

Paper-11 Indirect Taxation

Time Allowed: 3 hours

Full Marks: 100

Group-A (Answer Question 1 which is compulsory)

Question 1.

Answer the following questions with suitable reasons:

- (a) State the salient features of TIN (Tax Identification Number).
- (b) Whether excise duty is attracted on excisable goods manufactured in the State of Jammu and Kashmir?
- (c) Is there any taxability of transfer of goods made otherwise than by way of sale under CST Act?
- (d) In what cases refund of export duty are permissible?
- (e) Describe Penultimate Sale for export of goods.
- (f) If Date of completion of Service (DoS) was 10.08.2013, Date of Invoice (DoI) was 17.08.2013, a part payment of ₹16,000 was received on 05.08.2013 (DoP) and the balance payment of ₹10,000 was received on 20.08.2013, determine its Point of Taxation (PoT).
- (g) When one can pay duty under protest in Excise?
- (h) While producing the final product some waste and scrap are also emerged as a result of manufacturing process. State the excisability of waste and scrap.
- (i) What are "Online information and database access or retrieval services"?
- (j) "No anti-dumping duty is payable by EOUs under the Customs Act, 1962, even where the goods imported are used for manufacture of goods sold in India." — Clarify.

[10 × 2]

Answer:

- (a) The salient features of Tax Identification Number (TIN) are as follows:
 - (i) TIN consist of 11 digits.
 - (ii) First two characters represent the state code which is allotted by the Central Government which is common for all the dealer of a state and balance nine characters will be, however, different in different States.
 - (iii) TIN is useful to the department of commercial tax in case of computer applications, for detecting stop filers and delinquent accounts.
 - (iv) TIN also help full to the department for cross checking of sales and purchases across the state VAT dealers.
- (b) Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.

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- (c) As per section 6A of CST Act, 1956 where any dealer claims that he is not liable to pay tax under the CST Act, in respect of any goods, on the ground that the movement of such goods from one state to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer.
- (d) Where any duty has been paid on the exportation of any goods, such duty shall be refunded to the person by whom or on whose behalf it was paid, if —
- (i) The goods are returned to such person otherwise than by way of resale.
 - (ii) The goods are re-imported within one year from the date of exportation.
 - (iii) An application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.
- (e) Penultimate sale for export of goods:
- i. Penultimate sale is the last sale immediately prior to the original export.
 - ii. According to Section 5(3) of the CST Act, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export after fulfilling certain conditions.
- (f) For ₹16,000 received on 05.08.2013 (i.e. before DoI), PoT = DoP = 05.08.2013. However for balance ₹10,000, the PoT shall be = DoI = 17.08.2013, as invoice has been issued within 30 days of completion of service.
- (g) Sometimes it happens that the classification of goods done by excise authorities, assessable value determined by the excise authorities in adjudication proceedings, etc. are not agreeable or acceptable to the assessee. In such cases, the assessee can file an appeal and in the meanwhile he can pay duty under protest.
- (h) As waste and scrap are not manufactured, but arise as a result of manufacture of the final product there should not be any tax on the waste and scrap. Thus, waste and scrap can be 'goods' but dutiable only if 'manufactured' and are mentioned in Tariff.
- But as per amendment made by the Finance Act, 2008 in the definition of excisable goods include waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.
- (i) "Online information and database access or retrieval services" are services in relation to online information and database access or retrieval or both, in electronic form through computer network, in any manner. Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision. The other important feature of these services is that they are completely automated, and require minimal human intervention. Example: Web-based services providing access or download of digital content.

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- (j) Export Oriented Unit (EOU) is exempt from antidumping duty as such. However, if the imported goods are sold as such or have been used for manufacture and sale of goods in India, then antidumping duty will become payable.

Group-B

(Answer any eight questions out of the ten questions given)

Question 2.

- (a) Narina Manpower Supply Corporation (NMSC) is a labour contractor of manpower to M/s Garmil Interiors. They charge to the principal employer for the wages of their labour which amounts to ₹1,40,000 plus their service charge of ₹14,000 for arranging the labour. The issue is whether service tax is payable on gross amount charged by them or only their charges for labour.
- (b) Write down the aspects of Valuation Audit as per Section 14A of Central Excise Act.
- (c) "Duty drawback rates are of following types – (A) All Industry Rate (B) Brand Rate and (C) Special Brand Rate." — Describe any one of these three.

[3+4+3]

Answer:

- (a) The gross amount charged means the total sum charged by the assessee for provision of services. Hence expenditure incurred by the assessee for costs and services shall form part of the value liable to service tax under section 67 along with Rule 5(A) of the Service Tax (Determination of Value) Rules, 2006.

In this case, employees are of Narina Manpower Supply Corporation (NMSC). Hence the whole of the sum viz. wages paid to the labour as well sum charged for arranging the labour viz. ₹1,40,000 + ₹14,000 = ₹1,54,000 shall be the value.

- (b) The aspects related to the Valuation Audit can be described as follows:
- (i) Deputy Commissioner of Central Excise or Assistant Commissioner with prior approval of Chief Commissioner can order the Valuation of Assessable Value.
 - (ii) Audit has to be done by a qualified Cost Accountant or Chartered Accountant.
 - (iii) The Cost Accountant has to be nominated by the Chief Commissioner.
 - (iv) The maximum time limit for submission of such cost audit report is 180 days from the date of receipt of cost audit order by the manufacturer.
 - (v) The expenses and audit fees shall be paid by excise department to the cost auditor.
 - (vi) The auditor is required to find:
 1. Whether the assessable value of goods manufactured by the assessee is correct.
 2. Whether classification of goods has been done correctly.
 3. Wherever certification is required and whether such certification has been obtained.

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4. Whether the cost of production shown in the cost sheet is in accordance with the Cost Accounting Standard 4 issued by the Institute of Cost and Works Accountants of India.
 5. Whether raw material shown in the purchase book matches with the purchase invoice.
- (c) Although there are three types of duty drawback rates available viz All Industry Rate, Brand Rate and Special Brand Rate, we will describe All Industry Rate in details.

All Industry Drawback Rates - All Industry Drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Government of India. The rates are periodically revised – normally on 1st June every year.

Whenever specific rates are provided, drawback shall be payable only if amount is more than 1% of FOB value, except when the drawback claim per shipment exceeds ₹500. Revised rates have been announced vide Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier Notification No. 81/2006-Cus(NT) dated 13-7-2006].

The all industry drawback rates are given in two ways – (a) when Cenvat facility has been availed and (b) when Cenvat facility not availed. The difference between the two is central excise portion of duty drawback. If rate indicated in both is same, it means that it pertains to only customs portion and is available irrespective of whether exporter has availed Cenvat or not – Condition No 5 to Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier No. 81/2006-Cus(NT) dated 13-7-2006].

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006). In case of some cases, value cap has been fixed. In such cases, maximum drawback allowable per unit of quantity has been specified (This is to avoid misuse by over-valuation of export goods).

Question 3.

- (a) How research and development activities are dealt in the course of international transfer pricing issues?
- (b) M/s Ankana Ltd. has opening balance of Cenvat credit of ₹13 lakhs on 1st July 2013. During July 2013, inputs on which Cenvat credit of ₹25 lakhs is available, were purchased. From 1st August to 25th August 2013 inputs on which Cenvat credit of ₹15 lakhs is available, were purchased. The duty liability of finished products for July 2013 was ₹42 lakhs and is payable on 6th August 2013, being due date for payment of duty under Rule 8 of Central Excise Rules, 2002. But the duty is paid belatedly by M/s Ankana Ltd. on 25th August 2013. M/s Ankana Ltd. is of the opinion that since the duty is paid belatedly by it, it can utilise Cenvat credit earned upto 25th August 2013. Discuss.
- (c) Mr. Roy is regularly paying excise duty and value added tax on his manufacturing and sales activities respectively. He seeks your advice while calculating the Value Added Tax on sales as well as net VAT liability from the following information:
Purchases from local market (VAT inclusive of @12.5%) ₹ 1,29,375.
Manufacturing expenses is ₹ 80,000.
Profit on Cost @75%.

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Excise Duty @12.36%

Output VAT @12.5%.

[4+3+3]

Answer:

(a) Several global Multi National Enterprises (MNEs) have established subsidiaries in India for research and development activities on contract basis to take advantage of the large pool of skilled manpower which are available at a lower cost. These Indian subsidiaries are generally compensated on the basis of routine and low cost plus mark up. The parent MNE of these R&D centres justify low cost plus markup on the ground that they control all the risk and their subsidiaries or related parties are risk free or limited risk bearing entities.

The claim of parent MNEs that they control the risk and are entitled for major part of profit from R&D activities is based on following contentions:

- Parent MNE designs and monitors all the research programmes of the subsidiary.
- Parent MNE provides fund needed for R&D activities.
- Parent MNE controls the annual budget of the subsidiary for R&D activities.
- Parent MNE controls and takes all the strategic decisions with regards to core functions of R&D activities of the subsidiary.
- Parent MNE bears the risk of unsuccessful R&D activities.
- The Indian transfer pricing administration always undertakes a detailed enquiry in cases of contract R&D centres. Such an enquiry seeks to ascertain correctness of the functional profile of subsidiary and parent MNE on the basis of transfer pricing report filed by the taxpayers, as well as information available in the public domain and commercial databases. After conducting detailed enquiries, the Indian tax administration often reaches the following conclusions:
 - Most parent MNEs were not able to file relevant documents to justify their claim of controlling risk of core functions of R&D activities and asset (including intangible assets) which are located in the country of subsidiary or related party.
 - Contrary to the above, it was found that day to day strategic decisions and monitoring of R&D activities were carried out by personnel of subsidiary who were engaged in actual R&D activities and bore relevant operational risks.

(b) The CBEC vide its Circular No. 962/05/2012 dated 28.03.2012 has clarified that Cenvat credit balance available on the last day of the month or quarter can be utilised for payment of duty relating to that month or quarter, even if the self-assessed duty is paid belatedly (i.e. after the due date specified under Rule 8 of Central Excise Rules, 2002).

Thus the contention of M/s Ankana Ltd. that it can use credit balance available on the date of payment, if the duty is paid belatedly, is wrong. Hence, in the above case, the assessee can use credit balance available upto 31st July, 2013 for payment of duty for the month of July, 2013.

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Therefore, M/s Ankana Ltd. can use credit balance available on 31st July 2013, i.e. ₹38 lakhs (₹13 lakhs + ₹25 lakhs) for payment of duty for the month of July, 2013. Hence the remaining amount of ₹4 lakhs is to be deposited in cash.

(c) Computation of Tax Payable

Cost of Purchases	₹1,15,000 [₹1,29,375 × 100/112.5]
Manufacturing expenses	₹80,000
Total cost	₹1,95,000
Profit @75% on cost	₹1,46,250 [₹1,95,000 × 75/100]
Assessable Value	₹3,41,250
Add: Excise Duty	₹42,179 [₹3,41,250 × 12.36/100]
Taxable Turnover	₹3,83,429
Add: Output VAT	₹47,929 [₹3,83,428 × 12.50/100]
Aggregate Sales	₹4,31,358
Value Added Tax payable	₹47,929
Less: Input Tax Credit	₹14,375
Net Value Tax Payable	₹33,554

Question 4.

(a) What are the essential elements of interstate sale as per section 3 of CST Act, 1956?

(b) Mr. Kapil an Indian resident, aged 45 years, returned to India after visiting England on 10/05/2013. He had gone to England on 01/05/2013. On his way back to India he brought following goods with him –

His personal effects like clothes etc. valued at ₹85,000:

A video camera worth ₹19,000;

2 litre of Wine worth ₹2,000;

A watch worth ₹24,000.

Find the customs duty payable by Mr. Kapil.

(c) M/s A Ltd. received the following sums (exclusive of taxes). Compute its service tax liability (ignore small service provider's exemption) —

(1) Services by way of breeding of fish: ₹5,00,000.

(2) Commission from selling of various goods belonging to other parties: ₹5,00,000.

(3) Margin earned from trading in shares: ₹2,00,000

(4) Farmer education and training: ₹4,00,000.

[3+3+4]

Answer:

(a) The essential ingredients of interstate sale are as follows:

(i) The transaction should be a complete sale.

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- (ii) There should be movement of goods from one state to another state by virtue of agreement to sale.
- (iii) The completed sale must take place in a state different from the state in which movement of goods commences.
- (iv) It is not necessary that completed sale precedes the movement of goods. Sale can be either before or after the movement of goods.
- (v) There must be physical movement of goods from one state to another state.
- (vi) Where the movement of goods commences and terminates in the same state, it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other state.
- (vii) The movement of goods shall commence when the goods are delivered to the carrier or other bailee for transmission and the movement of the goods shall end when the delivery is taken from such carrier or bailee. Thus, the transfer of documents to the title of the goods (Lorry receipt/ Railway Receipt, Bill of Lading, Airway Bill) shall be made during the movement of the goods from one state to another.

(b) Computation of Customs Duty payable by Mr. Kapil:

	₹
Video camera	19,000
2 litres of wine	2,000
Watch	24,000
Total	45,000
Less: GFA (General Free Allowance)	35,000
Net value	10,000
Customs duty @ 36.05% on ₹10,000	3,605

Note: Personal effects like clothes etc. valued at ₹85,000 are exempt.

(c) Computation of service tax liability:

- (1) Services by way of breeding of fish: ₹5,00,000 — It amounts to agriculture — Not taxable u/s 66D(d) of Finance Act, 1994.
- (2) Commission from selling of various goods belonging to other parties: ₹5,00,000 — Taxable.
- (3) Margin earned from trading in shares: ₹2,00,000 — Shares are securities and 'goods' and trading in goods is a service covered within negative list u/s 66D(e) of Finance Act, 1994 — Not taxable.
- (4) Farmer education and training: ₹4,00,000 — Covered under agricultural extension services — Covered in negative list u/s 66D(d) of Finance Act, 1994 — Not taxable.

Therefore, taxable value = ₹5,00,000; and service tax thereon @12.36% = ₹61,800.

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Question 5.

- (a) "The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations." — State those difficulties.
- (b) What are the criteria to determine if a service is 'directly in relation to' immovable property located in taxable territory?
- (c) Y Ltd. has been exported Product Z to USA. Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1962, if —
FOB value of Product Z (exported goods) — ₹2,40,000.
Market price of Product Z — ₹1,80,000.
Duty drawback rate: 30% of FOB.

[4+4+2]

Answer:

- (a) The difficulties in applying the arm's length principle are as follows:
- (i) The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.
 - (ii) It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises. It also involves a lot of cost to the group.
 - (iii) Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.
 - (iv) The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).
- (b) Generally, the following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory:
- i) The service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property;
 - ii) the service is physically performed or agreed to be performed on an immovable property (e.g. maintenance) or property to come into existence (e.g. construction);
 - iii) the direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural

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services, surveying and sub-dividing, management services, security services etc);

- iv) the purpose of the service is:
- the transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);
 - the determination of the title to the property.

There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm's general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.

- (c) Drawback amount = ₹2,40,000 × 30% = ₹ 72,000 or ₹ 1,80,000 × 1/3 = ₹ 60,000
Allowable duty draw back does not exceed 1/3 of the market value.
Hence, the amount of duty drawback allowed for Product Z is ₹ 60,000.

Question 6.

- (a) What is the significance of consideration in the context of service tax? Whether a security deposit that is returnable on completion of provision of service is a consideration for service or not?
- (b) What are the powers associated with taxation under Constitution of India?
- (c) Prior Ltd. supplies raw materials to a job worker Tweet Ltd. after completing the job work, the finished product of 6,500 packets are returned to Prior Ltd. putting the retail sale price as ₹15 on each packet. The product in the packet is covered under MRP provisions and 40% abatement is available on it. Determine the assessable value under Central Excise Law from the following details:

Cost of raw materials supplies	₹32,000
Transportation charges for sending raw material to Tweet Ltd.	₹4,500
Job worker's charges including profit	₹10,000
Transportation charges for returning the finished packets to Prior Ltd.	₹4,500

[4+3+3]

Answer:

- (a) As per section 67 of the Finance Act, 1994, 'consideration' includes any amount that is payable for the taxable service provided or to be provided. As per section 2(d) of the Indian Contract Act, 1872, consideration is defined as "when at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing, something such act or abstinence or promise is called a consideration for the promise."

Activity carried out without any consideration is outside the ambit of service, such as donations, gifts, free charities etc. However an act by a charitable institution for

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consideration would be a service and taxable unless otherwise exempted. But following are some examples of non-monetary consideration:

- (i) Supply of goods and services in return for provision of service.
- (ii) Refraining or forbearing to do an act in return for provision of service.
- (iii) Tolerating an act or a situation in return for provision of a service.
- (iv) Doing or agreeing to do an act in return for provision of service.

Grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research. Donations to a charitable organisation are not consideration unless charity is obligated to provide something in return.

Security deposit which is in the nature of security and hence do not represent consideration for service. However if the deposit is in the nature of a colourable substance wherein the interest on the deposit substitutes for the consideration for service provided or the interest earned has a perceptible impact on the consideration charged for service then such interest would form part of gross amount received for the service. Also security deposit should not be in lieu of advance payment for the service.

(b) Power of Taxation under Constitution of India is as follows:

- (i) The Central Government gets tax revenue from Income Tax (except on Agricultural Income), Excise (except on alcoholic drinks) and Customs.
- (ii) The State Governments get tax revenue from sales tax, excise from liquor and alcoholic drinks, tax on agricultural income.
- (iii) The Local Self Governments e.g. municipalities, etc. get tax revenue from entry tax and house property tax.

Article 265 provides that no tax shall be levied or collected except by authority of Law. The authority for levy of various taxes, has been provided for under Article 246 and the subject matters enumerated under the three lists set out in the Schedule-VII to the Constitution.

(c) In case of goods covered under MRP (Maximum Retail Price) based excise levy under section 4A of the Central Excise Act, the valuation thereof will be done in accordance with the provisions of the said section and not as per the section 4, since section 4A has overriding effect over the provisions of the section 4. The assessable value of goods is as follows:

	₹
Retail sale price of each product	15
Less: Abatement @40%	6
Assessable Value per packet	<hr style="width: 100%; border: 0.5px solid black;"/> 9

Hence total assessable value is (₹ 9 × 6,500) = ₹ 58,500.

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Question 7.

- (a) What are the schemes introduced to obtain inputs free from duty or to grant refund of the same?
- (b) What is regressive effect of indirect taxes?
- (c) PNP Electronics Ltd. is engaged in the manufacture of wooden furniture having its factories at Kolkata and Delhi. At Kolkata the company manufactures picture tubes which are stock transferred to Delhi factory where it is consumed to produce television sets. Determine the Excise duty liability of captively consumed picture tubes from the following information: - Direct material cost (per unit) ₹800; Direct Labour ₹100; Indirect Labour ₹50; Direct Expenses ₹100; Indirect Expenses ₹50; Administrative Overheads ₹50; Selling and Distribution Overheads ₹100. Additional Information: - (1) Profit Margin as per the Annual Report of the company for 2012-13 was 12% before Income Tax. (2) Material Cost includes Excise Duty paid ₹73 (3) Excise Duty Rate applicable is 12%, plus education cess of 2% and SHEC @ 1%.

[5+1+4]

Answer:

- (a) There are various schemes have been devised to obtain inputs free from duty or to grant refund of the same. In some schemes, the unit has to be isolated from domestic production units, while in some schemes the units producing goods for domestic production are also entitled to get inputs free of cost. The schemes are described as follows:

A. Schemes where export production unit has to be isolated from domestic production units — There are schemes where units producing goods for export purposes have to be isolated from domestic units. The schemes are - EOU, STP, EHTP, BTP and SEZ. [BTP – Bio-Technology Park]

B. Schemes where domestic production unit can get inputs free from taxes — The schemes of EOU, SEZ, STP, BTP and EHTP are suitable where the unit is exclusively or at least predominantly for export purposes. There are other schemes where a unit producing goods for domestic purposes is also entitled to get inputs / capital goods without payment of customs duty / excise duty. It can be broadly classified as follows:

- (i) **Relief of excise duty on inputs** — (a) Cenvat credit of duty paid on inputs can be utilized for payment of excise duty on other final products. Alternatively, refund of duty paid on inputs can be obtained (b) Same result can be achieved by paying duty on final product and claiming rebate. In this case, additional benefit is that duty paid on capital goods will also get refunded indirectly. In first case, only duty paid on inputs is refundable (c) Obtaining inputs without payment of excise duty under notification No. 43/2001-CE(NT). This is advisable when there are one or two major identifiable inputs (d) Rebate of duty paid on inputs under notification No. 41/2001- CE (NT) (e) Excise portion of Duty drawback.
- (ii) **Relief of customs duty on inputs** — (a) Advance Authorisation (b) Duty Entitlement Pass Book scheme (DEPB) (c) DFIA (Duty free Import Authorisation) (d) Customs portion of duty drawback.

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(iii) **Capital goods at concessional rate** — Capital goods can also be obtained at concessional rate of customs duty under EPCG (Export Promotion Capital Goods) scheme.

(b) Indirect taxes do not depend on paying capacity. Since the indirect tax is uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as 'regressive'.

It is also possible to levy lower taxes on goods of daily consumption while levying higher taxes on luxury goods and the regressive effect can be reduced in many circumstances.

(c) Cost of production is required to be computed as per CAS-4. Material cost is required to be exclusive of Cenvat credit available.

Particulars	₹
Material Consumed (Net of Excise duty) (800 – 73)	727
Direct Labour	100
Direct Expenses	100
Works Overheads	100
Administrative Overheads (assumed relating to production capacity)	50
Total	1,077
Add: 10% of total as per rule 8	108
Assessable Value	1,185
Excise duty @12.36% on ₹1,185	146.47

Note - (1) Indirect labour and indirect expenses have been included in Works Overhead
(2) In absence of any information, it is presumed that administrative overheads pertain to production activity. (3) Actual profit margin earned is not relevant for excise valuation.

Question 8.

(a) Compute the amount of interest (if any) as per Customs Act, 1962 in the following case:
Piano Ltd. imported goods valuing ₹ 300 lakhs vide a Bill of Entry presented before the proper officer on 01-11-2012, on which the rate of customs duty was 10%. The proper officer decided that the goods are subject to chemical examination and therefore, the same were provisionally assessed at a value of ₹ 300 lakhs and Piano Ltd. paid provisional duty ₹ 30 lakhs on the same date. Piano Ltd. wants to voluntarily pay duty of ₹10 lakhs on 15-12-2012. Can it do so what are the conditions which are to be completed before such payment.

(b) What are the roles are played by Cost Accountant under VAT?

(c) Laxman & Co., a registered dealer with head office at Kolkata, furnishes to you the following information:

- (i) Inter-State sale of goods (it includes ₹ 12,00,000 being the value of goods transferred to Chennai Branch covered by Form F): ₹51,20,000
- (ii) Dharmada collected: ₹25,000
- (iii) Weighment dues charged separately from buyers: ₹2,15,000
- (iv) Cash discount shown in invoice as per trade practice: ₹60,000

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(v) Indemnity charges (recovered from buyers to cover transit loss based on their request): ₹53,000

Calculate the turnover and CST payable, on the assumption that all the sales were made to registered dealers.

(d) What is Bill of Export?

[3+2+4+1]

Answer:

(a) The department has clarified vide Circular No. 40/2011-Cus, dated 09-09-2011 that whenever any importer or exporter intimates to the proper officer in writing that he desires to pay voluntarily certain amount of duty of customs, at any time before finalization of the provisional assessment, the following conditions must be satisfied before such payment:

- (i) Such duty should be paid, along with interest on the amount of duty so being paid, @ 18% from the first day of the month in which the duty is provisionally assessed till the date of payment thereof;
- (ii) The term and conditions of the bond and the amount of security of surety furnished at the time of provisional assessment shall remain unchanged; and
- (iii) No refund of duty will be granted till the assessment is finalized.

Thus, on above compliances, Piano Ltd. can provisionally pay duty.

(b) Cost Accountants have the following key role to play in proper implementation of VAT:

- (i) Record keeping:** VAT requires proper record keeping and accounting. Systematic records of input credit and its proper utilization is necessary for the dealer to take input tax credit. No doubt, Cost Accountants are well equipped to perform these activities.
- (ii) Tax planning:** Cost Accountant is competent to analyze various alternatives and its impact on dealer so as to minimize the tax impact.
- (iii) Helping to departmental officers:** There will be audit wing in department and certain percentage of dealers will be taken up for audit every year on scientific basis. Cost Accountant can ensure proper record keeping so as to satisfy the departmental auditors.
- (iv) External audit of VAT records:** Under VAT system, self assessment has been brought into force. Cost Accountants can play a very vital role in ensuring tax compliance by audit of VAT accounts.

As per the Bombay High Court in the case of Sales Tax Practitioners Association of Maharashtra v State of Maharashtra (2008), has held that VAT audit can be conducted only by Chartered Accountants and Cost Accountants.

(c) Statement Showing Taxable Turnover & CST Payable by Laxman & Co.

Particulars	Amount (₹)
Inter-State sale of goods	51,20,000
Less: Branch transfer against Form F	(12,00,000)

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Add: Weighment charges charged separately	2,15,000
Add: Dharmada Collected	25,000
Less: Cash discount	(60,000)
Taxable Turnover	41,00,000
CST @2% on taxable turnover	82,000

Notes:

- i. Indemnity charges do not form part of sale price – Hence, should not be added.
- ii. It is assumed that dharmada, weighment dues and indemnity charges are shown separately in the invoice and have not been included in the total value of inter-state sale of ₹ 51.20 lakhs and cash discount has also not been deducted therefrom.
- iii. It is also assumed that the sale value of ₹ 51.20 lakhs does not include Central Sales-tax.
- iv. Cash discount allowed as per trade practices does not form part of sale price. Hence, should be deducted.

(d) As per section 2(5) of Customs Act 1962, the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.

Question 9.

(a) Son Ltd. has agreed to render services to Mr. T. The following are the events:

- (i) Contract for services entered into on 31.08.2012.
- (ii) Advance received in September, 2012 towards all services: ₹66,000.
- (iii) Total value of services, billed in February, 2013: ₹2,10,000.
- (iv) Above includes non-taxable services of: ₹70,000.
- (v) Balance amount is received in March, 2013.

When does the liability to pay service tax arise and for what amount? Contract contains clear details of services; consideration and service tax are charged separately, as mutually agreed upon.

(b) What is Certified Facilitation Centre (CFC)?

(c) Write about Import General Manifest (IGM). What is the time limit for submission of bill of entry after the delivery of IGM?

[5+2+3]

Answer:

(a) As per Rule 3 of Point of Taxation Rules, 2011, wherever any advance is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

	₹
Advance received towards all services in September, 2012	66,000
Amount billed for taxable services (₹2,10,000 - ₹70,000)	1,40,000
Advance received towards taxable services (₹66,000 × ₹1,40,000/₹2,10,000)	44,000
Service tax @12.36% (since service tax is charged separately) (₹44,000 ×	5,438

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12.36%)	
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In this case, the due date for payment of service tax will be 5th October, 2012.

Balance portion:

	₹
Amount billed for taxable services (₹2,10,000 - ₹70,000)	1,40,000
Advance received towards taxable services	44,000
Amount billed but not received towards taxable services (₹1,40,000 - ₹44,000)	96,000
Service tax @12.36% (since service tax is charged separately) (₹96,000 × 12.36%)	11,866

In this case, the due date for payment of service tax will be 5th March, 2013.

- (b) CFC stand for Certified Facilitation Centre under ACES project of CBEC and is an e-facility, which may be set-up and operated by a Cost Accountant/Chartered Accountant/Company Secretary or a proprietary concern/firm of Cost Accountants or Chartered Accountants or Company Secretary in practice to whom a certificate is issued under the ACES project, where the assessee of Central Excise and Service Tax can avail this facility to file their returns and other documents electronically along with associated facilitation on payment of specified fees.
- (c) Import General Manifest (IGM) indicates the details of all the goods to be transshipped, private property of the crew and arms and ammunitions, gold and silver should also be cleared separately irrespective of whether for landing, for transshipment or for being carried as same bottom cargo. The IGM has to be filed within 24 hours after arrival of the ship/ aircraft.

As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at any time after the delivery of import manifest or import report. Therefore, no time limit has been fixed for submission of bill of entry.

Question 10.

- (a) What is the difference between a Sale for Export and Sale in the Course of Export?
- (b) What would be the situation where the payment for a service is made at one location (say by the headquarters of a business) but the actual rendering of the service is elsewhere (i.e. a fixed establishment)?
- (c) Computation of assessable value – average/equalized cost of transport: A manufacturer having a factory at Kolkata has uniform price of ₹ 1,000 per unit (excluding taxes) for sale anywhere in India. During financial year 2012-13, he made following sales –

(a)	Sale at factory gate in Kolkata	1,000 units – no transport charges.
(b)	Sale to buyers in Chennai	600 pieces – actual transport charges incurred ₹ 20,000.
(c)	Sale to buyers in Kanpur	700 pieces – actual transport charges incurred ₹ 40,000.
(d)	Sale to buyers in Goa	700 pieces – actual transport charges incurred ₹ 30,000.

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Find assessable value per unit under the central excise.

[3+4+3]

Answer:

(a) Differences between a Sale for Export and Sale in the Course of Export are as follows:

Sale for Export	Sale in the Course of Export
(i) A sale effected by the dealer (seller) and he is not connected with the export of the goods which actually takes place subsequently.	Seller has an express between the sale and the export.
(ii) Seller has no intention for export.	Seller has clear intention to export.
(iii) Seller does not know the ultimate destination of the goods he has sold.	Seller has clear address for ultimate destination of his goods.
(iv) This sale may be called as penultimate sale.	This sale is called as export sale.
(v) Sale exempted from CST provided Form 'H' received from his buyer.	Sale exempted from CST automatically.
(vi) This sale is covered under Section 5(3) of the CST Act, 1956.	This sale is covered under Section 5(1) of the CST Act, 1956.

(b) Occasionally, a person may be the person liable to make payment for the service provided on his behalf to another person. For instance, the provision of a service may be negotiated at the headquarters of an entity by way of centralized sourcing of services whereas the actual provision is made at various locations in different taxing jurisdictions (in the case of what is commonly referred to as a multi-locational entity or MLE). Here, the central office may act only as a facilitator to negotiate the contract on behalf of various geographical establishments.

Each of the geographical establishments receives the service and is obligated to make the payment either through headquarters or sometimes directly. When the payment is made directly, there is no confusion. In other situations, where the payment is settled either by cash or through debit and credit note between the business and fixed establishments, it is clear that the payment is being made by a geographical location. Wherever a fixed establishment bears the cost of acquiring, or using or consuming a service through any internal arrangement (normally referred to as a "recharge", "reallocation", or a "settlement"), these are generally made in accordance with corporate tax or other statutory requirements. These accounting arrangements also invariably aid the MLE's management in budgeting and financial performance measurement.

Various accounting and business management systems are generally employed to manage, monitor and document the entire purchasing cycle of goods and services (such as the ERP Enterprise Resource Planning System). These systems support and document the company processes, including the financial and accounting process, and purchasing process. Normally, these systems will provide the required information and audit trail to identify the establishment that uses or consumes a service.

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It should be noted that in terms of proviso to section 66B, the establishments in a taxable and non-taxable territory are to be treated as distinct persons. Moreover, the definition of "location of the receiver" clearly states that "where the services are "used" at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service" will be the location. Thus, the taxing jurisdiction of service, which is provided under a 'global framework agreement' between two multinational companies with the business establishment located outside the taxable territory, but which is used or consumed by a fixed establishment located in the taxable territory, will be the taxable territory.

- (c) In this question, since the goods are sold at uniform price of ₹ 1,000 per unit (excluding taxes) for sale anywhere in India, hence the manufacturer will get deduction on account of cost of transportation on average or equalized basis as per Rule 5 of Central Excise Valuation Rules, 2000.

The assessable value per unit shall be [Price per unit – Cost of transport on average basis] i.e., [₹1,000 – ₹ 30] = ₹ 970. The cost of transportation on average basis shall be computed as under, -

Total actual transport charges incurred during the year (Nil + ₹ 20,000 + ₹ 40,000 + ₹ 30,000)	90,000
Total number of units sold (1,000 + 600 + 700 + 700)	3,000
Average or Equalised Freight (Transport Charges) per unit (₹ 90,000 ÷ ₹ 3,000)	30

Question 11.

- (a) **M/s Kohinoor Industries imported finishing agents, dye-carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for Additional Duty of Customs (CVD) leviable under section 3 of Customs Tariff Act 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the 'same factory' for manufacture of textile articles. The department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the 'same factory'. You are requested to comment upon the contention of Department.**
- (b) **"The settlement Commission is constituted under section 32 of the Central Excise Act, 1944 in order to speedy disposal and easy settlement of tax disputes of Customs and Central Excise....." — Mention the powers which the settlement commission has on the ground of high revenue stake and saving of time and energy for both the applicant and the department.**
- (c) **Purchase price of the inputs purchased from the local market (inclusive of VAT) ₹ 52,000.
VAT rate on purchases 4%
Storage cost incurred ₹ 2,000
Transportation cost ₹ 8,000
Goods sold at a profit margin of 10% on cost of such goods
VAT rate on sales 12.5%**

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

From the above informations calculate the VAT liability of Mr. Roy for the month of February 2013, using 'invoice method' for computation of VAT.

[3+4+3]

Answer:

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

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

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

(b) Power of the Settlement Commission

(i) Power to order Provisional Attachment to Protect Revenue [Section 32G (Customs section 127D)]: The Settlement Commission has the power to order provisional attachment of any property belonging to the applicant in the prescribed manner. Such order can be made by the Settlement Commission during the pendency of any proceedings before it where it is of the opinion that such attachment is necessary for the purpose of protecting the interests of the revenue.

(ii) Power to Grant Immunity from Prosecution or Imposition of Penalty or Fine (Section 32K (Customs section 127H)) : If the Settlement Commission is satisfied that applicant has cooperated with it in the proceedings before it and has made a full and true disclosure of his duty liability, then the Commission may grant to an applicant immunity from -

- prosecution for any offence under this Act, and
- also wholly or partly from imposition of any penalty and fine under this Act.

(iii) Power to send case back to Central Excise/Customs Officer [Section 32L (Customs section 127I)]: If the applicant does not cooperate with the Settlement Commission in the proceeding before it, the Settlement Commission may send the case back to the Central Excise/Customs officer for further action as per law. If the application is sent back, then, all submissions made and all the information given by the applicant before the Settlement Commission can be used by the Excise/ Customs officer while deciding the case.

In that case, the period commences from the date of the application to the Settlement Commission and ending with the date of receipt by the Central

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

Excise/Customs officer of the order sending case back to him, shall be excluded for the purposes of time limit u/s 11A and interest u/s 11BB.

(iv) Other Powers: The Settlement Commission shall have the following other powers -

- All the powers which are vested in a Central Excise/Customs Officer under this Act or the rules made there under;
- power to regulate its own procedure;
- Exclusive jurisdiction over the case where application is allowed to be proceeded with and until the settlement order has been passed.

(c) Computation of VAT liability

	₹
Cost of Purchases = ₹52,000 x 100/104	50,000
Add: Storage cost and transportation cost (₹2,000 + ₹8,000)	10,000
Total cost	60,000
Add: profit 10% on Cost (₹60,000 x 10%)	6,000
Taxable Turnover	66,000
Add: VAT on Taxable Turnover (₹66,000 x 12.50%)	8,250

Net VAT Tax liability:

VAT payable on Sales	₹8,250
Less: Input Tax Credit (₹52,000 – ₹50,000)	₹2,000
Net VAT liability payable by Mr. X for the month of Jan 2013	₹6,250