

Paper 11- Indirect Taxation

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Full Marks: 100

Time allowed: 3 hours

The figures in the margin on the right side indicate full marks.
Working notes should form part of the answer.

1. Answer the following questions:

(A) Multiple choice questions:

[7×2=14]

- (a) Value of captively consumed excisable goods is to be taken at —
(i) 110% of cost production;
(ii) 120% of cost production;
(iii) 100% of cost production;
(iv) 90% of cost production.
- (b) Service of beautification of buildings at Srinagar is ₹ 3,00,000. The amount of service tax payable will be —
(i) ₹ 45,000;
(ii) Nil;
(iii) ₹ 22,500;
(iv) None of the above.
- (c) Services provided by the Central Government to A Ltd., (whose turnover of 2015-16 is ₹ 10 lakhs) is ₹ 50,000. The service tax liability will be:
(i) exempted service
(ii) ₹ 7,500
(iii) ₹ 4,500
(iv) Not at all service
- (d) Bonafide Baggage including _____ personal effects is exempt from customs duty.
(i) Used
(ii) Unused
(iii) Damaged
(iv) Lost
- (e) Which of the following is not a declared good under CST Act?
(i) rice;
(ii) jowar;
(iii) wheat;
(iv) charcoal.
- (f) EOU has to issue _____ certificate for obtaining inputs without payment of Duty.
(i) CT - 1
(ii) CT - 2
(iii) CT - 3
(iv) None of the above
- (g) If the maximum retail price (MRP) of a refrigerator is ₹ 20,000, carry abatement rate of 40% and rate of excise duty is 12.5%, the amount of duty will be:
(i) ₹ 2,500
(ii) ₹ 1,000
(iii) ₹ 1,500
(iv) None of the above.

Answer:

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- (a) (i)
- (b) (ii)
- (c) (i)
- (d) (i)
- (e) (iv)
- (f) (iii)
- (g) (iii)

(B) Say Yes or No for the following question:

[6×1=6]

- (a) Service tax is levied under entry 97 of List I of Seventh Schedule to Constitution of India.
- (b) Buying commission is always includible in customs valuations.
- (c) No fees are payable while applying for service tax registration.
- (d) Territorial waters of India extend upto 24 nautical miles inside sea from baseline on coast of India.
- (e) Unbranded software is service.
- (f) In order to attract excise duty under central Excise Act 1944, goods must be movable or immovable.

Answer:

- (a) Yes.
- (b) No.
- (c) Yes.
- (d) No.
- (e) Yes.
- (f) No.

(C) Match the following:

[5×1=5]

	Column 'A'		Column 'B'
1.	Pollution control equipment	A	avoids cascading effect of tax.
2.	VAT	B	Declared goods under CST
3.	B-4 Bond	C	Removal of confiscated goods
4.	Indirect taxes	D	Eligible for Cenvat credit as capital goods
5.	Jute	E	regressive in nature.

Answer:

- 1 → D
- 2 → A
- 3 → C
- 4 → E
- 5 → B

Answer any five questions from the following.
Each question carries 15 marks

- 2.(a) Mr. X, a dealer located in the State of Maharashtra, dealing in machinery used in rolling mills furnishes following information for the financial year 2015-16.
- (i) Total inter-state Sales during in the financial year (CST not shown separately) – ₹ 2,29,50,000
 - (ii) Trade Commission for which credit have been issued separately – ₹ 5,78,125
 - (iii) Freight and Transportation charges charged separately in invoice – ₹ 4,00,000
 - (iv) Freight charges included in value but not shown separately – ₹ 2,00,000
 - (v) Insurance for transport of machinery upto destination – ₹ 75,000

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- (vi) Installation and commissioning charges levied separately in invoice – ₹ 1,00,000
 (vii) The buyers have issued C forms in respect of machinery bought by them from Mr. X. Compute the tax liability under CST Act. [10]

Answer:

Computation of Tax Liability

Particulars	Amount (₹)	Amount (₹)
Gross turnover (including CST)		2,29,50,000
Less:		
Trade commission	5,78,125	
Freight charges shown separately in the invoices	4,00,000	
Installation & Commissioning	1,00,000	10,78, 125
Aggregate Sale Price		2,18,71,875
Tax on above (₹ 2,18,71,875 × 2/102)		4,28,860
Turnover		2,14,43,015

- (b) Compute the purchases eligible for availing input tax credit to determine the VAT liability from the following particulars:-

Purchases	₹
Goods for resale within the State	10,000
Capital goods required for the purpose of the manufacture or resale of taxable goods	14,000
Goods purchased from the unregistered dealer	3,200
Goods which are being utilized in the manufacture of exempted goods	6,600
High seas purchases	2,300

[5]

Answer:

	₹
Goods for resale within the State	10,000
Capital goods required for the purpose of the manufacture or resale of taxable goods	14,000
Eligible input tax credit	24,000

- 3.(a) Hero Electronics Ltd. is engaged in the manufacture of colour television sets having its factories at Kolkata and Gujarat. At Kolkata the company manufactures picture tubes which are stock transferred to Gujarat 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 2015-16 was 12% before Income Tax. (2) Material Cost includes Excise Duty paid ₹89 (3) Excise Duty Rate applicable is 12.5%. [8]

Answer:

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

Sr. No.	Particulars	Total Cost (₹)
1.	Material Consumed (Net of Excise duty) (₹ 800 – ₹ 89)	711
2.	Direct Labour	100
3.	Direct Expenses	100
4.	Works Overheads (₹ 50+₹ 50)	100

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5.	Quality Control Cost	—
6.	Research and Development Cost	—
7.	Administrative Overheads	50
8.	Total (1 to 7)	1,061
9.	Less - Credit for Recoveries/Scrap/By-Products/Misc Income	—
10.	Cost of Production (8-9)	1,061
11.	Add - 10% as per rule 8	106
12.	Assessable Value	1,167
13.	Excise duty @12.5% of ₹ 1,167	145.88

Therefore, total duty liability = ₹ 145.88

Note - (1) In absence of any information, it is presumed that administrative overheads pertain to production activity. (2) Actual profit margin earned is not relevant for excise valuation.

(b) A Small Scale Unit (SSI) has effected clearances of goods of the value of ₹ 460 lakhs during the financial year 2015-16. The said clearances include the following: (i) Clearance of excisable goods without payment of Excise duty to a 100% EOU unit - ₹ 40 lakhs. (ii) Export to Nepal and Bhutan - ₹ 50 lakhs, (iii) Job-work in terms of Notification No. 214/86 C.E., which is exempt from duty - ₹ 60 lakhs. (iv) Goods manufactured in rural area with the brand name of others - ₹ 70 lakhs. Write a brief note with reference to the Notifications governing SSI under the Central Excise Act whether the benefit of exemption would be available to the unit for the financial year 2016-17. [7]

Answer:

Turnover in respect of sale to EOU (₹ 40 lakhs) and job work under notification No. 214/86 - CE (₹ 60 lakhs) is required to be excluded for purpose of SSI exemption limit of ₹ 400 lakhs.

Turnover of SSI excluding these sales is ₹ 360 lakhs (₹ 460 lakhs - ₹ 40 lakhs - ₹ 60 lakhs). Hence, the SSI unit will be entitled to exemption in 2016-17 upto first turnover of ₹ 150 lakhs.

4.(a) State the distinctions between pilfered goods u/s 13 of the Customs Act and Lost or destroyed goods u/s 23 of the Customs Act. [6]

Answer:

Pilfered goods u/s 13 of the Customs Act vs. Lost or destroyed goods u/s 23 of the Customs Act:

Pilfered goods	Lost or destroyed goods
(i) Pilferage refers to that in small quantities	(i) Lost or destroyed postulates loss or destroyed by whatever reason whether theft, fire, accident etc.
(ii) In this case, the importer is not liable to pay duty	(ii) The duty payable on lost goods is remitted by Assistant/Deputy Commissioner.
(iii) In this case, if the pilfered goods are retrieved duty becomes payable.	(iii) In this case, restoration is impossible if the goods are destroyed.
(iv) The pilferage must have occurred after the unloading of the goods but before the proper officer has made an order for clearance for home consumption under section 47 of the Customs Act or deposit on a warehouse under section 60 of the Customs Act.	(iv) In this case, the goods must have been lost or destroyed at any time before their clearance for home consumption. Thus, it also covers the cases where the goods are lost after the duty has been paid and order for clearance has been given but before the goods are actually cleared.

(b) M/s. Premium Industries Ltd., has imported a machine from Japan at an F.O.B. cost of 1,00,000 yen (Japanese). The other expenses incurred were as follows: (i) Freight from Japan to Indian port 10,000 yen; (ii) insurance paid to insurer in India ₹ 5,000; (iii)

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Designing charges paid to consultancy firm in Japan 15,000 yen; (iv) M/s Premium Industries Ltd. spent ₹ 50,000 in India for development work connected with the machine; (v) Transportation cost from Indian port to factory ₹ 15,000; (vi) Central Government has announced exchange rate prevailing in the market was 1 yen = ₹ 0.40 by notification under section 14(3). However the exchange rate prevailing in the market was 1 yen = ₹ 0.4052 (vii) M/s Premium Industries Ltd. made payment to the bank based on exchange rate of 1 yen = ₹ 0.4150, (viii) The commission payable to the agent in India was @5% of F.O.B. price in Indian rupees. The rate is BCD @10%. Similar goods are subject to 12.5% excise in India. Education cess and special CVD is as applicable. Find the customs duty and other duties payable. How much CENVAT can be availed by importer, if he is manufacturer? [7+2]

Answer:

Particulars	Japanese Yen
FOB	1,00,000
Add: Freight	10,000
Add: Designing charges	15,000
Sub-total	1,25,000
	Value in ₹
Sub- total (1,25,000 YEN x ₹ 0.40)	50,000
Add: Insurance	5,000
Add: Commission (1,00,000 YEN x 5% x ₹ 0.40)	2,000
CIF Value	57,000
Add: 1% unloading on CIF	570
Assessable Value	57,570

Calculate of Custom Duty payable:

Basic Customs Duty = @10% of ₹ 57,570 is ₹ 5,757,

CVD = @12.5% of ₹ 63,327 is ₹ 7,916,

Education Cess = @ 2% of ₹ 13,673 is ₹ 273,

SAH Education Cess = @ 1% of ₹ 13,673 is ₹ 137 and

Special CVD = @4% of ₹ 71,653 is ₹ 2,866.

Total Customs Duty payable is ₹ 16,949.

Cenvat credit of ₹ 7,916 (CVD) can be availed up to 50% in the first year and balance in the subsequent years. However, with regard to Special CVD is ₹ 2,866 can be availed fully in the first year itself.

5.(a) Specify whether the following payments can be treated as consideration for service:

(i) Amount received in settlement of dispute

(ii) Amount received advances for performance of service

(iii) Security deposit that is returnable on completion of provision of service.

(iv) Excess payment made as a result of a mistake.

[8]

Answer:

(i) Amount received in settlement of dispute = It shall not be regarded as consideration unless it represents a portion of the consideration for an activity that has been carried out. If the dispute itself pertains to consideration relating to service then it would be a part of consideration.

(ii) Amount received advances for performance of service = Such advances are consideration for the agreement to perform a service.

(iii) Security deposit that is returnable on completion of provision of service = Returnable deposit is in the nature of security and hence do not represent consideration for service.

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However if the deposit is in the nature of a colorable device 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.

(iv) Excess payment made as a result of a mistake = If excess payment returned, it is not consideration. If not returned and retained by the service provider it becomes a part of the taxable value.

(b) M/s. LST Ltd. is engaged in the business of renting of immovable properties owned by it. During the quarter ended on 31-03-2016, it has collected a rent (exclusive of property tax of ₹ 20 lakhs) of ₹ 120 lakhs. The said sum includes rent from,-

- (1) Vacant land used for horticulture : ₹ 10 lakhs;**
 - (2) A building let out to RBI: ₹ 12 lakhs;**
 - (3) A temple hall was let out for religious purpose for general public : ₹ 15 lakhs;**
 - (4) Residential houses let out to individuals for commercial use : ₹ 20 lakhs**
- Compute the value of taxable services, assuming the rent is exclusive of service tax in each case. Ignore Small Service Providers' exemption. [7]**

Answer:

Computation of the value of taxable service & service tax (₹ in lakhs):

Total rent (Municipal tax does not form part of value)	120
Less: Amounts that do not form part of the taxable service -	
(1) Vacant land used for Horticulture (covered in negative list)	10
(2) Building let out to RBI	Taxable
(3) Temple hall let out for religious purpose meant for general public (Exempt under Notification No. 25/2012-ST, dated 20-06-2012)	15
(4) Residential houses let out to individuals for commercial use (Not covered in negative list since the said houses are used for commercial purposes)	Taxable
Total taxable value	95

6.(a) State the advantages of indirect taxes. [5]

Answer:

Advantages of Indirect Taxes:

- (i) Since the price of commodity or service is already inclusive of indirect taxes, the customer i.e. the ultimate tax payer does not feel a direct pinch while paying indirect taxes and hence, resistance to indirect taxes is much less compared to resistance to direct taxes.
- (ii) Indirect taxes are easier to collect as indirect taxes are mainly on goods/commodities/services, for which record keeping, verification and control is relatively easy (at least in organized sector). Manufacturing activities are carried out mainly in organized sector, where records and controls are better.
- (iii) Tax evasion is comparatively less in indirect taxes in organized sector due to convenience of control.
- (iv) Collection costs of indirect taxes as percentage of tax collected are lower in indirect taxes compared to direct taxes.
- (v) Government can levy higher taxes on luxury goods, which reduces the wasteful expenditure.

(b) Write short note on the following: [5+5=10]

- (i) VAT Invoice**
- (ii) Status holders in foreign trade policy**

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Answer:

(i) VAT Invoice: VAT invoice is also called as Tax Invoice. A VAT invoice shows certain VAT details of a sale or other supply of goods and services. It can be either in paper or electronic form. Under the scheme of VAT, the most important document is tax invoice. A registered dealer is entitled to claim set-off only on the basis of a valid tax invoice. Set off is not available on purchases affected through a bill or cash memorandum. A Tax Invoice is must to claim input tax credit (set off).

A valid Tax Invoice shall contain the following particulars: –

1. The word tax invoice in bold letter at the top or at a prominent place.
2. A consecutive serial number
3. The date on which the invoice is issued
4. The name, address and the TIN of the seller
5. The name, address and TIN of the buyer
6. The description of the goods;
7. The quantity or volume of the goods and price;
8. The value of the goods;
9. The rate and amount of tax charged; and
10. The total value of the goods

(ii) Status holders: Business leaders who have excelled in international trade and have successfully contributed to country's foreign trade are proposed to be recognized, as Status Holders and given special treatment and privileges to facilitate their trade transactions, in order to reduce their transaction costs and time.

All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder.

An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years, as indicated below:

Status category	Export Performance FOB/FOR (as converted) Value (in US \$ Million) during current year and two previous years
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

Note: One million = 10 lakh

7.(a) Explain any four services under negative list.

[7]

Answer:

1) Services provided by Govt. or local Authority — All services provided by Govt., in terms of their sovereign right to business entities.

- Grant of mining licenses
- Audit of Comptroller and Auditor General, etc.

Exclusions:

- Speed post, Express Parcel post, Life insurance and agency services carried out on payment of commission
- Services in relation to vessel or an aircraft
- Transport of goods and passengers
- Support services.

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- 2) Services provided by Reserve Bank of India (RBI) — All type of services provided by RBI.
Exclusions: Services provided to RBI.
- 3) Services provided by a foreign diplomatic mission located in India — All type of services.
- 4) Agriculture or agricultural produce — The following items are included:
- Cultivation, harvesting, seed testing
 - Supply of farm labour
 - Trimming, sorting etc. thereby marketable in the primary market
 - Renting of agro machinery loading, unloading, packing, storage and warehousing of agricultural produce
 - Agricultural extension services
 - Services by any agricultural produce marketing committee
 - Commission on Sale or Purchase of Agricultural Produce
 - Cultivation of Ornamental Flowers
 - Poultry Farm
- Exclusions:
- Potato Chips or Tomato Ketchup
 - Grinding, sterilizing extraction of packaging in retail packs of agricultural products.

(b) XYZ Ltd. of Delhi, engaged in various businesses has provided the following services, whose values are listed below. Compute its service tax liability:

- (1) Service of interior decoration in respect of immovable property located in Jammu: ₹ 5 lakh;**
- (2) Professional services of valuation of immovable properties [vide a single contract for a consolidated consideration] to Mumbai based Reliance Industries Ltd. in respect of its four properties located in Delhi, Kashmir, Kolkata and London. It is assumed that XYZ Ltd. performed 20%, 30%, 15% and 35% of his total services in foregoing four cities respectively : ₹20 lakhs;**
- (3) Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney: ₹ 40 lakh; [8]**

Answer:

The taxable value and service tax is computed below (amount in ₹)

(1)	Service of interior decoration in respect of immovable property located in Jammu: As per Rule 5 of Place of Provision of Services Rules, 2012 in respect of services provided directly in relation to immovable property, the place of provision will be location of immovable property. Therefore, in the given case, the place of provision of service will be Jammu which falls in non taxable territory and thus this service will not be taxable.	Nil
(2)	Professional services of valuation of immovable properties : As per Rule 7 of Place of Provision of Services Rules, 2012 if services referred in Rule 5 (location of specific service) is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided. Here, percentage of services performed in London and Kashmir will be ignored for determining place of provision of service because London and Kashmir falls in non-taxable territory. Thus, comparison has to be made between location of Delhi and Kolkata. Since in the present context, the greater proportion 20% of services are performed in Delhi, place of provision of services will be Delhi. As a result, such services will be subject to tax.	20,00,000
(3)	Architectural services to an Indian Hotel Chain which has business	40,00,000

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	establishment in Mumbai) for its newly acquired property in Sydney: If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Sydney (outside the taxable territory). However, as per Rule 8, since both the provider and the receiver are located in taxable territory, the place of provisions would be the location of the service receiver i.e. Mumbai. Place of provision being in the taxable territory, the service would be taxable in India.	
	Total taxable value	60,00,000
	Service tax liability (including SBC & KKC)	9,00,000

8.(a) State relevance of 'arm's length price' in international transactions between associated companies. [5]

Answer:

The tax rates vary from country to country. A multinational company may have associate companies in various countries. In such cases, in case of international transactions, the tendency is to show more profit in countries where tax rate is low. This is done by adjusting the price at which goods are sold or services are provided. These are 'controlled transactions'. To avoid such tax avoidance devices, it has been provided that such transactions should be valued on basis of arm's length prices for calculation of profits (or loss) of that assessee. Principle of arm's length price requires that a transaction between two related parties should be priced, as if they were not related. The principle is to place uncontrolled and controlled transactions on an equal footing.

(b) Explain which enterprise can be termed as 'associated enterprises'. Your answer need not contain provisions relating to 'deemed associated enterprise'. [5]

Answer:

As per section 92A(1) of Income Tax Act, an enterprise would be regarded as an associated enterprise of another enterprise, if:

- B. It participates directly or indirectly, or through one more intermediaries, in the management or control or capital of the other enterprise; or
- C. In respect of it, one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Section 92A(1)(a) applies when there is participation by one enterprise into other enterprise.

Section 92A(1)(b) of Income Tax Act applies when there is participation by a third enterprise into both the enterprises.

(c) Gama Pharmaceuticals Ltd. is an Indian subsidiary of a UK Company Gama Pharma Ltd. The UK parent company sales its products to unrelated buyers at 300 UK pounds per unit. What would be the Arms Length Price (ALP) in following two independent situations?

- i. The UK Parent company sales its product to Indian subsidiary at 250 UK pounds per piece.**
- ii. The product is sold to Indian subsidiary at 320 UK pounds per unit. [2½+2½]**

Answer:

- i. The price of 250 UK pounds is accepted as with the price, profit of Indian subsidiary will be higher. Hence, there is no loss of income tax revenue to Indian Government.
- ii. In this case, the price taken for computing income of Indian subsidiary would be 300 UK pounds per unit, as accepting price of 320 UK pounds means the profit of Indian

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subsidiary will be lower. The difference is more than 3%. Hence, transaction piece of 320 UK pounds cannot be accepted. Hence, ALP will be 300 UK Pounds.