

Paper-11 Indirect Taxation

Time Allowed: 3 hours

Full Marks: 100

Working notes should form part of the answers.

Group-A

(Answer Question 1 which is compulsory)

Question 1.

Answer the following questions with suitable reasons:

- (a) What do you understand by Trade Parlance Theory?**
- (b) “Barge or Lighterage charges are not to be added to the customs value while calculating the value of imported goods.” — Critically examine.**
- (c) Whether services rendered by public libraries are exempted from service tax or not? Give reason.**
- (d) What is Independent Professional Audit in the context of VAT?**
- (e) Is customs duty levied on goods derelict, wreck, jetsam etc.? State with reason.**
- (f) What is the method of the valuation for stock transfer in case of excise?**
- (g) What are the conditions to be satisfied to equate assessable value with sale price as per Central Excise Act?**
- (h) Define ‘Sale’ in the purview of Central Sales Tax Act.**
- (i) The Reserve Bank of India (RBI) has provided some valuable services to the Government of India. Whether RBI is required to pay service tax on the services provided by it and why?**
- (j) There was a natural calamity in the factory in the factory, but the department was not intimated in time. State whether remission of duty will be granted under the Central Excise Rules, 2002 or not with reason.**

[10 × 2]

Answer:

- (a)** As per Trade Parlance Theory, goods are to be classified as they are known in Trade and Commerce. If a product is neither defined in Schedule to Central Excise Tariff Act, 1985 nor in the Central Excise Act, 1944, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it, i.e. in its commercial sense.
- (b)** The statement is not correct. In some cases, the ship is not brought upto jetty. Goods are discharged at outer anchorage. This may be for various reasons, e.g. (i) deep draught at port; (ii) Ports are busy, (iii) Odd dimensional or heavy lifts or hazardous cargo discharged at anchorage. Charges for brining the goods from outer anchorage are known as ‘barging/ lighterage charges’. As per explanation to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, ship demurrage charges on chartered vessels, lighterage or barge charges are includible to the custom value while calculating the value of imported goods.
- (c)** Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material; are exempted from service tax (Mega Exemption).
- (d)** Independent Professional Audit is also termed as Compulsory VAT-Audit or External Audit and one of the types of audit prescribed under the VAT provisions. This audit is conducted as the Department Audit cannot check the tax evasion to a significant extent. It is prescribed by some of the States and carried out by Cost Accountants or Chartered Accountants.
- (e)** As per section 21 of the Customs Act, 1962, 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

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is shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

- (f) In case of stock transfer in excise, value to be adopted is the price prevailing in depot at the time of clearance from factory. Once goods are cleared from factory to depot on payment of duty (on basis of price prevailing at the time of removal from factory), it is not necessary to chase the goods and see at what price the goods were subsequently sold.
- (g) As per Section 4 of the Central Excise Act, 1944, "Assessable value" can be equated to Sale price only if the following conditions are satisfied:
- There should be a sale.
 - Such sale must be for delivery at the time and place of removal
 - Buyer and seller are not related.
 - Price is the sole consideration.
- (h) As per Section 2(g) of Central Sales Tax Act, 'Sale' means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods.
- (i) If the Reserve Bank of India has rendered some services to the Government of India it is not required to collect service tax from the Government of India and remit the same to the Service Tax department. RBI is not liable to pay the service tax. All types of services provided by RBI are included in the Negative List of services.
- (j) Yes, remission of duty will be granted under the Central Excise Rules, 2002. Remission cannot be denied simply because there was delay in giving information to the Department. If there is a natural calamity in the factory, procedural lapse cannot come in the way of benefit.

Group-B

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

Question 2.

- (a) What is Duty Entitlement Pass Book Scheme (DEPB Scheme)? Who cannot avail DEPB?
(b) Determine the total amount of Excise Duty payable on a machine, using the details given below:

Particulars	₹
(i) Sale Price of the machine, excluding taxes and duties	2,00,000
(ii) Sales tax	20,000
(iii) Cost of durable and returnable packing included in the Sale Price given at (i) above	5,000
(iv) Design and Development charges paid by Buyer on behalf of Seller to a third party	20,000
(v) Warranty charges charged separately by the seller	6,000

Rate of Excise duty – 12%, cess – 3%, calculations should be supported by notes wherever, required.

[(2+3)+5]

Answer:

- (a) The Duty Entitlement Pass Book Scheme (DEPB Scheme) is easy to administer and more transparent. The scheme is similar to Cenvat credit scheme. The exporter gets credit when he exports the goods. The credit is on the basis of rates prescribed. This credit can be utilized

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for payment of customs duty on imported goods. Exporter can have either DEPB scheme or duty drawback but not both. Exports under DEPB scheme are allowed only when DEPB rate for the concerned export product is finalised.

Following cannot avail DEPB –

- (i) Goods manufactured in customs bonded warehouse
- (ii) Goods exported against discharge of export obligation under Advance Authorisation
- (iii) EOU, SEZ, STP, BTP or EHTP units
- (iv) Export of goods of foreign origin, unless there is manufacture or processing
- (v) Exports made under specified paras of Foreign Trade Policy.

(b) Computation of Assessable Value (AV) and Excise Duty Liability

Particulars	₹
Selling Price of Machine excluding taxes & duties	2,00,000
Add: Design & Development charged paid by buyer on behalf of seller to Third party (Amount paid by Buyer to a third person on behalf of the seller is includible in AV)	20,000
Sales tax (Duties & taxes not included in AV)	Nil
Warranty Charges (Warranty charges is included in AV)	6,000
Less: Cost of durable and returnable packing (Cost of durable and returnable packing is not includible in AV)	(5,000)
Assessable value	2,21,000
Excise Duty @ 12% (₹ 2,21,000 x 12%)	26,520
Education Cess @ 2% (₹ 26,520 x 2%)	530
Secondary and Higher Education Cess @ 1% (₹ 26,520 x 1%)	265
Total Excise Duty payable	27,315

Question 3.

(a) Write the advantages of indirect taxes (any four).

(b) State with reasons whether CENVAT credit will be admissible in the following cases —

- (i) Inputs used for tests or quality control check;
- (ii) Inputs contained in waste etc.;
- (iii) Inputs are pilfered from the store-room;
- (iv) Materials used for repairs of capital goods.

[4+6]

Answer:

(a) Advantages of Indirect Taxes:

- (i) Easy management: Indirect taxes mainly relate to organized sector. Hence, it is convenient to control, i.e., levy, control and collection of indirect taxes are easy.
- (ii) Assured Collection: Being easier to control, the incidence of tax evasion is comparatively less. So, the contribution of indirect taxes to the Government shows an increasing trend, as the business progress.
- (iii) Psychological Effect: It creates an impression in the minds of manufacturers and dealers, that they are only collecting the tax and not paying out of their pocket. Also, the

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ultimate taxpayer does not feel the burden of levy, since it is indirectly included in the price of the product.

- (iv) **Luxury Goods and Necessary Goods:** Indirect taxes controls wasteful expenditure on luxury goods by levying higher tax.
- (v) **Industrial Growth:** Indirect taxes have a positive impact on industrial growth, by reducing taxes on goods manufactured in tiny or small scale industries or in backward areas.
- (vi) **Low Cost of Collection:** Cost of collection of indirect taxes is comparatively less.

(b) The admissibility of CENVAT credit–

- (i) **Inputs used for tests or quality control check:** Inputs used for tests or quality control check shall be eligible for cenvat credit as testing and conducting quality control check is necessary for manufacture.
Thus inputs used for the said tests and quality control check have relationship with manufacture of final product and eligible for Cenvat Credit.
- (ii) **Inputs contained in waste etc:** Credit shall be admissible in respect of inputs contained in the waste, refuse or by-product, since such inputs are used in factory and have some relationship with the manufacture of final product.
- (iii) **Inputs are pilfered from the store-room:** Credit shall not be admissible, since credit on inputs is available only for inputs used in the factory of manufacturer of final products. If the inputs are lost in the store-room without being used at all, credit of duty paid on such inputs will not be available.
- (iv) **Materials used for repairs of capital goods:** All the goods used within the factory of manufacturer, which have relation whatsoever with manufacture of final products, shall be eligible for Cenvat Credit.
Repairs of capital goods, used in manufacture of final product, have relation with manufacture of final product. Hence, materials used therein will qualify for input credit.

Question 4.

- (a) Mr. Sen has provided the following services during the year 2013-14. Determine whether he is eligible for threshold exemption (Small Service Providers exemption) during the year 2014-15:**
- (1) Services provided outside India: ₹ 2 lakh;**
 - (2) Services (falling under negative list): ₹ 2 lakh;**
 - (3) Services fully exempt under other notifications: ₹ 5 lakh;**
 - (4) Declared Services (Sum charged ₹ 4 lakh, but, value determined as per the valuation rules is 60% i.e., ₹ 2,40,000);**
 - (5) Services (where amount charged is ₹ 60,000, but, after abatement, value is ₹ 20,000) and**
 - (6) Other services provided: ₹ 7 lakh (including ₹ 1 lakh towards services where whole of the service tax was payable by the service recipient). Provided Mr. Sen is not a GTA (Goods Transport Agency) service provider.**
- (b) State the relation between Cross Border Services and its compliance with Foreign Exchange Management Act.**

[7+3]

Answer:

- (a)** Mr. Sen would be eligible for threshold exemption or small service providers' exemption if the "aggregate value" of taxable services provided during the year 2013-14 is upto ₹ 10 lakhs. The relevant computations are shown below —

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Case	Treatment	₹
(1) Services provided outside India	Not taxable service, as not liable to service tax u/s 66B of Finance Act, 1994 – Not includible	NIL
(2) Services (falling under negative list)	Not taxable service, as not liable to service tax u/s 66B of Finance Act, 1994 – Not includible	NIL
(3) Services fully exempt under other notifications	Specifically excluded in determination of aggregate value	NIL
(4) Declared Services	Value as determined as per section 67 of Finance Act, 1994 and Valuation Rules is to be taken	2,40,000
(5) Services eligible for abatement	Abatement is a form of partial exemption. Value as per section 67 of Finance Act, 1994 viz. ₹ 60,000 shall be taken.	60,000
(6) Other Services	Includible (Even services covered under reverse charge are includible).	7,00,000
Aggregate Value for Financial Year 2013-14		10,00,000
Since the aggregate value of service is ₹ 10 lakhs (i.e., not exceeding ₹ 10 lakhs) during financial year 2013-14, Mr. Sen is eligible for threshold exemption (Small Service Providers exemption) during the financial year 2014-15.		Eligible for exemption

- (b) The transaction involving foreign exchange is regulated by Foreign Exchange Management Act (FEMA), 1999 in India. The main thrust from liberalization of economy has been on promotion of foreign exchange rather than control of foreign exchange. All transaction involving foreign exchange is regulated by FEMA and the provisions of FEMA have to comply with wherever applicable. The Preamble of the Act says that it is an Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

Question 5.

- (a) Describe the application of Resale Price Method (RPM) in the context of Arm's Length Price.
 (b) Mr. A manufactured and exported goods worth ₹ 10,00,000 to Mr. B of UK on 1st January, 2014 and availed duty drawback of ₹ 16,000. Mr. A imported the same goods on 8th February, 2014. What will be the customs duty payable by Mr. A, if rate of basic customs duty is 10% and goods are exempt from CVD and special CVD?
 (c) "Section 75 of Customs Act, 1962 provides some disallowances or cases when drawback allowed can be recovered." — Give some examples of such disallowances.

[5+3+2]

Answer:

- (a) Resale Price Method (RPM) method is ideally suited to measure the value of the services performed by a buyer or seller of goods who generally acts as a distributor and does not add a significant value to goods sold. It is applicable even with differences in products, as long as the functions performed are similar. However, it is less useful where goods are further processed or in nature of raw material.

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RPM is applied in a backward process. From the sale price to an unrelated third party, appropriate adjustments to the gross margin are made by comparing the transaction to other, third party transactions. The applications of this method are as follows:

- (1) This method can be applied when there are no comparable uncontrolled sales and an applicable resale price is available within a reasonable time before or after the controlled sale.
- (2) Where the reseller does not add substantial value to the goods through physical modification. Limited enhancements such as packaging, repackaging, labeling or minor assembly ordinarily do not generally affect the use of RPM. Hence, RPM may not be applicable if the reseller performs value added functions.
- (3) RPM is more accurate where it is realized within a short time of the reseller's purchase of goods.
- (4) RPM is ordinarily used when the controlled reseller does not use intangible property to add substantial value to the products.
- (5) RPM is applied when the reseller does not alter the physical characteristics of the product.
- (6) Where the reseller has the exclusive right to resell the goods, the gross margin would be affected by factors like size of market, existence of substitute goods, and level of activity undertaken by the reseller.

(b) Since the exported goods have been reimported within 3 years from date of export (viz. Date of export is 1st January 2014, while date of reimport is 8th February 2014) hence, as per exemption issued by the Central Government, the duty payable = Export Incentive viz. Duty drawback claimed at the time of export. Therefore, duty payable = ₹ 16,000.

It is assumed that the goods are reimported without any re-manufacturing or re-processing.

(c) Examples of disallowances when drawback allowed can be recovered:

- i. If sale proceeds of export goods are not received within time stipulated by Reserve Bank of India [This provision does not apply to goods supplied from Domestic Tariff Area (DTA) unit to Special Economic Zone (SEZ) unit].
- ii. If no customs/excise duty is paid on the inputs or service tax is not paid on input services.
- iii. Goods manufactured under Customs Bond or Excise Bond where inputs were obtained without payment of duty.
- iv. Goods manufactured by Export Oriented Unit or a unit in Special Economic Zone (as they obtain inputs without payment of duty).

Question 6.

(a) Calculate the total tax liability under the State VAT law and under the Central Sales Tax Act for the month of October 2013 from the following particulars:

Particulars	₹
Inputs purchased within the state	1,70,000
Capital goods used in the manufacture of the taxable goods (not included in the negative list)	50,000
Inputs purchased from a registered dealer who opts for composition scheme	10,000

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under the provisions of the Act	
High seas purchases of inputs	1,20,000
Finished goods sold: (a) within the state	2,00,000
(b) in the course of inter-State trade	2,50,000

Applicable tax rates are as follows:-

Case (A): VAT rate on capital goods 12.5%; Input tax rate within the state 12.5%; Output tax rate within the state 4%; Central sales tax rate 2%.

Case (B): VAT rate on capital goods 4%; Input tax rate within the state 4%; output tax rate within the state 12.5%; Central sales tax rate 2%.

(b) What is 'Prohibited Goods' under Customs?

[8+2]

Answer:

(a) Computation of VAT liability – Case (A)

	Value (₹)	Rate	Tax (₹)
I. VAT payable on Sales for the month	2,00,000	4.00%	8,000
Add: CST payable on inter-state sales made for the month	2,50,000	2.00%	5,000
Total sum required to be paid during the period (1)			13,000
II. Input Tax Credit Balance (Opening)	NIL	NIL	NIL
Add: Credit available on inputs	1,70,000	12.50%	21,250
Add: Credit available on capital goods (assumed fully allowed)	50,000	12.50%	6,250
Add: Credit available on purchases from dealer opting for Composition Scheme and High-sea purchases – Not eligible for credit. (₹ 10,000 + ₹ 1,20,000)	1,30,000	NIL	NIL
Total Input Tax Credit (ITC) (2)			27,500
VAT payable in cash [1-2](if positive)			0
Balance of ITC to be carried forward [2-1](if positive)			14,500

Computation of VAT liability – Case (B)

	Value (₹)	Rate	Tax (₹)
I. VAT payable on Sales for the month	2,00,000	12.50%	25,000
Add: CST payable on inter-state sales made for the month	2,50,000	2.00%	5,000
Total sum required to be paid during the period (A)			30,000
II. Input Tax Credit Balance (Opening)	NIL	NIL	NIL
Add: Credit available on inputs	1,70,000	4.00%	6,800
Add: Credit available on capital goods (assumed fully allowed)	50,000	4.00%	2,000
Add: Credit available on purchases from dealer opting for Composition Scheme and High-sea purchases – Not eligible for credit. (₹ 10,000 + ₹ 1,20,000)	1,30,000	NIL	NIL
Total Input Tax Credit (B)			8,800
VAT payable in cash [A-B](if positive)			21,200

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Balance of ITC to be carried forward [B-A] (if positive)			0
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- (b) As per section 2(33) of the Customs Act, Prohibited Goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Question 7.

(a) A & Co. a proprietorship Firm, undertook security services for B Ltd. The Taxable Value was determined as ₹3,00,000. The service was complete on 15.09.2013 and Invoice was raised on 25.09.2013. A & Co. paid the amount due on 06.10.2013. Determine the following -

- (i) Amount for which Invoice is to be raised by M/s A & Co.
- (ii) Point of Taxation and Due date for payment of Service Tax by M/s A & Co. and M/s B Ltd.
- (iii) CENVAT Credit eligibility for M/s B Ltd. and the date of availment of credit.

(b) State the duty liability on captive consumption in excise.

[8+2]

Answer:

(a)

1. Issue of Invoice:

- (i) Invoice must be raised by the service provider specifying the name and address of the service receiver, the description of the service, taxable value and the service tax payable thereon.
- (ii) Hence, the Invoice shall include only the service tax component payable by the service provider. In the given case, the invoice amount shall be ₹ 3,00,000 + ₹ 9,270 (₹ 3,00,000 x 12.36% x 25%) = ₹3,09,270.

2. Point of taxation:

(i) A & Co. (Service provider):

- As per Rule 3 of Point of Taxation Rules (POT Rules) if the Invoice is issued within 30 days from the date of completion of service, then the point of taxation shall be the earlier of date of invoice or date of payment.
- Here, date of Invoice (25.09.2013) is within 30 days from the date of completion (15.09.2013).
- Hence, the POT shall be date of Invoice, i.e. 25.09.2013 (since the date of payment is much later).
- Due Date for payment of its share of service tax of ₹ 9,270 shall be on 5th /6th October 2013.

(ii) B Ltd. (Service Receiver):

- As per Rule 7 of POT Rules for services where the service receiver is liable for service tax, the Point of Taxation (POT) shall be the date of payment, if the payment is made within 6 months from the date of Invoice.
- In the given case, the date of payment (06.10.2013) is within 6 months from date of invoice (25.09.2013).
- Hence, the POT shall be date of payment, i.e. 06.10.2013.
- Due Date for payment of its share of Service Tax of ₹ 27,810 shall be on 5th/6th November 2013. (₹ 3,00,000 x 12.36% x 75%)

3. Cenvat Credit Eligibility for B Ltd.:

- (i) For the amount collected by service provider as part of invoice, i.e. ₹9,270: Date of

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receipt of invoice.

(ii) For the amount directly paid by Service Receiver, i.e. ₹27,810: Actual Date of payment of service tax.

(b) Since excise duty is on manufacture of goods, duty is payable as soon as goods are manufactured within the factory. Such goods are called 'intermediate products' and its use within the factory is termed as 'Captive Consumption'. Duty is payable even when goods are dispatched from one factory to another factory of the same manufacturer.

Question 8.

(a) Prior Ltd. is in the manufacture of both excisable and non-excisable goods in their factory building rented by them from 01-10-2013 and have been occupying the same as a tenant. From the following particulars for the period 01-10-2013 to 31-03-2014 state briefly with suitable explanations whether Prior Ltd. could claim the benefit of exemption in terms of Notification No. 8/2003 – CE dated 01-03-2003 (SSI exemption) for the financial year 2014-15.

	(₹ In lakhs)
Clearances of branded goods	80
Export Sales to Nepal	80
Export Sales to USA and Canada.	120
Clearances of goods (duty paid based on annual capacity of production under Sec. 3A of the Central Excise Act, 1944)	70
Clearances of goods subject to valuation based on retail sale price under Sec. 4A of the Central excise Act, 1944 (said goods are eligible for 30% abatement)	200
Job work under Notification No. 214/86-CE.	60

During the period 01-04-2013 to 30-09-2013, the previous tenant of the building presently occupied by Prior Ltd. had cleared excisable goods of the aggregate value of ₹ 120 lakhs. Compute the aggregate value of clearances and also determine whether SSI exemption will be available or not.

(b) Mr. Dev provides services to Mr. Ali against payment of ₹ 1,12,360 in cash and motor car valuing ₹ 3 lakh. Determine value of services and service tax payable.

[8+2]

Answer:

(a) Computation of aggregate value of clearances of all excisable goods for home consumption for the purpose of eligibility limit of ₹ 400 lakhs.

Particulars	₹ Lakhs
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Clearances of branded goods – Not includible, as not eligible for exemption	Not includible
Export sales to Nepal – Includible, as it is clearance for home consumption	80
Export Sales to USA and Canada – Not includible, as it is not clearance for home consumption	Not includible
Clearances of goods (duty paid based on annual capacity of production under Sec. 3A of Central excise Act, 1944) – Includible, as it is also excisable goods and clearance for home consumption.	70
Clearances of goods subject to valuation based on retail sale price under Sec. 4A of the Central Excise Act, 1944 (said goods are eligible for 30% abatement) [Value = ₹ 200 lakhs – 30% abatement = ₹ 140 lakhs]	140
Job work under Notification No. 214/86-CE – Not includible	Not includible
Add: Clearance of goods by previous tenant from the same factory (Includible)	
[It is assumed, in this case, that the same factory was used by both viz. assessee as well as tenant; hence, clubbing is attracted.]	120
Value of clearances of all excisable goods for home consumption during 2013-14	410
Since aggregate value of clearances exceeds ₹ 400 lakhs during financial year 2013-14, hence SSI-exemption is not available during financial year 2014-15.	SSI-exemption not available

- (b)** In case where service provider is in receipt of consideration in kind, the amount received (in all) and value of consideration received is regarded as inclusive of service tax, as per section 67(1)(ii) of Finance Act, 1994.

Hence, total consideration (inclusive of service tax) = ₹ 1,12,360 + 3,00,000 = ₹ 4,12,360.

Value of services = ₹ 4,12,360 × 100 ÷ 112.36 = ₹ 3,66,999; and service tax @ 12.36% thereon = ₹ 45,361.

Question 9.

- (a)** From the following particulars, calculate assessable value and total customs duty payable:

- (i) Date of presentation of Bill of entry : 18-06-2013 [Rate of BCD 25%; Exchange Rate: ₹ 43.60 and rate notified by CBEC ₹ 43.80]
- (ii) Date of arrival of goods in India: 28-06-2013 [Rate of BCD 20%; Exchange Rate; ₹ 43.90 and rate notified by CBEC ₹ 44.00]
- (iii) Rate of Additional Customs Duty : 12%;
- (iv) CIF value 2,000 US Dollar; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Landing Charges no ascertainable].
- (v) Education Cess applicable 3%
- (vi) Assume there is no special CVD.

Also determine the Cenvat credit eligibility if the buyer is — (1) manufacturer (2) service provider and (3) trader. [Provide working notes as and when required]

- (b)** Give some examples of land-related services in the context of service tax.

[[6+2]+2]

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Answer:

(a) Computation of assessable value and the total customs duty payable –

CIF value	US\$	2,000
Less: Freight	US\$	500
Insurance	US\$	100
FOB Value	US\$	1,400
Add: Air Freight restricted @ 20% of FOB value	US\$	280
Insurance (actual amount)	US\$	100
CIF value	US\$	1,780
CIF Value in Indian ₹ (CIF Value in US\$ x ₹ 43.80 per US\$)	₹	77,964
Add: 1% for landing charges	₹	780
Assessable value [A]	₹	78,744
Add: Basic Customs duty @ 20% of [A]	[B] ₹	15,749
Total for additional duty of customs u/s 3(1) Customs Tariff Act, 1975	[C] ₹	94,493
Add: Additional Customs Duty (@ 12% of ₹ 94,493 i.e., [C])	[D] ₹	11,339
Add: Education Cess on total customs duty i.e., 3% of [B+D]	₹	813
[E]		
Total for the levy of additional duty of customs u/s 3(5) of Customs Tariff Act, 1975	₹	1,06,645
[F=C+D+E]		
Add: Additional duty of customs equal to sales tax etc.	[G] ₹	---
Total cost of imported goods	₹	1,06,645
Total Customs duty [B+D+E+G] (rounded off)	₹	27,901

Cenvat credit eligibility:

- (1) Buyer, who is manufacturer, is eligible to avail Cenvat credit of [D] and [G] above. As there is no Special CVD as per section 3(5) of the Customs Tariff Act, 1975, he will be eligible to avail credit of [D] only.
- (2) A buyer who is service provider is eligible to avail Cenvat credit of [D] above.
- (3) A trader who sells imported goods in India after charging VAT/ sales tax can get refund of Special CVD of 4%, i.e. [G] above. Alternatively, he can pass on the credit of Special CVD also to his customer. In this case, as there is no Special CVD, the trader cannot avail the said benefit.

Working Notes:

- (1) Rate of exchange notified by CBEC on the date of presentation of bill of entry has been considered.
- (2) Rate of duty as applicable on the arrival of aircraft which is later than the date of submission of the bill of entry has been considered.
- (3) Landing charges @ 1% have been considered as per Rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (4) Since Air freight exceeds 20% of FOB value of goods, it shall be restricted to 20% of FOB value of goods.

(b) Examples of land-related services in the context of service tax:

- i) Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work;

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- ii) Renting of immovable property;
- iii) Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster;
- iv) Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed;

Question 10.

(a) Distinguish between Safeguard Duty and Anti-dumping Duty for the purpose of customs.

(b) In which cases registration of VAT can be cancelled?

[5+5]

Answer:

(a) The difference between safeguard duty and anti-dumping duty are listed below –

Basis	Safeguard Duty	Anti-dumping Duty
1. Levy under	Section 8B or 8C of the Customs Tariff Act, 1975.	Section 9A of the Customs Tariff Act, 1975.
2. Objective	To ensure that bulk imports of goods do not cause serious injury / disruption to domestic industry.	To ensure that goods are not imported at lower than normal value (dumping), thereby, causing loss to domestic market.
3. Based on	Increased imports in quantity.	Imports at value less than normal value.
4. Quantum	Levied as determined by the Government.	Cannot exceed margin of dumping.
5. Duration	Remains in force for 4 years, extendable upto 10 years from date of levy.	Remains in force for 5 years, extendable by further 5 years.
6. Exception	Not levied if imports from a developing country doesn't exceed 3% and total imports from all developing countries (each with share upto 3%) doesn't exceed 9% in total.	Exceptions to levy of this duty are listed in section 9B of the Customs Tariff Act, 1975.

(b) Registration of VAT can be cancelled in the following cases:

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

Question 11.

Answer to PTP_Intermediate_Syllabus 2012_Jun2014_Set 3

- (a) 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? Describe the provision.
- (b) Mr. X sells his land along with the standing crops and trees for ₹ 30 lakhs. Sales tax officer wants to assess for sales tax the value of standing crops and trees. Comment.
- (c) MN Ltd. is engaged in the manufacture of 'paracetamol' tablets that has an MRP of ₹ 10 per strip. The company cleared 1,00,000 tablets and distributed as physician's samples. The goods are not covered by MRP, but the MRP includes 12.36% Excise Duty and 2% CST. If the cost of production of the tablet is 40 paise per tablet, determine the total duty payable.

[3+4+3]

Answer:

- (a) As per Rule 4(1) 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.

Besides the above, where molasses are produced in a khandsari sugar factory, the person who procures such molasses, whether directly from such factory or otherwise, for use in the manufacture of any commodity, whether or not excisable, shall pay the duty leviable on such molasses, in the same manner as if such molasses have been produced by the procurer.

Thus, warehouse keeper and procurer of molasses are exceptions to the above Rule.

- (b) Assessment of the value of the standing crops and trees along with land:
- (i) Land is sold along with standing crops and trees.
 - (ii) The sale does not pertain to the latter alone in which case they are uprooted and removed. Consequently, they become goods.
 - (iii) In the instant case, the standing crops and trees are immovable.
 - (iv) They are not goods and hence do not attract sales tax.
- (c) If the product is not covered under MRP provisions, valuation provisions under section 4A of the Central Excise Act, do not apply. In that case, valuation is required to be done as per Central Excise Valuation Rules.

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

As per Rule 8, such samples are to be valued at 110% of cost of production or manufacture. The given cost of production is 40 Paise, Assessable Value will be 44 Paise. Therefore, duty payable @ 12.36% on 44 paise = 5.44 paise per tablet.