INTERMEDIATE EXAMINATION

(REVISED SYLLABUS - 2008)

GROUP - II

Paper-10 : APPLIED INDIRECT TAXATION

Q.1. (a) Fill in the blanks :

(i) Indirect taxes _____ affects the prices of commodities and services.

(ii) Capital goods intended for use in any 100% export-oriented unit (EOU) can be warehoused for a period of _____ years from the date on which the proper officer has made an order under section 60 of the Customs Act, 1962 permitting the deposit of the goods in the warehouse.

(iii) Rule _____ of the Central Excise Rules, 2002 provides for self-assessment of duty.

(iv) Shipping bill for export of goods under claim for duty drawback should be in _____ colour.

(v) Duty rebate is not allowed if the rebate amount is less than _____ .

Q.1. (b) State with reasons, whether *True* or *False* :

(i) Appeals against orders of Commissioner (Appeals) relating to duty drawback cannot be filed before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

(ii) Security demanded from dealer under the Central Sales Tax, 1956 can be satisfied in the form of surety bond.

(iii) Duty Drawback rate is fixed by the Central Government in consultation with the Board.

(iv) There is no scheme for furnishing a service tax return through Service Tax Return Preparers.

(v) Import manifest is required to be submitted at the customs station within twelve hours of arrival of aircraft or vessel.

Answer 1. (a)

(i) Directly

(ii) Five

(iii) 6

(iv) Green

(v) Rs. 500

Answer 1. (b)

(i) **True** — However, revision application before the Central Government can be filed.

(ii) **True** — The security may be in the form of 'surety bond'. If the surety i.e. a person giving surety bond becomes insolvent or dies, the dealer must inform the sales tax authority within 30 days and provide fresh surety bond or security within 90 days.

(iii) **False** — Drawback rate is fixed by the Commissioner of Central Excise, and not by the Central Govt.

(iv) **True** — The Finance Act, 2008 has inserted a new section 71 to provide for the scheme for furnishing a service tax return through Service Tax Return Preparers.

(v) **False** — As per section 30(1) of the Customs Act, 1962, the Import manifest should submitted prior to the arrival of the aircraft or vessel.

Q. 2. (a) Discuss the dutiability of Fabrication of steel structure at site as per Central Excise Act, 1944.

(b) FOB Cost of a consignment is 5,000 UK Pounds. Insurance and transport costs are not available. What is Customs Value? On the date of filing of bill of entry, Reserve Bank of India reference rate of US $ was 45.37 and inter-bank closing rates were : Rs. 45.38 per US $ and Rs. 71.38 per UK Pound. Exchange rate announced by Board (CBE&C) by customs notification was Rs. 71.78 per British Pound. T T buying rate was 71.70 and T T selling rate was Rs. 71.61 per UK pound.

(c) 'Central Government can become a dealer, but the state government cannot' - is the statement correct? Give reasons.

(d) What is Lease Tax?

Answer 2. (a)

As per Sr. No. 64 of notification No. 3/2005-CE dated 24-2-2005, (earlier it was in tariff entry 7308.50), structures fabricated at site of work for use in construction at site are exempt from duty. In Delhi Tourism v. CCE 1999(114) ELT 421 (CEGAT), it was held that the term 'site' should be given wider meaning and not narrow meaning. Even if structure is cast at different place and brought to site of construction, it will be eligible for exemption.

Answer 2. (b)

FOB Price is 5,000 UK pounds. Add 20% as freight cost i.e. 1000 as actual cost is not available. Since insurance charges are not known, insurance cost should be taken @ 1.125% of FOB price i.e. 56.25. Thus, CIF price is 6,056.25 UK pounds. Conversion rate is 71.78. Hence, CIF Value is Rs. 4,34,717.63 (6,056.25 × 71.78). Landing charges @ 1% of CIF will be Rs. 4,347.18. Thus, Customs Value is Rs. 4,39,064.80.

Answer 2. (c)

The statement is not correct. According to Explanation 2 under Sec 2(b), "a **Government** which, whether or not in the course of business buys, sells, supplies or distributes goods shall be deemed to be a dealer for the purposes of CST Act'

- The word used is 'Government' and not Central Government.
- No distinction is sought to be made between Central Government and State Government.
- Hence every government, be it central or state, buying /selling goods will be deemed to be a dealer.

Answer 2. (d)

Lease tax is a tax on transfer of right to use goods. Under VAT laws, the transfer of right to use the goods, which is a deemed sale, may be treated at par with the sale.

Q. 3. (a) What is Reverse Tax Credit?

(b) An importer has imported certain goods and while determining the assessable value, landing charges @ 1% of CIF value were added. The importer has claimed that actual landing charges are much lower than 1% of the CIF value in his case. You have been asked to advise whether the importer can file a bill of entry by adding actual landing charges instead of notional 1% of CIF value or not.

c)

(c) Discuss the admissibility or otherwise of the CENVAT credit of inputs contained in final products lying in stock, which were exempted but subsequently became excisable. Whether the same principle will be applicable in case of capital goods.

Answer 3. (a)

If goods purchased, intended for specified use, in respect of which input tax credit is availed, are subsequently used, fully or partly, for non specified purpose, the input tax credit so availed shall be reduced from the tax credit for the period during which the said utilization has taken place. If part of the goods purchased is utilized otherwise, the amount of reverse tax credit shall be proportionately calculated.

Answer 3. (b)

The importer cannot file Bill of **Entry by** adding actual landing charges. Rule 3(2)(b) of Customs valuation Rules, 1989 has statutorily laid down **a fixed 1% charge on free on** board value (F.O.B **Value**) of the **goods** plus the cost of transport plus the **cost of** insurance. **In *Wipro Ltd. Vs ACC,*** it **was** held **that** handling charges of 1% of **CIF** Value, which is very nominal, are not arbitrary. It **has been** fixed under the power **conferred by the** Parliament on the rule making authority and such an act cannot be **considered beyond** the power conferred by **Section** 14(1) or Section **156** of the **Customs Act.** 1963. Accordingly, the importer should ha ve filed Bill of Entry by adding the **statutorily fixed** 1% charges in the CIF value regardless **of the** actual handling charges being much lower in the present case.

Answer 3. (c)

Rule 3(2) of Cenvat Credit Rules, 2004 states that a manufacturer shall be allowed to avail CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable.

However, Cenvat credit will not be allowed in similar circumstances in respect of duty paid on Capital Goods lying in stock or used in final products lying in stock, which were exempted but subsequently became excisable.

In Surya Roshni Ltd. v. CCEx. It was held that eligibility of capital goods to Cenvat credit should be determined at the time when the goods are received by the manufacturer. Subsequent becoming of goods as dutiable or the manufacturer putting capital goods to other use could not revive the question of admissibility of Cenvat credit.

Q. 4. (a) Give some examples where Cenvat credit is not required to be reversed even if duty was not paid on final product.

(b) When shall the transaction value be accepted even if the buyer and seller are related persons?

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

Answer 4. (a)

In following cases, Cenvat credit is not required to be reversed :

(i) No reversal in case of export/ deemed export of final product – Cenvat credit is not required to be reversed, if final product is exported or supplied to UN Agencies, or to EOU/ STP/ EHTP. Supplies to SEZ are 'exports'.

(ii) No reversal if intermediate product supplied and final product exported – If intermediate product is cleared without payment of duty under bond for manufacturer of final product which is to be exported. Cenvat on inputs used in manufacture of intermediate product is not required to be reversed.

Answer 4. (b)

Transaction value acceptable even if goods sold to related person : Even if goods are sold to related persons, the value under Rule 3(1) shall be accepted in the following two different cases :

(i) If the examination of circumstances surrounding the sale reflects that relationship did not influence the price; or

(ii) Where the importer demonstrates that the declared value of the goods being valued closely approximates to the following values ascertained at or about the same time :

1. Transaction value of the identical or similar goods, in sales to unrelated buyers in India;
2. The deductive value of identical or similar goods; or
3. The computed value of identical or similar goods.

However, in applying values used for comparison, due account shall be taken of the demonstrated difference in commercial levels, quantity levels, adjustments in accordance with Rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

Answer 4. (c)

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

Therefore, the claim of the manufacturer does not hold good.

Q. 5. (a) A fishing boat operating in high seas, beyond the territorial waters of India, finds a ship wrecked in mid-sea and brings derelict and jetsam into India, along with fish caught by it.

Discuss the liability of duty on the fish, derelict and jetsam.

(b) Is Cenvat credit available in respect of service tax paid on use of mobile phones?

(c) How shall the value be determined in case goods are purchased on high seas basis?

Answer 5. (a)

All goods derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it is shown to the satisfaction of the Proper Officer, that they are entitled to be admitted duty-free under this Act. [Sec 21]

The concept of 'goods brought into India' is not confined to goods, which are intentionally brought into India, but also extends to derelict, flotsam, jetsam and wreck brought or coming into India.

This implies that apart from goods which are normally imported in the course of international trade, flotsam and jetsam which are washed ashore and derelict and wreck brought into India out of compulsion, are also treated at par with trade goods.

Fish, derelict and jetsam brought into India by the Fishing Boat would be liable to customs duty.

Answer 5. (b)

Yes. Credit of service tax paid in respect of mobile phone service is admissible, provided the mobile phone service is used for providing output service or used in or in relation to manufacture of finished product.

Answer 5. (c)

Section 14(1) provides that the value of goods shall be the transaction value i.e. the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.

Purchase on high sea basis means that the imported goods are acquired by a buyer from the original importer while they in the high seas i.e. the purchase takes place before they reach India. In case of imported goods purchased on high sea sales basis, the price, at which the goods are acquired by the buyer from the original importer, can be the price for the delivery of such goods at the time and place of importation and, therefore, such price would be taken to be the value of such goods. In case of more than one high sea sales, the last sale price i.e. the actual high-sea-sale-contract price paid by the last buyer would be taken as the value of such goods.

Q. 6. (a) Admag Ltd., an advertising agency, used to provide advertisement services. It used to create original concept and design the advertising material for its clients (including brochures, annual reports etc.).

Discuss whether State-VAT could be imposed on the entire proceeds inclusive of charges for design making?

(b) What are the consequences in case of increase in retail price after clearance from factory?

(c) Briefly discuss about dutiability of the Goods manufactured in 100% EOU/EPZ etc. but sold in domestic tariff area.

Answer 6. (a)

Though Article 366(29A) of Constitution regards 'transfer of property in goods involved in execution of a works contract' a deemed 'sale', however, such deeming fiction cannot be extended beyond the purpose for which it was created. If in a contract, an element to provide service is contained, the deeming fiction of Article 366(29A) cannot be applied to impose VAT on 'service' element.

The payments of service tax as also the VAT are mutually exclusive. Therefore, they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract. A composite contract may consist of different elements providing for attracting different nature of levy. Therefore, in a case of this mature, it can't be held that VAT would be payable on the value of the entire contract, irrespective of the element of service provided.

Accordingly, the State-VAT could not be imposed on the entire proceeds inclusive of charges for design making. The assessee should divide the proceeds to discharge service tax on the service element of the contract and VAT on the sale element of the contract.

Answer 6. (b)

If retail price declared on the package at the time of removal is subsequently altered to increase the price, such increased retail price will be retail price for purpose of section 4A. {explanation 2 (c) to Sec. 4A}. As per section 2(f)(ii), affixing label of altered price will be 'deemed manufacturer' and hence excise duty will become payable.

Answer 6. (c)

"Export Oriented Undertaking" means an undertaking which has been approved as a 100% EOU by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951, and the rules made under that Act. 100% EOU shall be deemed to be registered u/r 9 of CE Rules, 2002, if they do not remove excisable Goods or procure excisable goods to/from domestic tariff area.

If excisable goods which are produced or manufactured by a 100% EOU and brought to any other place in India, it will attract levy of excise duty. The duty will be levied at the rate of aggregate of the duties of customs which would be leviable under the Customs Act 1962, on like goods produced of manufactured outside India if imported into India. Value of such goods will be determined in accordance with the provisions

of Customs Act, 1962 if the duty to be levied is Ad-Valorem. When any duty of customs is leviable at different rates, then such duty shall be deemed to be leviable at the highest of those rates.

Q. 7. (a) The Department sought to include the charges/cost of PDI and free after-sales services provided by the dealer to the customers in the assessable value of the goods in question on the ground that such charges formed part of 'transaction value' and were payable by the buyer-customer to the dealers only on behalf of the assessee. The assessee denied any such inclusion. Discuss.

(b) A person is neither a producer nor a curer nor a manufacturer of excisable goods, but he only stores such goods in a warehouse. Can he be called upon to pay the duties of excise on such goods? Explain the provision.

(c) Whether CENVAT credit can be denied on the ground that the document on the basis of which CENVAT credit is claimed does not contain all the information required therein?

Answer 7. (a)

The pre-delivery inspection and after-sales services are carried by the dealer under the terms of the dealership agreement between the assessee and the dealer. The charges therefore are already included in the dealer's margin on which the excise duty is not paid by the assessee. However, the said charges are paid by the buyer to the dealer (in the form of dealer's margin) only 'on behalf of the assessee'. The same is payable by reason of/ in connection with 'sale' by the assessee to the dealers, as the same is done under the dealership agreement. Hence, the same is includible in the assessable value of the goods and is, therefore, liable to excise duty in the hands of the assessee.

Answer 7. (b)

As per Rule 4 of the Central Excise Rules, 2002, every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods. No excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided.

Thus, a warehouse keeper though not a producer or manufacturer or curer, shall be liable to pay duty of excise on the goods stored by him.

Answer 7. (c)

As per Rule 9(2), no CENVAT credit shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994 are contained in the said document.

However, even if the said document doesn't contain all such particulars, the Deputy/ Asst. Commissioner of Central Excise may allow the CENVAT credit, if –

1. Such document contains –
   (i) Details of duty or service tax payable ;
   (ii) Description of the goods or taxable service;
   (iii) Assessable value;
   (iv) Central Excise or Service Tax Registration No. of person issuing the invoice; and
   (v) Name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service; and
2. The Deputy/ Asst. Commissioner is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver.

Q. 8. (a) Beautiful Hair Ltd. Manufactures shampoo at its factory in Kanpur. The following maximum retail price (MRP) are printed on the packet :

MRP in Bihar	**:**	**Rs. 150**
MRP in West Bengal	**:**	**Rs. 148**
MRP in other places	**:**	**Rs. 145**

What is the assessable value of shampoo cleared for sale in the State of Andhra Pradesh as per section 4A of the Central Excise Act, 1944? Give reasons for your answer.

(b) What are the provisions made under the Customs Act, 1962 regarding control of customs over the warehoused goods?

(c) Does 'renting of lockers by bank' amounts to sale?

Answer 8. (a)

It was held in Mount Everest Mineral Water Ltd. V. CCEx [2004] 166 ELT 52 (Tri. – Del.) that where the assessee had marked different sale prices on its mineral water bottles for sale in different region, he didn't satisfy the requirement under Explanation 2(c) to Section 4A that marking of different prices must be on different packages. Thus, as per Explanation 2(a), the highest price declared on the package is to be taken into account for valuation.

Hence, MRP of Rs. 150 will be taken for assessment purpose. Assessable value per packet = Rs. 150 – Permissible Abatement.

Answer 8. (b)

The provisions are as follows :

(i) All warehoused goods shall be subject to the control of the proper officer.

(ii) No person shall enter a warehouse or remove any goods therefrom, without the permission of the Proper Officer.

(iii) The Proper Officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

(iv) The Proper Officer shall have – access to every part of a warehouse and power to examine the goods therein.

Answer 8. (c)

Bank-lockers, being part and parcel of this attached and embedded in earth, are immovable property and not 'goods'. Further, renting of lockers and providing right to use locker cannot be regarded as 'transfer of right to use goods' to be considered as 'deemed sale'. Renting of locker amounts to license to use lockers.

The charges for lockers are not merely towards rent but also towards cost of maintaining high safety standards. The dominant aspect involved in the transaction is security; therefore, the facility provided by bank to keep valuables in a safe place is service and no element of sale is involved therein.

Q. 9. (a) How are stock/branch transfers accounted for under VAT laws?

(b) A 100% EOU has paid certain amount towards excise duty on capital goods while opting out of exemption scheme. Discuss whether such payment can be availed of as CENVAT credit by it.

(c) M/s. Robin Ltd. cleared certain excisable goods manufactured by it on which duty payable was Rs. 12 lakhs on 1.2.2011. On 5.2.2011, the said goods are rejected by the customer and returned to the factory of Robin Ltd. for being re-made/refined. M/s Robin Ltd., in terms of Rule 16(1), took credit of duty of Rs. 12 lakhs on the strength of its own invoice issued at the time of clearance on 1.2.2011. The Department denies the credit on the ground that the duty on such goods has not been paid, as the due date for payment of duty falls on 5th March, 2011 (5th of the next month). Decide.

Answer 9. (a)

Stock/branch transfers i.e. transfer of stock from head office to the branch or vice-versa (viz. Inter-State transfers) do not involve sale and, therefore, they cannot be subjected to sales-tax/VAT. However, if –

(i) Inputs are used in the manufacture of finished goods, which are stock/branch transferred; or

(ii) Goods purchased for re-sale are stock/branch transferred,

Then, tax paid on such inputs/ goods will be available as input tax credit subject to retention of 2% out of such tax by the State Governments.

Answer 9. (b)

The Export-Oriented Undertaking (EOUs) and the units located in Software Technology Park (STP)/ Electronic Hardware Technology Park (EHTP) are allowed excise duty-free receipt of capital goods in their premises for the manufacture of export goods. At the time of debonding i.e. when they opt out of the exemption scheme, they are required to pay excise duty on the depreciated value of capital goods at the rate in force on the date of debonding. Rule 3 provides that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of debonding of the EOU or the unit located in STP/EHTP.

Answer 9. (c)

The Board has clarified vide Instruction F. No. 267/44/2009-CX. 8, dated 25-11-2009 that Rule 8(2) of the Central Excise Rules, 2002, provides that 'the duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub rule (1) and the credit of such duty is allowed, as provided by or under any rule'. This provision explains that the invoice of the returned goods, would be a valid document for availing credit and duty is deemed to have been discharged. Regarding availing credit on its own invoice, Rule 16(1) of the Central Excise Rules, 2002, allows the assessee to do so. In view of above, credit on rejected/ returned goods, received in the factory before prescribed date for duty payment, can be allowed to be taken under Rule 16(1). Hence, Robin Ltd.'s action is correct in law. Robin Ltd. should pay duty of Rs. 12 lakhs on 5th March, 2011 as per Rule 8.

Q. 10. (a) A company imported certain goods and warehoused them initially for a period of one year. The company surrendered the goods and the auction of the goods was duly advertised. However, subsequently the company made a request for permission to re-export the goods under section 69 (1) of the customs Act, 1962 and for cancellation of the auction sale. The request was not granted and the goods were auctioned. The company contends that it is entitled to withdraw the offer of surrender subsequently and hence, the auction was not valid. Examine.

(b) Highlight important features of 'transitional product specific safeguard duty on imports from the People's Republic of china'.

(c) M/s. Real Construction Co. Ltd. expects a gross turnover of Rs. 2,000 crores during the coming year from various commercial/ industrial constructions (inclusive of charges towards various material and services). It furnishes following additional information –

(i) Total value of materials and input services Rs. 800 crores & Rs. 400 crores (Excise Duty @ 8.24%; and Service Tax @ 10.3%); Capital Goods received last year Rs. 200 (Duty @ 12.36%), but no credit was availed on them.

(ii) Gross turnover includes completion and finishing services of Rs. 80 crores.

The company is in a dilemma whether to opt for abatement or go for full value and avail CENVAT credit. It engages you as a consultant to advice such that its service tax liability is minimized.

It is given that the above charges do not include the cost of land, as the said cost runs into thousands of crores on which the company doesn't want to pay service tax in any form.

Answer 10. (a)

The facts of this case are similar to that in UOI v. Shakti Ltd. [2008] 223 ELT 129 (SC), wherein it was held that the importer having surrendered its title to the goods could not withdraw the same. The importer couldn't be permitted to take advantage of its own fault. Since the goods had already been put to auction by the Department, therefore, the importer could neither be permitted to withdraw the surrender made earlier nor could it be allowed to re-export the goods.

Answer 10. (b)

Viewing threat to the domestic industry form the increased imports from china, section 8C of the Customs Tariff Act, 1975 was enacted. This Section provides that if, after requisite enquiry, the Central Government is satisfied that any article is imported into India from the People's Republic of China in such condition so as to cause or threatens to cause market disruption to domestic industry, it may impose specific product safeguard duty on such imports from China.

Market disruption shall be caused whenever imports of a like article of a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significantly cause of material injury, or threat of material injury, to the domestic industry. Threat of market disruption means a clear and imminent danger of market disruption.

Answer 10. (c)

Avail CENVAT credit under CENVAT credit Rules, 2004 :

	Rs. In crores
Gross turnover of the company	2,000.00
Service tax thereon @ 10.3%	206.00
Less : CENVAT credit on materials [800 crores × 8.24%]	65.92
CENVAT credit on input services [400 crores x 10.3%]	41.20
CENVAT credit on capital goods [200 crores x 12.36%, since no credit was availed in the year of receipt, the same may be availed of in the next year fully]	24.72
Net service tax liability	74.16

Avail abatement @ 67% under Not. No. 1/2006 credit under CENVAT credit Rules, 2004 :

	Rs. In crores
Gross turnover of the company	2,000.00
Less : Completion and finishing services to various clients – taxable under this service, however, not eligible for abatement under Not. No. 1/2006-ST. Hence, excluded and considered/ included separately in value.	80.00
Gross amount charged (inclusive of materials, etc.)	1,920.00
Less : Abatement @ 67% under Not. No. 1/2006-st (since the gross amount charged doesn't include cost of land, hence, abatement is 67%)	1,286.40
Taxable turnover (after abatement)	633.60
Add : Completion and finishing services to various clients (not eligible for abatement)	80.00
Total value of taxable service	713.60
Service tax thereon @ 10.3%	73.50

Advice : Since the service tax liability is less in case when abatement is opted for, hence, the company is hereby advised to opt for abatement in the coming year. Further, opting for abatement will save it from maintaining CENVAT credit records and disputes pertaining to eligibility of CENVAT credit.

Q. 11. (a) Can an exporter replace free of cost and without any authorization, spares related to a product exported earlier and found to be defective, within the warranty period ? Can the entire product exported earlier be replaced ? Can it be so done after the warranty period also?

(b) State briefly the provisions relating to rate of exchange applicable for customs valuation.

(c) 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 11. (a)

Warranty spares of plant, machinery etc. can be exported without authorization along with the main equipment or subsequently within warranty period, subject to approval of RBI [para 2.33 of FTP].

If goods exported were found to be defective/ damaged or otherwise unfit can be replaced free of charge by exporter. Such replacement is allowed provided the replacement goods are not under restricted category – para 2.37 of FTP. For export of gift/ spares/ replacement goods in excess of ceiling/ period, application can be made to DGFT – para 2.53 of HBP Vol. 1.

Answer 11. (b)

Exchange rate as applicable on date of presentation of bill of entry u/s 46 as prescribed by CBE&C (Board) should be considered.

The condition of 'grant of entry inwards' is not provided for this purpose. Bill of Entry can be presented 30 days before expected date of arrival of vessel. If bill of Entry is presented within that time and even if 'Entry Inward' is granted subsequently, rate of exchange prevalent on the date of presentation of bill of entry will be considered.

As per Explanation (a) to section 14 (2), the rate of exchange will be determined by CBE&C or ascertained in such manner as CBE&C may direct [Till 10-10-2007, the rate was prescribed under earlier section 14 (3) (a) of Customs Act].

Rate of exchange in case of warehoused goods – Relevant exchange rate for valuation is as in force on date on which bill of entry is presented u/s 46. Bill of Entry is presented u/s 46 of Customs Act either for home consumption or for warehousing. Hence, in case of warehoused goods, exchange rate prevailing on the date on which Bill of Entry is presented u/s 46 and not when Bill of Entry is presented u/s 68 for clearance from customs warehouse is applicable.

Answer 11. (c)

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 :–

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. 12. (a) What is Works Contract Tax? Can a works contractor opt for composition in respect of selected works contract? Is it essential to opt for composition scheme in respect of all the works contracts?

(b) M/s. Disha Ltd. incorporated on 1-4-2011, is engaged in the manufacture of a product covered by Notification No. 8/2003-CE. It expects the following during the year 2011-2012 :

(i) Clearances of such product : Rs. 700 lakhs (Excise Duty @ 8.24%)

(ii) Value of inputs to be used in manufacture : Rs. 140 lakhs (Excise duty @ 20.6%)

(iii) Value of input services to be used in manufacture : Rs. 140 lakhs (Service Tax @ 10.3%)

(iv) Value of capital goods purchased and received : Rs. 20 lakhs (Excise duty @ 10.3%)

Discuss whether M/s. Disha Ltd. should opt for the SSI-exemption during the year 2011-12. Show your workings and cite relevant case-laws, if any. All amounts are exclusive of duties/ taxes.

(c) An assessee availed Cenvat credit of duty paid on all inputs. Part of his final products was sold to another manufacturer. The manufacturer used them in his manufacture and then exported his final product. The goods were cleared under the Bond without payment of duty. Discuss the provisions in respect of the Cenvat credit which he had availed on inputs used in the final products which were exported?

Answer 12. (a)

Works Contract Tax is a tax on a deemed sale, namely, transfer of property in goods involved in execution of a Works Contract. In case of works contract, the property in goods is transferred by way of accretion or accession. Accordingly, as soon as the goods are used, there is a transfer and accordingly that is the point of levy.

Subject to notifications and conditions, a dealer may opt to pay lump sum tax in respect of:

- The entire turnover of sales effected by way of works contract;
- Any portion of the turnover corresponding to individual works contract

Answer 12. (b)

The solution is as follows :

	With SSI-Exemption	Without SSI- Exemption
Value of clearances of the final product	700.00	700.00
Less : First clearances upto Rs. 150 lakhs exempt	150.00	0.00
Dutiable clearances	550.00	700.00
Excise duty @ 8.24%	45.32	57.68
Less : Cenvat credit of inputs – Under SSI exemption, the inputs used in exempt clearances shall not be eligible for credit. The inputs used in dutiable clearances shall only be eligible as follows :		
[140 lakhs ÷ 700 lakhs] x 550 lakhs x 20.6%	22.66	28.84
CENVAT credit of input services (see note)	14.42	14.42
CENVAT credit of capital goods (100% credit is available in the year of receipt)	2.06	2.06
Total excise duty payable	6.18	12.36

Suggestion : Since the net excise duty payable shall be less in the case of SSI-exemption, hence, it is suggested that Disha Ltd. should opt for SSI-exemption during the financial year 2011-12.

Note : Input service credit available even during SSI-exemption [Vallabh Vidyanagar Concrete Factory v. CCEx. [2010] 18 STR 271 (tri.-Ahmd.)] : The notification no. 8/2003-CE specifically provides for denial of credit of duty paid on inputs, but does not provide for denial of Cenvat credit on input service. In respect of capital goods also, the credit is allowed even during the period of exemption to SSI manufacturers and this is because notification does not provide for denial of Cenvat credit on capital goods. In absence of any such restriction in the notification no. 8/2003-CE in respect of input services, a unit availing of SSI-exemption is eligible for the cenvat credit of service tax paid on input services.

Answer 12. (c)

From first manufacturer's perspective (assessee) :

(i) He has sold the goods on payment of duty, by claiming credit on inputs.

(ii) He has not exported, nor has he manufactured the export goods. He has only supplied final product which are used by the manufacturer exporter for manufacture of export goods.

(iii) Therefore, the first manufacturer is not an exporter, hence, he is not eligible for any refund or rebate in respect of duty paid on goods sold to the manufacturer exporter.

From second manufacturer's perspective (exporter or manufacturer exporter) :

(i) He has procured inputs on payment of duty, but exported without payment of duty.

(ii) He can –

1. Claim refund on Cenvat credit under Rule 5 of Cenvat Credit Rules, or
2. Claim rebate of duty paid as inputs under rule 18 of Central Excise Rules read with Notification No. 20/2004 dated 6.9.2004.

Q. 13. (a) Manish Ltd. imported a machine at a FOB value of Rs. 20,00,000. This sum includes Rs. 3,50,000 attributable to post-importation activities to be carried out by the seller. Manish Ltd. had supplied raw material worth Rs. 8,00,000 to the seller for the manufacture of the said machine. The goods were imported by vessel and actual cost of transport is Rs. 1,20,000. The importer has also paid demurrage charges Rs. 7,250 and lighterage and barge charges Rs. 20,000, in addition to said Rs. 1,20,000. The importer also paid Rs. 32,000 for transportation of goods from port of entry to Inland Container Depot. The actual cost of insurance is unascertainable. Compute assessable value.

(b) M/s. LG International exported goods from three different destinations : Mumbai Sea Port, Mumbai Airport & Pune. It has received three show-cause notices as detailed below :

Sl No.	*SCN No. and date*	*Amount (Rs.)*	*Issued by (Commissionerate)*
1.	**No. 51/2011 dated 5-6-2011**	**2,10,658**	**Deputy Commissioner Mumbai Customs (Sea)**
2.	**No. 52/2011 dated 5-6-2011**	**1,50,845**	**Deputy Commissioner of Customs, Pune**
3.	**No. 53/2011 dated 5-6-2011**	**2,89,623**	**Deputy Commissioner Mumbai Customs (Air)**
	Total liability	**6,51,126**	

M/s. LG International seeks to prefer an application before the Settlement Commission for the settlement of this case involving Rs. 6,51,126. Advise on admissibility or otherwise of the application.

(c) A beauty parlour charges Rs. 80,000 from a client for providing beauty treatment service, the break up of the bill is as follows :

Labour and facility charges	**Rs. 40,000**
Value of cosmetics and toilet preparations consumed in providing the service	**Rs. 30,000**
Value of cosmetics and toilet preparations sold to the client	**Rs. 10,000**

Compute the amount of service tax to be charged from the client.

Answer 13. (a)

Computation of Assessable Value

		Amt. in Rs.
FOB Value		20,00,000
Add :	Adjustment under Rule 10(1)for raw material supplied by Manish Ltd.	8,00,000
Less :	Amount attributable to post-importation activities	3,50,000
	Transaction value	24,50,000
Add :	Actual cost of transport (1,20,000 + 7,250 + 20,000)	1,47,250
Add :	Cost of Insurance @ 1.125% of FOB value, as the same is not ascertainable	22,500
	CIF Value	26,19,750
Add :	Landing charges @ 1%	26,198
	Assessable value	**26,45,948**

Note :

(i) It has been assumed that the amount attributable to post-importation activities is not payable as a condition of the sale of imported goods and hence, the same is not includible in assessable value.

(ii) Demurrage charges, lighterage and barge charges form part of cost of transport as per Explanation to Rule 10 (2) and are, therefore, includible in assessable value. However, cost of transportation from port of entry to Inland Container Depot do not form part of cost of transport as per Rule 10 (2).

Answer 13. (b)

The issue involved in this question is whether in case of three SCNs each involving an amount of duty of less than Rs. 3 lakhs, a single application for settlement can be filed when the total of such amounts exceeds Rs. 3 lakhs. The same issue came for consideration in OptiGrab International v. Govt. of India [2010] 253 ELT 722 (Mad.) wherein it was held as follows :

(i) As per the first proviso to Section 127-B of the customs Act, the Applicant can file an application for settlement if a show cause notice has been issued and the admitted duty liability exceeds Rs. 3 lakhs, which means for each and every application there should be a notice and the additional duty liability admitted should be more than Rs. 3 lakhs for each and every application.

(ii) In the instant case, M/s. LG seeks to file a common application in respect of three show cause notices issued to it by three different Commissionerates. The word 'case', as defined u/s 127A(b) of the Act, means 'any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of Scetion 127 is made'. Thus, Section 127-A(b) does not speak about multiple proceedings before multiple adjudicating authorities.

In the present case, three show cause notices were issued which were answerable to three different adjudicating authorities before three different Commissionerates and as such the cases covered in the three show cause notices are only three different cases and therefore, they cannot be treated as one single case and cannot be clubbed. Since the individual SCNs are of duty amount less than Rs. 3 lakhs, therefore, no application for settlement can be field in respect thereof.

Answer 13. (c)

The labour and facility charges are liable to service tax. The value of cosmetics and toilet preparations consumed in providing the service forms intrinsic part of the value of service. The materials consumed during the provision of service form part of the cost of that service. Hence, the value of consumed materials will be included in the value of service. However, the value of cosmetics and toilet preparations sold to client will be exempt under notification no. 12/2003 on the fulfillment of conditions specified therein.

Hence, the value of taxable service = 40,000 + 30,000 = Rs. 70,000, the service tax on which at the rate of 10.3% amounts to Rs. 7,210, which should be charged in the bill.

Q. 14. (a) Explain the provisions of vexatious seizure as given u/s 22 of the Central Excise Act, 1944.

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

(c) What are the documents required for filing the claim for rebate of Central Excise duty by an exporter of the excisable goods?

Answer 14. (a)

Section 22 of the Central Excise Act provides that if any Central Excise or other officer exercising powers under this Act or under the rules made thereunder –

(i) Without reasonable ground of suspicion searches or cause to be searched any house, boat or place;

(ii) Vexatiously and unnecessarily detains, searches or arrests any person;

(iii) Vexatiously and unnecessarily seizes the movable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(iv) Commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty,

Then, for every such offence, such officer shall be punishable with fine which may extend to Rs. 2,000. Moreover, any person who willfully and maliciously gives false information and so causes an arrest or a search to be made under this Act shall be punishable with fine which may extend to Rs. 2,000 or with imprisonment for a term which may extend or two years or with both.

Answer 14. (b)

Section 143A authorizes AC/DC of Customs to permit clearance of certain materials without payment of duty.

The materials are imported under an Import Licence belonging to the category of the Advance Licence granted under the Imports and Exports (Control) Act, 1947, subject to the condition that the goods are exported within the specified time mentioned in the said licence.

On export of the goods, the duty payable on the imported goods are to be adjusted against the duty drawback admissible to the exported goods.

If however, the duty (import duty) cannot be adjusted due to failure of meeting the export obligation, the importer has to pay such duty along with simple interest @ 12% p.a., from the date of grant of permission u/s 143A till the date of actual payment.

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

Answer 14. (c)

The following documents shall be required for filing claim of rebate of excise duty –

(i) A request on the letterhead of the exporter containing rebate claim, date and number of the ARE-1 and invoice and amount of rebate on each ARE-1 and its calculations;

(ii) Original copy of the ARE-1;

(iii) Invoice issued under Rule 11 of the Central Excise Rules, 2002;

(iv) Self attested copy of Shipping Bill;

(v) Self attested copy of Bill of Lading; and

Disclaimer Certificate in case where claimant is other then exporter.

Q. 15. (a) Sagar Ltd., a manufacturer of sugar, was directed by the Central Government to maintain buffer stock of 3790 MT of sugar for specified period of free sale of sugar. To compensate the assessee, the Government extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar. Department alleged that amount received by the assessee as buffer subsidy was covered within the definition of 'Storage and Warehousing' services and was, therefore, liable to service tax. Discuss.

(b) X Ltd. is manufacturing goods in the brand name of another, but the product is entirely different. The director wishes to avail SSI exemption. Should it be granted the exemption?

(c) The assessee imported a second had Automation Transfer Honing Machine at a declared assessable value of Rs. 41 lakhs. Department opined that transaction value u/e 14(1) is acceptable only if it is the price at which such or like goods are ordinarily sold or offered sale, and since it was not in this case, hence, the transaction value was rejected and assessment was made as per residual method under Rule 9 of the Customs Import Valuation Rules at Rs. 136 lakhs.

Answer 15. (a)

Service tax can be levied only if service of 'Storage and Warehousing' is provided. Nobody can provide service to himself. In the present case, the assessee stored the goods owned by himself. After the expiry of storage period, the assessee was free to sell to the buyers of its own choice. The assessee has stored goods in compliance to directions of government of India issued under Sugar Development Fund Act, 1982. The assessee has received subsidy not on account of services rendered to Government of India but has received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. The act of assessee cannot be called as rendering of services.

Just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the assessee became 'Storage and Warehouse keeper' nor the Government of India became their client in this regard. The storage of specific quantity of free sale sugar cannot be treated as providing 'Storage and Warehousing' services to the Government of India.

Hence, the department's contention was not correct in law. [CCEx v. Nahar Industrial Enterprises Ltd. [2010] 19 STR 166 (P&H)].

Answer 15. (b)

SSI exemption can be availed if the company gets the brand name registered in its own name. CBEC vide their letter no. 213/41/88-cx,6, dated 30.12.1988 had clarified that as per section 8 of Trade and Merchandise Marks Act, 1958, a trademark need not be necessarily registered in respect of all goods.

It is possible and permissible to have same trade mark/brand name for different classes of goods owned by different persons.

However, Supreme Court in CCE vs. Rukmani Pakkwell Traders (2004) (SC) has held that this circular applies only if there are more than one registered owners in respect of same brand. The circular does not apply when brand is unregistered.

The exemption is not available as brand name of other is used.

Answer 15. (c)

Rule 12 of the Customs Imports valuation rules empowers the officer to raise doubts on the truth or accuracy of the declared value based on various reasons including significantly higher value of identical or similar goods; The proper officer should call for the documents and evidence and record his reasons for rejecting the transaction value. Unless the reasons are recorded for rejecting the transaction value, the transaction value shall be acceptable. If the department alleges undervaluation, it must make detailed inquiries, collect material and adequate evidence, in view of the above, since the Department didn't have evidence to prove that the value declared by the assessee was not true/ accurate, hence, the transaction value declared by the assessee was acceptable.

Q. 16. (a) The assesse club was registered under Service Tax under the category of "Health and Fitness Service" under which the services provided by health club and fitness centre were liable to service tax. It was charging and paying service tax, but, subsequently filed refund claim contending that since it was providing service to own members, hence, it was not liable to service tax on principle of mutuality.

(b) Compute the VAT liability of Mr. Abhishek Bachhan for the month of February 2011, using the 'Invoice method' of computation of VAT.

Purchases from the local market (includes VAT @ 4%)	**Rs. 72,800**
Storage cost incurred	**Rs. 1,250**
Transportation cost	**Rs. 2,250**

Goods sold at a margin of 5% on the cost of such goods VAT rate on sales 12.5%.

(c) Find assessable value If machinery is sold for Rs. 1,00,000 by the machinery manufacturer. On customer's demand, a lubricant is purchased & sold for Rs. 7,500 (purchase cost Rs. 6,250). Lubricant is required for maintenance of machinery.

Answer 16. (a)

The assessee-club had employed various who were engaged in provision of health and fitness services to the members. The members were being charged fee and out of the fees so collected, the employees were paid their salaries. Accordingly, the assessee-club was a health club/ establishment liable to service tax. Every club will have members to whom the club provides various services and if services provided to members held outside the scope of 'health club and fitness centre', then the charge of service tax will be rendered nugatory.

Further, when the assessee was a health club, specifically covered under 'health and fitness service', the service could not be classified as 'club or association service'.

Hence, the service provided by the assessee-club is liable to service tax. [Century Club v. CST [2010]17 STR 337 {Kar.)]

Answer 16. (b)

Computation of VAT and invoice value

	Rs.
[Cost of local materials including VAT (VAT on local materials purchased inside the state is eligible as input credit, hence, the same doesn't form part of cost. Accordingly, cost of local materials = 72800 × 100 ÷ 104]	70,000
Storage cost and transportation cost = 1,250 + 2,250	3,500
Total Cost	73,500
Add : Profit margin @ 5% on the cost of such goods	3,675
Total Sale Price	77,175
Add : VAT @ 12.5%	9,647
Total Invoice Value	86,822
VAT payable :	
VAT on sales	9,647
Less : VAT on local materials [70,000 × 4%]	2,800
Net VAT payable	6,847

Answer 16. (c)

In the given case lubricant is not an integral part of machinery. But it is arranged at the request of the customer. Hence, sale of lubricant is a separate transaction from the sale of machinery. Therefore, sale of lubricant will not form part of assessable value. Therefore, assessable value as per section 4(1)(a) is Rs. 1,00,000.

Q. 17. (a) Mani Ltd. was a manufacturer of flash lights, dry cell battery etc. In the manufacture of flash lights, the assessee purchased aluminum slugs and produced aluminum cans of torch bodies by a process of extrusion. The Central Excise authorities sought to levy excise duty on such aluiminum cans. Aluminum cans had sharp edges & rugged in form so as to be used as a component. In making flash light cases this cans had to undergo various processes such as trimming, threading & redrawing after which they were further subjected to the process of needling, beading, anodizing & painting. The assessee contends that unless these processes are completed, the aluminum cans have no reasons to be subjected to the levy of Central Excise duty. How would you decide this controversy between the assessee & the Central Excise authorities? What law point involved in this issue?

(b) What are the conditions of valid sale and state what is not sale at the time of removal?

(c) Write a short note on re-entry of the goods cleared for export under bond but not actually exported.

Answer 17. (a)

The law point involved in this case is whether the goods manufactured or produced for the purpose of excise law, refers to articles which are capable of being sold to a consumer.

The aluminum cans as described in the question, can at best be said to be only an intermediate product in the manufacture of flash lights. They were crude and elementary in form and were incapable of being treated at that stage as a component in a flash light. In order to use the cans as a component in making flash light cases the can had to undergo various processes, after which they become a distinct and complete component capable of being used as flash light cases. In the elementary and unfurnished form it is difficult to say they attract any market. On similar set of facts the SC had in, Union Carbide India ltd. vs. Union of India and others (1986), held that aluminium cans in their unfurnished form could not be said to attract the market and hence could not be sold to be goods for the purposes of Central Excise Act.

Answer 17. (b)

Sale refers to transfer of ownership in goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration [Sec 2(h)].

Consideration can be paid by or to third party also. It need not be paid by the buyer himself. Sale includes Hire Purchase and Lease.

The following are not sale of goods at the place of removal for Central Excise i.e. factory gate –

(i) Transfer to depot / branch – No sale at the time and place of removal

(ii) Job work or processing – No sale of goods since 'Job work charges' cannot be considered as consideration for transfer.

(iii) Free samples / supply under warranty claims – No consideration

(iv) Hypothecation – There is no transfer.

Answer 17. (c)

The excisable goods cleared for export under bond or undertaking but not actually exported for any genuine reasons may be returned to the same factory. The following principles should be adhered to –

(i) Goods are returned to the factory within 6 months along with original documents (Invoice and ARE-1).

(ii) The assessee shall give intimation of the re-entry of each consignment in Form D-3 within 24 hours of such re-entry.

(iii) Such goods are to be stored separately at least for 48 hours from the time of intimation is furnished to Range Officer or shorter period if verification is done by the Superintendent of Central Excise in the manner specified by such Central Excise Officer.

(iv) The assessee shall record details of such goods in the Daily Stock Account and taken in the stock in the factory.

(v) The Superintendent of Central Excise will verify himself or through Inspector in charge of the factory, about the identity of such goods with reference to invoice, ARE-1 and the daily stock account in respect of 5% of intimations, within another 24 hours of receipt of intimation.

Q. 18. (a) Discuss whether advertisement and publicity charges borne by the dealer / buyers are to be excluded from the assessable value?

(b) An electricity company generates electricity by using coal. In the process, cinder (unburnt coal) is left as the residue. Is the duty of excise chargeable on such cinder?

(c) Compute the duties payable by a 100% EOU from the following information in respect of excisable goods cleared by it to Domestic Tariff Are on 31-08-2011 :

(i) Assessable value under excise Law = Rs. 90,000 (Assessable value under Customs Law = Rs. 2 lakhs)

(ii) Basic customs duty (net) – 10%

(iii) Excise duty on like goods manufactured in India – 10%

(iv) Additional duty of customs u/s 3(5) of Customs Tariff Act 1975 on similar goods – 4%

(v) Education cess – 2% and Secondary and Higher Education Cess – 1%

Assume that the goods are not liable to VAT in India. The goods have been removed in accordance with the policy and procedures applicable to the EOU, after obtaining requisite permissions.

Also determine the quantum of Cenvat credit available to the buyer under proviso to Rule 3(7)(a) of the Cenvat Credit Rules, 2004?

Answer 18. (a)

As per the definition of 'transaction value' those advertising or publicity charges will be included in the assessable value, which the buyer is liable to pay to, or on behalf of, the assessee.

Therefore when advertisement and publicity charges are borne by the dealer on his own account then such charges will not be included in the assessable value as the transaction is on principal to principal basis and the dealer is not liable to pay such charges to or on behalf of the manufacturer.

Where there is a written agreement between the manufacturer and the dealer as a result of which the dealer is under an obligation to incur advertisement and publicity charges, then, the cost of such charges will be included in the assessable value.

The Department has opined that where the dealings are on principal-to-principal basis and there is an agreement either written or oral, that the buyer will incur certain expenditure for advertising, then, the cost of such advertisement and publicity will be includible in the assessable value. Moreover, where the brand name/ copyright owner gets his goods manufactured from outside (on job-work basis or otherwise), the expenditure incurred by the brand name/copyright owner on advertisement and publicity charges, in respect of the said goods will not be added to the assessable value, as such expenditure is not incurred on behalf of the manufacturer (Assessee).

Answer 18. (b)

The Apex Court in UOI v. Ahmedabad Electricity Co. Ltd. [2003] 158 ELT 3 (SC) has held that excise duty is an incidence of manufacture. For a product to be excisable it should have gone through the process of manufacture. Since coal is used as a fuel and not as a raw material in the end product therefore cinder,

which is produced as a result of burning coal, cannot be said to have gone through any process of manufacture resulting in the emergence of the end product. Further, as a result of manufacture a new and different article having a distinctive name, character or use must come into existence. Burning of coal does not amount to manufacture, as cinder produced as a result of the burning of coal is not a new product. By burning, coal is just reduced to an inferior quality coal, which is of no use in the furnace or boiler. Thus, cinder cannot be said to have gone through any process of manufacture and therefore cannot be subject to levy of excise duty.

Answer 18. (c)

Proviso to section 3(1) of the Central Excise Act, 1944 provides that excise duty leviable on DTA sales by 100% EOU would be equal to customs duties leviable on like goods imported into India.

It has been held in Sarala Performance Fibers Ltd. v. CCEx [2010] 253 ELT 203 (Tri.- Ahmd.] that education cess shall not be added thrice. Once the customs duty is determined and education cess is computed on the whole of the customs duty, there is no question of the addition of the education cess. The customs duty (including the education cess thereon) is the final excise duty payable by the assessee-EOU as per proviso to section 3 of the Central Excise Act, 1944. The said section 3 deems excise duty = customs duty, hence, after computation of the customs duty, the third time addition of the education cess need not be made.

After providing 50% exemption from basic customs duties and 100% exemption from section 3(5) duty, the customs duties leviable on like goods imported into India will be computed as follows –

		Amount in Rs.
Assessable value		2,00,000.00
Add : Basic customs duty @ 5% (after 50% exemption)	[1]	10,000.00
Total for levy of section 3(1) duty		2,10,000.00
Add : Additional duty of customs u/s/ 3(1) equal to excise duty @ 10%	[2]	21,000.00
Add : Education cess on excisable goods @ 2% of [2]	[3]	420.00
Add : Secondary & Higher education cess on excisable goods @ 1% of [2]	[4]	210.00
Add : Education cess and SHEC on imported goods @ 3% on [1+2+3+4]	[5]	948.90
Total for levy of additional duty of customs u/s 3(5)		2,32,578.90
Additional duty of customs u/s 3(5) @ 4% (since goods are not liable to VAT in India, therefore, this duty will not be exempt)	[6]	9,303.16
Excise duty under proviso to section 3(1) = Total Customs duties (1+2+3+4+5+6)		41,882.06

Cenvat credit available to the buyer of these goods : As per proviso to Rule 3(7)(a), the quantum of Cenvat credit available to the buyer shall be the aggregate of the following –

	Amount in Rs.
Additional customs duty u/s 3(1) of CTA equal to excise duty (i.e. item [2])	21,000.00
Additional customs duty u/s 3(5) of CTA (i.e. item [6])	9,303.16
Education cess on excisable goods [i.e. item [3])	420.00
Secondary and higher education cess on excisable goods (i.e. item [4])	210.00
Total CENVAT credit available **	30,933.16

****Note :** In short, the credit of basic customs duty and 'EC & SHEC on imported goods' shall not be available. Therefore, the credit can be computed by deducting items [1] and [5] from the total excise duty.

The credit of additional duty of customs specified in section 3(5) of the Customs Tariff Act, 1975 shall also be available as it is one of duties specified in Rule 3(1) of the Cenvat Credit Rules, 2004 and Rule 3(7)(a) also provides the credit of additional duty referred to in section 3(5) of the Customs Act, 1975.

Q. 19. (a) Mr. Amar is a registered dealer and gives the following information. You are required to compute the net tax liability and total sales value under the Value Added Tax :

Amar sells the product to dealers in his state and in other states.

The profit margin is 12% of cost of production and VAT rate is 12.5% of sales.

(i) Intra state purchase of raw materials Rs. 3,00,000/- (excluding VAT @ 4%).

(ii) Purchases of raw materials from an unregistered dealer Rs. 1,00,000/- (including VAT @ 12.5%).

(iii) High seas purchases of raw materials are Rs. 1,85,000 (excluding customs duty @ 10%).

(iv) Purchases of raw materials from other states (excluding CST @ 2%) Rs. 80,000.

(v) Transportation charges, wages and other manufacturing expenses excluding tax Rs. 1,50,000.

(vi) Interest paid on bank loan Rs. 60,000.

(b) Whether export service provided by a service provider is excluded for the purpose of payment of service tax?

(c) Ms. Sarika, a registered service provider did not render any services during the financial year 2010-11. Whether she is required to file service tax return?

(d) Explain how drawback is allowed on goods imported for personal use and subsequently re-exported.

Answer 19. (a)

Computation of Total turnover and VAT liability of Mr. Amar :

Particulars	**Amount Rs.**
Intra state purchases of raw materials [Since, credit of Rs. 12,000 would be available, it will not be included in cost of input]	3,00,000
Raw materials purchased from an unregistered dealer [Since, credit of input tax would not be available, it will be included in cost of input]	1,00,000
High seas purchases of raw materials (Rs. 1,85,000 + Rs. 18,500) [Since, credit of customs duty of Rs. 18,500 would not be available, it will be included in cost of input]	2,03,500
Raw materials purchased from other states (Rs. 80,000 × 102%) [Since, credit of CST of Rs. 1,600 would not be available, it will form part of cost of input]	81,600
Transportation charges, wages and other manufacturing expenses	1,50,000
Interest paid on bank loan shall not be considered	—
Total cost	8,35,100
Add : Profit margin @ 12%	1,00,212
Sales price of goods or turnover	9,35,312
Output VAT @ 12.5% on Rs. 9,35,312	1,16,914
Less : Input VAT	12,000
Net VAT liability	1,04,914

Answer 19. (b)

Yes, export of service is exempt from payment of service tax if services are exported in accordance with the Export of Services Rules, 2005. However, service provided to an exporter is not excluded for the purpose of payment of service tax. The person liable to pay service tax under sub-section (1) or sub-section (2) of section 68, shall pay service tax as applicable on the specified services provided to the exporter and used for export of such goods, and such person shall not be eligible to claim exemption for the specified service.

Answer 19. (c)

Every assessee shall file a half yearly return in Form ST-3. Even if there is no service provided during a half year, a Nil return has to be filed. Therefore, Ms. Sarika is required to file a service tax return.

Answer 19. (d)

In respect of a motor car or goods imported by a person for his personal and private use, drawback of duty shall be calculated by reducing the import duty paid in respect of such motor car or goods by 4%, 3%, 2.5% and 2% for use for each quarter or part thereof during the period of first year, second year, third year and fourth year respectively.

Where the period aforesaid is more than 2 years, drawback shall be allowed, only if the Board, on sufficient cause being shown, has in that particular cse extended the period beyond 2 years.

Further, no drawback shall be allowed if such motorcar or goods has or have been used for more than 4 years.

Q. 20. (a) Determine the excise duty payable u/s 4 of the Central Excise Act, 1944 from the following information :

Particulars	Amount
Price of machinery excluding taxes and duties	6,00,000
Installation and erection expenses	25,000
Packing charges (primary and secondary)	13,000
Design and engineering charges	4,000
Cost of material supplied by buyer free of charge	10,000
Predelivery inspection charges	850

Other information :

(i) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.

(ii) Bought out accessories supplied along with machinery valued at Rs. 7,250.

(iii) Central Excise Duty rate 8% and cess as applicable.

(b) A manufacturer purchased certain inputs from Mr. Bimal. The assessable value was Rs. 30,000 and the Central Excise duty was calculated at Rs. 4,944 making a total amount of invoice at Rs. 34,944. However, buyer-manufacturer paid only Rs. 31,250 to Mr. Bimal in full settlement of this bill. How much Cenvat credit can be availed by manufacturer and why?

(c) The assessee-importer certain goods from a foreign supplier, who is holding 30% equity in assessee company. The department has rejected the transaction value contending that the price was influenced by relationship. Is the action of the customs department justified ? Explain with reference to decided case law (s).

Answer 20. (a)

Computation of amount of Excise Duty

Particulars	Rs.	Reasoning
Price of machine	6,00,000	Net of taxes and duties
Machine installation expenses	—	Installation expenses are not includible in AV. Hence not added. Thermax Ltd. 99 ELT 481 (SC)
Packing	13,000	Packing charges are includible in AV
Design and engineering charges	4,000	Essential for purpose of manufacture and hence included in AV
Cost of material supplied by buyer free of charge	10,000	Deemed to be money value of additional consideration
Predelivery inspection charges	850	Included in AV. Costs can be incurred at any time as per the definition of Transaction value. Therefore, cost incurred just before removal also covered.
Bought out accessories supplied along with the machine	—	Supply of optional bought out accessory is a trading activity and hence duty is not payable on it.
Total	6,27,850	
Less : Cash discount [2% × 6,00,000]	12,000	Deductible if actually passed on to buyer. Circular No. 643/34/2002 – CX dated 01.07.2002
Assessable value	6,15,850	
Excise duty @ 8%	49,268	
Add : Education cess @ 2%	985	
Add : Secondary & Higher Education Cess @1%	493	
Total duty payable	50,746	

Answer 20. (b)

It has been clarified vide Circular No. 877/15/2008-CX., dated 17-11-2008 that the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise. It may however be confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price. However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit.

Since the manufacturer has taken credit of duty shown in the invoice and there has not been any reduction of duty subsequently, therefore, the manufacturer is entitled to the Cenvat credit on the entire duty paid on the price initially invoiced.

Therefore, the fact of payment of Rs. 31,250 only by the buyer will not alter the situation so long as Mr. Bimal has paid duty equal to Rs. 4,944 on the goods. Accordingly, the manufacturer-buyer can claim Cenvat credit of Rs. 4,944 in respect of duty on such goods.

Answer 20. (c)

The facts of this case are similar to that in CC v. Initiating Explosives systems (I) Ltd. [2008] 224 ELT 343 (SC), wherein it was held by the Supreme Court that Rule2(2) of the customs Import Valuation Rules, 2007 provides that persons shall be deemed to be 'related' if one of them directly or indirectly controls the other. Though the word 'control' has neither been defined anywhere under the said rules nor under the Customs act, however, in ordinary sense, the control is established when one enterprise holds at least 51% of the equity shareholding of the other company. Since, in this case, the exporter company holds only 30% of the equity of the assessee-importer, therefore, it cannot be said that the exporter-company controls the assessee-importer. Accordingly, the assesse-importer and the exporter company are not 'related' to each other.

In view of what has been stated above, the department's action is not sustainable in law.

Q. 21. (a) ABC Ltd. does not effect sales of its goods at ex-factory. Goods are sold only from Depots/ branches situated away from the factory and costs are incurred for transport of goods from factory to depots. ABC Ltd., the assessee and its customers are not related persons and price is the sole consideration for sale. What is the basis for determining the value of clearances ex-Depot/ branches?

(b) M/s. Ranjan & Co., a provider of taxable service, purchased computers and computer peripherals on 1-4-2011 at Rs. 11,03,000 (inclusive of excise duty of Rs. 1,03,000) for use in providing taxable service. Assuming that rate of excise duty is 10.3% and that the cenvat credit attributable on such computers was duly accounted for on the same day, you are required to compute the amount of Cenvat credit to be reversed in the following cases—

(i) If the computers are removed, after being used, on 3.4.2012 at Rs. 8 lakhs (all inclusive)

(ii) If the computers are removed, after being used, on 2.8.2015 at Rs. 2.5 lakhs (all inclusive)

(iii) If the computers are removed, after being used, on 3.3.2016 for Rs. 90,000.

(c) Mr. Pradhan of Rajasthan started business w.e.f. 1.1.2011 and got himself registered with VAT authorities. He presents the following details for the month of January, 2011 –

	Rs.
Purchases from Rajasthan	10,00,000
Purchases from Delhi	4,00,000
Sales within Rajasthan out of purchases from Rajasthan	8,00,000
Sales within Rajasthan out of purchases from Delhi	1,00,000
Sales to dealer of Maharashtra out of purchases within Rajasthan	4,00,000
Sales to dealer of Maharashtra out of purchases from Delhi	2,00,000

Compute tax payable by Mr. Pradhan. Aforesaid amounts are exclusive of taxes.

VAT rate is 4%. CST rate is 2%.

Answer 21. (a)

The valuation of excisable goods sold from depot, premises of consignment agent or any other place or premises, shall be as under –

(i) The normal transaction value prevalent at the depot, premises of consignment agent etc. and it shall be taken at the time when the goods are transferred from the factory to the depot, etc.

(ii) The normal transaction value which is to be taken is the transaction value of the goods sold in greatest aggregate quantity to the buyers not being related to the assessee and such price is the sole consideration for sale.

(iii) If the normal transaction value cannot be determined at the time when the goods are transferred to the depot, then, the price nearest to the time of such transfer shall be taken.

In case the manufacturer is transferring the goods for the first time to depot or the premises of the consignment agent or any other place or premises from where they are to be subsequently sold, the assessee has to assess the goods so transferred provisionally under Rule 7 of the Central Excise Rules, 2002. Subsequently when the goods are actually sold from the depot or the premises of consignment agent, the final assessment will be made and the manufacturer will have to pay the differential duty or will be entitled to refund as provided in Rule 7 of the Central Excise Rules, 2002.

Answer 21. (b)

The amount of Cenvat credit to be reversed shall be computed as follows :

(i) No. of quarters = 1.4.2011 to 3.4.2012 = 5 quarters, for which the credit not reversible = 10% × 4 (for first year) + 8% for first quarter of 2nd year = 48%. Hence, the balance credit being 52% of the total excise duty of Rs. 1,03,000 shall be revrsed i.e. amount payable = 1,03,000 × 52% = Rs. 53,560.

(ii) No. of quarters = 1.4.2011 to 2.8.2015 = 18 quarters (4 years + 2 quarters of 5th year), for which the credit not reversible = 10% × 4 (for first year) + 8% x 4 (for 2nd year) + 5% × 4 (for 3rd year) + 1% × 6 (for 4th year and 2 quarters of year 5) = 98%. Hence, the balance credit being 2% of the total excise duty of Rs. 1,03,000 shall be reversed i.e. amount payable = 1,03,000 × 2% = Rs. 2,060

(iii) In this case, the computers are being removed after expiry of 5 years from 1.4.2011. Hence, the provisions relating to reversal under Rule 3(5) do not apply. Further, as per Rule 3(5A), when the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. Since M/s. Ranjan & Co. is a provider of taxable service, therefore, Rule 3(5A) doesn't apply to it. Hence, no payment is required to be made by M/s. Ranjan & Co.

Answer 21. (c)

The tax payable by Mr. Pradhan for the month is computed hereinbelow :

	Sales within Rajasthan (VAT)	**Sales outside Rajasthan (CST)**
Total sales	9,00,000	6,00,000
Gross VAT liability @ 4% & CST liability @ 2%	36,000	12,000
Input Vat credit available on purchases from Rajasthan @ 4%	36,000	4,000
Net tax payable	NIL	8,000
Excess VAT credit to be utilized against payment of CST**	4,000	

The VAT liability on sales within Rajasthan is Rs. 36,000 while the VAT credit availed on purchases within Rajasthan is Rs. 40,000. Hence, whole of the output tax of Rs. 36,000 will be paid out of the input tax credit of Rs. 40,000. The excess credit of Rs. 4,000 will be used for payment of CST on sale outside the State of Rajasthan. The balance amount of CST payable of Rs. 8,000 (12,000 – 4,000) will be paid in cash.

Q. 22. (a) Write short notes on Protective duty.

(b) Save Life Hospital imported certain medical equipments without payment of import duty under an exemption notification. The condition of the notification was that on an average 40% of outdoor patients will be provided free treatment. As the department found that the hospital has provided free treatment only to 39.80% outdoor patients, the hospital was directed to pay the customs duty leviable on the medical equipments. Hospital has contended, on the other hand, that the shortfall is only marginal and in any case the condition is to be satisfied during

the entire life of the medical equipments imported. Discuss whether the contention of the hospital is to be accepted by the department?

(c) Basudev Ltd. shifted its factory from Indore to Jabalpur and transferred all the available inputs and capital goods to the new site. The inputs, capital goods and the balance of unutilized Cenvat credit duly received and accounted for in the registers of the new unit.

The said balance of unutilized Cenvat credit transferred was Rs. 10,00,000. However, the quantum of Cenvat credit attributable to the inputs and capital goods so transferred to the new site was Rs. 7,50,000 only. The department raised the plea that the assessee was entitled to transfer only Rs. 7,50,000 of Cenvat credit and not the entire balance of unutilized credit of Rs. 10,00,000.

Explain, whether department's plea is justified in law.

Answer 22. (a)

As per section 6 and 7 of the Customs Tariff Act, 1975, protective duties are levied by Central Government on the recommendation of the Tariff Commission of India to ensure protection to domestic industries established in India, from bulk imports. Protective duty is imposed by the Central Government by introducing a Bill and getting it passed in the Parliament. It is deemed to have been specified in the First Schedule as the duty leviable in respect of such goods.

Duration of the protective duty is determined by the schedule itself. Thus, they will be effective till the date as mentioned in the schedule. The Central Government has the powers to reduce or increase such duty where it deems fit by a notification in the Official Gazatte and get the approval of the same in the Parliament.

Answer 22. (b)

Any amendment in an Act by way of Notifictaion is due to some reason behind it. There is an intention of the legislature behind issuing any notification for exempting any goods form the chargeability of duty and the same should not be tampered or interpreted in a manner different from the one intended by the legislature. In the instant case the medical equipments were exempted by way of notification on the condition that on an average 40% of outdoor patients will be provided free treatment. Now the exemption should be provided only if the assessee satisfies this condition. If the free treatment is provided to less than 40% of outdoor patients, as in the instant case it is only 39.80%, then the duty shall be leviable. There should not be any interpretation to the exemption condition except the one that is understood by its plain reading. Therefore, the assessee's contention that the condition is to be satisfied during the entire life of the medical equipments is absurd and fictitious. However, the difference being very minute, the assessee's intention to honour the exemption condition is justifiable and hence the exemption may not be denied by the assessing officer.

Answer 22. (c)

Unutilized Cenvat credit can be transferred if the manufacturer of final products or output service provider shifts his business to another site or transfers his business to another person. The condition for the same are as follows :

(i) Stock of inputs as such or in process, or the capital goods should be transferred along with the factory or business premises to the new site or ownership.

(ii) Inputs, or capital goods, on which credit has been availed of should be duly accounted for to the satisfaction of the DCCE/ACCE.

Cenvat credit rule does not mandate transfer of credit corresponding only to quantum of inputs transferred to new factory. Transfer of available credits along with inputs and capital goods in stock permitted [CCE vs. CESTAT 2008 (230) ELT 209 (Mad.)].

Hence, Basudev Ltd. is entitled to transfer the entire amount of unutilized credit of Rs. 10,00,000. The contention of the department is not valid in law.

Q. 23. (a) CTC Ltd., a manufacturer of cigarettes, has received a show cause notice alleging that the company has been clearing, without payment of excise duty, sticks of cigarettes as samples for test in the quality control laboratory within the factory premises. It was further alleged that the company did not maintain any account in respect of quantity of cigarettes removed. It has been argued by the company that no excise duty was leviable on samples of cigarettes drawn for test purposes, since the process of manufacture of cigarette is not completed until the same are packed as packing is a process incidental or ancillary to the process of manufacture of cigarettes and packing is done only after the samples sent are tested in laboratory. Comment on the following questions that fall for consideration :

(i) Whether the cigarettes removed for the purposes of test could be treated to be excisable goods manufactured and consequently liable to payment of excise duty?

(ii) Whether excise duty is leviable on the cigarettes destroyed during the process of testing in the laboratory?

(b) The process of commercial duplication by which a blank CD is transformed into software loaded marketable CD constitutes manufacturing or processing of goods. Explain briefly with the help of recent judicial pronouncement.

(c) What do you mean by buying commission? Whether service charges paid to canalizing agency will be included in the value to goods.

Answer 23. (a)

Comments are as follows :

(i) The facts of CTC Ltd. are similar to those, which have been decided by the SC in *ITC Ltd.* v. *CCEx.* [2003] 151 ELT 246 (SC), in which it was held that manufacture of cigarettes is completed when it emerges in the form of sticks of cigarettes, which are sent to the laboratory for quality control test. Sticks of cigarette, which are the end product of manufacture, are commercially known in the market and are capable of being sold as such before its removal for quality test. Packing of the cigarette cannot be said to be incidental or ancillary to the manufacturing process as cigarettes are fit for consumption even before packing, but the same may be incidental or ancillary to its sale only. Held sticks of cigarette, which are removed for the purpose of tests in the quality control laboratory situated within the factory premises, are liable to excise duty, as they are marketable and fit for consumption as such.

(ii) Since the company has not maintained accounts in relation to the destruction of cigarette sticks during the course of testing, we are of the opinion that excise duty will be leviable on the entire stock of cigarette sticks sent to the laboratory for quality control test.

Answer 23. (b)

It was held in *CIT* v. *Oracle Software India Ltd.* [2010] 320 ITR 546 (SC) that if an operation/ process renders a commodity fit for use for which it would otherwise not be fit, the operation/process would be 'manufacture'. In this case, the blank CD was an input. By the duplicating process undertaken by the assessee, the recordable media which is unfit for any specific use got converted into the programme which was embedded in the master media and thus the blank CD got converted into recorded CD by such an intricate process. The duplicating process changed the basic character of a blank CD dedicating it to a specific use. Without such processing, blank CD would be unfit for their intended purpose. Therefore, processing of blank CDs dedicating them to a specific use constituted 'manufacture'. The marketed copies of the CD were goods and the process in which they became goods was covered by 'manufacture or processing of goods'.

Answer 23. (c)

As per Interpretative Notes, 'Buying commission' refers to the fees paid by an importer to his agent for service of representing him abroad in purchase of goods being valued. The buying commission is not includible in the value of the imported goods as per rule 10(1)(a)(i).

Every commission is not a buying commission. The person must have acted as an 'agent outside India' of the importer in purchase of the goods. Therefore, service charges paid to the canalizing agent in India cannot be equated with 'buying commission' because a canalizing agent is neither an agent of the importer nor does he represent the importer abroad. Hence, the service charges paid to canalizing agent were includible in the assessable value [*Hyderabad Industries Ltd*. v. *UOI* [2000] 115 ELT 593 (SC)].

Q. 24. (a) A bill of entry was presented on 4th August 2011. The vessel carrying goods arrived on 11th August 2011. Entry inwards was granted on 13th August 2011, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to Rs. 5,00,000 was paid by the importer on 22nd August, 2011. Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were four holidays during the period from 14th August to 22nd August, 2011.

(b) Write a note on tax liability in cases of new services as per the Point of Taxation Rules, 2011.

(c) State whether the principle of 'unjust enrichment' shall be applicable in the following cases –

(i) Refund of duty paid on raw materials, which have been captively consumed.

(ii) Refund of an advance payment made in anticipation of importation of goods.

(iii) Refund of duty on car imported for personal use.

Answer 24. (a)

As per section 47(2), importer is liable to pay interest @ 15% p.a. if he fails to make payment within 5 days (excluding holidays) from the date of return of assessed bill of entry to him. The assessed bill of entry was returned to him, on 13th August and the duty was paid on 22nd August. After excluding holidays, the number of days from 14th August to 22nd August = 9 – 4 = 5 days. Since duty has been paid within time period of 5 days, no interest is payable u/s 47 (2).

Answer 24. (b)

Where a service is taxed for the first time, then –

(i) No tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable.

(ii) No tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of Service Tax Rules, 1994.

Rule 5 not applies to continuous supply of service : Rule 5 doesn't apply to a service covered by Rule 6 i.e. in case of continuous supply of service, provisions of Ruler 6 shall continue to apply.

Answer 24. (c)

The aforesaid issues have been discussed hereunder –

(i) Yes, it has been held in *UOI* v. *Solar Pesticides (P) Ltd*. [2000] 116 ELT 401 (SC) that the burden of duty can be passed on either directly or indirectly. In case the raw materials, on which the refund arises, have been captively consumed and the finished goods manufactured therefrom are sold, it is presumed that the incidence of duty has been passed on. Hence, the doctrine of 'unjust enrichment' shall be applicable to refund of duty paid on captively consumed raw materials also.

(ii) No. it was held in *United News of India* v *UOI* [2004] 168 ELT 442 (Del.) that any advance payment made in anticipation of importation of goods can be appropriated against the payment of duty only on the actual importation of goods into India, until then such amount cannot be regarded as 'duty' and shall be held by the Department in the capacity of the trustee. Further, in case of short landing of anticipated goods also, the amount representing such short landed goods cannot be regarded 'duty', as no importation of short-landed goods ever took place.

Hence, neither the time limit nor the bar of 'unjust enrichment' under section 27 shall apply to these cases.

(iii) No. section 27 specifically provides that if refund relates to duty paid on imports made by an individual for his personal use, then, such refund shall be granted to the assessee; and shall not be credited to the consumer welfare fund. Therefore, such refunds are out of the purview of doctrine of unjust enrichment.

Q. 25. (a) Which goods are not covered under VAT?

(b) The assessee, a manufacturer of ice-cream makers and Popcorn makers, used to avail of the benefit of SSI-exemption. The said goods were sold under their own brand name "Swetie". However, in case of sale to United Tele-Shopping (UTS) and Tele-Shopping Network (TSN), the supervisors of UTS and TSN used to examine the goods and affix a sticker thereon containing the names of UTS/TSN.

The Department denied SSI-exemption in respect of goods bearing the names/ symbols of UTS/TSN contending that the same amounts to affixation of brand-name so as to dis-entitle the exemption. Discuss.

(c) The goods manufactured by ABC Ltd., which were liable to duty @ 20.6%, have been exempted therefrom w.e.f. 1.3.2011. Its inputs are available at a fixed rate and are liable to excise duty @ 16.48%. On 1.3.2011, —

(i) Inputs (1,000 units) purchased for Rs. 1,16,480 (inclusive of duty) are lying in stock;

(ii) The stock under process (WIP) is 500 units (100% complete as to inputs);

(iii) Finished goods (1,250 units) are lying in stock (Input-Output ratio is 1:1) and

(iv) The balance in Cenvat receivable A/c. is Rs. 1,64,800.

The Department has demanded reversal of credit taken on inputs referred to above. However, the company contends that credit once validly taken is indefeasible and cannot be required to be reversed. Decide.

What would be your answer if the balance in Cenvat Receivable A/c. as on 1.3.2011 is Rs. 30,000.

Answer 25. (a)

Generally, all goods, including declared goods, are covered under the VAT-laws of respective States and, thus, get the benefit of input-tax credit. However, the following goods are outside the VAT are –

(i) Petrol, diesel, Aviation Turbine Fuel (ATF) or other motor spirit.

(ii) Liquor and

(iii) Lottery tickets.

These will continue to be taxed under the Sale-tax Act or any other state Act or even by making special provisions in the VAT Act itself at uniform floor rates decided by the Empowered Committee. Thus, the States may or may not bring these commodities under VAT laws.

However, it has been agreed that all these commodities will be subjected to 20% rate of tax.

Answer 25. (b)

The sticker containing names/ symbols of UTS/TSN were fixed after quality checking. Therefore, the same was a brand name used for the purpose of indicating a connection in the course of trade between the goods and UTS/TSN. Accordingly, the assessee was not entitled of SSI-exemption in respect of goods sold to UTS/TSN. [*Unison Electronics Pvt. Ltd.* v. *CCEx.* [2009] 235 ELT 206 (SC)].

Answer 25. (c)

It is well-established law that credit once validly taken is indefeasible and cannot be required to be reversed. – *CCEx*. V. *Dai Ichi Karkaria Ltd.* [1999] 112 ELT 353 (SC). But, the same is subject to the specific provisions of the Act or rules made thereunder. If the statutory provisions require reversal of credit in particular circumstances, the credit has to be reversed in accordance therewith.

Accordingly, in view of specific provisions of Rule 11(3) of the Cenvat Credit Rules, 2004, since the final products of ABC Ltd. have been absolutely made exempt from excise duty, therefore, the company shall have to pay an amount equal to Cenvat credit taken on inputs lying in stock or in stock and balance credit, if any, shall lapse. Accordingly, ABC Ltd. will have to pay amount computed as follows :

	Rs.
Inputs lying in stock (Credit = 1,16,480 × 16.48 ÷ 116.48) (Net purchase price, exclusive of excise duty per unit = 1,00,000 ÷ 1,000 units = Rs. 100 per unit)	16,480
Inputs in process (100 per unit x 500 units × 16.48%)	8,240
Inputs contained in finished goods lying in stock (100 per unit × 1,250 units × 16.48%)	20,600
Amounts to be paid by ABC Ltd.	45,320

The aforesaid amount can be paid by utilizing the balance in Cenvat Credit A/c. The balance credit = Rs. (1,64,800 – 45,320) = Rs. 1,19,480 shall lapse.

If the balance in Cenvat Receivable A/c. as on 1.3.2011 is Rs. 30,000, then, the manufacturer will have to pay in cash an amount = Rs. 45,320 – Rs. 30,000 = Rs. 15,320.

Q. 26. (a) A sum equivalent to 30 days purchase price of goods cleared on credit was kept by the assessee company as 'interest free fixed deposit'. There is no difference of sale price between cash sales and credit sales. The assessee Co. wants to know whether notional interest on fixed deposits should be added to the sale price for calculating excise duty. Give your advice to the assessee. Cite case study if any, in support of your answer.

(b) The assessee filed an application for settlement on 9.1.2011, while an adjudication order dated 25.12.2010 passed in respect of the said matter and dispatched by the department on 1.1.2011 was received by assessee after 9.1.2011 (i.e. after filing of application for settlement). The Department contended since the case was not 'pending' on the date of filing of application, as the adjudication order was passed before the date of filing of application for settlement, hence, the said application was not maintainable. Discuss.

(c) Discuss briefly whether input tax credit of the VAT paid on purchases of goods that are stock transferred is available or not.

Answer 26. (a)

No the notional interest on fixed Deposits should not be added to the sale price for calculating Excise Duty as the assessee company is not asking all the dealers to give security deposit but only from those who are availing credit facilities.

Excise Duty is levied on manufactured goods at the price paid by the buyer. The price paid in the present case is a uniform price collected from all buyers. No special consideration has been shown to dealers who had given the security deposit.

This view is also supported by the decision of Supreme Court of *VST Industries Ltd.* vs. *Collector of Central Excise* (1998).

It has also been clarified by the CBE&C (Circular No. 404/37/98. CX dated 22.6.98) that the notional interest on advances deposited by the wholesale buyers would be included for the purpose of determination of

assessable value if the deposit influences the fixation of the sale price either by way of charging a less price from or by offering a special discount to the buyer who has given the deposit.

Answer 26. (b)

The adjudication order was passed on 25.12.2010. The same was dispatched by the Department on 1.1.2011, while it was received by the assessee after 9.1.2011. Receipt of adjudication order is not relevant for the settlement of case; when the order has been passed (dated and signed) and the same has been sent to the assessee so as to be out of control of the adjudicating authority, the same ceases to be 'pending' before the adjudicating authority. The adjudication became complete and effective on 1.1.2011, when the order left the hands of adjudicating authority.

Since the matter was not 'pending' on 9.1.2011, hence, no application for settlement could be filed in respect thereof.

Therefore, the said application was not maintainable.

Answer 26. (c)

Inter State transfer do not involve sale and are therefore are not subjected to sales tax. The same position continues under VAT. However, tax paid on the purchases of goods which are stock transferred will be available as input credit after retention of 2% of such tax by the State Government.

Q. 27. (a) Amal extracted product A and product B from mines at Rs. 30,000 and Rs. 40,000 respectively and sold the same at 150% margin to Bimal (VAT rate is 4% on product A and 12.5% on product B). Bimal is a dealer operating under composition scheme who is liable to VAT @ 0.4% of turnover. Bimal used A & B as raw material; added 100% of cost of raw material towards manufacturing expenses and profits and sold the resultant product to the wholesaler, Kamal. Kamal sold the same to retailer Shyamal at 25% above cost (VAT rate is 4%). Shyamal sold the same to a consumer at 20% above cost (VAT rate is 4%).

Show the amount of VAT payable by each person.

(b) Should Service Tax be paid even, if it is not collected from the client or Service Receiver?

(c) Ms. Vasudha, received Rs. 2,00,000 by an account payee cheque, as advance while signing a contract for providing taxable service; she receive Rs. 6,00,000 by credit card while providing the service and another 5,00,000 by a pay order after completion of service on 15.2.2011. All three transactions took place during financial year 2010-11. She seek your advice about the liability towards value of taxable service and the service tax payable by her.

Answer 27. (a)

Computation of VAT payable by each person :

Rs.

Particulars	VAT on sales	VAT credit	Net VAT payable
Amal	15,500	No input tax	15,500
Bimal (Opted for Composition Scheme)	1,524	No credit	1,524
Kamal	19,050	No credit	19,050
Shyamal	22,860	19,050	3,810

Notes :

The VAT liability at each stage is shown below -

	Rs.
Cost to Amal (30,000 + 40,000)	70,000
Add : Profit of Amal @ 150% of cost	1,05,000
Sale price of Amal	1,75,000
Add : VAT [4% of (30,000+150% of 30,000) + 12.5% of (40,000+150% of 40,000)	15,500
Raw material cost to Bimal	1,90,500
Add : Margin for expenses and profits at 100% of raw material cost	1,90,500
Sale price of Bimal/ Cost to Kamal (Composite tax cannot be recovered)	3,81,000
Add : Profit margin @ 25%	95,250
Sale price of Kamal	4,76,250
Add : VAT @ 4%	19,050
Purchase price of Shyamal (inclusive of VAT)	4,95,300
Cost to Shyamal (net of VAT)	4,76,250
Add : 20% margin of Shyamal	95,250
Sale price of Shyamal	5,71,500
VAT @ 4% thereon	22,860

This illustration shows the effect of breakage of chain due to composition scheme. A single dealer who has opted for composition scheme in the chain of sale of a product would lead to increase in cost due to no input-VAT credit to him and no VAT-able invoice issued by him.

Answer 27. (b)

Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per Rule 2(1)(d) of the Service Tax Rules, 1994. This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. The gross amount collected will be deemed inclusive of service tax.

Answer 27. (c)

As per Explanation to section 67, "Gross amount charged" includes payment by credit card, cheque, deduction from account and any form of payment by issue of credit notes/ debit notes and book adjustment. Further, the expression "money" has been defined to include any cheque, pay order, currency, promissory note, letter of credit, draft, traveller's cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value.

Accordingly, the computation of service tax shall be as follows :	Rs.
Amount received through account payee cheque	2,00,000
Amount received by credit card	6,00,000
Amount received by pay order	5,00,000
Gross amount received during the year	13,00,000

Alternative I : The said amount is exclusive of service tax and Ms. Vasudha is not eligible for Small Service Provider Exemption [13,00,000 × 10.3%]	1,33,900

Alternative II : The said amount is inclusive of service tax and Ms. Vasudha
Is not eligible for Small Service Provider Exemption [13,00,000 × 10.3% ÷ 110.3%] 1,21,396

Alternative III : The said amount is exclusive of service tax and Ms. Vasudha
Eligible for Small Service Provider Exemption [13 lakhs – 10 lakhs] × 10.3% 30,900

Alternative IV : The said amount is inclusive of service tax and Ms. Vasudha
is eligible for Small Service Provider Exemption [13 lakhs – 10 lakhs] × 10.3% ÷ 110.3% 28,015

Q. 28. (a) IPL Ltd. is a manufacturer of Soft Drink, which is a commodity notified u/s 4A of the Central Excise Act, 1994 and the notified percentage of abatement is 30%. It sells soft drink in bottles to various retail shop-keepers and gives 20 bottles free along with purchase of every 100 bottles. The MRP indicated on each bottle is Rs. 190 per bottle. The transaction value is Rs. 150 per bottle. During, a month, M/s IPL Ltd. sold 1,20,000 bottles and gave away 24,000 bottles free to the retail shop-keepers. Compute the amount of excise duty payable by M/s IPL Ltd. Excise duty is 10%.

(b) Mention the circumstances in which the appellant is entitled to produce additional evidence before the Commissioner (Appeals).

(c) Bharat Ltd. filed the bill of entry in respect of an imported consignment on 20th May, 2011. The goods were found to be in order when examined on 25th May 2011. After payment of duty, the proper officer gave the out of charge order on 25th May 2011 itself. When the importers went to take delivery of the goods on 1st June 2011, they found the packages in torn condition and two packages had been pilfered. They filed refund claim in respect of the packages pilfered. The claim was rejected by the customs authority on the ground that pilferage had taken place after the grant of out of charge order. Decide with the help of decided case law, if any, whether rejection of the claim of the importers is in accordance with law.

Answer 28. (a)

It has been clarified vide Circular No. 238/28/2010-CX., dated 29-11-2010 that in view of decision in India Laboratories Pvt. Ltd. v. CCEx. [2007] 213 ELT 20 (Tri.-LB) quantity discount, bonuses etc. are applicable for the valuation of goods under section 4 of the Central Excise Act, 1944 and not in case of goods valued under Section 4A. it was held that sale is not a necessary condition for charging to excise duty; duty becomes payable (unless otherwise exempted) is respect of every removal of excisable goods.

In the present case, the sale is for the gross quantity (1,44,000 bottles) at the net price (Rs. 150 per bottle on 1.20 lakhs bottles) and claimed free supply (24,000 bottles) is not meant for the ultimate customer; and such quantity claimed to be given free (24,000 bottles) also carries MRP. Therefore, duty is to be discharged on the entire quantity including goods covered as "the quantity discount" i.e. 1,44,000 bottles on the basis of value arrived at under section 4A after giving the abatement provided for.

Accordingly, the computation of duty payable is as shown below : **Rs.**

No. of bottles on which duty payable	1,44,000
Retail sale price or MRP per bottle	190
Retail sale price of all bottles on which duty payable (1,44,000 × 190)	2,73,60,000
Less : Abatement @ 30%	82,08,000
Value (net of abatement)	1,91,52,000
Excise duty @ 10.3%	19,72,656

Excise duty is a levy on manufacture; and is payable on removal. Therefore, it is payable on free sample as well even if there is no sale. In this case, when a manufacturer sells more goods for a lesser price, then, excise duty is payable on all such goods. In case of Section 4, such duty shall be on transaction value (i.e. actual price net of discounts) or a value computed as per rules made thereunder; in case of section 3(2), it would be tariff value of goods removed; and in case of section 4A, it would be RSP less notified abatement of goods removed.

Answer 28. (b)

Rule 5 of the Central Excise /Customs (Appeals) Rules states that the appellant is not entitled to produce before the Commissioner (Appeals) any evidence whether oral or documentary, other than the evidence produced by him before the adjudicating authority except in the following circumstances –

(i) Where adjudicating authority has refused to admit evidence which ought to have been admitted, or

(ii) Where the appellant was prevented by sufficient cause from producing evidence, which he was called upon to produce by the adjudicating authority; or

(iii) Where the appellant was prevented by sufficient cause from producing, before the adjudicating authority any evidence, which is relevant to any ground of appeal; or

(iv) Where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

The Commissioner (Appeals) shall not take into consideration any such additional evidence unless the adjudicating authority has been allowed a reasonable opportunity –

(i) To examine the evidence or document or to cross-examine any witness produced by the appellant.

(ii) To produce any evidence/ witness in rebuttal of the additional evidence produced by the appellant.

The Commissioner (Appeals) shall record in writing reasons for admitting any such additional evidence.

Answer 28. (c)

It was held in *Zeneith Bearing Enterprises* v. *CC*, 1995 (75) ELT 801 (Tribunal) that once an out of charge order has been given, the legislature has intended that it is at their own risk and responsibility, in so far as the duty liability is concerned in respect of the pilferage. The 'loss' as a result of pilferage is covered only under section 13 and has specifically kept out from the purview of Section 23. If, after an order for clearance for home consumption, pilferage is noticed (though the goods were lying in the customs area and yet to be cleared for home consumption) remission cannot be granted under section 23; they are to be considered only under section 13. Any pilferage taking place after an order for clearance for home consumption i.e. out of charge has been made is not eligible for remission u/s 13.

Therefore, the rejection, by the customs authorities, of refund claim filed by the importers in respect of the pilfered packages is in accordance with law.

Q. 29. (a) An owner of imported goods, which have been warehoused, wants to do some manufacturing or other operations on such goods inside the warehouse. Explain the provisions under the Customs Act, 1962 for the same.

(b) Hair Care Ltd. manufactures hair oil. It is packed in pouches, each pouch containing 2.5 ml., 4 pouches (sachets) are sold in one packet. The net weight of each pouch, as also the net weight of the commodity in 4 pouches and the maximum rate is printed on the pouches. Examine whether the provisions of section 4A of the Central Excise Act, 1944 will apply for the valuation purpose.

(c) A 100% EOU has paid certain amount towards excise duty on capital goods while opting out of exemption scheme. Discuss whether such payment can be availed of as Cenvat credit by it.

Answer 29. (a)

Section 65 provides that the owner of any warehoused goods may carry on any manufacturing process or other operations in relation to warehoused goods –

(i) With the sanction of the Assistant/Deputy Commissioner, and

(ii) Subject to the prescribed conditions and

(iii) On payment of the prescribed fees.

Answer 29. (b)

The facts of this case are similar to that in CCEx v. Kraftech Products [2008] 224 ELT 504 (SC). As per Standards of Weights and Measures (Packaged Commodity) Rules, 1977 (SWM Rules), there is no requirement to declare RSP on any package containing a commodity if the net weight or measure of the commodity is 10 gms or 10 ml or less, if it is sold by weight or measure.

In this case, the assessee had not only declared weight of 2.5 ml. on each sachet but had also declared the aggregate weight of 10 ml. on the packet of 4 sachets. Therefore, the packet was intended to be sold by weight or measure.

Further, the expression 'any package containing a commodity' appearing in SWM Rules doesn't mean that the outermost package should contain the commodity. The 'packet'. In this case, contained sachets of hair oil, therefore, the 'packet' was a package containing a commodity, namely, hair oil.

Accordingly, there was no requirement to declare RSP on the packet and the same was assessable u/s 4 of the Act, not u/s 4A of the Act.

Answer 29. (c)

The Export-Oriented Undertakings (EOUs) and the units located in Software Technology Park (STP)/Electronic Hardware Technology Park (EHTP) are allowed excise duty-free receipt of capital goods in their premises for the manufacture of export goods. At the time of debonding i.e. when they opt out of the exemption scheme, they are required to pay excise duty on the depreciated value of capital goods at the rate in force on the date of debonding.

Rule 3 provides that the Cenvat credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of debonding of the EOU or the unit located in STP/EHTP.

Q. 30. (a) State whether the inputs can be procured without payment of duty for the purpose of use in the manufacture of goods to be exported to Nepal or Bhutan. If yes, give the conditions, limitations and procedure subject to which such inputs can be procured?

(b) Explain the provisions of refund of antidumping duty in certain cases.

(c) Write a note on refund of export duty.

Answer 30. (a)

Inputs can be procured without payment of duty for the purpose of use in the manufacture of goods to be exported to Nepal or Bhutan.

The conditions, limitations and procedure subject to which such inputs can be procured without payment of duty are same as those applicable for procurement of inputs without payment of duty when the goods are exported to countries other than Nepal or Bhutan with the following additional conditions/ differences –

(i) For exports to Nepal and Bhutan, the payment must be in freely convertible currency; and

(ii) Export of goods to Nepal and Bhutan must be made without payment of duty by following the conditions, safeguards and procedure specified for export of goods to Nepal or Bhutan without payment of duty.

Answer 30. (b)

Section 9AA provides that, where an importer proves to the satisfaction of Central Government that he has paid any anti-dumping duty, imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional antidumping duty which is refundable under section 9A.

For this purpose, the Central Government may make rules to –

(i) Provide for the manner in which and the time within which the importer may make the application;

(ii) Authorize the officer of the Central Government to dispose of such application and the manner of determination of the excess duty by such officer; and

(iii) Provide for the manner in which the excess duty shall be refunded by the Deputy or Assistant Commissioner of Customs after such determination.

Answer 30. (c)

According to section 26 of the Customs Act, 1962, any export duty paid on goods exported will be refunded if the following conditions are satisfied :

(i) Goods are re-imported within one year.

(ii) The goods are returned otherwise than by way of resale, and

(iii) Refund claim is made within 6 months from the date when the proper officer made an order for clearance of the goods for re-importation.