under section 192 for TDS and sec.219 for advance tax. Tax credit un-der section 115JAA therefore precedes other credits. The income-tax return form prescribed under a rule cannot override the law. This has been conceded by the Tri-bunal in *Chemplast Sanmar Ltd.* v *Addl. CIT* where it was pointed out that the tax credit under section 115JAA cannot depend upon tax payable with reference to tax liability which may vary according to the amount of advance tax paid or TDS or as a result of appeal, revision, rectification etc. Unutilised credit was adjusted against tax payable and does not depend upon other variable factors. For computing interest payable the shortfall has to be reckoned firstly over the MAT credit and then other adjustments. Any other view may lead to absurd results in charging interest on amount already to the credit of the taxpayer. Interest can be charged only on amount withheld. For coming to this conclusion the Tribunal followed the rationale of the decision in *CIT* v *T. T. Investments and Trades Pvt. Ltd.* . Any other inference would lead to an absurd result. Rules are meant to carry out the provisions of the Act. It cannot override the same as had been pointed out by the Supreme Court in *CIT* v *Taj Mahal Hotel* and *Central Bank of India* v *Their Workmen.*

There has been further liberalisation of the provisions for set off of MAT tax paid against regular tax by way of amendment by the Finance Act, 2006 extending the eligibility period from 5 to 7 years. But this will be effective from assessment year 2007-08, but the tax paid for assessment year 2006-07 will also qualify for such ex-tended benefit.

Q. 46. How is the carried forward loss and depreciation determined when part of it has been adjusted in an earlier year?

Answer 46.

The problem arises where there is intervening profit not fully absorbing past losses or depreciation. In *Rashtriya Ispat Nigam Ltd.,* the dispute was whether loss or depreciation, whichever is less, should be reckoned on year to year basis in such cases. If the lesser of the two is taken in a year, such lesser amount would get exhausted sooner, so that the set off provision loses its effectiveness for the taxpayer for later years, since only remaining loss or depreciation being the lesser amount is admissible. Such an interpretation appears to be harsh in a case of a company with eroded capital not in keeping with the objective of taxing only prosperous companies with no taxable statutory income, so that there is no avoidance of tax on distributed dividend, as there is nothing to distribute. Where the Assessing Officer set off the depreciation, which was lower, on a continuing basis, the assessee would like the set off provisions to be applied afresh for each year, as though it is the first year, reducing what is already set off only against total loss including depreciation. Assessee's method is fair and consistent with the objective and probably not ruled out specifically in the statute, so that the benefit of its interpretation should be available to it. Incidentally, Circular No.495 dated 22.8.1987[6] gives an illustration for set off on year-wise basis. The interpretation placed on this Circular by the assessee was sought to be resisted on the ground that it related to sec. 115J and would not be applicable for later versions of this tax, though the sections are *pari materia.* This case relating to a public sector undertaking illustrates the incidence of this tax on book profits, which does not follow either the concept of distribut-able income under company law or such income on the basis of accounting principles or even the objective of the provision.

Q. 47. Whether dividend tax under section 115-0, interest on income tax, tax penalty, could all be treated as income tax, so as to be disallowed?

Answer 47.

Dividend tax under section 115-0 was held to be income tax to be disallowed. Interest on income tax was found to be disallowable. In this context, the amendment to section 115JB by the Finance Act, 2008 by way of insertion of Explanation 2 is to be seen. Under the Explanation the amount of income-tax shall include tax on distributed dividend under section 115-0/115R, interest, surcharge, education cess and secondary and higher education cess. Deferred tax is also taken into account, but it is only the net amount, which is so required to be taken. These amendments are made with retrospective effect from 1.4.2001.

It was followed by a Press Note. There has been a further clarification in Circular No.4 of 2004 dated 13th May, 2004 :

"It is hereby clarified that tax is required to be deducted at source under section 193 or sec-tion 195, as the case may be, only at the time of redemption of such bonds, irrespective of whether the income from the bonds has been declared by the bond-holder on accrual basis from year to year or is declared only in the year of redemption.

It is further clarified that a person, who has declared the income from a Deep Discount Bond on annual accrual basis during the term of the bond, will be entitled to make an application under section 197 of the Income-tax act, requesting the Assessing Officer to issue a certificate for no deduction of tax or deduction at a lower rate. In such a case, the assessee should furnish along with the prescribed Form No. 13, details of the income offered for tax by him from year to year. In case the assessee is not the original subscriber, and has acquired the bonds from some other person, he shall furnish the relevant particulars including the name, address and PAN, of such other person. If the Assessing Officer is satisfied that the applicant-assessee had declared his income from the bonds from year to year on accrual basis during the period the bond was held by him he shall issue a certificate allowing the tax deduction at source at such reduced rate as is justified by the total income of the applicant in the year of redemption.

Similarly, an assessee being a resident individual, who is the original subscriber of a Deep Discount Bond may furnish a declaration in Form No.15H in accordance with section 197A, if he has been declaring income on the bond from year to year on accrual basis, and no tax is payable on his total income, including the interest accruing during that year, in the year of redemption. However, such a declaration cannot be filed by an individual other than a senior citizen availing of tax rebate under section 88B of the Income-tax Act, if the amount of accumulated interest, being paid on redemption, exceeds the maximum amount not chargeable to tax in his case".

The last circular contemplates a situation where a taxpayer may not choose to declare the annual accretion which was expected in the earlier two circulars. There is still a legal inference that in the case of such bonds there is only liability for capital gains, whether it is redeemed on maturity or realised by sale which has not been appreci-ated. However it is possible for a person who is not liable to tax to avoid tax deduc-tion at source by filing Form 15H. The issue therefore continues to be uncertain with the law and the Board's view of the matter being divergent.

It may, however, be noticed that an amendment by Finance Act, 2003 to section 10(10D) would remove exemption available for proceeds of insurance policy, where the premium paid in any year during the term of the policy exceeds 20% of the actual capital sum assured, so that the proceeds of the policy will be taxable in the hands of the employee in the year of maturity if it occurs during his lifetime. But this restriction applies only to policies issued on or after 1st April, 2003.

Q. 48. If a slump sale is made by a firm to a company in a manner that the benefit of exemption under section 47(xiii) is availed and thereafter the company amalgamates with another company, will there be forfeiture of exemption though 50% parity of ownership may not continue?

Answer 48.

It was once thought that amalgamation could not be transfer in view of the deci-sion of the Supreme Court in *CIT* v *Rasiklal Maneklal (HUF)*' rendered in the con-text of capital gains tax under the earlier law in which there was no exemption avail-able for amalgamation. But then the Supreme Court in a very recent decision in *CIT* v *Grace Collis* has held that the later extension of the definition of transfer to in-clude extinguishment would mean that amalgamation is also transfer, so as to make the shareholder liable for tax. Even if it falls within the definition of transfer under section 2(1B) of the Act, it may be argued that it is only for exemption for amalga-mating company and its shareholders under section 47(vi) and (vii) respectively.

Hence, even if the condition of 50% parity is maintained it may still be construed as violation of condition under section 47(xiii) of the Act and exemption may be lost.

Q. 49. What are the tests for inferring business to be one as a going concern or a business as a whole in contrast with severable sale? Is it possible to reduce the incidence of tax in these transactions?

Answer 49.

In a sale of business as a whole, transferred as a going concern with all assets and liabilities, the seller will not be able to withdraw any asset while the buyer will not be able to reject any such assets of business. Similarly, the buyer cannot refuse to take over any liability. Even if it is not so strictly complied with, it may still pass muster as a slump sale, because slump sale is defined in a wider sense, since Explanation-1 to section 2(19AA) would define an undertaking to include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole, while ruling out only transfer of individual assets and liabilities or for combination thereof not constituting a business activity. What is implied is that the transferred entity must be a unit capable of being sold as such, though it may be a part of a larger undertaking. Hence a slump sale under Income-tax law may be of a business activity, while for sales-tax law it may include a unit or a division but cannot possibly include a mere business activity. Where it is a unit or division, it may be capable of being considered as a separate business in some cases where all its assets and liabilities are transferred.

Q. 50. A business in paints and varnishes was originally carried on by Sri A in his individual capacity. In the year 1952 the business was converted into a partnership firm and the partnership deed provided that the tenancy rights in the shops in which the business was carried on vested with Sri A in his individual capacity and the other partners were not entitled to any claim therein. Even subsequently, wherever changes were made in the constitution of the firms, a provision was always made in the relevant deed declaring that Sri A was the exclusive holder of the tenancy rights. Subsequent to death of Sri A, the tenancy rights were transferred to another concern. The transferee concern paid to the firm a sum of Rs.1 lakh for the transfer of the tenancy rights.

The question is whether the surplus realised from the transfer of the tenancy rights could be considered in the assessment of the firm?

Answer 50.

The sum of Rs. 1.80 lakhs does not belong to the firm, the amount belongs to the legal heirs of Sri A, since there has been no transfer from partner to firm.

Q. 51. The purpose of constituting a firm was for construction and letting out godowns. The Assessing Officer had taken the view that since partnership can be only for carrying on a business, there is no business in deriving income from property and that therefore the firm is not entitled to be treated as a firm so as to require registration when registration procedure was in vogue. Even after the registration procedure has been dropped, is it possible to treat it as a firm and not required to be treated as association of persons?

Answer 51.

Business for the purpose of partnership law is different from the concept under income-tax law, which requires income from property even in the hands of a property dealer to be treated as property income and not business income as held in *CIT* v *Chugandas & Co.* Kerala High Court in *CIT* v *George Oommen & Co.* has pointed out that the heads of income for income-tax purposes have no relevance in deciding whether there is business under partnership law. But for purposes of general law and partnership law, business has to be understood in wider sense to include every profit making activity. It was so held in *Smith* v *Anderson* . This difference was pointed out in *CIT* v *Veerabhadra Industries.*

Q. 52. What is the treatment to be accorded to discount or bonus in respect of debentures?

Answer 52.

Discount or bonus unlike interest on debentures would be a capital receipt for the investor while it may be revenue expenditure for a dealer as was found in *Lomax, Inspector of Taxes* v *Peter Dixon & Son Ltd.* , an English decision which was ap-proved in *Madras Industrial Investment Corporation Ltd.* v *CIT* in the case of dis-count on debentures which was allowed on a spread over basis during the life of the debentures. Similar treatment was found admissible for bonus debentures in *National Engineering Industries Ltd.* v *CIT*.

Q. 53. When does the liability on interest on disputed enhanced compensation arise?

Answer 53.

Even where the assessee is able to draw part or whole of the enhanced compensation granted by the lower court, it is only subject to appeal, so that in case the State appeal is successful, the assessee would have to return the amount. Liability cannot, therefore, arise till finality is reached. The fact that section 45(5) requires such enhanced compensation to be assessed in the year of receipt cannot have application for disputed compensation and interest thereon. It is so decided also by the Karnataka High Court.

Q. 54. What are the conditions for deduction of unrealised rent?

Answer 54.

Rule 4 of the Income-tax Rules as substituted by the Income-tax (Eighth Amendment) Rules, 2001 prescribes the conditions as under :

Unrealised rent—For the purposes of the Explanation below sub-section (1) of section 23, the amount of rent which the owner cannot realise shall be equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrecoverable where,—

(a) the tenancy is *bona fide;*

(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(c) the defaulting tenant is not in occupation of any other property of the assessee;

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

Q. 55. There is a practice of receiving deposit instead of rent. The assessee accounts for interest on such deposits as its income. Should he also ac-count for notional income from property?

Answer 55.

The answer was against the assessee in *S.Ujjanappa* v *CIT,* where it was held that ownership confers the duty to account for notional income from such property. The issue as to whether it involves double taxation was not posed in this case. Inter-est income earned by the assessee on the deposits or notional interest when used in business could have been set off against such income. There is clearly double taxation implicit in such cases. In *Webb's Agricultural & Automobile Industries* v *ITO* , a car received by way of lottery winnings brought to tax as income was held to be eligible for depreciation, though assessee had not paid for the same, because of the notional cost. This line of reasoning should avoid elimination of double taxation by setting off the two incomes one notional and the other real as between them, but the law on the subject is still nebulous.

Q. 56. How is the work in progress valued? Should the overheads be treated as part of cost?

Answer 56.

Work-in-progress is generally valued at cost. The issue as to whether the over-heads should be taken into consideration by adoption of "on-cost" basis or whether only direct cost should be taken was considered in *Duple Motor Bodies Ltd.* v *Inland Revenue Commissioner* , where it was found that either method can be adopted but where the assessee has adopted one method, it is not open to him to change it.

Where an assessee had followed a method of accounting, which excluded overheads in valuation of work-in-progress on the ground that the goods under manufacture may not result in marketable commodities, the Tribunal rejected the change mainly on the ground that there was no evidence of possible deterioration of work-in-progress. The High Court, however, found that since the assessee had followed the same method in earlier years, it was entitled to continue the same practice. The Supreme Court in *CIT* v *British Paints India Ltd.* decided on the short point that merely because a system has been consistently followed, it does not mean that Revenue is bound by it, if it finds that it is not consistent with accounting principles. If the income could be rightly deduced from the system followed, it was open to the Assessing Officer to reject the same, since there is no estoppel in such matters. According to this decision, the cost ordinarily has to reckon overheads as well. The distinction between finished stock and work-in-progress was however not appreciated in this case, when it reversed the decision of the Calcutta High Court. But it is still an authority for the view that the method followed should be consistent with accounting principles. A scientific method of valuation of work-in-progress is probably only the retrievable value or a value which makes an allowance for a situation, if the goods turn out to be non-marketable. In other words, valuation at less than the cost or mar-ket value for work-in-progress should be permissible in certain lines of manufacture, where there is possible wastage before completion of the manufacture of the product, if such valuation is consistently followed.

Q. 57. 1,500 pieces of a product 'A' were manufactured during the financial year. Its list price (i.e. retail price) is Rs. 250 per piece, exclusive of taxes. The manufacturer offers 20% discount to wholesalers on the list price. During the year, 840 pieces were sold in wholesale, 510 pieces were sold in retail, 35 pieces were distributed as free samples. Balance quantity of 115 pieces was in stock at the end of the year. The rate of duty is 10% plus education cess and SAH education cesses as applicable. What is the total duty paid during the financial year?

Answer 57.

Assume that the manufacture is not eligible for SSI concession.

The total selling price is as follows –

Qty	Price	Total
510	250	1,27,500
840	200	1,68,000
35	200	7,000
Total		3,02,500

Duty payable is 10% of Rs 3,02,500 i.e. Rs 30,250, plus education cess @ 2% i.e. Rs 605.00 plus SAH education cess @ 1% is Rs 302.50.

Note : (a) Since 115 pieces were in stock at year end, no duty will be payable. Duty will be payable only when goods are cleared from factory. (b) In case of samples, as per rule 4 of Valuation Rules, value nearest to the time of removal, subject to reasonable adjustments is required to be taken. However, since prices are varying, value nearest to the time of removal may not be ascertainable and will not be acceptable for valuation as the prices are changing. In such case, recourse will be taken to rule 11 of Valuation Rules, i.e. best judgment assessment. We can take recourse to rule 7 and 9 where principle of 'normal transaction value' is accepted, when prices are varying. As per rule 2(b) of Valuation Rules, 'normal transaction value' means the transaction value at which the greatest aggregate quantity of goods are sold. Since greatest quantity of 840 pieces are sold at Rs 200, that will be 'normal transaction value', which can be taken for valuation of free samples. 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 Rs. 250 per piece. The price is inclusive of State Vat and Central excise duty. State Vat rate is 4% and excise duty rate is 10% plus education cess and SAH education cess as applicable. What is the AV, and what is duty payable per piece ?

Assume that Assessable Value = x. No deduction is available in respect of brokerage paid to third parties from Assessable Value.

Since Excise duty is 10%, education cess is 2%, SAH education cess is 1% and State Vat rate is 4%, price including excise will be $1.103x$.

State Vat @ 4% of $1.103x$ is $0.04412x$. Hence, price inclusive of sales tax and excise duty will be $1.14712x$.

Now,	$1.14712x$	= Rs. 250.00
Hence,	x	= Rs. 217.94
Check the answer as follows –		
Assessable Value		= Rs. 217.94
Add duty @ 10.30% of Rs. 206.37		= Rs. 22.45
Add State Vat @ 4% on		
Rs. 240.39 (217.94+22.45)		= Rs. 9.62
Total Price (Including		
duty and tax) (217.94+22.45+9.62)		= Rs. 250.00

Q. 58. Find Assessable Value and duty payable. The product is not covered under section 4A. Maximum Retail Trade Price : Rs. 1,100/- per unit. - State Vat, Octroi and other Local Taxes : 10% of net price- Cash Discount : 2% - Trade Discount: 10% - Primary and Secondary packing cost included in the above MRP : Rs. 100 - Excise duty rate : 8% *ad valorem* plus education cesses as applicable.

Answer 58.

Cash discount Rs 22 (2% of Rs 1,100) and trade discount 88 [8% of Rs 1,100] are available as deduction. Packing cost is not allowable as deduction. Hence, price of excise purposes is Rs 990. [Rs 1,100 – 22 – 88]. — Now, if X is the assessable value, excise duty is 0.103*x* and price including Excise duty is 1.103*x*. State Vat and local taxes @ 10 % of 1.103*x* will be 0.1103*x*. Thus, price inclusive of excise duty and sales tax will be 1.2133*x*.

Now,	1.2133*x*	=	Rs. 990.00
Hence,	*x*	=	Rs. 815.96
Excise Duty @ 10.30% of	*x*	=	Rs. 84.04
Check the answer as follows –			
Assessable Value		=	Rs. 815.96
Add duty @ 10.30% of Rs. 206.37		=	Rs. 84.04
Add State Vat @ 4% on Rs. 900 (815.96+84.04)		=	Rs. 90.00
Total Price (After allowable deductions)		=	Rs. 990.00

Q. 59. A manufacturer has to supply a machinery on following terms and conditions : (a) Price of machinery : 3,40,000 (net of taxes and duties) (b) Machinery erection expenses : 26,000 (c) Packing (normally done by him for all machinery) : 4,000 (d) Design and drawing charges relating to manufacture of machinery : 30,000 (Net of taxes and duties) (e) Central Sales Tax @ 4% (f) Central Excise Duty @ 10% plus education cess of 2% plus SAH education cess of 1% (g) Cash discount of Rs. 5,000 will be offered if full payment is received before dispatch of goods. (h) the machine will be supplied along with bought out accessories @ Rs. 8,500. The accessories were optional. You are informed that (a) The buyer made all payment before delivery. (b) The manufacturer incurred cost of Rs. 1,200 in loading the machinery in the truck in his factory. These are not charged separately to buyer. Find the 'Assessable Value' and the duty payable.

Answer 59.

Erection expenses are not includible in AV. Cash discount is allowable as deduction. Duty is not payable on optional bought out accessories supplied along with the machinery. The cost of Rs. 1,200 is already included in the selling price of machinery (as it is not charged separately) and hence is not to be added again. Hence, AV is Rs. 3,69,000 [Rs. 3,40,000 + 4,000 + 30,000 – 5,000]. Duty @ 10% will be Rs. 36,900, plus education cess @ 2% i.e. Rs. 738.00 and SAH education cess @ 1% i.e. Rs. 369.00.

Q. 60. A small scale manufacturer had achieved sales of Rs. 73 lakhs in 2007-08. Turnover achieved during 2008-09 was Rs 1.52 crores. Normal duty payable on the product is 10% plus education cesses as applicable. Find the total excise duty paid by the manufacturer during 2008-09 (a) If the unit has availed Cenvat credit (b) If the unit has not availed Cenvat credit. [The turnover is without taxes and duties]

Answer 60.

(a) If the unit has availed Cenvat credit, it has to pay full duty on entire turnover. Hence, duty payable is 10% of Rs 1.52 crores i.e. Rs 15.20 lakhs, plus education cess @ 2% of Rs 15.20 lakhs i.e. 30,400, plus SAH education cess @ 1% of Rs 15.20 lakhs i.e. Rs 15,200. Total – Rs 15,65,600.

(b) If the SSI unit has not availed Cenvat, the duty payable is as follows: (i) On first Rs. 150 lakhs : Nil (ii) On subsequent sales : Normal duty of 10% plus education cesses as applicable. Thus, duty on remaining Rs 2 lakhs will be Rs 20,000. Thus, excise duty paid is Rs 20,000, plus education cess of Rs 400 plus SAH education cess of Rs 200 Total – Rs 20,600.

Q. 61. An SSI manufacturer may like to pay full duty even when he is eligible for SSI exemption.

(*a*) Can he do so?

(*b*) Why he would like to pay full duty?

(*c*) What is the duty payable?

Answer 61.

(*a*) Yes, he can do so. He can avail Cenvat on inputs.

(*b*) He would like to do so if his customer wants to avail Cenvat and if duty paid on his inputs is high. In such case, effective cost of the buyer is reduced, if the manufacturer pays duty.

(*c*) Duty payable will be normal rate, less concession available, if any, under any exemption notification.

Q. 62. A small scale manufacturer produces a product 'P'. Some of the production bears his own brand name, while some production bears brand name of his customer. The customer purchases the goods from the small scale unit and sales himself by adding 20% margin over his purchase cost. Clearances of the SSI unit in 2007-08 was Rs. 3,53,00,000. He achieved clearances of Rs 445 lakhs in 2008-09 as per following break up. [These clearances are without considering excise duty and sales tax]

(*a*) Clearances with his own brand name : Rs. 80 lakhs. (*b*) Clearances of product bearing his customer's brand name : Rs. 365 lakhs. Normal excise duty of his product is 10% plus education cesses as applicable. The SSI unit intends to avail Cenvat benefit on inputs on goods supplied to the brand name owner but intends to avail SSI exemption on his own clearances.

***(A)* Find the total duty paid by the manufacturer in 2008-09, if (i) Inputs are common but SSI unit is able to maintain separate records of inputs in respect of final products under his brand name and those with other's brand name (ii) The inputs are common and SSI unit is not able to maintain separate records on inputs used in final products manufactured under his brand name and with other's brand name.**

***(B)* What will be the rate of excise duty payable by him in April 2009 (*i*) on product bearing his own brand name *and* (*ii*) on product bearing his customer's brand name.**

***(C)* Will there be any difference in duty payable in April 2009 if all his clearances of Rs. 445 lakhs in 2008-09 were of product under his own brand name ?**

Answer 62.

(*A*) SSI unit can avail Cenvat on final products cleared under other's brand name and avail SSI exemption in respect of his own production.

(i) In the first case, he has to pay duty @ 10% on Rs 365 lakhs, i.e. Rs 36.50 lakhs plus education cess of Rs 73,000 plus SAH education cess of Rs 36,500. He cannot avail Cenvat credit in respect of inputs used to manufacture product under his own brand name.

(ii) In the second case, since he is unable to maintain separate record of inputs, he will have to pay 10% 'amount' on Rs 80 lakhs as per rule 6(3)(b) of Cenvat Credit Rules. Thus, he has to pay duty of Rs 36.50 lakhs, plus education cess of Rs 73,000 plus SAH education cess of Rs 36,500, plus an 'amount' of Rs 8.00 lakhs. He can avail Cenvat of all the inputs. — Note that in respect of goods bearing customer's brand name, duty is payable on his selling price to the customer even if customer sells them subsequently at higher price.

The assessee has to carefully do his costing and decide (i) whether to avail Cenvat on all inputs, pay full duty on all final products and 10% 'amount' on final products cleared under his own brand name or (ii) Not avail Cenvat at all and avail exemption from duty on his own production with his brand name.

(*B*) The turnover of SSI during 2008-09 was over Rs. 4 crores. However, for purposes of calculating the upper limit of Rs. 4 crores, clearances with other's brand name are not to be considered. Hence, from 1st April 2009, he can clear goods bearing his own brand name upto Rs 150 lakhs without payment of duty, if he does not avail Cenvat credit on inputs used in such products. If he is unable to maintain separate records, he will have to pay 10% 'amount' on goods manufactured under his own brand name.

(*C*) If total turnover of Rs. 4.45 crores in 2008-09 was under his own brand name, the manufacturer is not eligible for any Small industry concession in April 2007, and he will have to pay duty at normal rates on his total clearances in April 2009.

Q. 63. M/s XYZ. are in the business of supplying "Turbo-alternators" to various customers. They manufacture steam turbines in the factory, which are removed to the customer's site on payment of Central Excise Duty. They purchase duty paid alternators from the market which are delivered at the customer's site. M/s XYZ assemble both the items and fix them permanently on a platform at the site. Department demands central excise duty payable on "@ Turbo-alternator" when it comes into existence after being assembled on the platform embedded to the earth. Is the view taken by the department correct. Discuss with the help of case laws, if any.

Answer 63.

In the present case two issues are involved

(1) Whether assembly of steam turbines and duty paid alternators amounts to manufacture of turbo alternators, and

(2) Whether such assembly results in manufacture of excisable goods.

The facts of the case are similar to the case of *Triveni Engineering and Industries Ltd. v C. CEX, 2000* (120) El,T 273(SC)

In the present case, the Appellants were, according to specified designs, combining steam turbine and alternator by fixing them on a platform and aligning them. As a result of this activity of the Appellants, an new product, turbo alternator, came into existence, which has a distinctive name and use different from its components. Therefore, the process involved in fixing steam turbine and alternator and in coupling and aligning them in a specified manner to form a turbo alternator, a new commodity, is nothing but a manufacturing process.

Though the process of assembling results into a new commodity and therefore is a process amounting to manufacture, yet the turbo alternator set (known in the market as such) comes into existence only when a steam turbine and alternator with all their accessories are fixed at the site. Further, in order to be brought in the market the turbo would not remain turbo alternator. Thus, its is obvious that without fixing to the ground the turbo alternator does not come into being. The installation or erection of turbo alternator on the platform specially constructed on the land cannot be treated as a common base, therefore, such alternator would be immovable property. Accordingly, such activity could not be considered as 'excisable goods'.

Q. 64. Snow White Ltd. Manufactures paper and in the course of such manufacture, "wastepaper" is produced (paper being the main product and dutiable goods). The Central Excise Tariff Act, 1985 (CE7) was amended w.e.f. 1-3-1995, so as to include waste paper. White Ltd. was issued a show cause notice by the Central Excise Officer, demanding duty of Rs. 2 lakhs on waste paper produced during October, 1994 to February, 1995, but cleared during April-May, 1995. A reply is due to be filed immediately to the notice. As Counsel of Snow White Ltd. you we required to advise the company about –

(i) The legality and validity of the proposed levy and collection of duty on waste paper for the period prior to 1-3-1995; and

(ii) State (with the help of decided cases) the reasons for your advice/opinion.

Answer 64.

The issue involve in the given case is determination of taxable event for the purpose of levy of excise duty.

As per section 3 of the Central Excise Act, 1944, the taxable event for levy of Central Excise is "manufacture of excisable goods". The date for determination for rate of duty and tariff valuation is the date of actual removal of the goods from the factory or warehouse.

However, there must be a levy of duty of excise at the time of manufacture and only then, the duty can be collected at the time of removal as has already been held in *Vazir Sultan Tobacco Industry's* case 1996 (83) ELT 3(SC).

Therefore, the waste paper produced prior to the levy will not be chargeable to duty of excise even though it has been cleared after such levy and the proposed show cause notice demanding Rs. 2 lakhs of excise duty on such waste paper is invalid and illegal and liable to be quashed.

Q. 65. Kagaz Karkhana Ltd., manufactures paper In the year 1995, it embarked on a major expansion programme, and for the purpose, fabricated at site, 75% of the portion of papermaking machine and procured (paying excise duty) the remaining parts of the papermaking machine from other suppliers. Having done so, it assembled all the parts together into a paper-making machine at site. The erection and installation was completed during November, 1995. and the machine was firmly fastened to the earth, with the help of bolts, nuts and grouting material on a concrete bed, to prevent rattling and ensure wobble-free operation and presently the machine is functional and operating. During July, 1998, the Central Excise authorities served the company a show cause demanding excise duty of Rs. 5 crores, on the paper-making machine, alleging that the activity resulted in manufacture of excisable goods, failing under chapter 84 of CET. The company engages you as 'counsel' to represent them and desires to contest the case on the grounds :

(i) That the activity of erection and installation was not manufacture,

(ii) That the activity resulted in "immovable property" emanating at site and

(iii) That the demand is time-barred

You are required to discuss the tenability or otherwise of the contentions of the notice client and advise them drawing support form the judicial decision.

Answer 65.

There are three issues involved in the present case :

(i) Whether the activity of erection and installation was not manufacture,

(ii) Whether the activity resulted in "immovable property" emanating at site and

(iii) Whether the demand is time-barred

In respect of the first issue, it is to be noted that the excise duty is levied on the excisable goods manufactured in India, and hence it will not be attracted where goods are not produced from the manufacturing process.

A commodity is said to be manufactured if by application of the process its identity is changed and it is known in the market as a separate and distinct commodity having separate name, character and use.

The assembly of parts results in paper-making machine which has distinct identity, name and character and use and hence such assembly amounts to manufacture.

The second issue is whether erection and installation of such machine on a concrete bas results in a immovable property. The Supreme Court, in *Sirpur Paper Mills v C.C.Ex., Hyderabad* 1998(97) ELT 3 (SC), has held that papermaking machine if assembled and erected at site and embedded in concrete base to ensure wobble free operation will not become an immovable property. The machine can be dismantled from its base and sold in parts. Hence, the assessee's first two contentions are untenable and incorrect as the activity has resulted in the manufacture of goods and there is no immovable property brought into existence and assembly operations are liable to duty of excise.

The third issue is whether the demand notice is time barred. Under section 11A of the Central Excise Act, 1944, the extended period of limitation can be invoked only when there is a fraud, collusion, willful misstatement, suppression of facts or contravention of the provisions of the Act with an intent to evade the payment of duty of excise. If the manufacturing activity of paper-making machine was known to the department then the department cannot invoke the extended period of limitation. Hence, the contention of the assessee is an arguable pint and the same is legally tenable.

Q. 66. Regarding the applicability of excise duty, Computers are covered under Heading no 84.71 of the First schedule to the Central Excise Tariff Act, 1985 which describes computers as automatic data processing machines. XYZ Ltd. has undertaken upgradation of its computers both in terms of storage capacity and processing speed by increasing the hard disc capacity, RAM, changing of processor chip from 386 to 486 and in certain cases from Pentium III to Pentium IV. The Department's contention is that new goods with a different name character and use have come into existence and the upgraded products are chargeable to excise duty. Discuss in the light of provision of section 2*(f)* of the Central Excise Act, 1944 relating to "manufacture" whether this stand of the Department is justified.

Answer 66.

The computers covered under heading No. 84.71 of the Schedule to the Central Excise Tariff Act, 1985 are described as automatic data processing machines. An automatic data processing machine will be known by this name, irrespective of its capacity of storage and processing, which may be enhanced by increasing the hard disk capacity. RAM or by changing the mother board or the processor chip. However, it cannot be said that new goods with a different name, character and use have come into existence, which can be subjected to duty again.

Accordingly, upgrading of old and used computer systems would not amount to manufacture, in so far as the upgradation does not bring into existence goods with a distinct new name, character and use.

Q. 67. Full exemption is granted by exercising Central Excise Notification which explains all products of printing industry including newspapers and printed periodicals." A manufacturer, who is manufacturing cardboard cartons and subsequently doing varied printing on them, claims benefit of the said exemption notification on the ground that every material on which printing is done becomes a product of the printing industry. Is the claim of the manufacturer justified? Give reasons for your view.

Answer 67.

The cited Central Excise exemption notification grants full exemption to – "all products of printing industry including newspapers and printed periodicals". The products in respect of which exemption is claimed are cardboard, cartons although subsequently varied printing is done on them. These products relate to the packaging industry. The mere fact that printing is done on these products will not render these products as the products of the printing industry.

Accordingly, the products of the packaging industry shall not be entitled to the exemption granted to "all products of printing industry including newspapers and printed periodicals".The case in support is *Rollatainiers Ltd. v UOI* (1994) 72 ELT 793(SC).

Q. 68. X Ltd. is engaged in the manufacture of 'paracetamol' tablets that has an MRP of Rs. 9 per strip. The company cleared 1,00,000 tablets and distributed as physician's samples. The goods are not covered by MRP, but the MRP includes 10% Excise Duty and 2% CST. If the cost of production of the tablet is 40 paise per tablet, determine the total duty payable.

Answer 68.

If the product is not covered under MRP provisions, valuation provisions under section 4A do not apply. In that case, valuation is required to be done as per Central Excise Valuation Rules.

As per the CBEC's circular, any physicians samples or other samples distributed free of cost are to be valued under Rule 11 read with Rule 8 of Central Excise Valuation Rules, 2000.

As per Rule 8, such samples are to be valued at 110% of cost of production or manufacture. The given cost of production is 40 Ps, Assessable Value will be 44 Ps. Therefore, duty payable @ 10% on 46 paise = 10% × 0.46 = 0.046 paise per tablet.

Q. 69. M/s. A.U.L. avail of CENVAT credit of the duty paid on the inputs namely, steel sheets. The scrap generated during the manufacture of their final product was cleared by them without payment of duty. Subsequently the Department raised a demand of Excise duty on waste and scrap. M/s. A.U.L. accepted the duty liability, but contended that the price at which waste and scrap had been sold should be considered to be cum-duty price and assessable value should be determined after deducting the element of excise duty. The contention of the Department is that as no central Excise duty was paid by them while clearing the scrap, no deduction on account of excise duty is available to M/s. A.U.L.

Answer 69.

The facts of the given ease are similar to those decided by the Supreme Court in *C.C.Ex. v Maruti Udyog Ltd.* (2002) 141 ELT 3 (SC) in the said case, the department raised duty demand on waste and scrap and the price realized by the assessee was taken as the assessable value. The assessee contended that the price of such waste and scrap was includive of excise duty. The Supreme Court decided the issue in favour of the assessee. Accordingly, in the given case, as the Department has raised duty demand on waste and scrap, the price collected by M/s. A.U.L. will be considered as the cum-duty price and it shall be deemed that the element of excise duty is already included in such price. The manufacturer will therefore be entitled for deduction on account of such price. Thus the assessable value will be worker out as under –

$$\text{Assessable value} = \frac{\text{Cum - duty price} - \text{Permissible deduction} \times 100}{100 + \text{rate of duty}}$$

Q. 70. A Ltd., a manufacturer to tyres was extending a warranty discount on any tyres that, were defective. The scheme of warranty discount operated thus: the customers lodged their claim with-regard to any defects in the tyres. Such claims were then scrutinized by a Technical Committee of A Ltd.,

which would decide the amount of refund due to the customer on the basis of the reduction in the normal life of tyre attributable to the defect. This refund was to be given by the Technical Committee. This practice was being followed by A Ltd. for the last 15 years. A Ltd. claimed the 'warranty discount' as a Trade discount which is deductible in computing the assessable value of the tyres. Is this correct? Discuss in the light of the provisions under Section 4 of the Central Excise Act, 1944.

Answer 70.

According to section 4 of the Central Excise Act, 1944, regarding discounts, transaction value does not make a direct reference. Now actually the excise duty is paid/payable on the net price of the goods after deduction of discounts. If in any transaction discount is allowed in accordance with normal practice of trade and it is passed on to the buyer, tile inclusion of such discount is not justified. However, the said amount to be allowed as deduction must be in the nature of discount.

From the facts of the above case, the manufacturer was extending warranty discount on any tyres that were defective. Though this was known as discounts, but it was only a compensation for defects in tyres, which was given to the customers. Hence, it will not be allowed as deduction from the transaction value as was held in *GOI v MRF* (1995) 77 ELT 433(SC).

Q. 71. M/s U.T.A. manufacture welding electrodes which are put first in Polythene bags and then packed together ill cardboard cartons. They sell electrodes at the factory gate packed in cardboard cartons whereas such electrodes are also packed in wooden boxes when sold to their customers located at outstations. Is the department justified to include the cost of wooden boxes in the assessable value of the welding electrodes? Discuss with the help of case laws, if any.

Answer 71.

The new Section 4 of the Central Excise Act, 1944, does not make any specific reference to packing charges. In normal commercial transactions the price of goods charged includes the cost of packing charges. The charges that are recovered on account of packing are obviously the charges in relation to sale of goods under assessment and will form the part of transaction value. Whatever be the nature of packing that is whether the packing is primary or secondary or special or packing for the purpose of transportation, the cost of such packing shall be includible.

In light of the new Section 4, the earlier case laws hold no significance now.

Q. 72. Explain whether the following items can be included in/excluded from the transaction value under section 4 of the Central Excise Act, 1944.

(1) Collection expenses incurred in respect of empty bottles for filling aerated waters from the premises of buyers to the manufacturers.

(2) Delivery and collection charges of gas cylinders and collection of empty cylinders.

(3) Interest notional or real accruing on deposits for sale/return of gas cylinders as well as rentals.

(4) Cash discount known at the time of clearance of goods but not availed by the customer.

(5) Value of system software in case of computers.

Answer 72.

(1) Transaction value includes any amount charged in addition to the price of the goods by reason of or in connection with the sale. Since collection expenses are incurred by reason of or in connection with the sale, it would be included in the transaction value.

(2) CBEC has vide Circular No. 643/34/2002, dated 1-7-2002 clarified that delivery and collection charges of gas cylinders are by reason of or in connection with the sale of goods and therefore, the same would be included in the transaction value.

(3) The interest on advances taken from the customers would not be included in the assessable value, unless the receipt of such advance had no effect of depressing the wholesale price.

In *VST Industries Ltd. v C.C.Ex, Hyderabad* 1998 (97) ELT 395(SC), where interest free deposits were taken because of commercial consideration of covering the risk of credit sales, no special consideration flowing from the assessee to the buyer keeping the deposit was found and the Supreme Court held that notional interest cannot be included in the assessable value.

(4) However, in such case, the burden of proof lies on the Department to prove a nuxus between the fact of advance taken and the depression in the value.

(5) The transaction value is the price actually paid or payable for the goods. In the given situation, as the case of cash discount has not been passed on to tile customer, it will not be allowed as deduction.

As per tile CBEC & Circular No. 644/35/2002-CX, dated 12-7-2002 the Software can

be of the following types –

Systems software/Operating software – which is designed to control the operation of the computer system.

Application software – Which is developed for specific applications only.

Valuation of goods is done in the form in which it is cleared. Therefore, computer *systems* will be valued by including the value of the software loaded on the hard disc. No distinction is to be made between an 'operating software' and an 'application software'.

Q. 73. Thunder TV Ltd is engaged in the manufacture of colour television sets having its factories at Bangalore and Pune. At Bangalore the company manufactures picture tube; which are stock transferred to Pune factory where it is consumed to produce television sets. Determine the Excise duty liability of the captively consumed picture tubes from the following information :

Direct material cost (per unit)	**Rs. 600**
Indirect material	**Rs. 50**
Direct Labour	**Rs. 100**
Indirect Labour	**Rs. 50**
Direct Expenses	**Rs. 100**
Indirect Expenses	**Rs. 50**
Administrative overheads	**Rs. 50**
Selling and Distribution overheads	**Rs. 100**

***Additional Information* :**

1. **Profit margin as per the Annual Report for the company for 2008-2009 was 15% before income tax.**
2. **Material cost includes Excise duty paid Rs. 100.**
3. **Excise duty rate applicable is 10%.**

Answer 73.

As per Rule 8 of The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the valuation of captively consumed goods is 110% of the cost of production. The cost of production of goods would include cost of material, labour cost and overheads including administration cost and depreciation etc.

The cost of material would be net of excise duty if CENVAT credit is availed in respect of such inputs.

Accordingly, the assessable value will be determined as follows :

Raw materials Cost (net of excise duty)	Rs.	500
Indirect material	Rs.	50
Direct Labour	Rs.	100
Indirect Labour	Rs.	50
Direct Expenses	Rs.	100
Indirect Expenses	Rs.	50
Administrative overheads	Rs.	50
Total cost of production	Rs.	900
Assessable value	Rs.	990
(*i.e.* 110% of the cost of production)		
Excise duty @ 10%	Rs.	99
Education Cess @ 2%	Rs.	1.98
SHEC @ 1%	Re.	0.99

$\therefore$ Total Duty Liability = Rs. (99 + 1.98 + 0.99) = Rs. 101.97

The raw material cost has been taken at Rs. 500 after deducting the duty element assuming that the CENVAT credit has been availed.

Q. 74. H Ltd. purchased a Boring-Drilling machine at a cum-duty price of Rs. 32,14,476. The Excise duty rate charged on the said machine was @ 10%. The machine was purchased on 1-4-2007 and disposed of on 30-9-2008 for a price of Rs. 12 lakhs. The company was claiming depreciation @ 25% following Straight Line Method.

Using the said information, answer the following questions :

(i) What is the Excise duty paid on the machine?

(ii) What is the Cenvat credit allowable under Cenvat Rules?

(iii) What is the amount of Cenvat credit reversible or duty payable at the time of clearance of the said machinery?

Answer 74.

Cum-duty price Rs. 32,14,476

Hence, Basic Price *i.e.* Assessable value = 32,14,476 × 100/110 = Rs. 29,22,250

Excise duty paid = Rs. 2,92,225, *i.e.* 10% of Rs. 29,22,250.

As per Cenvat Rules, 50% Cenvat credit can be availed in current financial year an balance 50% of Cenvat is allowable only in following financial year, if the capital Goods are in possession and use.

Since the Capital goods were in use for six months in the year 2007-08, Cenvat of balance 50% is allowable. Cenvat allowable in the year 2006-07 Rs. 1,46,112.50 and Cenvat allowable in the year 2007-08 Rs. 1,46,112.50.

As per Cenvat Credit Rules (as applicable upto 28-2-2003), an ‘amount’ equal to duty payable at the rate and value as applicable on the date of removal is payable.

Hence, ‘amount’ payable at the time of disposal on 30-9-2008 is Rs. 12,00,000 × 10/100 *i.e.* Rs. 1,20,000.

It may be noted that w.e.f. 1-3-2003, the Cenvat Credit Rules had been amended, and an ‘amount’ equal to Cenvat credit availed on goods is payable. Hence, in this case, an amount of Rs. 2,92,225 would have been payable, if clearance was after 1-3-2003.

Q. 75. ABC and Co. are manufacturing the products specified below from excise duty paid high density polyethylene granules. Part of the goods are captively consumed and other part of the goods cleared for home consumption in India and for export to Bhutan and United Kingdom. The effective rate of duty, and the value of clearances during the preceding year 2007-08, and the current assessment period 2008-2009 are as follows –

1. Rate of duty —

Product 'A' – 10%. Product 'B' – 10%. Product 'C' (Waste & Scrap) – Exempt from duty.

2. Value clearances in 2007-08 –

Product 'A' –

(a) Clearance for home consumption – Rs. 130 Lakhs.

(b) For captive consumption in the manufacture of excisable goods – Rs. 135 lakhs.

(c) Exports to Bhutan – Rs. 35 lakhs

(d) Exports to UK under bond – Rs. 100 lakhs

Product 'B' —

(a) Clearance for home consumption – Rs. 80 lakhs

(b) For captive consumption in the manufacture of excisable goods – Nil

(c) Exports to Bhutan – Rs. 50 lakhs.

(d) Exports to UK under bond – Rs. 200 lakhs.

Product 'C' –

(a) Clearance for home consumption – Rs. 40 lakhs

(b) For captive consumption in the manufacture of excisable goods – Rs. 20 lakhs.

(c) Exports to Bhutan – Nil

(d) Exports to UK – Nil

3. Value of clearances during current year *i.e.* 2008-09 —

Product 'A' –

(a) Clearance for home consumption – Rs. 50 lakhs.

(b) For captive consumption in the manufacture of excisable goods – Rs. 40 laksh

(c) exports to Bhutan – Nil

(d) Exports to UK under bond – Rs. 50 lakhs.

Product 'B' –

(a) Clearance for home consumption – Rs. 80 lakhs

(b) For captive consumption in the manufacture of excisable goods – Nil

(c) Exports to Bhutan – Rs. 50 lakhs.

(d) Exports to UK under bond – Rs. 100 lakhs.

Product 'C' –

(a) Clearance for home consumption – Rs. 50 lakhs.

(b) For captive consumption in the manufacture of excisable goods – Nil

(c) Exports to Bhutan – Rs. 50 lakhs.

(d) Exports to UK under bond – Rs. 100 lakhs.

Advise the manufacturers as to whether they are entitled to small scale exemption and the amount of excise duty payable for their clearances during 2008-09, if the assessee intends to avail Cenvat credit.

Answer 75.

Turnover in 2007-08 for purpose of considering SSI exemption limit is as follows –

Product A – Rs. 165 lakhs [130 + 35]

Product B – Rs. 130 lakhs [80 + 50]

Product C – Rs. 20 lakhs.

If final product is exempt from duty, the goods used for captive consumption are liable to duty.

Therefore, total turnover during 2007-08 is Rs. 315 lakhs.

Since total turnover exceeds Rs. 300 lakhs, the assessee is not entitled to any exemption in 2008-09 and has to pay full normal duty @ 10%.

Whether assessee avails or does not avail Cenvat credit does not affect the turnover limit of Rs. 300 lakhs.

Q. 76. A company manufacturing consumer durables has factory in Tamilnadu. It has a depot in Maharashtra. Its product 'A' is dispatched to its depots in Maharashtra and sold from the depot to its dealers in Maharashtra. The depot administration expenses are Rs. 4 lakhs per annum. These do not include transport charges from Tamilnadu to Maharashtra. The dealers in Maharashtra are registered under CST Act and can issue C form. Local sales tax rate for sale as per Tamilnadu Sales Tax Law is 12% if goods are sold in Tamilnadu. The present price for sale from Maharashtra Depot is Rs. 22,500, inclusive of transport charges from Tamilnadu to Maharashtra. Actual transportation charges from Tamilnadu to Maharashtra are Rs. 1,000 per piece. The depot price is inclusive of applicable excise duty @ 10% plus education cess as applicable, but exclusive of Maharashtra sales tax. Sale from Maharashtra depot of product A are 2,000 pieces per annum. As an economy measure, it is proposed to close the depot in Maharashtra and make direct sale from Tamilnadu to dealers in Maharashtra. Marketing department has stated that if goods are sold from Tamilnadu, total amount payable by dealers in Maharashtra should remain unaltered. Otherwise, sales will be badly affected. Taxation department argues that this will reduce the profitability of the product, as the CST payable will have to be borne by the company. Finance department is of the view that this extra tax burden will get offset by reduction in depot expenses and slight reduction in excise duty. Evaluate the financial implications to decide whether it will be economical to close the depot in Maharashtra and advise Management about desirability or otherwise of closing the depot. Ignore effect of Maharashtra Sales Tax, if any.

Answer 76.

Presently, goods are sold from depot. If the sale is from depot, excise duty is payable on the depot price of Rs. 22,500. No deduction of transport cost from Tamilnadu to Maharashtra is allowable. Since the price is inclusive of excise duty @ 10% plus education cess and SAH Education cess of 3% (total 10.30%), the duty payable is Rs. 2,101.00 and Assessable Value is 20,399 per piece. After deducting freight expenses, present net realization per piece is Rs. 19,399.00.

If goods are sold directly from Tamilnadu, CST @ 2% will be payable. The price chargeable to dealers is required to remain unchanged to Rs. 22,500 per piece. If we assume that net sale price from Tamilnadu is 'x', then total invoice value to dealers in Maharashtra will be as follows –

(A)	Net Price of Product A	=	X
(B)	Add : Excise Duty @ 10.30%	=	0.1030x
(C)	Add : CST @ 2% on 1.1030x	=	0.02206x
(D)	Total price (A+B+C)	=	1.12506x
	Add : Transport charges	=	Rs. 1,000
	Total Invoice Value	=	1.12506x + 1000

Note : Excise duty and CST are not payable on transport charges, if charged separately in invoice.

Now, 1.12506x + 1000 = 22,500

Hence, x = Rs. 21,500/1.12506 = Rs. 19,110.09

Thus, the realization per piece has reduced from Rs. 19,399.00 to Rs. 19,110.09 per piece. This results in loss of Rs. 288.91 per piece. Since sale is 2,000 pieces per annum, total loss per year will be Rs. 5,77,820. If depot is closed, there will be saving of Rs. 4,00,000 per annum. Thus, there will be net loss of Rs. 1,77,820, if the depot is closed and sales are effected directly from Tamilnadu. Hence, it is not advisable to close the depot.

Q. 77. A has imported from U.S.A. by Air under-mentioned goods at Mumbai :

Tariff Heading – 85-01, (1) Description – Micro motors – Value in FOB – US $ 10,000 (2) Soldering irons and guns – Value in FOB — $ 5000 – Other relevant data are : Air freight $ 400, Insurance actual $ 200, Local agent's commission Rs. 5,000, Rate of exchange 1 $ =Rs. 50, Customs duty – 25% Ad-valorem, CVD – 16% Ad-valorem, SAD – 4% Ad-valorem. Effective Rate of duty on soldering irons and guns through a customs notification is 20%. Compute assessable value of each item and relative total customs duty and aggregate customs duty payable.

Answer 77.

Details	Micro Motor	Soldering Iron
FOB US $	10,000.00	5,000.00
Air Freight & Insurance (pro-rata)	400.00	200.00
Total CIF USD	10,400.00	5,200.00
Total CIF in Rs. @ Rs. 50 per 1 USD (Rs.)	5,20,000.00	2,62,000.00
Agency Commission on pro-rata basis in Rs.	3,333.33	1,666.67
Total Value	5,23,333.00	2,61,666.67
Add Landing Charges @ 1%	5,233.33	2,616.67
Assessable Value	5,28,566.66	2,64,283.34
Basic Customs Duty [25% for micro motors and 20% for soldering iron]	1,32,141.67	52,856.67
CVD 16% (On AV + Basic customs duty)	1,05,713.33	50,742.40
SAD @ 4% (On AV + Basic customs Duty + CVD)	30,656.87	14,715.30
Total customs duty [Basic + CVD + SAD)	2,68,511.87	1,18,314.37
Duty rounded to Rs.	2,68,512.00	1,18,314.00

Q. 78. Compute (keeping in mind the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975), the total customs duty payable by an importer on goods 'X' imported by sea into India, from the following details. You may, wherever appropriate, make 1,000 (Dollars) * Weight of Goods 1,000 Kg * Freight Charges $ 100 (Dollars) * Insurance Charges $ 20 (Dollars) * Handling Charges Rs. 200 * Exchange Rate 4 Dollars =Rs. 100 * Date of Presentation of Bill of Entry – 4.5.91 * Date of Entry Inwards of Vessel – 1.5.91 Rates of Customs Duty on 1.5.91 - * Basic 100% Adv. * SAD – 4% * Additional (CVD) 15% * Rates of Customs Duty on 4.5.91 - * Basic 110% Adv. * SAD 4% * Additional (CVD) 15%.- . – Note : No other particulars are relevant.

Answer 78.

CIF Value is US $ 1,120 [1,00 + 100 + 20].

Converted into Rupees, it will be Rs. 28,000 @ Rs. 25 per dollar.

Add handling charges of Rs. 200.

Presuming that these are 'landing charges' and hence separate landing charges are not added, the Customs Value (Assessable Value) will be Rs. 28,200.

Assessable Value	Rs. 28,200.00
Basic duty @ 110%	Rs. 31,020.00
CVD @ 15% on Rs. 59,220	Rs. 8,883.00
SAD @ 4% on Rs. 68,103	Rs. 2,724.12
Total Customs Duty (Basic + CVD +SAD)	Rs. 42,627.12
Rounded to	Rs. 42,627

Q. 79. Zing Yong of China exports Lithium Cell to India, the FOB price of which is one Dollar for 30 cells; however the details of Fright & Insurance were not made available. Investigation reveals that the goods are imported into India at an increased quantity. Similar cells are manufactured in India, the cost of sales per cell of which indicates the following break-up :

Direct Material	**Rs. 2.00**
Direct Labour	**Re. 0.25**
Direct Expenses	**Re. 0.25**
Indirect Expenses	**Re. 0.50**
Indirect Labour	**Re. 0.25**
Indirect Expenses	**Re. 0.25**
Administrative Overheads	**Re. 0.50**
Selling and distribution overheads	**Re. 0.50**
Profit Margin	**Re. 0.50**

The exchange rate 1 $ = Rs. 50. Is there any case to impose Safeguard Duty? If yes, what is the duty leviable?

Answer 79.

The Given price of imported cells is FOB one dollar for 30 cells, i.e. Rs. 50 for 30 cells, as 1 $ = Rs. 50.

Since CIF price is not available, it is necessary to calculate CIF price.

As per valuation rules, if freight and insurance charges are not available, freight may be taken @ 20% of FOB and insurance @ 1.125% of FOB. Hence, freight will be Rs. 10 and insurance will be Rs. 0.56.

Thus, when the CIF price is Rs. 60.56, landing charges @ 1% of CIF will be 0.61 and the Assessable Value will be CIF Price *plus* landing charges i.e. Rs. 61.17 for 30 cells.

Assuming basic customs duty of 25%, CVD of 16% and SAD of 4%, total duty payable is 50.8% of Assessable Value, the duty will be Rs. 31.07. Hence, landed cost of 30 cells is Rs. 92.24 (Rs. 61.17 value plus Rs. 31.07 as duty).

Accordingly, the landed cost will be Rs. 3.07 per cell.

In case of Indian manufacturer, his total cost will be as follows –

Prime Cost (Direct Material + Direct Labour + Direct Expenses)	Rs. 2.50
Cost of Production (Prime Cost + Indirect Material + Indirect Labour + Indirect Expenses)	Rs. 3.50
Cost of Sales (Cost of production + Administration Overheads + Selling and Distribution Overheads).	Rs. 4.50
Selling price (Cost of Sales plus profit).	Rs. 5.00

Thus, landed cost of imported article will be Rs. 3.07 and selling price of Indian manufacturer will be Rs. 5,00 per cell.

Accordingly, there is a case for imposition of product Specific Safeguard Duty on imports from Chine u/s 8C of Customs Tariff Act.

Maximum safeguard duty that can be imposed is Rs. 1.93 per cell.

Q. 80. 'A' imports by air from USA a Gear cutting machine complete with accessories and spares. Its HS classification is 84.610 and Value US $ f.o.b. 20,000.

Other relevant data/information : (1) At the request of importer, US $ 1,000 have been incurred for improving the design, etc. of machine, but is not reflected in the invoice, but will be paid by the party, (2) Freight – US $ 6,000. (3) Goods are insured but premium is not shown/available in invoice. (4) Commission to be paid to local agent in India Rs. 4,500. (5) Freight and insurance from airport to factory is Rs. 4,500. (6) Exchange rate is US $ 1 = Rs. 45. (7) Duties of Customs : Basic – 25% CVD – 16% SAD – 4%. – Compute (i) Assessable value (ii) Customs duty.

Answer 80.

(i) Computation of Assessable Value –

FOB Value of Machine	= $ 20,000
Add : Expenditure for improving design	= $ 1,000
Add – Freight limited to 20% of FOB [Rule 9(2)]	= $ 4,000
Insurance @ 1.125% of FOB [Rule 9(2)c(iii)]	= $ 225
Sub-Total	= $ 25,225
Sub-Total In Rs. @ Rs. 45 per Rupee	= Rs. 11,35,125
Add – Agents Commission [Rule 9(1)(i)]	= Rs. 4,500
Total CIF Value	= Rs. 11,39,625
Add – Landing charges 1% of CIF	= Rs. 11,396
Assessable Value	= Rs. 11,51,021

Duty payable will be as follows –

(ii) Gear cutting machine Complete with accessories and spares

Basic Customs Duty @ 25% 2,87,755.25

Calculation of Additional Duty

Additional duty (CVD) is payable on AV + Basic Customs Duty.

Accordingly, CVD @ 16% will be payable on Rs. 14,38,776.25 (11,51,021 + 2,87,755.25).

Therefore, CVD payable will be 2,30,204.20

Calculation of Special Additional Duty (SAD)

Special Additional Duty @ 4% is payable on AV + Basic + CVD.

Accordingly, SAD payable will be Rs. 66,759.22

i.e. 4% of Rs. 16,68,980.50 [11,51,021 + 2,87,755.25 + 2,30,204.20]

Total duty payable will be Rs. 5,84,718.65.

[Comprising of Basic 2.87,755.25 + additional *i.e.* CVD 2,30,204.20 + Special Additional Duty 66,79.20].

Q. 81. Nircom lcecream Company imported under one single order a consignment of plant and machinery namely continuous ice cream freezer with accessories such as electric dozer, can filter, fruit feeder and ripple machine wittily spare parts. According to Nircom the main function of the machine is to make ice cream. The ice freezer is stated to be refrigerating equipment classifiable under Heading 84.18 of the Customs Tariff Act, 1975. None of the aforesaid accessories can function independently as each of them has been specifically made to be connected to work along with the ice cream freezer. It is the department's view that the can filter, fruit feeder and ripple machine are independent, machines and not accessories. State with reasons as to how you would decide the issue with reference to the "General Rules for Interpretation" under First Schedule-Import Tariff to the Customs Tariff Act, 1975.

Answer 81.

Rule 2(a) of the Interpretation rules of Customs Tariff Act, 1975 states that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.

In the given case the ice cream freezer is an independent ready assembled unit having universal movement and does not require erection at the site, then it has to be classified according to its function independently. The mere fact that the machines called accessories can be connected with freezers would not charge their character of being independent machines. The accessories if they are intended to give better production of ice cream only still could be classified as independent machines. It cannot be said that but for those machine the freezer cannot be utilized for the purpose of manufacture of ice cream.

Q. 82. 'V' steels imported various items for its captive power plant with technical knowhow from, 'N' Engineering U.S.A. the relevant drawings of the turbine shaft and layout of the turbine with other items were also supplied. One of the items which was a turbine shaft was in a semi-finished condition. Before fitting, this turbine shaft had to be further ground and finished as per the dimensions of the shaft indicated in the layout drawing. "VI' steels paid US $ 2000 for the layout drawing and did not pay any customs duty on this amount. The Customs Department has claimed that this amount of US $ 2000 forms part of the transaction value under Rule 9(1) of the Customs Valuation Rules, 1988. "V" steel claims that the drawing indicating the dimensions of the turbine shaft was merely a layout drawing of the turbine shaft was merely a layout drawing of the turbine with other items of the turbine room.

Explain with reference to the provisions of Rule 9 of the Customs Valuation Rules, 1988.

Answer 82.

As per the terms of Rule 9(1)(*e*) of the Customs Valuation Rules, 1988, in determination of the transaction value, any payment made by the buyer as a condition of sale of the goods will be included in the value of the goods.

In the given case, the turbine shaft was imported in a semi-finished condition and has to be fitted and finished as per the indications in the layout drawing. Thus, this drawing is necessary for further finishing of the imported turbine shaft i.e. in the final production of the imported item before it is fitted. Therefore, as the payment of US $ 2000 is made for layout drawing without which the plant cannot be installed and hence the value of such layout drawing will be included ill the value of the goods.

In view of the above, it is a drawing necessary for the production of the imported item and therefore has to be included in the transaction value of the imported item.

Q. 83. Discuss briefly with reference to decided case laws as to how the 'value' shall be determined under section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 1988 in the following cases :

(i) Goods are offered at specially reduced price to buyer and the buyer is asked not to disclose the specially reduced price to any other party in India.

(ii) There has been a price rise between the date of contract and the date of importation. The contract was over 6 months before the date of shipment.

(iii) The sale involves special discounts limited to exclusive agents.

(iv) The goods are purchased on High seas.

Answer 83.

(i) Where sales are made to buyers at specially reduced prices, the prices so offered cannot be said to be the ordinary prices. In *Padia Sales Corporation v Collector of Customs* (1993) 66 ELT 35 (SC) the Supreme Court held that where the goods are offered to the buyers is asked not to disclose the specially reduced price to any other party, then the said price will not be acceptable.

(ii) Where there is a price rise at the time when the goods are imported in comparison to the price when the contract was made then, the price at the time of importation will be taken to be the value of the goods. In *Rajkumar Knitting Mills Pvt. Ltd. v Collector of Customs* (1998) 98 ELT 292 (SC), the Supreme Court held that the contract price may have bearing while determining the value of the goods, but he value is to be determined at the time of importation of the goods.

(iii) In *Eicher Tractors Ltd. v Commissioner of Customs, Mumbai* (2000) 122 ELT 321 (SC) the Supreme Court held that the price paid by the importer to the vendor in the ordinary course of commerce shall be taken to be the value of imported goods. Since the buyer and the seller are not related and the price is the sole consideration for sale, the discounted price was taken as the assessable value. However this decision has been nullified by the Customs Valuation Price of Imported Goods Rules, 2002 and consequently, where the sale involves special discounts limited to exclusive agents, such discounted price shall not be accepted as the assessable value.

(iv) Where high sea sales are made, the price charged by the importer from the assessee will be taken to be the value of the goods. Similar view was expressed by the Tribunal in *Godavari Fertilizers v C.C.Ex.* (1996) 81 ELT 535 (Tri.).

Q. 84. Determine the assessable value and customs duty amount from the following data :

Name of the raw material X

FOB value Euro 1 million

Ocean freight Actual data not available

Ocean Insurance Actual data not available

Freight from sea port to godown paid in India Rs. 10,000

Transit insurance in India Rs. 2,000

Selling commission paid to agent in India 5%

Royalty on manufacture and sale of final product to foreign collaborator 5%

Interest payable on raw material imported at 180 days credit (on FOB value) 12% p.a.

Dividend paid to the foreign supplier of raw material on their equity participation for the year 2001-02 Rs. 2 per share on 1 million shares of face value Rs. 10/share.

Importer supplied design and drawings worth Euro 10,000 to the foreign raw material supplier. # Landing charges as per Customs provisions

Customs duty rates : BCD – 30%, ACD – 16%, SAD – 4%

Exchange rate : 1 Euro = Rs. 42.

Answer 84.

Since ocean freight is not available, it has to be taken at 20% of FOB. Insurance will have to be taken @ 1.125% of FOB Value.

Royalty on manufacture and sale of final products payable to foreign collaborators has no relation to goods imported. Hence, it it not includible in Assessable Value for customs. Similarly, dividend paid to foreign supplier has no relation with supply of raw materials. It is not includible in Assessable Value.

Interest payable for credit is not includible in assessable value for customs purposes, as it is not part of 'transaction value'.

Freight from seaport to godown and transit insurance in India are post-importation costs and are not includible.

It is assumed that selling commission to selling agent in India is payable on basis of CIF Value of goods including cost of drawings supplied by buyer.

As per rule 9(1*)(b)(iv)* of Customs Valuation Rules, cost of engineering drawings is includible only if work was undertaken outside India. Since, payment has been made in Euro, it is assumed that the design and drawing work was done outside India.

Landing charges will be 1% of CIF Value, as per Customs Valuation Rules.

Hence, calculation of customs duty will as follows –

(A) Value of goods in Euro	=	10,00,000 Euro
(B) Add – Freight @ 25% of FOB	=	2,00,000 Euro
(C) Add – Insurance @ 1.125% of FOB	=	11,250 Euro
(D) Total CIF Value (A + B + C)	=	12,11,250 Euro
(E) Add designing and drawing charges	=	10,000 Euro
(F) Total CIF Value	=	12,21,250 Euro
(G) CIF Value in Rupees @ Rs. 42.00	=	Rs. 5,12,92,500.00
(H) Local Agency Commission @ 5%	=	Rs. 25,64,625.00
(I) Total Value	=	Rs. 5,38,57,125.00
(J) Add – landing Charges @ 1% of I	=	Rs. 5,38,571.25
(J) Assessable Value (I +J)	=	Rs. 5,43,95,696.25
(K) AV Rounded upto	=	Rs. 5,43,95,696.00

Duty Payable :

Basic Customs Duty (BCD) @ 30% of AV	=	Rs. 1,63,18,708.00
CVD @ 16% is payable on AV + BCD	=	Rs. 1,13,14,304.77
SAD @ 4% is payable on AV + BCD + CVD	=	Rs. 32,81,148.38

Thus, total duty payable is Basic – Rs. 1,63,18,708.80, CVD – 1,3,14,304.77 Rs. And SAD Rs. 32,81,148.38. Thus, total duty is Rs. 3,09,14,161.95, rounded to Rs. 3,09,14,162.

Q. 85. Discuss whether any duty drawback is admissible under section 75 in the following cases and if yes, what is the quantum of such duty drawback—

	FOB value of exported goods (Rs.)	Rate or amount of drawback	Market price of goods (Rs.)	Value of imported material used in goods (Rs.)
(a)	**1,00,000**	**0.75% of FOB value**	**80,000**	**50,000**
(b)	**49,000**	**1% of FOB value**	**50,000**	**30,000**
(c)	**60,000**	**0.8% of FOB value**	**70,000**	**35,000**
(d)	**3,000**	**1.5%**	**3,100**	**2,500**
(e)	**2,00,000**	**40% of FOB value**	**1,50,000**	**1,20,000**
(f)	**1,00,000 (2,000 kgs.)**	**Rs. 30 per kg.**	**55,000**	**40,00**
(g)	**4,00,000**	**3.5% of FOB value**	**4,60,000**	**4,50,000**
(h)	**4,20,000**	**4% of FOB value**	**4,10,000**	**3,00,00****

**** In this case, the Central Government has specified that the export value should be 40% more than the value of the imported material used therein.**

Answer 85.

The admissibility or otherwise of duty drawback in the aforesaid cases in discussed hereunder —

(a) **Drawback Admissible Rs. 750 :** Even inf the rate of drawback is less than 1% of FOB value of goods, drawback will be admissible because the amount of drawback i.e. 0.75% of 1,00,000 i.e. Rs. 750/- exceeds Rs. 500.

(b) **Drawback Admissible Rs. 490 :** Even if the amount of drawback is less than Rs. 500, drawback will be admissible because it is 1% or mor of the FOB value of the goods,

(c) **Drawback Inadmissible :** The drawback will n ot be admissible because it is less than 1% of the FOB value of the goods and its maount (0.8% of 60,000 i.e. 480) is less than Rs. 500.

(d) **Drawback Inadmissible :** Even if the drawback is 1.5% of FOB value, drawback will be inadmissible as the amount thereof is 1.5% of 3,000 i.e. Rs. 45, which is less Rs. 50.

(e) **Drawback Admissible Rs. 50,000 :** The amount of drawback i.e. 40% of 2,00,000 i.e. Rs. 80,000 shall be restricted to 1/ 3rd of the Market price of the goods i.e. 1/ 3rd of 1,50,000. Hence, the amount of drawback admissible shall be Rs. 50,000.

(f) **Drawback Inadmissible :** In this case the market price of the goods Rs. 55,000 is less than the amount of drawback i.e. 2,000 kgs. × Rs. 30 i.e. Rs. 60,000. Hence, no drawback shall be allowed.

(g) **Drawback Inadmissible :** No drawback shall be allowed in this case, as the export value i.e. FOB value of the goods is less the value of imported material used therein.

(h) **Drawback Inadmissible :** The value 40% more than value of imported materials is Rs. 3,00,000 + 40% of 3,00,000 i.e. Rs. 4,20,000. Since, the export value is not more than Rs. 4,20,000, no drawback shall be admissible.