Group - III
Paper 14 - Indirect and Direct - Tax Management

Direct Tax

Question 1.

(a) Is a slump sale an alternative to amalgamation and demerger? Justify your answer.

(b) Whether photographers and TV news film cameraman can avail of the benefit u/s 80RR?

(c) An assessee had retained and not allowed the officer authorized u/s 132(1)(iib) of the Act to inspect the documents maintained in the form of electronic record and the books of accounts. Whether the assessee is liable for prosecution.

(d) If an assessment is remanded back to Assessing Officer, can he introduce new sources of income for assessment?

(e) Is non-filing of wealth tax return liable for concealment penalty?

(f) Is there a threshold limit for application of AMT?

(g) A land, which is a taxable asset, is offered to Rabi and Rishi without specifying shares. Describe how wealth tax is to be levied.

(h) At what rate are capital gains taxed under MAT?

Answer:

(a) Yes. It is possible for a division or unit to be sold by slump sale or sell the asset in a severable sale to achieve the same object.

(b) Yes, as per Circular No. 31 dated 25.10.1969, photographers and TV news film cameraman can be regarded as artists for the purpose of Sec. 80RR.

(c) Section 275B provided that if the assessee fails to afford the Authorised Officer u/s 132(1)(iib), facility to inspect book of accounts or other documents, he shall be liable for rigorous imprisonment up to 2 years or fine.

(d) Where the assessment is set aside by the Tribunal and the matter remanded to the Assessing Officer, it is not open to him to introduce into the assessment new sources of income so as to enhance the assessment. Any power to enhance is confined to the old sources of income which were the subject matter of appeal [Kartar Singh vs.CIT (1978) 111 ITR 184 (P &H)].

(e) Wealth Tax Act would deem concealment on the non-filers on the assumption that the entire wealth liable to be returned is concealed. The expression "who has not previously been assessed under this Act" has been omitted with effect from 01.04.2003 so that the penalty is exigible, even if the assessee had been previously assessed.

(f) Yes. There is a threshold limit of ₹20,00,000, but this is not applicable for LLP as the exceptions made do not cover LLP.

(g) In this case it should be presumed that each has a half share and assessed accordingly without attempting to tax it as either AOP or BOI [CWT vs. J. K. Srivastava (2006) 280 ITR 470(All.)]

(h) MAT does not differentiate between capital gains and other incomes. The entire amount is taxed at the prescribed rate by the High Court in N. J. Jose and Co. (P) Ltd. vs. Asst. CIT, (2010) 321 ITR 132 (Ker).

Question 2.

(a) R & Co. Ltd. started two separate industrial undertakings – Unit I and Unit II. Unit I prima facie is eligible for deduction u/s 80IB. For the year ending 31.03.2013, the profit of Unit I was ₹6 Lakhs while Unit II suffered a loss of ₹2 Lakhs.
The Assessing Officer has allowed the deduction u/s 80IB on the net profit of ₹4 Lakhs. Discuss the validity of the order of the Assessing Officer.

(b) Net Profit of W Ltd., an Indian company, as per Profit and Loss A/c for the year ended 31st March, 2013 is ₹9,37,000. Advertisement expenditure debited to the Profit and Loss A/c is ₹3,00,000 out of which ₹1,30,000 is in respect of advertisement which is appeared in a magazine owned by a political party. Determine the Net Income of the company.
Will your answer be different if, in the above case, the assessee is W Inc. which is a foreign company?

(c) Explain briefly the proposition of law in case of any conflict between the provisions of the Double Taxation Avoidance Agreement (DTAA) and the Income-tax Act, 1961.

Answer:

(a) According to section 80IB deduction is available in respect of the profits or gains derived from the eligible industrial undertaking of the assessee. Section 80IB expressly provides that the deduction under this section shall be calculated on the gains derived from such undertaking.
In view of the above, R & Co. Ltd. is entitled for deduction u/s 80IB at 30% of income derived from Unit I, not on the net income from Unit II.
Hence, the eligible deduction for the assessment year 2013-14 is ₹1,80,000 (i.e. ₹6,00,000 × 30%).
Total Income shall be Net Income from both the undertakings Less Deduction u/s 80IB i.e. ₹4,00,000 Less ₹1,80,000 = ₹2,20,000. Therefore, the action of the Assessing Officer is not valid in law.

(b) **Computation of Net Income of W Ltd., an Indian company, for the assessment year 2013-14**

	₹
Net Profit as per Profit and Loss A/c	9,37,000
Add: Advertisement expenditure not deductible by virtue of section 37(2B) (being advertisement expenditure in a magazine owned by a political party)	1,30,000
Business Income	10,67,000
Other Income	Nil
Gross Total Income	10,67,000
Less: Deduction under Chapter VI-A	
Section 80GGB (in the case of an Indian Company advertisement expenditure paid to political party is treated as "contribution" to the political party and deduction u/s 80GGB)	1,30,000
Net Income	**9,37,000**

Computation of Net Income of W Inc., a foreign company, for the assessment year 2013-14

	₹
Net Profit as per Profit and Loss A/c	9,37,000
Add: Advertisement expenditure not deductible by virtue of section 37(2B) (being advertisement expenditure in a magazine owned by a political party)	1,30,000
Business Income	10,67,000
Other Income	Nil
Gross Total Income	10,67,000
Less: Deduction under Chapter VI-A	
Section 80GGB (No deduction available for any assessee other than an Indian company)	Nil
Net Income	**10,67,000**

(c) Where there is conflict between the provision as contained in the tax treaty and the provisions of Income Tax Act, a payer can take advantage of those provisions which are more beneficial to him. Thus, tax treaties override the provisions of Income Tax Act which can be enforced by the Appellate Authorities/Courts.

Question 3.

(a) ABC LLP has income of ₹14,00,000 under the head "Profit and Gains of Business or Profession" during the previous year 2012-13. One of its businesses is eligible for deduction @100% of profits u/s 80IB for the assessment year 2013-14. The profit from such business included in the business income is ₹7,00,000. Compute the tax payable by the LLP assuming it has no other income during the previous year 2012-13.

(b) Is e-filling of return mandatory? State the assessee's for whom e-filling of returns is mandatory?

(c) An amount of ₹10 Lakhs was paid on 17.03.2013 to Jugilal, father of Aman, by the Government as compensation to the grieved family whose only son Aman lost his life in Mumbai local train serial bomb blast. Is the amount of compensation received chargeable to tax in assessment year 2013-14?

(d) Is it mandatory for a Company to pay advance tax on the Book Profit?

Answer:

(a) **Computation of tax payable under Income Tax of ABC LLP for the A.Y. 2013-14 relating to the P.Y. 2012-13**

Particulars	Amount (₹)
Profit and Gains from Business or Profession	14,00,000
Less: Deduction u/s 80IB	7,00,000
Total Income	7,00,000
Tax Payable (₹7,00,000 × 30%)	2,10,000
Add: Education Cess @ 2%	4,200
Add: Secondary and Higher Education Cess @ 1%	2,100
Total Tax Payable	**2,16,300**

Computation of Alternate Minimum Tax (AMT) of ABC LLP for the A.Y. 2013-14 relating to the P.Y. 2012-13

Particulars	Amount (₹)
Total Income as per the provisions of Income Tax Act, 1961	7,00,000
Add: Deduction u/s 80IB	7,00,000
Adjusted Total Income	14,00,000
Alternate Minimum Tax Payable (₹14,00,000 × 18.5%)	2,59,000
Add: Education Cess @ 2%	5,180
Add: Secondary and Higher Education Cess @ 1%	2,590
Total Tax Payable	**2,66,770**

(i) Since the Income Tax payable as per the provision of the Income Tax Act is less than the Alternate Minimum Tax, the Adjusted Total Income of ₹14,00,000 would be deemed to be the Total Income of the LLP and the LLP would be liable to pay tax @18.5% thereof.
(ii) The amount of tax payable by ABC LLP for the A.Y. 2013-14 would therefore be ₹2,66,770.
(iii) ABC LLP is eligible for credit to the extent of ₹50,470 (i.e. ₹2,66,770 – ₹2,16,300) to be set off in the year in which tax on Total Income computed under the regular provision of the Act exceeds the Alternate Minimum Tax. The credit shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such credit is allowable.

(b) CBDT has vide notification No. 34/2013 dated 01.05.2013 has made it mandatory for the following category of the Assessees to file their Income Tax Return Online from A.Y. 2013-14:-
(i) Every person (not being a company or a person filing return in ITR 7) having total income exceeding ₹5,00,000.
(ii) an individual or a Hindu Undivided Family, being a resident, having assets (including financial interest in any entity) located outside India or signing authority in any account located outside India and required to furnish the return in Form ITR-2 or ITR-3 or ITR-4, as the case may be.
(iii) Every person claiming tax relief under Section 90, 90A or 91.
(iv) Those who are required to get their Account audited under Section 44AB, 92E, 115JB.
(v) A company required to furnish the return in Form ITR-6.
However, as per instruction of ITR 7, from assessment year 2013-14 onwards in case an assessee who is required to furnish a report of audit under section 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via), 10A, 12A(1)(b), 44AB, 80-IA, 80-IB, 80-IC, 80-ID, 80JJAA, 80LA, 92E or 115JB he shall file the report electronically on or before the date of filing the return of income.

(c) Section 10(10BC) provides that any compensation received on account of disaster by an Individual or his legal heir from the Central or State Government or Local Authority is exempt. Hence, the compensation received by Jugilal from the Government is exempt from tax.

(d) The Book Profit computed u/s 115JB shall be deemed to be the Total Income of the Assessee for the purpose of payment of any tax under the Income Tax Act, 1961, if the Total Income computed as per Income Tax Act is less than the Book Profit. In that case the company has to pay advance tax on its Book Profit. Where the company fails to pay advance tax on such book profits, then it is liable to pay interest u/s 234B and 234C. [Circular No.13/2001] [Kotak Mahindra Finance Ltd.265 ITR 114 (Bom)]

Question 4.

(a) Do you think notice issued u/s 142(1) and notice u/s 143(2) mean same? Justify your answer.

(b) Subir presents his financial data as follows for the previous year 2012-13

(i) Business income ₹8,90,000
(ii) Capital Gains ₹3,30,000
(iii) Payment of medical insurance premium on own life ₹10,000
(iv) He pays ₹50,000 to GIC for maintenance of his severely disabled son under an approved scheme.
(v) He has borrowed ₹5,00,000 as educational loan for his younger son who pursues MBA and pays 10% interest on the loan.
(vi) Subir himself is severely disabled.
Determine the income of Subir for the assessment year 2013-14.

(c) W Ltd., a company providing telecommunication services, obtains a telecom licence on April 1, 2005 for a period of 10 years which ends on March 31, 2015. The telecom licence is not renewable. The following two options are given to W Ltd. to pay the licence fees —
(1) to pay ₹10 Lakhs on April 1, 2005; or
(2) to pay ₹12 Lakhs on April 1, 2009.
Assume that each year's total receipts and expenses (excluding payment of licence fees) will be ₹60 Lakhs and ₹40 Lakhs, respectively, and the company wants to avail the benefit of tax holiday under section 80-IA from the first year, find out the better option.

Answer:

(a) Notice issued u/s 142(1) is different from that of notice issued u/s 143(2) in the following ways:

Notice u/s 142(1)	**Notice u/s 142(1)**
It is a notice to file return of income or produce accounts or documents or furnish information as the Assessing Office may require	It is a notice for making assessment u/s 143(3)
No assessment is possible by issue of this notice	Assessment can be made only if the notice u/s 143(2) is served on the assessee.
No time limit is prescribed for service of this notice	Time limit of 6 months from the end of relevant assessment year prescribed for service of notice
Approval of Joint Commissioner is necessary if statement of all assets and liabilities not included in accounts is required	No approval required
Books of accounts can be called for, for a maximum period of 3 years prior to the previous year	No such restriction is there in this case
Notice can be served even if no return of income is furnished	Notice can be served only if the return of income has been furnished

(b)

Computation of Total Income of Subir for the assessment year 2013-14

	₹	₹
Business Income		8,90,000
Capital gains		3,30,000
Gross Total Income		12,20,000
Deductions under Chapter VI-A		
80D: Mediclaim	10,000	
80DD: Maintenance of dependent with severe disability	1,00,000	
80E: Interest on study loan	50,000	
80U: Severe disability	1,00,000	
Total Deductions under Chapter VI-A		2,60,000
Total Income		9,60,000

Note: ₹1,00,000 will be allowed as deduction u/s 80DD irrespective of the expenditure incurred or amount deposited.

(c)

Option 1:

	Assessment Years	
	2006-07 to 2010-11 [₹ Lakhs]	**2011-12 to 2015-16 [₹ Lakhs]**
Gross Receipts	60	60
Less: Amount of deduction under section 35ABB on account of payment of licence fees [i.e., ₹10 Lakhs / 10]	1	1
Less: Other expenses	40	40
Business Income	19	19
Any other income	-	-
Gross Total Income	19	19
Less: Deduction under section 80-IA [100% for first 5 years and 30% for next 5 years]	19	5.7
Net Income	Nil	13.3

Option 2:

	Assessment years		
	2006-07 to 2009-10 [₹ Lakhs]	**2010-11 [₹ Lakhs]**	**2011-12 to 2015-16 [₹ Lakhs]**
Gross Receipts	60	60	60
Less: Amount of deduction under section 35ABB[i.e., ₹12 Lakhs / 5]	-	2.4	2.4
Less: Other expenses	40	40	40
Business Income	20	17.6	17.6
Any other income	-	-	-
Gross Total Income	20	17.6	17.6
Less: Deduction under section 80-IA [100% for first 5 years and 30% for next 5 years]	20	17.6	5.28
Net Income	Nil	Nil	12.32

It is, therefore, better to opt for the option 2.

Question 5.

(a) Mac, a foreign technician, is sent by F Ltd., a foreign company, to India in terms of a collaboration agreement dated 1st February, 2010 with J Ltd., an Indian company, to assist the Indian company in setting up a plant. The fees charged by F Ltd. are ₹6,000 per day for every day stay in India of Mac for such work. Mac draws total emoluments of ₹2,500 per day out of which a sum of ₹1,500 per day is paid by J Ltd. Mac stays in India for 80 days. What are the tax effects in India of the transactions?

(b) Heritage Co-operative Society, which is engaged in processing agricultural produce of its members, without the aid of power and its marketing, furnishes the following particulars, determine its net income for the assessment year 2013-14:
Income from processing of agricultural produce: ₹19,000; income from marketing agricultural produce: ₹2,000; dividends from another co-operative society: ₹50,000; income from letting of godowns: ₹20,000; and income from agency business: ₹95,000.

(c) For the assessment year 2013-14, net agricultural income of an assessee is ₹95,000 and non-agricultural income is ₹14,85,000. The taxpayer contributes ₹80,000 towards Public Provident Fund. Finds out the tax if the taxpayer is (i) A, an individual (27 years), (ii) B, a HUF, (iii) C, a firm assessed as such, (iv) D Ltd. an Indian company.

Answer:

(a) **Assessment of Mac:** It is assumed that Mac has come to India as an employee of the foreign company and not of the Indian Company. As his stay in India is for 80 days i.e. less than 90 days, his salary is not deductible in computing business income of his employer. Salary income is taxable in his hands as it accrued, arose and received in India.
Assessment of F Ltd.: The entire receipt of ₹6,000 per day for 80 days i.e. ₹4,80,000 becomes chargeable to tax in its hands as fees for technical services u/s 9(1)(vi) @10% plus surcharge plus EC & SHEC as per section 115A.
Assessment of J Ltd.: Since Mac comes to India to assist J Ltd. in setting up the plant, the expenses incurred on this account by J Ltd. are in the nature of expenses incurred for erection of machinery and putting the items of plant in working condition and can, therefore, be capitalised and treated as part of the "actual cost" of plant and machinery.

(b)

Statement showing calculation of Net Income of Heritage Co-operative Society for the Assessment Year 2013-14

	₹	₹
Income from letting of godowns		20,000
Business income:		
• from processing	19,000	
• from marketing	2,000	
• from agency	95,000	1,16,000
Dividend income		50,000
Gross Total Income		1,86,000
Less: deductions in respect of income from		
a. processing of agricultural produce [Sec. 80P(2)(a)]	19,000	
b. marketing of agricultural produce [Sec. 80P(2)(a)(iii)]	2,000	
c. agency business [Sec. 80P(2)(c)] [maximum of ₹50,000]	50,000	
d. dividend [Sec. 80P(2)(d)]	50,000	
e. letting of godowns [Sec. 80P(2)(e)]	20,000	1,41,000
Net Income		**45,000**

(c)

Computation of tax in the case of A (Individual) and B (HUF) as follows:

Particulars	Amount (₹)
Gross Total Income	14,85,000
Less: deduction under section 80C	80,000
Total Income	14,05,000
Income- tax on ₹15,00,000 (i.e., agricultural income: ₹95,000 + non-agricultural income: ₹14,05,000) [a]	2,80,000
Income-tax on agricultural income: ₹95,000 + exempted slab of income ₹2,00,000 [b]	9,500
Income-tax computed at [a] minus income-tax computed at [b]	2,70,500
Add: surcharge	Nil
Tax and surcharge	2,70,500
Add: Education cess @ 2%	5,410
Add: Secondary and higher education cess @ 1%	2,705
Tax payable	2,78,615

In the case of C (a firm) and D Ltd. tax liability will be as follows:

Particulars	Amount (₹)
Tax on non-agricultural income of ₹14,85,000 @30% [agricultural income is not considered in the case of firm and companies]	4,45,500
Add: Surcharge	Nil
Tax and surcharge	4,45,500
Add: Education cess @ 2%	8,910
Add: Secondary and higher education cess @ 1%	4,455
Tax liability	4,58,865

Question 6.

(a) Ganesh had placed a deposit of ₹15,00,000 in a bank on which he received interest of ₹95,000. He had also borrowed ₹10,00,000 from the same bank on the security of the deposit and was liable to pay ₹65,000 by way of interest to the bank. He therefore offered the difference between two amounts of ₹30,000 [i.e. ₹95,000 - ₹65,000] as Income from Other Sources. Is this correct?

(b) Sanrakshan is an institution, having main object 'preservation of Wildlife; used the entire income derived from an activity in the nature of trade for its main object during the previous year ended on 31.03.2013. The institution seeks your opinion to know whether such utilization of its income be treated for "Charitable Purpose"? Would your answer be different, if the main object of the institution is "Advancement of object of general public utility"?

(c) Mr. Singh gifts ₹5,00,000 to Mrs. Singh on 1st January 2013. Mrs. Singh invests the same in her existing crockery business where she has already invested ₹5,00,000. Mrs. Singh earns ₹10,00,000 from the business during the previous year 2012-2013. How would you assess the profits?

Answer:

(a) Section 57 provides that any expenditure (not being capital expenditure) expended to earn income chargeable under the head "Income from Other Sources" will be allowed as deduction against such income.
Interest on Bank FD was the income in the hands of the assessee. The interest on the loan taken from bank on that deposit is not an allowable expenditure as it is not expended to earn the interest on Bank FD.
Therefore, in the given case, the interest of ₹65,000 paid by Ganesh is not allowable as deduction and the entire interest of ₹95,000 is fully taxable.

(b) W.r.e.f. assessment year 2009-10 preservation of Environment, which includes water sheds forests and wildlife, is treated as charitable purpose. The entire income derived from an activity in the nature of trade and applied for its main object will be considered as charitable purpose and the exemption u/s 11 shall apply.
If the object of the Charitable Trust is general public utility and it involves in carrying of any activity in the nature of trade, commerce or business, or rendering any service in relation to trade, commerce, or business for cess, fess or other consideration and the aggregate value of receipts from the said activities does not exceed ₹25,00,000, the benefit of exemption shall continue.

(c) The previous year of the existing business is April to March. On the first day of the previous year (i.e. 1st April 2012), total investment has come from Mrs. Singh account. As the proportion of the gifted amount from spouse on 1st April 2012 to the total investment in business on the same day is NIL, the whole of the profits of ₹10,00,000 for the previous year 2012-13 will be included in the total income of Mrs. Singh.

Question 7.

(a) In an order of assessment for the assessment year 2012-13, an assessee noticed a mistake for which application u/s 154 was moved and the order was rectified. Subsequently, the assessee moved further application for rectification u/s 154, which was rejected by the Assessing Officer on the ground that the order once rectified, cannot be rectified again. Is the contention of the Assessing Officer correct?

(b) "An advance ruling can become void" – Discuss.

(c) A Firm carrying on business filed a return of income disclosing an income of ₹85,000 in 28th November, 2012 in respect of assessment year 2012-13. It discovered an omission therein and therefore filed a revised return u/s 139(5) in 27th January, 2013 showing a revised income of ₹60,000. The Assessing Officer, however, ignored the revised return and proceeded to process u/s 143(1)(a) on the original return. Comment.

Answer:

(a) Section 154 provides that any order passed by the Income Tax Authority can be rectified provided there is an error apparent from the record which may be a mistake of fact or mistake of law but not a disputable one. The order can be rectified within 4 years from the end of the financial years in which such order was passed.
Order once amended can be rectified again provided there is a mistake apparent on record, which is rectifiable. In case of re-assessment, the time limit of 4 years for rectification runs from the date of re-assessment order and not from the date of original assessment order [Hind wire Industries Ltd. 212 ITR 639 (SC)].
Therefore, in the given case, the second application of the assessee cannot be rejected by the Assessing Officer, provided the application is made within the time limit of 4 years as mentioned above. Therefore, the action of the Assessing Officer is not correct.

(b) As per section 245T, an advance ruling can be void ab initio by the Authority for Advance Ruling if, on a representation made to it by the Commissioner or otherwise, it finds that the ruling has been obtained by fraud or misrepresentation of facts. Thereafter, all the provisions of the Act will apply as if no such advance ruling has been made. A copy of such order shall be sent to the applicant and the Commissioner.

(c) Section 139(5) provides that any return filed within the time limit u/s 139(1) or u/s 142(1) can be revised if there is any omission or error in the original return.
Where belated return is field u/s 139(4), being not the return filed within time limit u/s 139(1), assessee cannot file a revised return u/s 139(5). [Kumar Jagadish Chandra Sinha 220 ITR 67(SC)]
In the given case, the original return is filed belatedly and hence, the revised return cannot be accepted.

Question 8.

(a) "An appeal shall lie to High Court against the order of the Tribunal" – Discuss the statement's correctness or otherwise.

(b) Samadhan Ltd. entered into an agreement for the warehousing of its products with Life Warehousing and deducted tax at source as per provisions of Section 194C out of warehousing charges paid during the year ended on 31.03.2013. The Assessing Officer while completing the assessment for A.Y. 2013-2014 of Samadhan Ltd. asked the Company by treating the warehousing charges as rent as defined in section 194-I to make payment of difference amount of TDS with interest. It submitted by the Company that the receipt had already paid tax on the entire amount of warehousing charges and therefore, now the difference amount of TDS can be not recovered. However, it will make the payment of due interest on the difference amount of TDS.

(c) Should the maximum rate of tax prescribed for discretionary trust, where such discretion does not extend to the entire trust's income, be applicable for entire income?

(d) W is an Association governed by provisions of Sec. 44A of the Income Tax Act. The subscription receipts for the year ended 31.03.2013 were ₹70,000. The expenditure in the normal course of its activities was ₹90,000. Other income taxable under the Income Tax Act works out to ₹80,000. On these facts you are consulted as to:
(i) How W's taxable income will be determined for assessment year 2013-14?
(ii) In case W did not have the other income taxable will there be any difference in the computation of its income.

Answer:

(a) The Tribunal is the final fact finding Appellate Authority and consequentially any order by the Tribunal on facts shall be final and cannot be taken up by the High Court.
Where order issued by the Tribunal involves a substantial question of Law, then either the Assessee or the Department can file an appeal to the High Court within 120 days from the date of receipt of Tribunal's order.
In view of the above, the order of Tribunal shall lie to the High Court, if it involves substantial question of law.

(b) TDS has to be deducted u/s 194-I from payment made towards warehousing charges [Circular No. 718/22.8.1995].
Further, No demand u/s 201(1) should be enforced after the tax deductor has satisfied the Officer-In-Charge of TDS that the taxes due have been paid by the deductee–assessee.

However, this will not alter the liability to charge interest u/s 201(1A) till the date of payment of taxes by the deductee or the liability for penalty u/s 271C. [Hindustan Coco coal Beverage (P) Ltd vs. CIT 293 ITR 226 (SC)].

In the instant case, Samadhan Ltd. has deducted tax u/s 194C at 1% instead of 10% u/s 194-I. However it is mentioned that warehousing has already paid the tax on its income from Samadhan Ltd.

If Samadhan Ltd. proves to the satisfaction of the Assessing Officer that the taxes have paid on the relevant income by the deductee, then the Assessing Officer cannot recover the TDS amount from it. However, Samadhan Ltd. is liable for interest on the differential amount at 1% per month or part of a month.

(c) No. In a similar situation relating to a charitable institution where there was violation in respect of some investments not permitted under section 13(1)(d), it was found in Director of Income Tax (Exemptions) vs. Shaik Mohd. Jan Foundation Trust ITA Nos. 267 & 272 (Bom.), where it was held that maximum rate should be limited only to that part of the income, where there is a violation, attracting such maximum rate and not to the entire income. The decision was rendered in the context of the language of the proviso to section 164(2), which refers to the forfeiture of exemption for breach of section 13(1)(d). It was pointed out that there is a factual difference between eligibility for exemption and withdrawal/forfeiture of exemption. Once there is eligibility, the withdrawal or forfeiture could only be limited to that part of the income which attracts maximum rate. Since the decision was rendered in the context of section 164(2) applicable to discretionary trust, the principle should have application for all private trusts.

(d)

(i) Deficiency = Expenditure Incurred by W Less Subscription from members = ₹90,000 – ₹70,000 = ₹20,000.

Total Income of the Association before making any deduction u/s 44A = Other Taxable Income = ₹80,000

Allowable Deficiency = 50% of Total Income (i.e. 50% ₹80,000 = 40,000) or amount of deficiency (i.e. ₹20,000), whichever is less = ₹20,000.

Total Income of the Association for the assessment year 2013-14 (after giving benefit of Section 44A) = Other Taxable Income Less Allowable Deficiency = ₹80,000 – ₹20,000 = ₹60,000.

(ii) When W does not have any other taxable income, then its deficiency cannot be set off or carried forward. In such case, the deficiency of ₹20,000 cannot be set off or carried forward. The assessable Total Income of W will be Nil.

Question 9.

(a) From the following information furnished by Mr. Das, determine the value of house property built on leasehold land as at the valuation date 31.3.2013 :

Particulars	₹
Annual Value as per Municipal Valuation	**1,90,000**
Rent received from tenant (Property vacant for 2 months during the year)	**1,50,000**
Municipal tax paid by tenant	**15,000**
Repairs on property borne by tenant	**7,000**
Refundable deposit collected from tenant as security deposit which does not carry any interest	**60,000**

The difference between unbuilt area and specified area over aggregate area is 10.5%.

(b) A partnership firm, consisting of two partners, A and B is engaged in the business of civil construction, had a turnover of ₹40,00,000 for the assessment year 2013-14. The firm submitted its rerun of income wherein it had been stated that it wished to be governed by the provision of Section 44AD of Income Tax Act. As authorized by the partnership deed, the firm paid remuneration to the partners within the limit of Section 40(b), The Assessing Officer declines to allow such remuneration in computation of the firm's business income. Discuss the validity of the Assessing Officer's action.

(c) G Ltd., an Indian company, supplied billets to its holding company, J Ltd. of Japan during the previous year 2012-13. G Ltd. also supplied the same product to another Japanese company F Ltd. who is an unrelated entity. The transactions with J Ltd. are priced at ¥65,000 per MT (FOB) and the transactions with F Ltd. are priced at ¥92,000 per MT (CIF). Insurance and freight amounts to ¥16,000 per MT. Compute the arm's length price for the transaction with J Ltd.

Answer:

(a)

Solution:

Assessee: Mr. Das **Valuation Date: 31.3.2013** **Assessment Year: 2013-14**

Computation of Value of House Property

Step I: Computation of Gross Maintainable Rent (GMR)

Particulars	**₹**	**₹**
Actual Annual Rent [₹1,50,000 x 12/10]		1,80,000
Add: Municipal tax paid by the Tenant	15,000	
Add: 1/9th of Actual Rent Receivable as repair expenses are borne by the tenant [₹1,80,000/9]	20,000	
Interest on Refundable Security Deposit [₹60,000 x 15% x 10/12]	7,500	42,500
GROSS MAINTAINABLE RENT (GMR)		**2,22,500**

Step II: Computation of Net Maintainable Rent (NMR)

Particulars	**₹**	**₹**
Gross Maintainable Rent (GMR)		2,22,500
Less: Municipal Taxes levied by the local authority	15,000	
Less: 15% of Gross Maintainable Rent [₹2,22,500 x 15%]	33,375	48,375
NET MAINTAINABLE RENT (NMR)		**1,74,125**

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

NMR × Multiple Factor for an Unexpired Lease Period = ₹1,74,125 × 10 = ₹17,41,250

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

Particulars		**₹**
Capitalisation of the Net Maintainable Asset		17,41,250
Add: Premium for excess of 10.5% unbuilt area over specified area [30% or CNMR]		5,22,375
Value of House Property as per Wealth Tax Act		**22,63,625**

(b) As per proviso to Section 44AD(2), where the assessee is a partnership firm, the salary and interest paid to its partners shall be deducted from the income computed on presumptive basis under this section i.e. income computed u/s 44AD shall be the Book Profit for the purpose of computing allowable remuneration to partners u/s 40(b).

Computation of Income of the Partnership Firm

Particulars	₹
Presumptive Income u/s 44AD – 8% of ₹40,00,000	3,20,000
Less: Interest allowable u/s 40(b)	Nil
Book Profit	3,20,000
Lees: Maximum remuneration on Book Profit [90% of first ₹3,00,000 + 60% of (₹3,20,000 – ₹3,00,000)]	2,82,000
Total Income	**38,000**

Since, the partners A and B have drawn remuneration within the limits prescribed u/s 40(b), the action of the Assessing Officer is not justified.

(c)

Computation of Arm's Length Price

Particulars	Amount ¥	Amount ¥
Price of Billets of F Ltd. per MT (in comparable uncontrolled transaction)		92,000
Less: Adjustment of differences (Insurance and Freight)		16,000
Arm's Length Price of billets sold to J Ltd.		76,000

Note: Since transactions with unrelated party given, Comparable Uncontrolled Price Method to be used to arrive at the Arm's Length Price of the transaction with the associated enterprise.

Question 10.

(a) E (P) Ltd. has converted in an LLP on 01.04.2012 and at the time of conversion, all the conditions specified u/s 47(xiiib) have been fulfilled. The unabsorbed business loss and the depreciation of the company as on the date of conversion were ₹25 Lakhs and ₹32 Lakhs, respectively. The business profits of the LLP for the previous year 2012-13 were ₹90 Lakhs. However, on 02.10.2013, 4 partners (who were erstwhile shareholder in E (P) Ltd.), holding in aggregate 55% of the profit sharing in the LLP, resigned. Discuss the tax consequences of the conversion of company into LLP and subsequent resignation of partners.

(b) Who is liable for prosecution for the offences made by HUF under Income Tax Act?

(c) Is commissioner paid to a property agent for acquiring property deductible from income from other sources?

Answer:

(a) As per Section 72A(6A), the LLP would be able to carry forward and set off the unabsorbed depreciation and business loss of ₹32 Lakhs and ₹25 Lakhs, since at the time of conversion, all the conditions specified in section 47(xiiib) has been fulfilled.
However, if in the subsequent year, the LLP fails to fulfill any conditions specified in section 47(xiiib), the business loss and unabsorbed depreciation which have been already set off by the LLP would be deemed to be the income chargeable to tax for the year in which it fails to fulfill such condition.

One of the conditions is that, the erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion.
Since, 4 partners holding in aggregate 55% of the profit sharing in the LLP have resigned on 02.10.2013 the LLP has failed to fulfill this condition. The amount of ₹57,00,000 representing unabsorbed depreciation and business loss set off against profit of the LLP for the assessment year 2013-14 would be deemed to be income of the LLP for the assessment year 2014-15, being the year in which it failed to fulfill the conditions.

(b) As per section 278C(1), where an offence under the Income Tax Act has been committed by a Hindu Undivided Family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
The karta shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
As per section 278C(2), where an offence under this Act has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu Undivided Family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(c) Since income from the property is assessable only under the hear "income from house property" such income is not deductible from income from other sources.

Question 11.

(a) Determine the amount of wealth tax payable by Mr. Ramana, a non resident for the assessment year 2013-14 based on the following information obtained on 31st March, 2013.
(i) He own a commercial complex and had earned a rental income of ₹12,00,000 during the year from it. It is valued at ₹6 Crores. Loan taken for the same is ₹4.5 Crores.
(ii) He has jewellery worth ₹1.5 Crores which he has pledged and taken a loan of ₹1 Crore. This was used to buy a land in Mumbai, which was later transferred as gift to his wife on 30th March, 2013 on their wedding anniversary.
(iii) He also has a foreign make motor car purchased outside India. He had ordered it to be transported to India and is expected to reach by April 7, 2013. The ship was on international waters on 31st March, 2013.
(iv) He bought a land 12 kms away from Chennai for ₹50 lakhs. He planned to construct a residential house property at an estimate of ₹2 Crores. 50% of the work was completed on 31st March, 2013.
(v) He has a residential house property at Washington, USA, valued at ₹8 Crores.
He has another house property at Chicago, USA, valued at ₹6 Crores for which a loan of ₹4 Crores has been taken.

(b) 'The procedure relating to the recovery of due tax or the arrears of taxes from a non-resident is different than the resident assessee' – Comment and state how such recovery is to be made along with its limitation.

(c) In levying wealth tax on the family, can the share of the female heir be excluded?

Answer:

(a)

Computation of Net Wealth of Mr. Ramana as on 31-03-2013

Amount ₹ in Crores

Particulars	Amount	Total Amount
Assets		
Commercial Complex – Not an asset	Nil	
Jewellery	1.50	
Land in Mumbai – Deemed Asset	1.00	
Motor Car in International Waters – Not an Asset for Non-Resident	Nil	
Land in Chennai – Construction Started – Not an Asset	Nil	
Residential House Property in USA – Not an Asset	Nil	
Residential House Property in USA – Not an Asset	Nil	
Gross Wealth		2.50
Less: Deduction of Loans:		
Loans for Commercial Complex – Asset Exempted		
Loan for Land in Mumbai	1.00	1.00
Net Wealth		1.50
Basic Exemption		0.30
Taxable Net Wealth		1.20

Wealth Tax Liability = 1% of ₹1,20,00,000 = ₹1,20,000

(b) The Agent of the non-resident, including a person who is treated as an Agent u/s 163 is treated as the Representative Assessee of the non-resident. Representative assessees are subject to the same duties, responsibilities and liabilities applicable under the provisions of the Act as applicable to the assessee. The representative assessee is liable to the assessment in his own name under representative capacity. The tax is to be levied and recovered from him in the like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(c) No. Following Gurupad Khandappa Magdum vs. Hirabhai Khadappa Magdum ((1981) 129 ITR 440 (SC) it was though that on the death of a coparcener, there is a notional partition, which could be given effect. But the subsequent decision in State of Maharashtra vs. Narayan Rao Sham Rao Deshmukh (1987) 163 ITR 31 (SC), it was clarified, that the share can be taken out only on actual partition by metes and bounds.

Question 12.

(a) If a taxpayer is entitled to double tax relief in India, though assessable under Indian Law, could such relief be denied merely because such income is exempt from tax in the other country?

(b) Y Ltd., a manufacturer of engineering goods, faces a shut down on account of imports of raw materials becoming costly. The contracts on hand for ready delivery of the manufactured goods are settled and the parties are paid the price difference of such goods. The company incurs loss. The Assessing Officer holds that Section 43(5) applies and the loss is arising from speculative transactions. He refuses to set off this loss against income from another business. Is the opinion of the Assessing Officer is valid?

(c) Whether dividend tax under section 115-O, interest on income tax, tax penalty, could all be treated as income tax, so as to be disallowed?

(d) An assessment was made on Som originally in the status of a nonresident. In the re-assessment made under section 147, he is assessed as resident and ordinarily resident on the ground that the correct status was not disclosed in the return of income filed originally. Is the change of status valid in a re-assessment?

Answer:

(a) No. There can be double non-taxation. It was so pointed out in CIT vs. Laxmi Textile Exporters Ltd. (2000) 245 ITR 521 (Mad.), in the similar situation, where income was eligible for exemption under Srilankan Law, though not taxable in India under the DTAA, it was held that relief cannot be denied. The High Court found that the DTAA is binding on the Government even [CIT vs. Visakhapatnam Port Trust (1983) 144 ITR 146 (AP)].

(b) The transactions having been settled without actual delivery they fall in Section 43(5) [Davenport & Co. Pvt. Ltd. vs. CIT (1975) 100 ITR 715 (SC)]. However, in order to deny set off of loss, it should have arisen in a speculative business (Section 73); it is not material that in CIT vs. Soorajmull Nagarmull (1981) 129 ITR 169, loss arose in a speculative transaction unless the transaction constitutes a business. The act of cancellation of contracts does not constitute a business and therefore, the loss does not arise from a speculative business [CIT vs. Kamani Tubes Ltd. (1993) 207 ITR 298 (Bom)].

(c) Dividend tax u/s 115-O was held to be income tax to be disallowed. Interest of income tax was also found to be disallowable. In this context, the amendment to section 115JB by the Finance Act, 2008 by way of insertion of Explanation 2 is to be seen. Under the Explanation the amount of income tax shall include tax on distributed dividend u/s 115-0/115R, interest, surcharge, into account, but it is only the net amount, which is so required to be taken. These amendments are made with retrospective effect from 01.04.2001.

(d) This case is based on a case decided by the Punjab & Haryana High Court in CIT vs. Surmukh Singh Uppal (Dr) (1983) 144 ITR 191(P&H) in which the court held that if an assessee fails to disclose fully and truly all the material facts at the time of original assessment then the question of status could be determined in reassessment proceedings if, on account of the non-disclosure of the facts fully and truly, there had been an escapement of income.
In view of the aforesaid case, the action which is taken by the Assessing Officer in assessing Som as a resident and ordinarily resident, is correct.

Indirect Tax

Question 13.

(a) Assessable value of certain goods imported from USA is ₹15,00,000. The packet contains 15,000 pieces with maximum retail price ₹150 each. The goods are assessable under section 4A of the Central Excise Act, 1944, after allowing an abatement of 40%. The excise duty rate is 8% ad valorem. Calculate the amount of additional duty of customs u/s 3(1) of the Customs Tariff Act, 1975 assuming basic customs duty @10% ad valorem.

(b) A manufacturer of wooden furniture sold the furniture without painting in it. After the furniture is sold, colour painting is done at the instance of buyers wherever necessary as per their specification either by the painters suggested by the manufacturer or other painters directly engaged by the buyers. Whether such painting would amount to manufacture?

(c) An outdoor caterer charges total sum of ₹6 lakhs (excluding taxes); client supplies goods and services valuing ₹1.5 lakhs (fair market value, excluding taxes) to the caterer on

payment of ₹50,000 (excluding taxes). Compute the value of taxable service and tax thereon.

(d) 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?

Answer:

(a) The goods are assessable under section 4A of the Central Excise Act, 1944 and hence:
- As per section 3 of Customs Tariff Act, 1975, value for the purpose of levy of additional duty of customs u/s 3(1) = Retail Sale Price – permissible abatement = [15,000 × (₹150 – 40% of ₹150)] = ₹9,00,000.
- Additional duty of customs = 8% of ₹9,00,000 = ₹72,000. (EC and SHEC are exempt).

(b) In this case, although colour painting of wooden furniture is incidental or ancillary to manufacture of furniture, the furniture is sold as a finished product without painting and the painting is done after the furniture is sold. Hence it would not amount to manufacture as no new commercial product having different name, use or character comes into existence.

(c) According to Rule 2C of the Service Tax (Determination of Value) Rules, 2006, Total amount = Amount charged ₹6 lakhs + FMV of goods and services supplied by the client ₹1.5 lakhs – Amount charged by client for supplying such goods and services ₹50,000 = ₹7,00,000.
Value of taxable service = 60% of ₹7,00,000 = ₹4,20,000
Tax @12.36% on ₹4,20,000,= ₹51,912.

(d) 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.

Question 14.

(a) Mr. Sen, a manufacturer sells goods to Mr. Mehta, a distributor for ₹2,000 (excluding of VAT). Mr. Mehta sells goods to Mr. Kumar, a wholesale dealer for ₹2,400. The wholesale dealer sells the goods to a retailer for ₹3,000, who ultimately sells to the consumers for ₹5,000. Compute the Tax Liability, input credit availed and tax payable by the manufacturer, distributor, wholesale dealer and retailer under Invoice method assuming VAT rate @ 12.5%.

(b) M/s. PMG Goods Services, a goods transport agency (GTA) furnishes the following information in respect of services provided for the month ending on March 31st, 2013. Determine the value of taxable services and tax thereon under the Finance Act, 1994.

Particulars	₹

(i)	**Service provided to M/s. Alka Co. Ltd. where person liable to pay freight in Alka**	**25,50,000**
(ii)	**Freight for transport of food grains and pluses**	**2,50,000**
(iii)	**Service to an unregistered firm**	**6,00,000**
(iv)	**Service provided as a 'clearing and forwarding agent'**	**2,00,000**
(v)	**Composite service provided which include packing/unpacking, loading, unloading in the course of transportation by road**	**2,00,000**
(vi)	**Service tax paid on input services used for providing goods transport agency services**	**72,000**

(Provide suitable explanations where required)

(c) When one can pay duty under protest in Excise?

(d) Mr. Ram provider of interior decorating services since 2009, hold's service tax registration under service tax provisions. Mr. Ram subsequently sold the entire business to Mr. Y for ₹10 lakhs. Will the registration number of Mr. Ram be the registration number of Mr. Y?

(e) A of Bangalore buys goods worth ₹200 (plus ₹4 CST) from Delhi and good worth ₹400 (plus VAT ₹16) from Bangalore. State the eligibility of the credit of tax paid on inputs.

Answer:

(a) As per Invoice Method:

Particulars	Amount (₹)	VAT Liability (₹)	VAT Credit (₹)	Tax to Government (₹)
Mr. Sen sold to Mr. Mehta Taxable turnover @12.5%	2,000	250	—	250
Mr. Mehta sold to Mr. Kumar	2,400	300	250	50
Mr. Kumar sold to retailer	3,000	375	300	75
Retail sold to consumer	5,000	625	375	250

Note: Total VAT paid into the credit of Government (i.e. from the Manufacturer to Consumer) is ₹625/- (i.e. ₹250 + ₹50 + ₹75 + ₹250).

(b) Computation of taxable value and tax thereon

Particulars	₹
Service provided to M/s. Alka Co. Ltd. where person liable to pay freight in Alka – Since person liable to pay freight is a company viz. body corporate, hence, person liable to pay service tax is Alka Ltd. The assessee, viz. GTA need not pay any service tax.	GTA not liable to pay service tax
Freight for transport of food grains and pulses – Exempt	Not taxable
Service to an unregistered firm – Assuming that person liable to pay freight is that unregistered firm, which is not a person specified in rule 2(1)(d), hence, person liable to pay freight is GTA. Hence, it will be taxable in the hands of GTA.	6,00,000
Composite service provided which include packing/unpacking, loading, unloading in the course of transportation by road – Naturally bundled service in ordinary course of business is governed by essential character thereof viz. GTA service, hence, covered under this head.	2,00,000

Taxable sum falling under GTA Service	8,00,000
Taxable value @ 25% of taxable sum (abatement allowed assuming no CENVAT Credit is claimed)	2,00,000
Add: services provided as 'clearing and forwarding agent' – Taxable	2,00,000
Total value of all services	4,00,000
Service tax @ 12.36% (no credit allowed on input services as abatement claimed)	49,440

(c) 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.

(d) No, the registration certificate under the service tax is non-transferable.

(e) The CST of ₹4 paid on purchases from Delhi is not eligible for credit as CST paid on purchases is not allowed as credit. But the VAT of ₹16 paid on purchases from Bangalore is eligible for credit.

Question 15.

(a) Is change in tariff heading/sub-heading under the Central Excise Tariff Act, 1985 required between the input material and the resultant finished product so as to render such finished products liability to duty?

(b) Computation of credit reversible where no separate books of accounts are maintained – Rule 6(3) & 6(3A) : M/s. ABC Co. Ltd., a manufacturer of dutiable as well as exempted goods and also a provider of taxable as well as exempted services, furnishes the following information:

(₹ In lakhs)

	Financial Year 11-12	For month of April, 2012
Value of exempted goods removed @ ₹ 650 per unit	**585**	**65**
Value of dutiable goods removed	**400**	**50**
Value of exempted services provided	**250**	**30**
Value of taxable services provided	**500**	**60**
Credit of input services, commonly used for all goods & services, taken	**—**	**₹ 2,00,820**
Credit of inputs, commonly used for all goods and services, taken (80,000 units x ₹ 30 per unit x 12.36%)	**—**	**₹ 2,96,640**

You are required to compute the provisional amount of proportionate credit reversible under Rule 6(3A) of the CENVAT Credit Rules, 2004 for the month.
Given that for every unit of exempted goods, two units of inputs are required.

(c) Compute the duty payable under the Customs Act, 1962 for an imported machinery based on the following information:

(i) Assessable value of the imported equipment US $ 10,100.
(ii) Date of Bill of Entry 25.03.2013 basic customs duty on this date 20% and exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹ 65.
(iii) Date of Entry inwards 21.03.2013 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹ 57.
(iv) Additional duty payable under Section 3(1) and (2) of the Customs Tariff Act, 1975: 15%.
(v) Additional duty under Section 3(5) of the Customs Tariff Act, 1975: 4%.

(vi) Education cess @ 2% in terms of the Finance (No. 2) Act, 2004 and secondary and higher education cess @ 1% in terms of the Finance Act, 2007.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee.

(d) Mr. P use to purchase duty paid MS tubes from its manufacturers and cut the same into requisite length. Thereafter, put it in the swaging machine for undertaking swaging process whereby dies fitted in the machine imparted "folds" to the flat surface of the MS tube/pipe. The Department took the plea that swaging process amounted to manufacture and hence duty was payable on the goods manufactured by Mr. P.

Answer:

(a) In **CCE vs. Kapri International (P) Ltd**, the assessee contended that in order to constitute a manufacturing activity the raw material and the final product must fall within different chapters of the Central Excise Tariff Act. The assessee argued that since the raw material (cotton fabrics) and the final product (bed sheets) fall within the same chapter, there is no manufacture. The Supreme Court observed that the cutting of cotton fabrics into small pieces brought into existence new marketable commodities-bed sheets, table cloth, etc., known as such in the market and thus manufacture occurs. Similarly, in Laminated Packing Case, a new product called "Laminated Craft paper" emerged when plain craft paper is laminated. Both plain and laminated craft paper fall under the same tariff heading. The Supreme Court held that the activity of lamination of duty paid craft paper amounts to manufacture. SC further observed that the fact of both items falling within the same chapter is not relevant. Once there is a transformation resulting in new commodity, duty is leviable.
Thus, if manufacture takes place, the commodity is dutiable even if the raw material and the resultant product fall under the same tariff heading.

(b) The amount of provisional credit reversible under Rule 6(3A) shall be as follows –

Particulars	₹
CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods (Inputs used in exempted goods = 10,000 x 2 = 20,000 units. Credit attributable to exempted goods = 20,000 x ₹ 30 per unit x 12.36%)	74,160
CENVAT credit attributable to inputs used for provision of exempted services = Value of exempted services during preceding financial year x (Cenvat credit taken on inputs – Cenvat credit attributable to inputs used in exempted goods) ÷ (Value of dutiable goods during preceding financial year + Value of taxable and exempted services during preceding financial year) = 250 lakh x (2,96,640 – 74,160) ÷ (400 lakh + 250 lakh + 500 lakh)	48,365
Cenvat credit attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services = Value of exempted goods and services during the preceding financial year x Cenvat credit taken on input services ÷ Total value of all goods and services (exempted or dutiable / taxable) during the preceding financial year = 835 lakh x 2,00,820 ÷ 1735 lakh	96,649
Provisional Cenvat Credit reversible under Rule 6(3A) for the month	2,19,174

(c) **Computation of Duty**

	Duty		Total
	Rate	**₹**	**₹**
Assessable Value (US$ 10,100 x Rate of exchange in force on date of presentation of bill of entry i.e., ₹ 65)	---	---	6,56,500.00
Add: BCD [As per section 15(1)(a), rate of duty prevalent on date of presentation of bill of entry or date of entry inwards, whichever is later, shall be applicable. Therefore, rate prevalent on 25-04-2012 viz. 20% shall be taken.]	20.00%	1,31,300.00	1,31,300.00
		1,31,300.00	7,87,800.00
Add: Additional duty i.e., CVD u/s 3(1) (excise duty excluding EC and SHEC due to exemption)	15.00%	1,18,170.00	1,18,170.00
		2,49,470.00	9,05,970.00
Add: Education Cess @ 3% on DUTY sub-total upto last stage	3.00%	7,484.10	7,484.10
		2,56,954.10	9,13,454.10
Add: Special CVD u/s 3(5) @ 4% of total value (including duty)	4.00%	36,538.16	36,538.16
Total (rounded off on nearest rupee)		2,93,492.00	9,49,992.00

(d) As per Section 2(f) of the Central Excise Act, 1944, Manufacture includes 'any process incidental or ancillary to the completion of a manufactured product'. However, input and output must be different with each other. Therefore, the process of swaging amounts to manufacture. Mr. P was liable to pay the duty. *[Prachi Industries vs. CCEx., Chandigarh* 2008 (225) ELT 16 (SC)]

The definition of manufacture under section 2(f) implies that manufacture would take place even at an intermediate stage, so long as the intermediate product is commercially and distinctly identifiable.

Intermediate products are such products, which are produced in a process naturally in the course of manufacture of a finished product, which involves more than one process. Thus, such products are output of one process and input for the subsequent process. Captive consumption means consumption of such output of one process in the subsequent process. Generally, the intermediate products do not have any marketable identity and can hardly be sold in the market.

In the case of JK Spinning & Weaving Mills vs. UOI the Supreme Court held that the captive consumption would amount to removal, hence chargeable to duty. However, in Union Carbide vs. UOI, the Supreme Court held that an intermediate product would be chargeable to excise duty, only if it is a complete product and can be sold in the market to a consumer. This decision was affirmed in Bhor Industries vs. UOI.

Question 16.

(a) Explain briefly the provisions relating to 'Special Audit' in certain cases under section 14A of the Central Excise Act, 1944.

(b) M/s. M Ltd. Supplies raw material costing ₹25,000 to job worker M/s. W & Co.; M/s. W & Co. processes the raw material and supplier an intermediate product 'Plastic Containers' to M/s. AP (being other unit of M/s M Ltd.) for packing of hair oil manufactured by M/s. M Ltd. M/s. W & Co. charged ₹1,400 as processing charges, which include ₹1,200 as processing charges and ₹200 as its profit margin. The cost of transportation of raw material to the premises of M/s. W & Co. is ₹200 and for sending the plastic jars to M/s. AP is ₹60.

The rate of excise duty is 12.36%.
Compute assessable value and excise duty payable by M/s. W & Co. Make suitable assumptions.

(c) ABC Associates is a Small Scale unit located in a rural area and is availing the benefit of Small Scale exemption under Notification No. 8/2003-CE in the year 2012-13. Determine the value of the first clearance and duty liability on the basis of data given below: (i) Total value of clearances of goods with own brand name - ₹80,00,000, (ii) Total value of clearances of goods with brand name of other parties - ₹90,00,000, (iii) Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances) ₹40,00,000.
Normal rate of Excise duty is @12%. Education cess and SAH Education cess is @ 3% of excise duty. Calculations should be supported with appropriate notes. It may be assumed that the unit is eligible for exemption under Notification No. 8/2003.

(d) An assessee, fails to pay service tax of ₹15 lakhs payable by 6th June 2011. He pays the amount on 16th June 2011. What is the penalty payable by M?

Answer:

(a) Section 14A provides for special audit in certain cases. –

I. Audit to be directed by Assistant Commissioner or Deputy Commissioner if value is not properly declared by assessee:

If at any stage of enquiry, investigation or any other proceedings before him, -

- any Central Excise Officer not below the rank of an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise;
- having regard to the nature and complexity of the case and the interest of revenue;
- is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person;
- he may, with the previous approval of the Chief Commissioner of Central Excise;
- direct such manufacturer or such person to get the accounts of his factory, office, depots, distributors or any other place, as may be specified by the said Central Excise Officer;
- audited by a cost accountant or chartered accountant, nominated by the Chief Commissioner of central Excise in this behalf.

II. Nominated Cost/Chartered Accountant, to submit audit report to Central Excise Officer:

The cost accountant or chartered accountant, so nominated shall, within the period specified by the Central Excise Officer, submit a report of such audit duly signed and certified by him to the said Central Excise Officer, mentioning therein such other particulars as may be specified.

The Central Excise Officer may, on an application made to him in this behalf by the manufacturer or the person and for any material and sufficient reason, extend the said period by such further period or periods as he thinks fit, however, the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed 180 days from the date on which the direction received by the manufacturer or the person.

III. Accounts to be audited even if they have been already audited under any other law:

The provisions of his section shall have effect notwithstanding that the accounts of the manufacturer or person aforesaid have been audited under any other law for the time being in force or otherwise.

IV. Opportunity to the assessee of being heard:

The manufacturer or the person shall be given an opportunity of being heard in respect of any material gathered on the basis of audit and proposed to be utilized in any proceedings under this Act or rules made thereunder.

Explanation 1: For the purpose of this section, "cost accountant" shall have the meaning assigned to it in clause (b) of sub- section (1) of section 2 of the Cost and Works Accountants Act, 1959.

Explanation 2: For the purposes of this section, "chartered accountant" shall have the meaning assigned to it in clause (b) of sub- section (1) of section 2 of the Chartered Accountants Act, 1949.

(b) **Assessable value and Excise duty in hands of M/s. W & Co.:** M/s. W & Co. is a job worker. In this case –

(i) The intermediate product manufactured by M/s. W & Co. is neither sold directly by M/s. M Ltd. at the job worker M/s. W & Co. premises nor is it transferred to any other place for being sold. Hence, clause (iii) of Rule 10A is applicable and the valuation is to be done as per the foregoing rules (i.e. Rules 4 to 10);

(ii) Since the element of sale is absent i.e. plastic jars are not sold, hence the only Rule that covers this contingency is Rule 8. However, Rule 8 applies only if the excisable goods are not sold by the assessee (here, M/s. W & Co.) but are used for consumption by him on his behalf in production or manufacture of other articles. Plastic jar is neither used by M/s. W & Co. nor on its behalf. It is used by the M/s. AP (being other unit of M/s. M Ltd.) in packing of hair oil. Hence, Rule 8 also doesn't apply for valuation in the hands of job worker M/s. W & Co.

(iii) Consequently, the valuation shall be done as per judgment in Ujagar Prints vs. UOI [1989] 38 ELT 535 (SC) as follows:

Particulars	₹
Cost of raw material supplied to the job-worker M/s. W & Co.	25,000
Transportation cost of raw material from the principal manufacturer – M/s. M premises to the job worker M/s. W & Co. premises	200
Processing charges of job – worker (cost and profit, both of the job- worker)	1,400
Total Assessable Value	**26,600**
Excise Duty@ 12.36%	**3,288**

Note: Job-worker M/s. W & Co. premises will be treated as deemed "factory- gate of removal" and hence, transportation expenses of plastic containers from job worker M/s. W & Co.'s premises to the place of M/s. AP (being other unit of M/s. M Ltd.) will not be included. The same view was held in **Indian Extrusions vs. CCEx. [2012] 283 ELT 209 (Tri. – Mumbai).**

(c) While calculating SSI exemption limit of ₹150 lakhs, goods cleared under brand name in rural area are to be included, since goods manufactured in rural area with brand name of others are entitled for SSI exemption. However, goods which are exempted from duty under notification other than exemption based on quantity or value of clearances is not required to be considered. Thus, for purpose of SSI exemption, his value of turnover is ₹170 lakhs. His first turnover of ₹150 lakhs is exempt. Thus, he is liable to pay excise duty on ₹20 lakhs.
Hence, Excise duty @ 12.36% is ₹2,47,200 .

(d) Penalty is calculated as follows:
₹15,00,000 x 10 days/30 days x 1% pm = ₹5,000
Or
100 per day x 10 days = ₹1,000
(Whichever is higher)

Therefore, the penalty is ₹5,000

Question 17.

(a) Give a comparison between section 74 and 75 of the Customs Act, 1962 relating to duty drawback.

(b) What are the powers conferred to Central Excise Officers?

(c) "The amount of service tax is based on the Point of Taxation." — Write about point of taxation (Rule 3) in the context of service tax.

(d) List out export incentives given to manufacturers under the EXIM policy.

Answer:

(a) Comparison of section 74 and 75 of the Customs Act, 1962 relating to duty drawback:

Basis	Drawback allowable on re-export of duty paid goods—Section 74	Drawback on materials used in the manufacture of exported goods — Section 75
1. Scope of drawback	Drawback, in relation to any goods exported out of India, means refund of duty paid on importation of such goods in terms of section 74. Thus, drawback is allowed only of import duties of customs.	"Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods.
2. Identity of goods exported	The identity of the goods exported should be established as the one, which was imported on payment of duty.	The goods exported under this Section are different from the inputs as the inputs are manufactured, processed or any operations are carried on them before their export.
3. Goods eligible For drawback	Drawback under this Section is available on all goods (identification is the only criterion).	Drawback under this Section is available only on notified goods.
4. Nature of goods exported	The exported goods should have been imported and customs duty be paid thereon.	The goods to be exported may be manufactured or processed from imported or indigenous inputs or by utilising input services.
5. Rate of drawback	The rate of drawback is 98% in case the goods are exported without use. The rate of drawback on goods taken into use is separately notified depending upon the period of us, depreciation in value and other relevant factors.	Rate per unit of final article to be exported is fixed by taking into account— (a) mode of manufacture (b) input-output ratio (c) standardisation of the products etc.
6. Period for export of goods	The goods should be exported within two year from the date of payment of duty or such extended time as the Board may allow.	No such restrictions.

7. Criteria of Value addition	There is no criterion of minimum value addition, which is to be fulfilled before export for claim of drawback.	It has been specifically provided that there should not be negative value addition and in specified the same should be achieved for claim of drawback.
8. Rules framed	The drawback is governed by the Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995. The Rules cover only the customs duty.	The drawback, in this case, is governed by the Customs Central Excise Duties and Service tax Drawback Rules, 1995. The rules cover customs duty, central excise duty and service tax.

(b) **Powers of Central Excise Officers:**

i. **Power to access registered premises:** As per Rule 22(1) of Central Excise Rules, 2002, an officer empowered by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

ii. **Power to stop and search:** As per Rule 23 of Central Excise Rules, 2002, any Central Excise Office, may search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty.

iii. **Power to detain or seize goods:** As per Rule 24 of Central Excise Rules, 2002, if a Central Excise Officer, has reason to believe that any goods, which are liable to excise duty but no duty has been paid thereon or the said goods were removed with the intention of evading the duty payable thereon, the Central Excise Officer may detain or seize such goods.

iv. **Power to delegate authority:** As per Section 12E(1) of Central Excise Act, 1944, a Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other Central Excise Officer who is sub-ordinate to him.
Notwithstanding anything contained in sub-section (1), the Commissioner of Central Excise (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14.

v. **Power to arrest:** As per the provisions of Section 13 of the Central Excise Act, 1944 the central excise officer not below the rank of inspector can arrest any person whom he has a reason to believe to be liable to punishment under the Central Excise Law. However, such an arrest can be only with the prior approval of Commissioner of Central Excise. The arrested person must be produced before the Magistrate within twenty four hours of the arrest.

vi. **Power to summon persons to give evidence and produce documents in inquiries under this Act:** As per Section 14 of the Central Excise Act, 1944,

   A. Any Central Excise Officer duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

   B. All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

C. Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860.

(c) The point of taxation defines the point in time when a service shall be deemed to have been provided. It has impact on determination of rate of tax, as normally the rate of tax shall apply as prevailing on the date when service shall be deemed to have been provided. The Government of India has introduced the Point of Taxation Rules, 2011 to remove the disputes about applicability of the rate of tax and for ascertainment of the Point of Taxation.

Determination of point of taxation (Rule 3):

(i) Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 30 days from the date of completion of the provision of service (w.e.f. 1-4-201 2).

(ii) Date of completion of the provision of service or payment, whichever is earlier if the invoice is not issued within the prescribed period as state in rule 4A of the Service Tax Rules, 1994.

W.e.f. 1-4-2012, in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

(d) Broadly, the export incentives under EXIM policy for manufacturers are –

(i) Indigenous inputs without payment of excise duty or rebate if duty paid.
(ii) No excise charged on final product or rebate if duty paid.
(iii) Imported inputs without payment of customs duty, or rebate if duty paid.
(iv) No export duty on export of final product.
(v) Bank finance on priority basis and at concessional rate of interest.
(vi) Import of capital goods at concessional rate (under EPCG scheme).
(vii) Exemptions/relaxations from income tax.
(viii) Exemption from sales tax on final product (refund of CST paid on inputs in case of EOU. No CST for supply to SEZ and SEZ units).
(ix) Usance bills of exchange executed by an exporter in relation to export transaction are fully exempt from stamp duty – SO 804(E) dt. 8-7-2004.

Question 18.

(a) 1,700 pieces of a product 'Q' were manufactured during the financial year. Its list price (i.e. retail 300 per piece, exclusive of taxes. The manufacturer offers 20% discount to wholesalers on the price) is list price. During the year, 850 pieces were sold in wholesale, 500 pieces were sold in retail, 100 pieces were distributed as free samples. Balance quantity of 250 pieces was in stock at the end of the year. The rate of duty is 12% plus education cess and SAH education cess as applicable. What is the total duty paid during the financial year? Assume that the manufacture is not eligible for SSI concession.

(b) What is Negative List? Write down any three services which have their inclusions in negative list.

(c) Mr. A, a first stage dealer in pharmaceutical plant and boiler in the State of Tamil Nadu, furnishes the under mentioned information:

		₹
(i)	**Total inter-State sales during financial year 2011-12 (CST not shown separately)**	**2,31,25,000**
(ii)	**Trade commission for which credit notes have to be issued separately**	**5,70,625**
(iii)	**Freight and transportation charges (of this ₹1,00,000 is on inclusive basis)**	**4,00,000**
(iv)	**Insurance premium paid prior to delivery of goods**	**70,000**
(v)	**Installation and commissioning charges levied separately in invoices**	**75,000**

Compute the tax liability under the CST Act, assuming the rate of tax @ 2%.

(d) Briefly discuss the procedure for confiscation of goods or imposition of penalty u/s 124 of the Customs Act, 1962.

Answer:

(a) **The total selling price is as follows –**

Quantity	Price (₹)	Total
500	300	1,50,000
850	240	2,04,000
100	240	24,000
Total		3,78,000

Duty payable is 12% of ₹3,78,000 i.e. ₹45,360, plus education cess @ 2% i.e. ₹907 plus SAH education cess @ 1% is ₹454. Therefore total excise duty is ₹46,721.

Note – (i) Since 250 pieces were in stock at year end, no duty will be payable. Duty will be payable only when goods are cleared from factory. (ii) In case of samples, as per rule 4 of Valuation Rules, value nearest to the time of removal, subject to reasonable adjustments is required to be taken. However, since prices are varying, value nearest to the time of removal may not be ascertainable and will not be acceptable for valuation as the prices are changing. In such case, recourse will be taken to rule 11 of Valuation Rules, i.e. best judgment assessment. We can take recourse to rule 7 and 9 where principle of 'normal transaction value' is accepted, when prices are varying.

As per rule 2(b) of Valuation Rules, 'normal transaction value' means the transaction value at which the greatest aggregate quantity of goods is sold. Since greatest quantity of 850 pieces are sold at ₹240, that will be 'normal transaction value', which can be taken for valuation of free samples.

(b) In terms of Section 66B of the Act, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66D. In all, there are seventeen heads of services that have been specified in the negative list. The scope and ambit of three of these services are explained below:

Services	Inclusion in Negative list (it means outside the scope of service tax)	Exclusion from Negative list (it means taxable unless exempted from service tax)	Remarks
(1) Services	All services provided by	• Speed post,	Reverse charge

provided by Govt. or local Authority	Govt., in terms of their Sovereign right to business entities. • Grant of mining licenses • Audit of Comptroller and Auditor General, etc.	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.	applicable in case of support services Examples: Adv. Service, Construction Works contract, Renting of movable or immovable property, Security Testing and analysis.
(2) Services provided by RESERVE BANK OF INDIA (RBI)	All type of services provided by RBI.	Services provided to RBI.	Services provided banks to RBI taxable.
(3) Services Provided by a foreign diplomatic mission located in India	All type of services.	NIL	Service provided to a foreign diplomatic mission located in India is exempt from service tax.

(c) **Computation of tax liability under the CST Act:**

	₹
Sales turnover	2,31,25,000
Less: Trade Commission	5,70,625
Freight and transportation charges to the extent shown separately in the invoices	3,00,000
Installation and commissioning charges levied separately in invoices	75,000
Total Turnover	2,21,79,375
Less: Central Sales Tax (₹2,21,79,375 x 2/102)	4,34,890
Taxable turnover	**2,17,44,485**

(d) As per Section 124 of the Customs Act, 1962, before confiscating goods or imposing any penalty on any person, a show cause notice must be issued to the owner of goods giving grounds for confiscation or imposition of penalty and he should be given an opportunity to make representation and being heard. The show cause notice can be issued only with the prior approval of the officer of customs not below the rank of Assistant Commissioner of Customs.

The notice and representation can be oral at the request of the person concerned.

Question 19.

(a) A manufacturer purchased certain inputs from Z. The, assessable value was: ₹20,000 and the Central Excise duty was calculated at ₹3,296 making a total amount of invoice at ₹23,296. However, the buyer manufacturer paid only ₹20,800 to Z in full settlement of this bill. How much CENVAT credit can be availed by the manufacturer and why?

(b) "Advance Authorisation' is not transferable, while material imported under DFIA will be transferable after fulfillment of export obligation." — Write about Advance Authorisation and DFIA (Duty Free Import Authorisaton) in this context.

(c) Mr. Anil, an IT professional and a person of Indian origin, is residing in U.S.A. for the last 14 months. He wishes to bring a used microwave oven (costing approximately ₹11,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in U.S.A. 6 months back and he has been using that oven for his personal use in his kitchen. He is not aware of Indian customs rules. Could you please provide him some advice in this regard?

(d) Discuss about Anti-Dumping and its features.

Answer:

(a) CENVAT credit that can be availed by the manufacturer is ₹3,296.
CENVAT credit cannot be reversed just because the supplier of inputs has given some reduction in price after removal of goods or the buyer manufacturer paid only reduced amount than that of invoice [unless supplier of inputs claims and get refund of excise duty paid by him].[CCE vs. Trinetra Texturisers 2004 (CESTAT].

(b) Under Advance Authorisation inputs required to manufacture export products can be imported without payment of customs duty.
Advance Authorisation can be granted to merchant exporter or manufacturer exporter to import raw materials. Since the raw materials can be imported before exports of final products, the Authorisation issued for this purpose is called 'advance Authorisation'.
Advance Authorisation is issued to allow duty free import of inputs with normal allowance for wastage. In addition, fuel, oil, energy, catalysts etc. required can also be allowed. Duty free import of mandatory spares upto 10% of CIF Value of Authorisation, which are required to be exported with resultant products, may also be allowed. However, prohibited items of imports cannot be imported.
The Advance Authorisation will be for actual user only. It is not transferable. The material imported under Advance Authorisation is also not transferable even after completion of export obligation. However, goods manufactured out of such imported material can be disposed of, after export obligation is fulfilled.
In case of Advance Authorisation, positive value addition is sufficient, while in case of DFIA, 20% value addition is required, except in case of gem and jewellery sector.
DFIA is issued to allow duty free import of inputs used in manufacture of export product (with normal allowances for wastages), and fuel, energy, catalyst etc. Duty free import of mandatory spares upto 10% value of authorisation, which is required to be exported/ supplied with resultant product, is also allowed.
DFIA is initially issued with 'actual user condition'. Imports will be exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-Dumping Duty and Safeguard duty, if any.
DFIA is issued on basis of SION. Import Authorisation will be limited to quantity mentioned in SION. DFIA is issued to manufacturer-exporter or merchant-exporter for following – (i) Physical exports including supplies to SEZ (b) Intermediate supplies and (c) Main contractors for supply of goods under Deemed Exports (except supply against Advance Authorisation and marine containers). In case of some deemed exports, DFIA is available to sub-contractors also.

(c) Free allowances to professionals in respect of their professional equipments upto ₹40,000 if Indian passengers returning to India after at least 6 months and in case of house hold articles it is upto ₹12,000.

In the given example Anil brings the used household article worth ₹11,200 which is free of duty. As per the rule 5 of the Baggage Rules, 1998 he is not liable to pay any duty.

(d) Dumping means export of goods by exporters of one country/territory to the market of another country/ territory at a price lower than the price prevailing in the country of export and the difference in such price is called margin of dumping. This is an unfair trade practice which can have a distortive effect on international trade and needs to be condemned under WTO law.
Dumping is said to occur when the goods are exported by a country to another country at a price lower than its normal value. This is an unfair trade practice which can have a distortive effect on international trade. Anti dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti dumping measure as an instrument of fair competition is permitted by the WTO. In fact, anti dumping is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry. It provides relief to the domestic industry against the injury caused by dumping. Anti-dumping is a measure to rectify the trade distortive effect of dumping and re-establish fair trade, which is achieved by imposition of a duty on dumped imports, not exceeding the margin of dumping.

Salient Features of Anti-Dumping:

(i) It is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry

(ii) It provides relief to the domestic industry against the injury caused by dumping and gives domestic industry a level playing field.

(iii) The duty is imposed as a deterrent effect to discourage dumped imports, so that users can buy material from domestic industry from whom they were not buying earlier on account of availability of cheap dumped imports.

(iv) The idea is to levy and collect extra tax, rather to take the landed value of imports to a level where domestic industry can fairly compete with imports and sell the product in the domestic market.

Question 20.

(a) X Ltd. filed the ST-3 return on 30th November 2012 for the period from 1st April 2012 to 30th September, 2012. Subsequently on 1st February 2013, some mistakes were found in the ST-3 return which was originally submitted on 30th November 2012. Service tax authorities rejected the revised return filed by X Ltd. on 5th February, 2013, since the revised return was filed by the assessee after 90 days from the due date of filing the return. Is the action of the department correct?

(b) Greenview Ltd. has paid excess amount of interest under section 11AA of Central Excise Act, 1944. Consequently, a refund claim for the said interest was filed by Greenview Ltd. under section 11B. The Department raised the objection to the refund claim on the ground that section 11B merely provides for refund of duty paid erroneously and not the interest. Do you think that the objection raised by the Department is valid in law?

(c) Briefly discuss the impact of tax on GATT 94.

(d) Discuss whether a Duty Free Import Authorisation (DFIA) is transferable.

(e) When will the Special Audit u/s 72A be directed to conduct?

Answer:

(a) No, the department action is not sustainable in the eyes of law. As per Rule 7B of the Service Tax Rules, 1 994, the time limit of 90 days for filing of revised return counts only from the date of filing of the original return and not from the due date for filing of original return as contained in the Explanatory Notes. Therefore, X Ltd. can file revised return by 5th February, 2013.

(b) The provision applicable for refund of duty extended to refund of interest with effect from 10th May 2008. Hence, application for refund of duty has to be made by the assessee within one year from the relevant date to the Assistant or Deputy Commissioner of Central Excise. Therefore, Greenview Ltd. is eligible to claim refund of interest along with duty. The Department's view is not valid.

(c) The term "GATT" stands for the "General Agreement on Tariffs and Trade". It is an agreement between States aiming at eliminating discrimination and reducing tariffs and other trade barriers with respect to trade in goods.
The Most Favoured Nation (MFN) principle requires Members not to discriminate among countries. The national treatment principle, which complements the MFN principle, requires that an imported product which has crossed the border after payment of customs duties and other charges should not receive treatment that is less favourable than that extended to the like product produced domestically. In other words, the principle requires member countries to treat imported products on the same footing as similar domestically produced goods.
Thus it is not open to a country to levy on an imported product, after it has entered the country on payment of customs duties at the border, internal taxes (such as a sales tax) at rates that are higher than those applied to comparable domestic products. Likewise, regulations affecting the sale and purchase of products in the domestic market cannot be applied more rigorously to imported products.

(d) DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product. DGFT, by means of Public Notice, may exclude any product(s) from purview of DFIA. This scheme is in force from 1st May, 2006.
Once export obligation has been fulfilled, request for transferability of Authorisation or inputs imported against it may be made before concerned Regional Authority. Once transferability is endorsed, Authorisation holder may transfer DFIA or duty free inputs, except fuel and any other item(s) notified by DGFT. However, for fuel, import entitlement may be transferred only to companies which have been granted 31uthorization to market fuel by Ministry of Petroleum and Natural Gas. Once transferability is endorsed, imports / domestic procurement against 31uthorization or transfer of imported inputs / domestically procured inputs shall be subject to payment of applicable additional customs duty / excise duty. While endorsing transferability, 31uthorization would bear a note as to liability of such additional customs duty / excise duty. However, in case where CENVAT facility has not been availed, exemption from additional customs duty / excise duty would be available even after endorsement of transferability on DFIA. Wherever SIONs (Standard Input and Output Norms) prescribe actual user condition and in case of Acetic Anhydride, Ephedrine and Pseudo Ephedrine, DFIA shall be issued with actual user condition for these inputs and no transferability shall be allowed for these inputs even after fulfillment of export obligation.
However, for 31uthorizations issued prior to 1.4.2007, exemption from Additional Customs Duty / Excise Duty shall continue to be available even after endorsement of transferability, as provided in FTP (RE-2006).

(e) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),-

I. Has failed to declare or determine the value of a taxable service correctly; or

II. Has availed and utilized credit of duty or tax paid-

(i) Which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or

(ii) By means of fraud, collusion, or any willful misstatement or suppression of facts; or

III. Has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under 20 the jurisdiction of the said Commissioner,

He may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

Question 21.

(a) D Ltd. is registered under Central Excise Act, 1944. It has paid the following amount under Central excise Act, 1944:

	₹
Central Excise Duty	**16,00,000**
Amount of interest	**1,00,000**

In addition, it is liable under the following Acts for the amounts indicated against each Act:

	₹
The Recovery of Debts Due to banks and financial institutions Acts,1993	**3,00,000**
The Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002	**2,00,000**
Factory Act,1948	**3,00,000**
Customs Act,1962	**6,00,000**

The company has a property worth ₹20 lakhs. What legal remedy is available to Central Excise Department for recovery of its above-mentioned dues of ₹17 lakhs.

(b) A exported a consignment under drawback claim consisting of the following items:

(i) 200 pieces of pressure stoves mainly made of brass @ ₹80/ piece.FOB value ₹16,000-drawback rate is 4% of FOB.

(ii) 200 kg Brass utensils @ ₹200 per Kg . FOB Value ₹40,000 drawback rate is ₹24/ kg.

(iii) 200kg Art ware of brass @ ₹300/kg.FOB Value ₹60,000.Drawback Rate 17.50% of FOB subject to a maximum of ₹38/per kg.

On examination in docks, weight of brass art ware was found to be 190 kgs and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.

(c) Mr. X a proprietor of AB Ltd. Received ₹1,00,000 by an account payee cheque, as advance while signing a contract from proceeding taxable services; he receive ₹5,00,000 by credit card while proving the service and another ₹5,00,000 by a pay order after completion of service on January 31,2013. All three transactions took place during FY 2012-2013. He seeks your advice about her liability towards value of taxable service and the service tax payable by him.

(d) Is a service provider allowed to pay service tax on a provisional basis?

Answer:

(a) According to provisions of Section 11E of Central Excise Act, 1944, notwithstanding anything to the contrary contained in any central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made there under shall be the First charge on the property of the assessee or the concerned. However, aforementioned first charge shall be subject to the amounts payable under the following Acts:

(i) Companies Act,1956 [section 529A]
(ii) The recovery of Debts Due to Banks and the financial Institutions Act, 1993.
(iii) The Securitization Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002.

In view of above mentioned provisions of Section 11E of Central Excise Act, 1944, the Department can create first charge on the property of defaulting assessee D Ltd. However, aforementioned first charge shall be subject to amounts payable under the following Acts:

The Recovery of Debts Due to Banks and Financial Institutions Act,1993	₹3,00,000
The securitization and Reconstruction of financial Assets and the Enforcement of security Interest Act,2002	₹2,00,000

Thus, the Department will be able to create first charge of ₹15 Lakhs [i.e. ₹20 Lakhs **Less** ₹5 Lakhs payable under above Acts] only by virtue of Section 11E of Central Excise Act, 1944.

(b) **Duty drawback available in each case is as follows:**

SL No.	Particulars	Duty Drawback in ₹
1.	200 pieces of pressure stoves	640 [4% of ₹16,000]
2.	200 kgs brass utensils	4,800 [200 × 24]
3.	200 kgs of art ware	7,220 [190 × 38]

Thus, drawback on individual clearances are ₹640, ₹4800 and ₹7,220.
Total drawback = ₹12,660.

Note: In case of art ware, the drawback on FOB value @ 17.50% is ₹10,500. The condition is that maximum drawback will be ₹38/ kg. Hence, on 190 kgs . works to ₹7,220.

(c) Value of taxable service ₹11,00,000 [₹1,00,000 by account pay cheque, ₹5,00,000 lakh by credit card & ₹5,00,000 lakh for pay order]

(i) If an assessee is a small service provider, than
Service tax =1,00,000 × 12.36/112.36 = 11,000
(ii) If an assessee is not a small service provider, than
Service Tax =11,00,000 × 12.36/112.36 = 1,21,004

(d) Yes. If the service provider is not able to calculate the rate or value of service, he make an application to Superintendent of Central Excise or Assistant commissioner or Deputy Commissioner for payment of service tax on provisional basis.
If Assistant commissioner or Deputy Commissioner allowed the service provider can make the payment on provisional basis.
Service provider does not require to execute a bond.

Question 22.

(a) Q Ltd. at Delhi purchased plastic granules valued ₹1,16,000 (inclusive of central excise ₹16,000) for manufacture of plastic moulded chairs. It availed CENVAT credit of excise duty of ₹16,000 paid on the said inputs. It subsequently cleared the said inputs as such from the factory in the following manner-

Sales to S Ltd. (purchase price : ₹20,000)	**₹40,000**
Sale to K Co. (purchase price: ₹10,000)	**₹10,000**
Clearance to Q Ltd.'s own factory at Kanpur (purchase price: ₹70,000)	**free of cost**

Q Ltd. has sought your advice on the excise duty payable by it on the above clearances. Give your advice in the matter.

(b) Q dispatches goods from Karnataka and raises invoice on X in Madhya Pradesh; Q charges 2% CST and pays the same in Karnataka. During the course of movement of goods, X sells goods to Y in West Bengal and Y ultimately sells goods to Z in Kolkata. Z takes delivery of goods and the movement of goods comes to end. Sales from X to Y and Y to Z are by transfer of Lorry way bill receipts. Explain the forms to be issued so that the first and subsequent sales are exempt from central sales tax.

(c) Do you think VAT Audit is necessary? Justify your answer.

(d) R Ltd. Purchased capital goods for ₹50 Lakhs plus excise duty @12.36% on 01-04-2012. The said capital goods before being put to use become obsolete and were wholly written off since there was no realizable scrap value. Discuss its CENVAT implications. What would be your answer if the same have been written off wholly after being put to use?

Answer:

(a) Rule 3(5) of the CENVAT Credit Rules, 2004, when inputs are removes as such from the factory, the amount of duty payable shall be equivalent to the credit availed in respect of such inputs. The sale price has no bearing on the duty payable if the inputs are cleared as such from the factory.

Computation of excise duty payable by Q Ltd.

Excise duty payable on sales to S Ltd. [₹20,000 × ₹16,000 ÷ ₹1,00,000]	₹3,200
Excise duty payable on sales to K Co. [₹10,000 × ₹16,000 ÷ ₹1,00,000]	₹1,600
Excise duty payable on clearance to own factory at Kanpur [₹70,000 × ₹16,000 ÷ ₹1,00,000]	₹11,200

(b) Q will receive declaration in 'C' Form from X and will issue declaration in E-I Form to X. Later, X will issue declaration in E-II Form to Y and receive declaration in 'C' Form from 'Y' Finally, Y will issue declaration in E-II Form to Z and receive declaration in 'C' Form from Z, which will complete the chain. Because, Z has taken the possession of goods, thereby movement of goods from one state to another ends.
If the chain is broken, CST will be payable again. Otherwise, all subsequent sales will be exempt from sales tax.

(c) If turnover of the dealer exceeds specified limit (say,₹40 Lakhs or ₹1 Crore), such dealer is required to get his accounts audited by a Chartered Accountant and submit a report thereof to the Department in prescribed form within prescribed time.

Such audit is necessary because-

- Dealers are generally uneducated;
- VAT Department doesn't have enough resources to conduct audit of many dealers;

Hence, self- assessment done by assessee is verified by professionals and Department gets returns and records verified by professionals.

(d) As per Rule 3 (5B) of the CENVAT Credit Rules, 2004, if the value of any capital goods, before being put to use, on which CENVAT Credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of accounts, then the manufacturer shall pay an amount equivalent to the CENVAT Credit taken in respect of the said capital goods. Hence, R Ltd. will be required to reverse the CENVAT Credit attributable to such capital goods i.e. ₹50 Lakhs ×12.36% = ₹6,18,000
However, if the capital goods have been written off wholly after being put to use, then no reversal shall be required.

Case Study

Question 23.

(a) Whether Chartered Accountant's certificate alone is sufficient evidence to rule out the unjust enrichment under customs? Your answer should be supported by decided case laws.

(b) Is a person having income below taxable limit, required to furnish his PAN to the deductor as per the provisions of section 206AA, even though he is not required to hold a PAN as per the provisions of section 139A? Support your answer with decided case laws.

(c) State based on decided case laws whether the assessee is not entitled to claim exemption under section 5(1)(iv) of the Wealth Tax Act, in respect of hotel building?

Answer:

(a) **CCus., Chennai vs. BPL Ltd. 2010 (259) E.L.T. 526 (Mad.)**
Decision of the case:
The High Court noted that section 27 of the Customs Act mandates on the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.
However, in the given case, the respondent had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim. The certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the respondent could not be granted refund merely on the basis of the said certificate.
Thus, the High Court, overruling the Tribunal's decision, answered the question of law in favour of revenue.

(b) **Smt. A. Kowsalya Bai vs. UOI (2012) 346 ITR 156(Kar.)**
As per the provisions of section 1 39A, inter alia, a person whose total income does not exceed the maximum amount not chargeable to income-tax is not required to apply to the Assessing Officer for the allotment of a permanent account number (PAN).
However, as per the provisions of section 206AA, notwithstanding anything contained in any other provision of this Act, any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, i.e., the deductee shall furnish his PAN to the deductor, otherwise tax shall be deducted as per the provisions section 206AA, which is normally higher. It is mandatory for an assessee to furnish his PAN, despite filing Form 15G as required under section 197A, to seek exemption from deduction of tax.
The provisions of section 139A are contradictory to section 197A, due to the fact that assessees whose income was less than the maximum amount not chargeable to income-tax,

were not required to hold PAN, whereas their declaration furnished under section 197A was not accepted by the bank or financial institution unless PAN was communicated as per the provisions of section 206AA. The provisions of section 206AA creates inconvenience to small investors, who invest their savings from earnings as security for their future, since, in the absence of PAN, tax was deducted at source at a higher rate.

In order to avoid undue hardship caused to such persons, the Karnataka High Court, in the present case, held that it may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific provision of section 139A, section 206AA is not applicable to such persons. Therefore, the banking and financial institutions shall not insist upon such persons to furnish PAN while filing declaration under section 197A. However, section 206AA would continue to be applicable to persons whose income is above the maximum amount not chargeable to income-tax.

(c) **CIT vs. Hiro J. Nagpal (2009) 313 ITR 028 (Raj.)**
Relevant Section: 5(1)(iv)

The assessee claimed exemption under section 5(1)(iv) of the Act in respect of a hotel building. The valuation officer valued the interest of the assessee in the hotel property. The Wealth-tax Officer issued a demand under section 16(3) of the Act. The Appellate Assistant Commissioner of Wealth-tax upheld the order of the Wealth-tax Officer. The Tribunal granted the benefit of exemption under section 5(1)(iv) of the Act.

The High Court held that Section 5(1)(iv) of the Wealth-tax Act, 1957 was amended on April 1, 1972, taking away the words "exclusively used for dwelling purposes". The word "house" has neither been defined under the Wealth-tax Act nor under the General Clauses Act. The word "building" has been used in section 5(1)(iii) and the word "property" has been used in section 5(1)(i) of the Act. In common parlance, "house" means a dwelling place where people live. However, a residential building or house can also be used for commercial purposes. Hence, a hotel could not be considered to be house so as to qualify for the exemption under section 5(1)(iv) of the Act.

Question 24.

(a) Whether the smuggled goods can be re-exported from the customs area without formally getting them release from confiscation? Give your answer along with decided case laws.

(b) In case of a Settlement Commission's order, can the assessee be permitted to accept what is favourable to them and reject what is not? Support your answer with decided case laws.

(c) Can an assessee not claiming deduction under section 80-IB in the initial years claim the said deduction for the remaining years during the period of eligibility, if the conditions are satisfied? Give your answer with decided case laws.

Answer:

(a) **In Re Hemal K. Shah (Order No. 102/2011- Cus., Dated 14-6-2011 In F.No. 380/82/B/10-RA)**
Before the Government of India, Ministry of Finance (Before the Government of India, Ministry of Finance)

Facts of the Case:

Shri Hemal K. Shah, a passenger, who arrived at SVPI Airport, Ahmedabad on 20-6-2009, had declared the total value of goods as ₹ 13,500 in the disembarkation slip. On detailed examination of his baggage, it was found to contain Saffron, Unicore Rhodium Black, Titan Wrist watches, Mobile Phones, assorted perfumes, Imitation stones and bags. Since, the said goods were in commercial quantity and did not appear to be a bona fide baggage, the said goods were placed under seizure. The passenger in his statement admitted the offence and showed his readiness to pay duty on seized goods or re-shipment of the said goods. The

adjudicating authority determined total value of seized goods as ₹ 8,39,760 (CIF) and ₹ 10,91,691 (LMV); ordered confiscation of seized goods u/s 111(d) and (m) of the Customs Act, 1962 imposed penalty of ₹ 2,50,000 on Hemal K. Shah, confirmed and ordered for recovery of customs duty on the goods with interest and gave an option to redeem the goods on payment of fine of ₹ 2,00,000 which should be exercised within a period of three months from the date of receipt of the order. On appeal by Hemal K. Shah, the appellate authority allowed re-export of the confiscated goods.

Point of Dispute:
The Department disputed the re-export of confiscated goods. They said that the goods which have been confiscated were being smuggled in by the passenger without declaring the same to the Customs and are in commercial quantity. In view of these facts, the appellate authority has erred in by allowing the re-export of the goods by reducing the redemption fine and penalty. While doing so, he has not taken into account the law laid down by the Hon'ble Supreme Court in the case of CC, Kolkata vs. Grand Prime Ltd. [2003 (155) E.L.T. 417 (S.C.)]

Decision of the Case:
The Government noted that the passenger had grossly mis--declared the goods with intention to evade duty and smuggle the goods into India. As per the provision of Section 80 of Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under Section 77, the proper officer on request of passenger detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs at the time of his arrival at Airport. So the re-export of said goods cannot be allowed under Section 80 of Customs Act.

(b) **Sanghvi Reconditioners Pvt. Ltd. Vs. UOI 2010 (251) ELT 3 (SC)**
Relevant section: 127B of the Customs act, 1962
Decision of the case:
The Apex Court held that the application under section 127B of the Customs Act, 1962 is maintainable only if the duty liability is disclosed. The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty. The Court further opined that having opted to get their customs duty liability settled by the Settlement Commission, the appellant could not be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.

(c) **Praveen Soni vs. CIT (2011) 333 ITR 324 (Delhi)**
On the above issue, the Delhi High Court held that the provisions of section 80-IB nowhere stipulated a condition that the claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility. Therefore, the deduction under section 80-IB should be allowed to the assessee for the remaining years up to the period for which his entitlement would accrue, provided the conditions mentioned under section 80-IB are fulfilled.

Question 25.

(a) Based on decided case laws state whether the manufacturers of concentrates are eligible to avail credit of the service-tax paid on advertising services, sales promotion, market research etc. availed by them and utilise such credit towards payment of excise duty on the concentrate.

(b) When entries in Harmonised System of Nomenclature (HSN) and the Excise Tariff are not aligned, can reliance be placed upon HSN for the purpose of classification of goods? Give answer with decided case laws.

(c) Can exemption under section 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six month period? Give answer with decided case laws.

(d) Whether repayment of borrowed funds utilised for construction of commercial complex augmenting income of trust and amounts to application of income for charitable purpose eligible for exemption under section 11? Your answer should be supported by decided case laws.

Answer:

(a) **Coca Cola India Pvt. Ltd. vs. CCE (2009) 15 STR 657 (Bom.)**

Relevant Rule: Rule 2(1) of the CENVAT Credit Rules, 2004

Facts of the case:

The appellants manufactured non-alcoholic beverage bases also known as concentrates. This concentrate was sold by the appellants to bottling companies, who in turn sell the aerated beverages manufactured from the concentrates to distributors and who in turn sell it to retailers for the ultimate sale to the consumer. The advertisement and sales promotion activities including market research were undertaken by the appellant.

The concentrate manufacturer claimed the credit of service tax on the advertising service used for marketing of soft drink removed by bottlers. However, the credit was denied on the ground that the advertisements did not relate to concentrates manufactured by the appellants.

Decision of the case:

Bombay High Court held that though the contents of advertisements made by the appellants (the manufacturer of 'concentrates') essentially featured the 'bottle of aerated waters' (the bottles being the final products manufactured by bottlers and not by the appellants), the credit on advertising services received by the appellant could not be denied on the ground that the advertisement was not of the final product of the appellants (viz., 'concentrates'), but of the final product of the bottlers (viz. 'aerated waters').

The High Court laid down the following propositions -

Five limbs of definition of 'input service' under rule 2(1)

The definition of 'input service' under rule 2(1) can be conveniently divided into the following five independent limbs:

- Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products.
- Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal.
- Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory.
- Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs.
- Services used in relation to activities relating to business and outward transportation upto the place of removal.

Each of the aforementioned limbs of the said definition is an independent benefit/concession. If an assessee satisfies any one of the above limbs, then credit on input service would be admissible even if the assessee does not satisfy the other limbs.

Interpretation of certain expressions used in the definition of "input service"

(I) **Expression "means" and "includes"**

Above two expressions are exhaustive. By the word "includes", services which may otherwise have not come within the ambit of the definition clause are covered and by the word "means", these are made exhaustive.

(II) **Expression "such as"**

The words "such as" are illustrative and not exhaustive. In the context of business, it refers to those services which are related to the business.

Interpretation of the phrase "activities relating to business"

The phrase **"activities relating to business"** are words of wide import.

(i) The word 'business' is of wide import and cannot be given a restricted definition to say that business of a manufacturer is to manufacture final products only. In the present case, the business of the appellant would include, apart from manufacture of concentrates, entering into franchise agreements with bottlers, permitting use of brand name, promotion of brand name, etc.

(ii) The expression 'relating to' further widens the scope of the expression 'activities relating to business'.

(iii) The expression 'activities' further widens the scope of the aforesaid expression. Rule making authority has not employed any qualifying words before the word 'activities', like main activities or essential activities etc. It implies that all activities (essential or not) in relation to a business would fall within the ambit of input service. Hence, in the present case all activities having a relation with the manufacturer of the concentrate would fall within the definition of input service.

(iv) **Input services forming part of value of final product eligible for CENVAT credit**

Service tax is a value added tax and a consumption tax and the burden of service tax must be borne by the ultimate consumer and not by any intermediary i.e. the manufacturer or service provider. In order to avoid the cascading effect, CENVAT credit on input stage goods and services must be allowed as long as a connection between the input stage goods and services is established. Conceptually as well as a matter of policy, any input service that forms a part of value of final product should be eligible for the benefit of CENVAT credit. In the present case, since the advertising cost forms part of the assessable value, the assessee is eligible to take credit of tax paid on advertising services.

Credit allowed in case of existence of relationship between input service and final product

So long as the manufacturer can demonstrate that the advertisement services availed have an effect or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of final product, credit must be allowed. In the present case, the Court held that the advertisement of soft-drink enhanced the marketability of the concentrate.

Hence, the Bombay High Court inferred that the manufacturers of concentrates are eligible to avail credit of the service-tax paid on advertising services, sales promotion, market research etc. availed by them and can utilize such credit towards payment of excise duty on the concentrate.

(b) **Camlin Ltd. vs. CCEx., Mumbai 2008 (230) E.L.T. 193 (SC)**

The Supreme Court ruled that when the entries in the Harmonised System of Nomenclature (HSN) and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff. It further added that in the instant case, the Tribunal erred in relying upon the HSN for the purpose of classification of the impugned product. The Tribunal failed to appreciate that since the entries under the HSN and the entries under the said Tariff were completely different, the Tribunal could not base its decision on the entries in the HSN.

(c) **Hindustan Unilever Ltd. vs. DCIT (2010) 325 ITR 102 (Bom.)**
Relevant section: 54EC
In this case, the Bombay High Court observed that in order to avail the exemption under section 54EC, the capital gains have to be invested in a long-term specified asset within a period of six months from the date of transfer. Where the assessee has made the payment within the six month period, and the same is reflected in the bank account and a receipt has been issued as on that date, the exemption under section 54EC cannot be denied merely because the bond was issued after the expiry of the six month period or the date of allotment specified therein was after the expiry of the six month period. For the purpose of the provisions of section 54EC, the date of investment by the assessee must be regarded as the date on which payment is made. The High Court, therefore, held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption under section 54EC.

(d) **Director of Income-tax (Exemption) vs. Govindu Naicker Estate (2009) 315 ITR 237 (Mad.)**

Relevant Section: 11

During the assessment under section 143(3) of the Act, the Assessing Officer noted that, the trust had made part repayment of a loan taken from the bank for constructing a multi-storied building. The Assessing Officer opined that the multi-storied commercial complex was not one of the objects of the trust and the expenditure incurred for the construction of the building could not be treated as charitable in nature, that the repayment of loan could not be regarded as application of income towards the charitable objects of the trust and rejected the claim of the assessee. The Commissioner (Appeals) allowed the appeal on the ground that the property of the trust was in a dilapidated condition and fresh construction had to be undertaken by obtaining a loan. The subsequent letting out of the property was connected with the carrying out of the objects of the trust and hence, the repayment of loan ought to have been treated as eligible application. The finding of the Commissioner (Appeals) was confirmed by the Tribunal.

The High Court held that the Tribunal was right in holding that the repayment of loan taken from the bank for construction of commercial complex was application of income for charitable purposes and the assessee-trust was eligible for exemption under section 11 of the Act. Even though the expenditure incurred is capital in nature, if the expenditure is incurred for the purpose of promoting the object of the trust, it could be considered as application of the income for the purpose of the trust. If the application of the income resulted in the maintenance of the property held under trust for charitable purpose, is for the purpose of augmenting income in order to pursue the objects of the trust that would amount to application of income for the purpose of the trust.

Question 26.

(a) Based on decided case laws state whether the price used for selling of a product below the cost price for penetration of market can be considered as transaction value.

(b) While some Assessing Officers permit tax advocates and authorised persons to be present during survey/ search and copies of the statements recorded at the time of survey/search are supplied on the spot to the assessee, some Officers do not permit the authorised representatives to witness the proceedings and refuse to give copies of statements to the assessee. In connection with survey/search, discuss the following:
(i) Whether an authorised person can be present at the time of survey/ search ?
(ii) Whether the assessee is entitled to receive a copy of the statement recorded at the time of survey/search?

(iii) Whether the assessee is entitled to receive a copy of inventory of stocks prepared at the time of survey/search?

(iv) Whether the assessee is entitled to receive copies of the documents referred to above on application and on payment of fee.

(c) Can the CENVAT Credit of duty paid on inputs and capital goods used in mines be availed? Answer should be based on decided case laws.

(d) "Inspection charges are not includible in the assessable value of the imported goods if contract does not specify for certification by an independent agency" – Discuss with decided case laws.

Answer:

(a) **CCEx., Mumbai vs. Fiat India Pvt. Ltd. 2012 (283) E.L. T. 161 (S.C.)**

Facts of the Case:

The Fiat India Pvt. Ltd. (Fiat) was the manufacturer of motor cars. They were selling Fiat UNO model cars below cost and were making losses in wholesale trade. The purpose was to penetrate the market and compete with other manufacturers of similar goods. The prices were not based on manufacturing cost and profit. This was happening over the period of five years. The Assistant Commissioner directed for the provisional assessment of the cars at a price which would include cost of production, selling expenses including transportation and landing charges, wherever necessary and profit margin, on the ground that the cars were not ordinarily sold in the course of wholesale trade as the cost of production is much more than their wholesale price, but were sold at loss for a consideration.

Point of Dispute:

The Department disputed that as the extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty. Thus, the Department invoked Best Judgment Assessment.

Decision of the Case:

The Supreme Court held that the duty has to be paid on the "transaction value". Section 4(1)(a) of the Central Excise Act, 1944 defines transaction value as under "in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

If any of the ingredients in the above definition is missing then the price shall not be considered as the sole consideration as transaction value.

Supreme Court opined that this is a case of extra commercial consideration in fixing of price and artificially depressing it. Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent business person would continuously suffer huge loss only to penetrate market; they are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments. It is immaterial that the cars were not sold to related persons.

In view of the above resorting to best judgment assessment was proper.

(b) The queries raised are answered in seriatum as follows :

(i) **Whether an authorised person can be present at the time of survey or search -** Presumably the querist refers to an authorised representative as contemplated in section 288. The functions of this authorised representative are to represent the assessee in some of the proceedings under the Act. He cannot be a substitute for the assessee when the latter is required under section 131 to attend personally for examination on oath or affirmation. Now, a search or seizure proceeding under section 132, or a survey under

section 133A, does not take place by appointment, nor is there a previous notice served on the assessee to be present at the scene. The question of the services of an authorised representative during such proceedings does not, therefore, ordinarily arise. But the assessee or the owner of the searched premises may not find it possible to be present in all the rooms of the premises. He may, therefore, authorise someone else to be present when a search is going on. But this principle of natural justice will not entitle him to authorise the person to sign seized documents, etc., on his behalf or assist him when he is examined on oath. The search is required to be made by the income-tax authorities in the presence of two or more respectable inhabitants of the locality in which the building or place to be searched is situated [Rule 112(6) of the Income-tax Rules]. Section 132(4) provides for the examination of the person found in possession of the seized valuables on the spot. A witness is not entitled to be assisted or represented by a lawyer or a representative.

(ii) **Whether the assessee is entitled to receive a copy of the statement recorded at the time of the search/survey -** The provisions of sub-section (4) of section 132 empower the 'authorised officer' to examine on oath any person found to be in possession of documents, money, jewellery, etc., and to record his statement. As such statements constitute evidence in the relation to the assessment or any other proceedings under the Act, the assessee is entitled to copies of such recorded evidence so as to avail of the opportunity to defend his case. The denial of such opportunity to the assessee will vitiate any proceedings against him.

(iii) **Whether assessee is entitled to receive a copy of inventory of stocks prepared at the time of survey/search -** The provisions of section 132(1) relating to search and seizure, and of section 133A(3) relating to survey, empower the appropriate income-tax authority to make an inventory of 'valuable article or thing' or of stock. While a list of all seized things has to be delivered to the person owning or occupying the searched premises in terms of rule 112(8) of the Income-tax Rules, there is no provision either in section 132 or section 132A or the Rules requiring the authority conducting a search or a survey to let the owner/occupant of the premises have a copy of any inventory that he may make of the things found in the place searched/surveyed, but not seized. However, it is obvious that it is in the interests of the revenue to give a copy and to get the signature of the owner/ occupant on the spot as a confirmation of the authenticity/accuracy of the survey, backed by a statement from the owner/occupant. Failure to do so will expose the revenue in avoidable disputes about the correctness of the inventory.

(iv) **Whether the assessee is en tided to receive copies of documents referred to above on application and on payment of fee -** The answer is in the affirmative. Section 132(9) enables the person from whose custody any books of account or documents are seized under section 132(1) or 132(2A) to make copies thereof or extracts therefrom. One can ask for a certified copy of any document to which he is entitled in law. The Allahabad High Court has pointed out that unless there is a statutory prohibition, a person against whom action is being taken under section 132 is entitled to inspect the record of the proceedings and obtain copies of the orders passed in those proceedings-New Kashmir & Oriental Transport Co. (P.) Ltd. vs. CIT [1973] 92 ITR 334 (All.). If an assessment is made on the basis of materials to which access has not been given to the assessee, cannot obviously be sustained-Ramesh Chander vs. CIT [1974j 93 ITR 244 (Punj.) and Dhaniram Gupta vs. Union of India [1973189 ITR 280 (Cal.).

(c) **Madras Cements Ltd. vs. CCE 2010 (257) E.L.T. 321 (S.C.)**

Decision of the case:

The Apex Court decided the issue with regard to the eligibility of Modvat/ Cenvat credit on inputs and capital goods used in mines as follows:

(I) CENVAT credit on inputs used in mines

The Supreme Court held that the issue as to availability of Modvat/ Cenvat credit on inputs (explosives, lubricating oils etc.) was squarely covered by the case of Vikram Cement vs. CCE 2006 (194) E.L.T. 3 (S.C.). Therefore, the credit on inputs is allowed.

(II) CENVAT credit on capital goods used in mines

(i) **If the mines are captive mines**

If the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/ Cenvat credit on capital goods will be available to the assessee.

(ii) **If the mines are not captive mines**

(iii) If the mines are not captive mines but they supply goods to various other cement companies of different assessees, and it is found that the said goods were being used in the lime stone mines outside the factory of the assessee, Modvat/ Cenvat credit on capital goods used in such mines will not be available to the concerned assessee.

(d) **Bombay Dyeing & Mfg. vs. CC 1997 (90) ELT 276 (SC)]**

Where there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on his own and is not required for the purpose of fulfilling the condition of the contract, then such charges incurred on inspection are not includible in assessable value.

Question 27.

(a) Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income? Your answer should be supported by decided case laws.

(b) Is remission of duty possible in case of loss occurring due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks, accounting method adopted? Support your answer with suitable case laws.

(c) Supported by decided case laws state whether the construction of pre-fabricated components at one site to be used at different inter-connected metro construction sites in Delhi would get covered under exemption Notification No. 1/2011 - C.E. (N.T.) dated 17-2-2011 exempting the "goods manufactured at the site of construction for use in construction work at such site".

(d) Is the expenditure incurred on payment of retrenchment compensation and interest on money borrowed for payment of retrenchment compensation on closure of one of the textile manufacturing units of the assessee-company revenue in nature? Support your answer with decided case laws.

Answer:

(a) **CIT vs. Pruthvi Brokers & Shareholders (2012) 208 Taxman 498 (Bom.)**

While considering the above mentioned issue, the Bombay High Court observed the decision of the Supreme Court, in the case of Jute Corporation of India Ltd. vs. CIT (1991) 187 ITR 688 and National Thermal Power Corporation. Ltd vs. CIT (1998) 229 ITR 383, that an assessee is entitled to raise additional claims before the appellate authorities. The appellate authorities have jurisdiction to permit additional claims before them, however, the exercise of such jurisdiction is entirely the authorities' discretion.

Also, the High Court considered the decision of the Apex Court in the case of Addl. CIT vs. Gurjargravures (P.) Ltd. (1978) 111 ITR 1, wherein it was held that in case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became

available on account of change of circumstances or law, the appellate authority can allow the same.

The Supreme Court, in the case of Goetze (India) Ltd vs. CIT (2006) 157 Taxmann 1, held that the assessee cannot make a claim before the Assessing Officer otherwise than by filing an application for the same. The additional claim before the Assessing Officer can be made only by way of filing revised return of income.

The decision in the above mentioned case, however, does not apply in this case, since the Assessing Officer is not an Appellate Authority.

Therefore, in the present case, the Bombay High Court, considering the above mentioned decisions, held that additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.

(b) **UOI vs. Hindustan Zinc Limited 2009 (233) E.L. T. 61 (Raj.)**

The assessee was engaged in the manufacture of lead and zinc concentrates. At the time of carrying out the physical stock taking, some difference was found between the physically verified stock and the stock as per the books. According to the assessee, this difference was due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks, accounting method adopted. The assessee applied for the remission of the duty under rule 21 of the Central Excise Rules, 2002. Revenue contended that the shortage could have been avoided or minimized by the assessee, as these were neither due to natural causes, nor due to unavoidable accident. Thus, the prayer for remission was declined.

The Rajasthan High Court held that the expressions "natural causes" and "unavoidable accident" were required to be given, reasonable and liberal meaning, lest the provisions of rule 21, so far as they relate to admissibility of remission, on these two grounds, would be rendered altogether ineffective. The Court noted that if the contention of Revenue was accepted, no loss or destruction would fall in either of these clauses because in either case, grounds may be projected, on the anvil of requirement of appropriate storage, or safety measures, and so on and so forth. Even in cases of "unavoidable accident", it could always be contended that the accident could have been avoided by taking recourse of one or more measures. Thus, a bit liberal rather more practical approach was required to be taken in the matter.

The aspect of satisfaction under rule 21 was essentially a subjective satisfaction of authority concerned and in the instant case; the Tribunal independently recorded its satisfaction about the loss, or destruction having been sustained by the assessee under the circumstances as covered by rule 21. Therefore, merely on the basis of method of accounting of physical stock, the remission of duty could not be denied.

(c) **Commissioner of Central Excise vs. Rajendra Narayan 2012 (281) E.L. T. 38 (Del.)**

Facts of the Case:

The respondent-assessees were carrying on construction of the Delhi Metro. They had manufactured pre-fabricated components, which have been used in the construction of the Delhi Metro. The assessee claimed the exemption under Notification No. 1/2011-C.E. (N.T.) dated 17-2-2011 which exempts the goods covered under specified chapter headings for a specified period, manufactured at the site of construction for use in construction work at such site. The Department contended that the respondent-assessees were not entitled to claim the exemption stating that the goods were not manufactured at the site of the construction for use in the construction work at the site.

Decision of the Court:

The Court noted that Delhi Metro Rail Corporation Ltd. had contracted and called upon the respondent- assessee to construct pre-fabricated components of different segments to be used in elevated viaducts etc.. For the purpose of pre-fabricating the components a specific casting yard, premises was allotted by Delhi Metro Rail Corporation Ltd. The said casting yard constituted the construction site. From the said construction site, components had been moved to different locations where elevated viaducts of the tunnel were being constructed. The Court held that keeping in view the facts of the present case and that the construction was done virtually all over Delhi and construction sites were interconnected, practically pre-fabrication was done on construction site only.

Therefore, it allowed the appeal in the favour of the respondent- assessee.

Hence, the Court opined that CESTAT exceeded its powers under section 35C(2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier.

(d) **CIT vs. DCM Ltd. (2010) 320 ITR 307 (Delhi)**

The assessee-company had four textile units, out of which one unit had to be closed down as it was located in a non-conforming area, while the other three units continued to carry on business. The company claimed deduction of retrenchment compensation paid to employees of the unit which had been closed down and interest on money borrowed for payment of retrenchment compensation. The Revenue contended that the textile unit was a separate business maintaining separate books of account and engaging separate workers, and hence, with the closure of the unit, the assessee should not be allowed deduction of the aforementioned expenses.

The issue under consideration was whether closure of one textile mill unit would amount to closure of the business as contended by the Revenue. The Tribunal observed that there was no closure of business since the textile mill unit was only a part of the textile manufacturing operations, which continued even after closure of the textile mill unit, as the assessee-company continued in the business of manufacturing of textiles in the remaining three units. The assessee prepared a consolidated profit and loss account and balance sheet of all its manufacturing units taken together; the control and management of the assessee was centralized in the head office and also all important policy decisions were taken at the head office. Also, the head office provided funds required for various units and there were common marketing facilities for all the textile units.

The Tribunal applied the tests laid down by the Apex Court in CIT vs. Prithvi Insurance Co. (1967) 63 ITR 632 and arrived at the conclusion that there was interconnection, interlacing and unity of control and management, common decision making mechanism and use of common funds in respect of all the four units.

The High Court concurred with these findings of the Tribunal and accordingly, held that deduction was allowable in respect of expenditure on payment of retrenchment compensation and interest on money borrowed for payment of retrenchment compensation.

Note – In this case, the payment of compensation to workers on closure of a textile mill unit is treated as a revenue expenditure since after closure of the unit, the remaining business continued and there was inter-connection in the functioning of the different units. Therefore, it follows that if compensation is paid to workers on closure of the entire business, the same would be a capital expenditure.

Question 28.

(a) Whether the appeal filed by Commissioner himself and not by subordinate officer based on authorization under the erstwhile section 35B, is maintainable? Answer on the basis of case laws.

(b) Can services rendered by a hotel to its customers in providing hotel room with various facilities & amenities (like housekeeping, bank counter, beauty salon, car rental, health club etc.) amount to "carrying out any work" to attract the provisions of section 194C? Support your answer with decided case laws.

(c) Is an employee liable to pay interest under sections 234A, 234B and 234C, where the employer has failed to deduct tax at source, but has later paid such tax with interest under section 201(1A)? Support your answer with decided case laws.

(d) Kindly advise whether the provisions of sections 269SS and 269T will be attracted if one partner introduces ₹50,000 in cash and another partner withdraws ₹50,000 in cash on the same day?

Answer:

(a) **Commr. Of C.Ex. & Cus. vs. Shree Ganesh Dyeing & Ptng. Works 2008 (232) ELT 775 (Guj.)**

In the instant case, the assessee raised objection as to maintainability of the appeal on the ground that the appeal had been filed by Commissioner himself, instead of by the Central Excise Officer authorised by the Commissioner as required by the erstwhile section 35B(2) of the Central Excise Act, 1944.

The Court, while analyzing section 35B(2), held that section 35B(2) of the Act is made up of two parts or two stages:

First stage is formation of an opinion by Commissioner that the order made by the appellate authority is not legal or proper.

Second stage is filing of an appeal against order of appellate authority by directing any Central Excise Officer authorised by the Commissioner in this behalf to file an appeal on behalf of the Commissioner.

Accordingly, the Commissioner is vested with a discretion, in the first instance to form an opinion as to whether appellate order is legal or proper and then exercise the discretion to decide whether an appeal should be preferred or not, having come to the conclusion that the order is not proper or legal.

The High Court further clarified that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise. Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorising another officer to file appeal on his behalf. The language of the latter part of sub-section (2) of section 35B of the Act itself makes this more than abundantly clear when the provision uses the phrase 'to appeal on his behalf'.

(b) **East India Hotels Ltd. vs. CBDT (2010) 320 ITR 0526 (Som.)**

Relevant section: 194C

On this issue, the High Court observed that the words "carrying out any work" in section 194C are limited to any work which on being carried out culminates in a product or result. "Work" in the context of this section, has to be understood in a limited sense and would extend only to the service contracts specifically included in section 194C by way of clause (iv) of the Explanation below sub-section(7).

The provisions of tax deduction at source under section 194C would be attracted in respect of payments for carrying out the work like construction of dams, laying of roads and air fields, erection or installation of plant and machinery etc. In these contracts, the execution of the

contract by a contractor or sub-contractor results in production of the desired object or accomplishing the task under the contract.
However, facilities or amenities made available by a hotel to its customers do not fall within the meaning of work under section 194C, and therefore provisions of TDS under this section are not attracted.

(c) **CIT vs. Emilio Ruiz Berdejo (2010) 320 ITR 190 (Bom.)**
The High Court held that the person who fails to deduct tax is liable to pay interest under section 201(1A). Sections 234A, 234B and 234C cast liability on the assessee to pay interest for the default committed by him in the circumstances mentioned in the sections. Interest charged under sections 234A, 234B and 234C are compensatory and not in the nature of penalty.
Therefore, where the deductor had already discharged tax liability with interest payable under section 201(1A), no further interest could be claimed by the Revenue from the deductee employee either under section 234A or section 234B or section 234C.

(d) Under the Indian Partnership Act, 1932 a firm is not a distinct legal entity and the partnership property in law belongs to all the partners constituting the firm. When one talks of the firm's property or firm's assets, all that is meant is property or assets in which all partners have a joint or common interest-Malabar Fisheries Co. vs. CIT [1979] 120 ITR 49 (SC).
While the position in law is as stated above, the Assessing Officer is likely, on the facts given above, to hold that the transaction is really as between two partners in their individual capacity and they have colluded to avoid the provisions of section 269SS by making entries in the firm's books to show that money has passed through the medium of the firm. The Assessing Officer may invoke the ruling of the Supreme Court in McDowell & Co. Ltd. vs. Commercial Tax Officer [1985] 154 ITR 148 for the purpose.

Question 29.

(a) What is the nature of incentive received under the scheme formulated by the Central Government for recoupment of capital employed and repayment of loan taken for setting up/expansion of a sugar factory – Capital or Revenue? Mention decided case laws.

(b) Mentioning decided case laws state whether the metal scrap or waste generated during the repair of his worn out machineries/ parts of cement manufacturing plant by a cement manufacturer amounts to manufacture?

(c) Would the provisions of deemed dividend under section 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business? Support your answer with decided case laws.

(d) Whether doctrine of merger is applicable when appeal dismissed on the grounds of limitation and not on merits? Support your answer with decided case laws.

Answer:

(a) **CIT vs. Kisan Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All.)**
The assessee, engaged in the business of manufacture and sale of sugar, claimed that the incentive received under the Scheme formulated by the Central Government for recoupment of capital employed and repayment of loans taken from a financial institution for setting up/expansion of a new sugar factory is a capital receipt. The Assessing Officer, however, treated it as a revenue receipt.
On this issue, the High Court followed the ruling of the Apex Court in CIT vs. Ponni Sugars and Chemicals Ltd. (2008) 306 ITR 392, wherein a similar scheme was under consideration. In that case, the Apex Court had held that the main eligibility condition for the scheme was that the incentive had to be utilized for the repayment of loans taken by the assessee to set up a

new unit or substantial expansion of an existing unit. The subsidy receipt by the assessee was, therefore, not in the course of a trade and hence, was of capital nature.

(b) **Grasim Industries Ltd. vs. UOI 2011 (273) E.L. T. 10 (S.C.)**

Facts of the case:

The assessee was the manufacturer of the white cement. He repaired his worn out machineries/parts of the cement manufacturing plant at its workshop such as damaged roller, shafts and coupling with the help of welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc. In this process of repair, M.S. scrap and Iron scrap were generated. The assessee cleared this metal scrap and waste without paying any excise duty. The Department issued a show cause notice demanding duty on the said waste contending that the process of generation of scrap and waste amounted to the manufacture in terms of section 2(f) of the Central Excise Act.

Decision of the case:

The Apex Court observed that manufacture in terms of section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to the raw material at various stages by different operations. The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient.

However, in the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, (the end product). The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process.

Hence, it held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant does not amount to manufacture.

(c) **CIT vs. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.)**

Relevant section: 2(22)(e)

Under section 2(22)(e), loans and advances made out of accumulated profits of a company in which public are not substantially interested to a beneficial owner of shares holding not less than 10% of the voting power or to a concern in which such shareholder has substantial interest is deemed as dividend. However, this provision would not apply in the case of advance made in the course of the assessee's business as a trading transaction.

The assessee, a travel agency, has regular business dealings with two concerns in the tourism industry dealing with holiday resorts. The High Court observed that the assessee was involved in booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. The High Court held that such financial transactions cannot under any circumstances be treated as loans or advances received by the assessee from these concerns for the purpose of application of section 2(22)(e).

(d) **Raja Mechanical Co. (P) Ltd. vs. Commissioner of C. Ex., Delhi-I, 2012 (279) E.L. T. 481 (S. C.)**

Point of Dispute:

The issue under consideration is that in case the first appellate authority had rejected the appeal filed by the assessee on the ground of limitation, whether the orders passed by the original authority would merge with the orders passed by the first appellate authority.

The learned counsel for the assessee contended that in given case, the orders passed by the original authority would merge with the orders passed by the first appellate authority and therefore, the Tribunal should consider the appeal filed by the assessee.

It further submitted that the Tribunal ought to have considered the assessee's appeal not only on the ground of limitation but also on merits of the case. Since that has not been done, according to the learned counsel, the Tribunal has committed a serious error. The learned counsel further submitted that the "doctrine of merger" theory would apply in the sense that though the first appellate authority had rejected the appeal filed by the assessee on the ground of limitation, the orders passed by the original authority would merge with the order passed by the first appellate authority and, therefore, the Tribunal ought to have considered the appeal

On the other hand, the learned counsel for the respondent submitted that the doctrine of merger would not apply to a case where an appeal was dismissed only on the ground of the limitation.

Decision of the Case:

The Court observed that if for any reason an appeal is dismissed on the ground of limitation and not on merits that order would not merge with the orders passed by the first appellate authority. Apex Court opined that the High Court was justified in rejecting the request made by the assessee for directing the Revenue to state the case and also the question of law for its consideration and decision. In view of the above discussion, Supreme Court rejected the appeal.

Question 30.

(a) Does a product with short shelf-life satisfy the test of marketability? Yours answer should be based on suitable case laws.

(b) Does the activity of packing of imported compact discs in a jewel box along with inlay card amount to manufacture? Provide answer mentioning suitable case laws.

(c) Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB? Give your answer mentioning suitable case laws.

(d) Are the physician samples excisable goods in view of the fact that they are statutorily prohibited from being sold? Your answer should be supported by decided case laws.

Answer:

(a) **Nicholas Piramal India Ltd. vs. CCEx., Mumbai 2010 (260) E. L. T. 338 (S. C.)**

Facts of the case:

In the instant case, the product had a shelf-life of 2 to 3 days. The appellant contended that since the product did not have shelf-life, it did not satisfy the test of marketability.

Decision of the case:

The Supreme Court ruled that short shelf-life could not be equated with no shelf-life and would not ipso facto mean that it could not be marketed. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketed. Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.

(b) **CCE vs. Sony Music Entertainment (I) Pvt. Ltd. 2010 (249) E.L.T. 341 (Bom.)**

Relevant Section: 2(f) of the Central Excise Act, 1944

Facts of the case:

The appellant imported recorded audio and video discs in boxes of 50 and packed each individual disc in transparent plastic cases known as jewel boxes. An inlay card containing

the details of the content of the compact disc was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. The Department contended that the said process amounted to manufacture.

Decision of the case:

The High Court observed that none of the activity that the assessee undertook involved any process on the compact discs that were imported. It held that the Tribunal rightly concluded that the activities carried out by the respondent did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished and completed form.

(c) **CIT vs. Manjoo and Co. (2011) 335 ITR 527 (Kerala)**

On the above issue, the Kerala High Court observed that winnings from lottery is included in the definition of income by virtue of section 2(24)(ix). Further, in practice, all prizes from unsold tickets of the lotteries shall be the property of the organising agent. Similarly, all unclaimed prizes shall also be the property of the organising agent and shall be refunded to the organising agent.

The High Court contended that the receipt of winnings from lottery by the distributor was not on account of any physical or intellectual effort made by him and therefore cannot be said to be "income earned" by him in business. The said view was taken on the basis that the unsold lottery tickets cease to be stock-in-trade of the distributor because, after the draw, those tickets are unsaleable and have no value except waste paper value and the distributor will get nothing on sale of the same except any prize winning ticket if held by him, which, if produced will entitle him for the prize money. Hence, the receipt of the prize money is not in his capacity as a lottery distributor but as a holder of the lottery ticket which won the prize. The Lottery Department also does not treat it as business income received by the distributor but instead treats it as prize money paid on which tax is deducted at source.

Further, winnings from lotteries are assessable under the special provisions of section 115BB, irrespective of the head under which such income falls. Therefore, even if the argument of the assessee is accepted and the winnings from lottery is taken to be received by him in the course of his business and as such assessable as business income, the specific provision contained in section 115BB, namely, the special rate of tax i.e. 30% would apply.

Therefore, the High Court held that the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.

(d) **Medley Pharmaceuticals Ltd. vs. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.)**

The question which arose for consideration was whether physician samples of patent and proprietary medicines intended for distribution to medical practitioner as free samples, satisfied the test of marketability. The appellant contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, the same could not be considered to be marketable.

Supreme Court observed that merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold. Physician sample was capable of being sold in open market.

Moreover, the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in different fields. The restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act thereby causing revenue loss. Prohibition on sale of physician samples under the Drugs Act did not have any bearing or effect on levy of excise duty.

Therefore, the Court inferred that the physician samples were excisable goods and were liable to excise duty.

Note: This case was affirmed in case of Medley Pharmaceuticals Ltd. vs. Commissioner - 2011 (269) E.L.T. A20 (S.C.).