Group - II
Paper 11- Indirect Taxation

Question 1.

(a) What are the disadvantages of indirect tax?

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

(c) 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.

(d) 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?

(e) What kind of duty is to be performed by DGFT regarding SCOMET Items?

(f) State the salient features of TIN (Tax Identification Number).

(g) 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.

(h) Define Indian Customs Waters.

(i) 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.

(j) What is Compounded Levy Scheme?

Answer:

(a) The following are the disadvantages of indirect tax:

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

(ii) Tax on goods and services increases its prices, which reduces demand of goods and services. Lesser demand means lower growth of industrialization.

(iii) Higher customs duty and excise duty increases cost of modern machinery and technology.

(iv) Indirect taxes increase the prices of products and hence are often perceived as inflationary.

(b) 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.

(c) 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).

(d) 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.

(e) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) is either prohibited or restricted. These cover nuclear material, nuclear reactors, equipment for nuclear explosive devises, rocket systems, toxic chemicals, micro-organisms, chemicals for weapons, viruses, etc.
Application for license for exporting these items is to be made to DGFT (Director General of Foreign Trade). Application will be considered by Exim Facilitation Committee (EFC). In respect of items specified in Appendix 3 to Schedule 2 of ITC (HS), application will be considered by Inter-Ministerial working group in DGFT based on criteria as specified.

(f) The salient features of Tax Identification Number (TIN) are as follows:
(i) TIN consist of 11 digits.
(ii) First two characters represent the state code which is allotted by the Central Government which is common for all the dealer of a state and balance nine characters will be, however, different in different States.
(iii) TIN is useful to the department of commercial tax in case of computer applications, for detecting stop filers and delinquent accounts.
(iv) TIN also help full to the department for cross checking of sales and purchases across the state VAT dealers.

(g) 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.

(h) The term Indian Customs Waters means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.
Indian Customs Waters extend up to 24 nautical miles from the base line. Thereby, Indian Customs Waters cover both the Indian Territorial Waters and Contiguous Zone as well. Indian Territorial Waters extend up to 12 nautical miles from the base line whereas Contiguous Zone extended to a further 12 nautical miles from the outer limit of territorial waters.

(i) 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.

(j) Normal excise procedures and controls are not practicable when there are numerous small manufacturers. Rule 15 of Central Excise Rules provides that Central Government may, by notification, specify the goods in respect of which an assessee shall have option to pay duty of excise on the basis of specified factors relevant to production of such goods and at specified rates. The scheme is presently applicable only to stainless steel pattas/pattis and aluminium circles. These articles are not eligible for SSI exemption.

Question 2.

(a) What is the significance of consideration in the context of service tax? Whether a security deposit that is returnable on completion of provision of service is a consideration for service or not?

(b) State the requirements for removal of final products under Central Excise.

Answer:

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

Activity carried out without any consideration are outside the ambit of service, such as donations, gifts, free charities etc. However an act by a charitable institution for consideration would be a service and taxable unless otherwise exempted. But following are some examples of non-monetary consideration:

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

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

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

(b) Rule 11(1) of Central Excise Rules provides that excisable goods can be removed from factory or warehouse only under an 'Invoice' signed by owner or his authorised agent. In case of cigarettes, invoice shall be counter-signed by Inspector. Invoice should bear serial number and should be in triplicate.

As per Rule 11(2) of Central Excise Rules, Invoice shall contain –
(i) Registration Number
(ii) Address of jurisdictional Central Excise Division.
(iii) Name of consignee
(iv) Description and classification of goods
(v) Time and date of removal
(vi) Mode of transport and vehicle registration number
(vii) Rate of duty
(viii) Quantity and Value of goods
(ix) Duty payable on the goods.

Question 3.

(a) Mr. Roy is regularly paying excise duty and value added tax on his manufacturing and sales activities respectively. He seeks your advice while calculating the Value Added Tax on sales as well as net VAT liability from the following information:
Purchases from local market (VAT inclusive of @12.5%) ₹ 1,29,375.
Manufacturing expenses is ₹ 80,000.
Profit on Cost @75%.
Excise Duty @12.36%
Output VAT @12.5%

(b) 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) Computation of Tax Payable

Cost of Purchases	₹1,15,000 [₹1,29,375 × 100/112.5]
Manufacturing expenses	₹80,000
Total cost	₹1,95,000
Profit @75% on cost	₹1,46,250 [₹1,95,000 × 75/100]
Assessable Value	₹3,41,250
Add: Excise Duty	₹42,178 [₹3,41,250 × 12.36/100]
Taxable Turnover	₹3,83,428
Add: Output VAT	₹47,929 [₹3,83,428 × 12.50/100]

Aggregate Sales	₹4,31,357
Value Added Tax payable	₹47,929
Less: Input Tax Credit	₹14,375
Net Value Tax Payable	₹33,554

(b) 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 4.

(a) "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.

(b) 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%.

Answer:

(a) 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.

(b) 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).

Question 5.

(a) Computation of assessable value – average/equalized cost of transport: A manufacturer having a factory at Kolkata has uniform price of ₹ 1,000 per unit (excluding taxes) for sale anywhere in India. During financial year 2012-13, he made following sales –

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

Find assessable value per unit under the central excise.

(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)

Answer:

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

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

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

(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

Question 6.

(a) Write down the differences between direct tax and indirect tax.

(b) 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?

Answer:

(a) The following are the differences between direct tax and indirect tax:

Particulars	Direct Taxes	Indirect Taxes
Meaning	Direct Taxes are those taxes where the incidence and impact falls on the same person.	Indirect Tax is a tax where incidence and impact fall on two different person.
Nature of tax	Direct Tax progressive in nature.	Indirect Taxes is regressive in nature.
Levy & Collection	Levied and collected from the Assessee.	Levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.
Taxable Event	Taxable Income / Taxable Wealth of the Assessees.	Purchase / Sale / Manufacture of goods and provision of services.
Collected	After the income for a year is earned or valuation of assets is determined on the valuation date.	At the time of sale or purchases or rendering of services.
Shifting of Burden	Directly borne by the Assessee. Hence, cannot be shifted.	Tax burden is shifted or the subsequent / ultimate user.
Psychological Effect	It is psychologically very difficult for a person to pay some amount after it is received in his hands. Hence, there is psychological resistance.	Since the price of commodity or service is already inclusive of indirect taxes, the customer i.e. the ultimate tax payer does not feel a direct pinch while paying indirect taxes and hence, resistance to indirect taxes is much less compared to resistance to direct taxes.
Collection Mechanism	Direct taxes are mainly on income/ wealth of individuals, firms or corporate bodies, where millions of transactions are carried out in lakhs of places and keeping an eye over all such transactions is virtually impossible.	Indirect taxes are easier to collect as indirect taxes are mainly on goods/ commodities/ services, for which record keeping, verification and control is relatively easy (at least in organized sector). Manufacturing activities are carried out mainly in organized sector, where records and controls are better.
Cost of Collection	Collection cost of direct taxes as percentage of tax collected are higher in indirect taxes compared to indirect taxes.	Collection costs of indirect taxes as percentage of tax collected are lower in indirect taxes compared to direct taxes.
Tax Evasion	Tax evasion is comparatively	Tax evasion is comparatively

	more in direct taxes where it is on unorganized sector, since control is difficult.	les in indirect taxes in organized sector due to convenience of control.
Usage of taxes	Government can judiciously use the direct taxes to support development in desirable areas, while discouraging in backward areas, infrastructure development etc.	Government can judiciously use the indirect taxes to support development in desirable areas, while discouraging it in others, e.g. reducing taxes on goods manufactured in tiny or small scale units; lowering taxes in backward areas etc.
Effect on prices	Direct taxes do not affect prices of goods and service.	Tax on goods and services increases its prices, which reduces demand of goods and services. Lesser demand means lower growth of industrialization.
Inflationary Effect	Direct taxes are not inflationary.	Indirect taxes increase the prices of products and hence are often perceived as inflationary. Higher customs duty and excise duty increases cost of modern machinery and technology.

(b) 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.

Question 7.

(a) Compute the net VAT liability of Rahul using the information given as follows:-

Raw material purchased from foreign market (including duty paid on imports @ 20%): ₹ 12,000

Raw material purchased from local market (including VAT charged on the material @ 4%): ₹ 20,800

Raw material purchased from neighbouring state (including CST paid on purchases @ 2%): ₹ 7,140

Storage, transportation cost and interest: ₹ 2,500

Other manufacturing expenses incurred: ₹ 600

Rahul sold the goods to Rima and earned profit @ 20% on the cost of production. VAT rate on sale of such goods is 12.5%.

(b) An importer imported some goods for subsequent sale in India at $ 30,000 on CIF basis. Relevant exchange rate as notified by the Central Government ₹54. The item imported attracts basic duty at 10% and education Cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 14% plus education Cess of 2% and SAH 1%. Special Additional Customs Duty is 4%. Find the total duty payable.

Answer:

(a) Computation of net VAT liability (₹)

Imported goods (import duty is not eligible as Input credit, hence, import duty will form part of cost)	12,000
Local purchases [Input VAT is eligible for credit, hence, it will not form part of cost] [Total Price inclusive of VAT ₹ 20,800 – VAT 20,800 x 4 ÷ 104 = 20,800 – 800 = ₹ 20,000]	20,000
Purchases from other state (CST is ineligible for credit, hence, it will form part of cost)	7,140
Storage, transportation, interest and other manufacturing expenses [2,500 + 600] [Interest has been included in cost of production, assuming that it is an interest on working capital and operating expenditure; in any other case, it will not form part of cost of production.]	3,100
Total Cost	42,240
Add: Profit @ 20 % on cost	8,448
Sale Price	50,688
Add: VAT @ 12.5% on sale price	6,336
Total Invoice Price	57,024
VAT on Sales	6,336
Less: Credit of VAT paid on local purchases	800
VAT payable in cash	5,536

(b) Calculation of duty payable:

	(₹)
CIF value USD 30,000 X 54	16,20,000
Add: Loading and unloading @1%	16,200
Assessable Value	16,36,200
Add: Basic Customs Duty @10% on ₹16,36,200	1,63,620
	17,99,820
Add: Additional Customs Duty [@14% x ₹17,99,820]	2,51,975
	20,51,795
Add: Education Cess 2% on (₹1,63,620 + ₹2,51,975)	8,312
Add: SAH @1% on (₹1,63,620 + ₹2,51,975)	4,156
	20,64,263
Add: Special Additional Customs Duty	82,571

[@4% x ₹20,64,263]	
Total value of imported goods	21,46,834

Therefore total duty payable ₹5,10,634.

Notes:

- While calculating CVD we should not take into account NCCD of excise.
- CVD can also be imposed even if there is exemption from Basic Customs Duty.
- Imported goods contain more than one classification and the importer is unable to give the breakup of each item with value then the highest rate of duty among them will be considered.
- CVD can be levied only when the importer imported manufactured goods. It means CVD can be levied only if goods are obtained by a process of manufacture [*Hyderabad Industries Ltd* v *Union of India* (1995) (SC)].

Question 8.

(a) What is Anti-Dumping? Describe the features of it with the help of an example.

(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
(1)	**Value of exempted goods removed @ ₹ 650 per unit**	**585**	**65**
(2)	**Value of dutiable goods removed**	**400**	**50**
(3)	**Value of exempted services provided**	**250**	**30**
(4)	**Value of taxable services provided**	**500**	**60**
(5)	**Credit of input services, commonly used for all goods & services, taken**	**---**	**₹ 2,00,820**
(6)	**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.

Answer:

(a) 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.

Example:

Sale value of domestic industry at factory gate ₹150 (net of taxes). Landed Value of imports ₹100. Hence, Price under cutting = ₹150 (-) ₹100 = ₹50. This is positive undercutting. It creates pressure on domestic industry from imports, as the imported goods are sold at ₹100, which is less than the price charged by domestic industry.

On the contrary, if the Sale value of domestic industry at factory gate (net of taxes) is ₹120 and the Landed value of imports ₹135, then, Price under cutting = ₹120 (-) ₹135 = ₹(15). This is negative undercutting. The domestic industry is in a comfortable position, as the price of imports is more than the price charged by the domestic industry.

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

Sl. No.	Particulars	₹
(a)	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
(b)	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
(c)	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

Question 9.

(a) What is Provisional Assessment? How it is finalized? Whether any interest is payable or receivable regarding this matter?

(b) Define arm's length principle. Also mention the difficulties in applying the arm's length principle

Answer:

(a) Rule 7 of Central Excise Rules make provisions in respect of provisional assessment. Provisional assessment can be requested by the assessee. Department cannot itself order provisional assessment.

An assessee can request for provisional assessment in following circumstances – (a) Assessee is unable to determine the value of excisable goods in terms of Section 4 of CEA on account of non-availability of any document or information *or* (b) Assessee is unable to determine rate of duty applicable.

In aforesaid cases, assessee may request Assistant/Deputy Commissioner in writing giving reasons for provisional assessment of duty. [Assessee should give reason why he wishes to have provisional assessment]. After such request, the Assistant/Deputy Commissioner may by order allow payment of duty on provisional basis. The Assistant/Deputy Commissioner shall also specify the rate or value at which the duty will be paid on provisional basis. [Rule 7(1)].

Payment of duty on provisional basis will be allowed subject to execution of bond for payment of differential duty [Rule 7(2)].

Finalisation:

Final assessment will be made by Assistant/Deputy Commissioner after getting the required details. In case of such provisional assessment, demand can be raised within one year after the provisional assessment is finalised. After making payment of duty on provisional basis, Assistant/Deputy Commissioner should pass order for final assessment within 6 months from date of order of provisional assessment. This period can be extended by further 6 months by Commissioner and further without any time limit by Chief Commissioner [Rule 7(3)]. If differential amount is payable, interest is payable [Rule 7(4)]. If excess amount was paid, it is refundable with interest [Rule 7(5)]. The refund is subject to provision of Unjust Enrichment [Rule 7(6)].

AC/DC is required to pass order of final assessment after getting relevant information, within six months of date of communication of his order allowing provisional assessment. The period of 6 months can be extended by Commissioner of CE, on making a specific request, for reasons to be recorded in writing. Extension beyond one year for further period can be granted only by Chief Commissioner. [Rule 7(3) of Central Excise Rules].

Interest payable/receivable:

If differential duty is found to be payable, interest as specified in Section 11AA or 11AB will be payable by assessee from first day of the month succeeding the month *for which* such amount is determined till date of payment thereof. [Rule 7(4)].

If differential amount is found to be refundable to assessee, it shall be refunded with interest at rate as specified in Section 11BB from first day of the month succeeding the month *for which* refund is determined till the date of refund [Rule 7(5)]. Thus, interest is payable by department is on the same basis as payable by assessee, i.e. not from date of finalisation of provisional assessment, but from month next to the month on which duty was provisionally paid. [Note that u/s 11BB, interest on delayed refund is

payable only three months after filing of refund application. This provision does not apply to refund obtainable after finalization of Provisional Assessment].

If duty is paid on provisional basis, refund claim can be filed within one year after duty is adjusted after final assessment. [Explanation B(eb) to Section 11B].

(b) The arm's length principle seeks to ensure that transfer prices between members of an MNE (Multi National Enterprise) ("controlled transactions"), which are the effect of special relationships between the enterprises, are either eliminated or reduced to a large extent. It requires that, for tax purposes, the transfer prices of controlled transactions should be similar to those of comparable transactions between independent parties in comparable circumstances ("uncontrolled transactions"). In other words, the arm's length principle is based on the concept that prices in uncontrolled transactions are determined by market forces and, therefore, these are, by definition, at arm's length. In practice, the "arm's-length price" is also called "market price". Consequently, it provides a benchmark against which the controlled transaction can be compared.

The Arm's Length Principle is currently the most widely accepted guiding principle in arriving at an acceptable transfer price. As circulated in 1995 OECD guidelines, it requires that a transaction between two related parties is priced just as it would have been if they were unrelated. The need for such a condition arises from the premise that intra-group transactions are not governed by the market forces like those between two unrelated entities. The principle simply attempts to place uncontrolled and controlled transactions on an equal footing.

Difficulties in applying the arm's length principle:

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations.

i. The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.
ii. It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.
iii. Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.
iv. The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).
v. Arm's length principle involves a lot of cost to the group.

Question 10.

(a) 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 $ 10,000.

(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.

(b) "Duty drawback rates are of following types – (A) All Industry Rate (B) Brand Rate and (C) Special Brand Rate." — Describe.

Answer:

(a) 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

(b) The types of duty drawback rates are described as follows:

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

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

The all industry drawback rates are given in two ways – (a) when Cenvat facility has been availed and (b) when Cenvat facility not availed. The difference between the two is central excise portion of duty drawback. If rate indicated in both is same, it means that it pertains to only customs portion and is available

irrespective of whether exporter has availed Cenvat or not – Condition No 5 to Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier No. 81/2006-Cus(NT) dated13-7-2006].

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

B. Brand Rate of duty drawback – It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, *brand rate* is fixed under rule 6. The manufacturer has to submit application with all details to Commissioner, Central Excise. Such application must be made within 60 days of export. This period can be extended by Central Government by further 30 days. Further extension can be granted even upto one year in if delay was due to abnormal situations as explained in MF(DR) circular No. 82/98-Cus dated 29-10-1998.

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2- 2006).

C. Special Brand Rate of duty drawback – All Industry rate is fixed on average basis. Thus, a particular manufacturer or exporter may find that the actual excise/customs duty paid on inputs or input services are higher than All Industry Rate fixed for his product. In such case, he can apply under rule 7 of Drawback Rules for fixation of Special Brand Rate, within 30 days from export. The conditions of eligibility are (*a*) the All Industry Rate fixed should be less than 80% of the duties paid by him (*b*) rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than ₹500 (*c*) export value is not less than the value of imported material used in them – i.e. there should not be 'negative value addition'.

Question 11.

(a) Z Ltd. Collected following sums (exclusive of taxes) -

(1) Transport of passengers on vessel from Chennai to Port Blair : ₹ 8 lakh;
(2) Transport of passengers by vessels from Chennai to Dubai : ₹ 50 lakhs (services of ₹ 4 lakh was provided after crossing maritime zones of India);
(3) Transport of passengers by vessels from Dubai to Chennai : ₹ 40 lakhs (services of ₹ 6 lakh were provided after crossing maritime zones of India);
(4) Transport of passengers by stage carriage : ₹ 8 lakh;
(5) Transport of passengers by contract carriage : ₹ 4 lakh;
(6) Transport of passengers by contract carriage for tour : ₹ 3 lakh;
(7) Transport of passengers by ropeway: ₹ 1 lakh;
(8) Running cruise ships : ₹ 4 lakh (within territorial waters of India);
(9) Metro transport of passengers : ₹ 40 lakhs;
(10) Running of metered cabs and taxis : ₹ 8 lakh;
(11) Transport through national waterways: ₹ 9 lakh.

Compute taxable value.

(b) A Ltd., purchased a machine at a cum-duty price of ₹ 18,63,680. The excise duty rate charged on the said machine was 16% plus education cess 2% plus secondary and higher education cess 1%. The machine was purchased on 1-7-2012 and was disposed of one 30-9-2014 for a price of ₹ 10,00,000 in working condition as second hand machine.

- **Calculate the amount of CENVAT credit allowable for the financial years 2012-13 and 2013-14 and**
- **Also specify the amount payable towards CENVAT credit already taken at the time of disposal of the machinery in the year 2013-14.**

Answer:

(a) Computation of taxable value —

(1) Transport of passengers on vessel from Chennai to Port Blair: ₹ 8 lakh – Covered within negative list under section 66D(o), as transport by vessels takes place within India. It is assumed that vessel is not predominant meant for tourism purpose – Not taxable;

(2) Transport of passengers by vessels from Chennai to Dubai: ₹ 50 lakhs (services of ₹ 4 lakh was provided after crossing maritime zones of India) – Place where passenger embarks for a continuous journey viz. Chennai is the place of provision as per Rule 11 of PoP Rules; further, as per Rule 12, services provided on board a conveyance is provided at the place of first schedule point of departure thereof viz. Chennai. Hence, whole of the sum will be taxable in India.

(3) Transport of passengers by vessels from Dubai to Chennai: ₹ 40 lakhs (services of ₹ 6 lakhs were provided after crossing maritime zones of India) – Place where passenger embarks for a continuous journey viz. Dubai is the place of provision as per Rule 11 of PoP Rules; further, as per Rule 12, services provided on board a conveyance is provided at the place of first schedule point of departure thereof viz. Dubai. Hence, whole of the sum will be not be taxed in India;

(4) Transport of passengers by stage carriage : ₹ 8 lakh – Covered within negative list under section 66D(o);

(5) Transport of passengers by contract carriage : ₹ 4 lakh – Exempt;

(6) Transport of passengers by contract carriage for tour : ₹ 3 lakh – Not exempt, as meant for tour purposes – Taxable;

(7) Transport of passengers by ropeway : ₹ 1 lakh – Covered within negative list under section 66D(o);

(8) Running cruise ships: ₹ 4 lakh (within territorial waters of India) – Cruise ships are predominantly meant for truism purposes, hence, not covered within negative lit – Taxable;

(9) Metro transport of passengers : ₹ 40 lakh – Covered within negative list under section 66D(o);

(10) Running of metered cabs and taxis : ₹ 8 lakh – Covered within negative list under section 66(o);

(11) Transport through national waterways: ₹ 9 lakh – Covered within negative list u/s 66D(o).

Taxable Value = 50 + 3 + 4 = ₹ 57 lakhs.

(b)

Part I – CENVAT Credit allowable [Rule 4(2)(a) and 4(2)(b)]:

[Total Duty paid = ₹ 18,63,680 x 16.48% ÷ 116.48% = ₹ 2,63,680	**F.Y. 2012-13**	**F.Y. 2013-14**
50% credit in year of receipt and balance in subsequent year	1,31,840	1,31,840
Date of taking credit	01-07-2012	01-04-2012

Part II – Computation of amount payable under Rule 3(5A)

	Date of taking credit is 1-7-2012 only	**Date of taking credit is 1-7-2012 for 50% and 1-4-2013 for bal. 50%**	
		For first 50%	**For balance**
Credit taken = 50% of ₹ 1,44,200	2,63,680	1,31,840	1,31,840

Date of taking credit	01-07-2012	01-07-2012	01-04-2013
Date of removal	30-09-2014	30-09-2014	30-09-2014
No. of quarters of part thereof	9	9	6
Percentage eligible @ 2.5% for every quarter	22.50%	22.50%	15.00%
Credit reversible [100% - Percentage eligible]	77.50%	77.50%	85.00%
Amount to be paid=Credit Taken x % Reversible	2,04,352	1,02,176	1,12,064
Limit I = Total amount payable as about	2,04,352		2,14,240
Limit II = Value ₹ 10 lakh x Duty i.e., 16.48%	1,64,800		1,64,800
Amount payable under Rule 3(5A) = Higher of Limit I or Limit II	2,04,352		2,14,240

Question 12.

(a) State the various types of forms under CST.

(b) What are the basic conditions for levy of duty under section 3 of Central Excise Act?

Answer:

(a) The following are the forms under CST:

Form A	(i) This form is prescribed for application to get registered u/s 7 of CST Act. (ii) Details such as name, status, place of business, warehouses, nature of business, nature and purpose of goods to be dealt, goods to be bought from outside the state etc., are required to be furnished. (iii) Care should be taken to list the goods sought to be bought from outside the state and the purposes for which they are proposed to be utilized as the benefit of Form C is restricted to the goods and end use listed only.
Form B	(i) Certificate of registration shall be issued by the authority in this form. (ii) The certificate of registration should be kept in the principal place of business and copies thereof in the branches inside the appropriate state.
Form C	(i) Form C is used by a purchasing dealer to get the goods at confessional rate of duty and is issued in favour of the dealer who affects interstate sale. (ii) Registered dealers are entitled to certain exemptions under CST Act, 1956. (iii) It contains particulars such as name of purchasing dealer, sales tax registration no., its validity, details of goods obtained (whether for resale, manufacture, processing or as packing material), name and address of the seller etc. (iv) It is obtained from the sales tax authorities in the state in which the purchasing dealer is registered.
Form EI, EII & EIII	(i) In case of subsequent sale in the course of Interstate sale, the dealer effecting subsequent sale can avail exemption by submitting Form C issued by his customer and by submitting Form E-1, issued by his seller. (ii) Form, E-I, E-II & E-III etc. are printed by the Sales Tax department and are supplied to the registered dealer for their use. (iii) Form E-II & E-III will have to be issued, in case there are more than one subsequent sale.
Form F	(i) F form is required to be produced as proof of stock transfer. As per section 6A(1) submission of F form is mandatory to prove stock transfer. Otherwise, the transaction will be treated as sale for all purposes of CST Act. (ii) F Form is issued by the branch office/consignment agent receiving

	goods as branch/stock transfer to its head office/principal who is sending the goods by way of stock/ branch transfer. The H.O./Principal produces such F forms to its assessing authority to prove such stock/branch transfer.
Form G	(i) These forms are issued by the sales tax authorities of the concerned state where the goods are received. (ii) It contains the name of the issuing state, date of issue, name and address of consignee and his registration no., name and registration no. of the transferor, description of goods, quantity, weight value etc. (iii) The declaration shall be signed by the authorized signatory.
Form H	(i) This form is used by the exporters who purchase the goods for the purpose of export. (ii) The actual exporter shall issue a certificate to the penultimate seller in Form H. (iii) These forms are obtained from the sales tax authorities by the exporter. (iv) Form H contains the name of the issuing state, date of issue name and address of exporter and his registration no., name and registration no. of the selling dealer, description of goods, quantity, weight, value details of export etc.

(b) To attract excise duty, the following conditions must be fulfilled:

- There should be movable goods;
- The goods must be excisable;
- The goods must be manufactured or produced; and
- The manufacture or production must be in India.

Goods manufactured or produced in SEZ are "excluded excisable goods". This means, that the goods manufactured or produced in SEZ are "excisable goods" but no duty is leviable, as charging section 3(1) excludes these goods. Thus, the goods manufactured in SEZ are not "exempted goods". They can be termed as "excluded excisable goods".

As per explanation to section 2(d), 'goods' includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable'.

Question 13.

(a) M Ltd., which is engaged in manufacturing of excisable goods started its business on 1st June, 2011. It availed SSI exemption during the financial year 2011-12. The following are the details available to you:

	₹
12,500 kg. of inputs purchased @ ₹ 1,190.64 per kg. (inclusive of excise duty @ 8.24%)	**1,48,83,000**
Capital goods purchased on 31.05.2011 (inclusive of Excise Duty @ 14.42%)	**90,00,400**
Finished goods sold (at uniform transaction value throughout the year)	**3,00,00,000**

You are required to calculate the amount of excise duty payable by M/s M Ltd. in cash, if any, during the year 2011-12. Rate of duty on finished goods sold may be taken @ 12.36% for the year and you may assume the selling price exclusive of central excise duty.
There is neither any processing loss nor any inventory of input and output.

Output input ratio may be taken as 2 : 1.

(b) Define 'dealer' as per CST Act, 1956.

Answer:

(a) Computation of duty payable by M Ltd. during financial year 2011-12.

Particulars	Units	₹/unit	₹
Total value of all finished goods [12,500 Kg. x 2 units per Kg.]	25,000	1,200	3,00,00,000
Less: Exemption of ₹ 150 lakhs	12,500	1,200	1,50,00,000
Dutiable clearances (50% clearances are exempt and 50% dutiable)	12,500	1,200	1,15,00,000
Duty @ 12.36% on final product		148.32	18,54,000
Total Credit on inputs [Duty = 1,190.64 x 8.24 ÷ 108.24]	12,500	90.64	11,33,000
Less: 50% credit relating to exempted clearances [Reversal under Rule 6 of the CENVAT Credit Rules, 2004]	6,250	90.64	5,66,500
Credit relating to dutiable clearances	6,250	90.64	5,66,500
Add: Credit relating to capital goods [100% credit available in first year to SSI – units] [₹ 90,00,400 x 14.42 ÷ 114.42]			11,34,293
Total CENVAT Credit			17,00,793
Duty payable in cash [Duty on Final Product – CENVAT Credit]			1,53,207

(b) As per Sec 2(b) -'Dealer' means any person

(i) who carries on (whether regularly or otherwise), the business of

(ii) buying, selling, supplying or distributing goods, directly or indirectly,

(iii) for cash or for deferred payment, or for commission, remuneration or other valuable consideration.

Dealer includes the following:

A. A Local Authority, a Body Corporate, a Company, any Co-operative Society or other Society, Club, Firm, HUF or Other Association of Persons which carries on such business.

B. A Factor, Broker, Commission Agent, Del-credre Agent, or any other Mercantile Agent, by whatever name called, and whether of the same description as herein before mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not, and

C. An auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

Question 14.

(a) Give the details of the periodic returns under Central Excise.

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

Answer:

(a) All assesses are required to file returns mandatorily through e-filing, irrespective of the payment of excise duty w.e.f 01-10-2011. The forms of returns are as under:

Form of return	Description	Assessee	Time Limit
ER-1	Monthly	Manufacturer	10th of the following month from the end of the relevant month.
ER-2	Monthly	EOU	10th of the following month from the end of the relevant month.
ER-3	Quarterly	SSI	10th of the following month from the end of relevant quarter w.e.f. 1.4.2010
Annexure 13B	Quarterly	First Stage Dealer (or) Second Stage Dealer	15th of the following month from the end of the relevant quarter.
ER-4	Annual Financial Information Statement	Duty paid including CENVAT Credit ₹100 lakhs in the previous year.	Annually by 30th November of next year.
ER-5	Information relating to principal inputs statement	Duty paid including CENVAT Credit ₹100 lakhs in the previous year.	Annually by 30th April for the current year.
ER-6	monthly input and output	Assessee who submits form ER-5	10th of the following month from the end of the relevant month.
ER-7	Annual Installed Capacity Statement	By every assessee	30th April of the succeeding Financial Year
ER-8		An assessee is availing the exemption under N.T. 1/2011 dt. 1-3-2011 namely paying duty @1% or 2% as the case may be and does not manufacture any other products.	10th of the following month from the end of relevant quarter. For the year end quarter 31st March.

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

(i) Record keeping: VAT requires proper record keeping and accounting. Systematic records of input credit and its proper utilization is necessary for the dealer to take input tax credit. No doubt, Cost Accountants are well equipped to perform these activities.

(ii) Tax planning: Cost Accountant is competent to analyze various alternatives and its impact on dealer so as to minimize the tax impact.

(iii) Negotiations with suppliers to reduce price: VAT credit alters cost structure of goods supplied as inputs. A Cost Accountant will ensure that the benefit of such cost reduction is passed on by the suppliers to his company.

(iv) Helping to departmental officers: There will be audit wing in department and certain percentage of dealers will be taken up for audit every year on scientific basis. Cost Accountant can ensure proper record keeping so as to satisfy the departmental auditors.

(v) External audit of VAT records: Under VAT system, self assessment has been brought into force. Cost Accountants can play a very vital role in ensuring tax compliance by audit of VAT accounts.

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

Question 15.

(a) Mrs. & Mr. Khemka visited Australia and brought following goods while returning to India on 10-03-2013 after 7 days of stay-

(i) Their personal effects like clothes, etc., valued at ₹ 80,000.
(ii) A personal computer bought for ₹ 46,000.
(iii) A laptop computer bought for ₹ 35,000.
(iv) Two liters of liquor bought for ₹ 10,000.
(v) A new camera bought for ₹ 47,400.
What is the amount of customs duty payable?

(b) "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.

Answer:

(a) The question can be solved making two assumptions –

(i) Mr. and Mrs. Khemka have brought separate baggage and made separate declarations u/s 77:

- In this case, GFA under rule 3 (return from Australia after stay of more than 3 days) of ₹ 35,000 each will be available to Mr. and Mrs. Khemka separately;
- Used personal effects and one laptop shall be exempt;
- It is assumed that out of non-exempt items Mr. Khemka brought personal computer and liquor; while Mrs. Khemka brought new camera.
- Any other alternative allocation to avail full GFA of ₹ 35,000 under Rule 3 for each passenger may also be taken for the purpose of solution.

(ii) They have brought single baggage and made single declaration u/s 77, so that GFA shall be available only one time and will not be separately available for each passenger.

Computation of customs duty

	Separate Baggage		**Single Baggage for Mr. & Mrs. Khemka**
	Mr. Khemka	**Mrs. Khemka**	
Their personal effects like clothes, etc.	Exempt	Exempt	Exempt
A personal computer	46,000	---	46,000
A laptop computer	Exempt	Exempt	Exempt
Two liters of liquor (Liquor more than 2 liters is covered by Annex. I. Liquor upto 2 liters forms part of bona fide baggage and is eligible for GFA.)	10,000	---	10,000
New camera	---	47,400	47,400
Gross Value of Bona fide baggage	56,000	47,400	1,03,400
Less: General Free Allowance under Rule 3	35,000	35,000	35,000
Dutyable Value	21,000	12,400	68,400
Duty @ 36.05%	7,571	4,470	24,658

Total duty under Assumption 1 = ₹ 7,571 + 4,470 = ₹ 12,041. The lower duty is due to availability of GFA twice leading to benefit of ₹ 35,000 x 36.05% = ₹ 12,617.5 or ₹ 12,617.

(b) 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.

Question 16.

(a) State the taxable event of Central Sales Tax, Value Added Tax, Service Tax, Excise Duty, Customs Duty.

(b) A controversy has arised as to classification of Coconut oil. Is it (i) Hair oil (ii) Edible Oil (iii) Pure Coconut Oil or Coconut Oil? Advice.

Answer:

(a) The taxable events are:

Tax/Duty	Taxable Event
Central Sales Tax	Purchase or sale in the course of inter-state sale (i.e. from one state to another state)
Value Added Tax	Purchase or sale in the course of intra-state sale (i.e. within a state)
Service Tax	Destination based, service is taxable only if provided in India, except whole of Jammu & Kashmir
Excise Duty	Production or manufacture of excisable goods in India (except goods manufactured or produced in Special Economic Zones in India)
Customs Duty	Importation of goods into India or exportation of goods from India

(b) Classification of Coconut oil is based on End user test vide Circular No.890/10/2009 – CX dated
03.06.3009. It refers to coconut oil sold with the indications on the containers or the labels such as (i) Hair oil;
(ii) Edible Oil; (iii) 'Pure Coconut Oil' or 'Coconut Oil'.

(i) If the 'Coconut Oils' are sold with the label "Hair Oil" meant for retail sale, they are classified under the heading "hair oil" * Heading no.3305+;

(ii) If the coconut oil sold with the label "Edible Oil"/ "Pure Coconut or Coconut Oil" meant for retail sale:
- If such oil is sold in small packs i.e. 50ml/100 ml/200ml – classify as "Hair oil" only (Chapter 33), since majority of customers use as Hair oil
- If such oil is sold in larger packs for e.g. 1 litre or 2 litres – classify as "Edible Oil" (Chapter 15), since majority of customers use as Edible oil.

Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product.

Question 17.

(a) "Every assessee registered under Service tax provisions should file returns mandatorily electronically (w.e.f. 1-10-2011)." — Give details of those return forms.

(b) 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%.

Answer:

(a) The return forms are:

Period	Due date (e-filing)	Return (must be filed in triplicate)	Person responsible to file	Remarks
1st April to 30th September	25th of October	ST-3 Every assessee shall submit the half-yearly return electronically w.e.f. 1-10 2011.	All assesses (provider or recipient of service as the case may be)	Due date is a public holiday, then next working day is the due date. One ST-3 can file for multiple services. 'Nil' return acceptable but no return will attract penalty.
1st October to 31st March	25th April	ST-3 Every assessee shall submit the half-yearly return electronically w.e.f. 1-10-2011.	All assesses (provider or recipient of service as the case may be)	Due date is a public holiday, then next working day is the due date. One ST-3 can file for multiple services. 'Nil' return acceptable but no return will attract penalty.
1st April to 30th September	25th October	ST-3A Every assessee shall submit the	All assesses to whom provisional assessment has	A statement giving details of the difference between

		half-yearly return electronically w.e.f. 1-10-2011.	been granted.	the service tax deposited and the service tax liable to be paid for each month or quarter, as the case may be, in a memorandum accompanying the half-yearly return.
1st October to 31st March	25th April	ST-3A Every assessee shall submit the half-yearly return electronically w.e. f. 1-10-2011.	All assesses to whom provisional Assessment has been granted.	A statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month or quarter as the case may be in a memorandum accompanying the half-yearly return.

(b) 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**

Question 18.

(a) Give the details of Classification of "Cross Border Services".

(b) Who is a Large Tax Payer? What is an LTU?

Answer:

(a) The Cross Border Services can be classified as follows:

(i) Advance Ruling Representative Services: The term 'advance ruling' means (a) the determination of a question of law or fact in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant and also includes the determination of the tax liability of a non-resident arising out of such transaction with a resident applicant; (b) the determination or a decision on a question of law or fact relating to the computation of total income which is pending before any Income-tax authority or the Appellate Tribunal.

(ii) Branch office set up of a Foreign Company: Permission to set up a branch office is granted by the Reserve Bank of India. A Branch office of a foreign company upon approval from the RBI must be compulsorily registered under the (Indian) Companies Act, 1956.

Upon registration under the Companies Act, 1956 the branch office can carry on its business activities in the same way as a domestic company. Unlike a liaison office a branch office can generate revenue from the sales in the local market and repatriate the profits to the foreign parent company.

A branch office so approved and registered can carry on the following activities:–

(a) Export/Import of goods

(b) Rendering professional or consultancy services

(c) Carrying out research work, in which the parent company is engaged

(d) Promoting technical or financial collaborations between Indian companies and parent or overseas group company

(e) Representing the parent company in India and acting as buying selling agents in India

(f) Rendering services in Information Technology and development of software in India.

(iii) Business set up services: Consultancy services rendered to Non-residents and entrepreneurs in starting, growing, expanding, diversifying and in case required, closing businesses in India. The services may also include preparation of project reports, feasibility report, Market survey, Project Planning & many more.

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

(v) Foreign company incorporation: In India, incorporation of a company involving foreign investment is primarily governed by two laws i.e. Companies Act, 1956 and Foreign Exchange Management Act, 1999 (FEMA). Companies Act is principally concerned with compliance with requirements and guidelines prescribed by registrar of companies whereas FEMA mandates compliances with guidelines prescribed by Reserve Bank of India in relation to Foreign Direct Investment in India. It is imperative from above that our scope of service emanate in form of consultancy services for ensuring compliance with both the above laws i.e. Companies Act, 1956 and FEMA, 1999 and liaisoning with respective authorities.

(b) **Large Tax Payer** means a person who:-

(i) Has one or more registered premises under Central Excise Law/Service Tax Law;

(ii) Is an assessee under Income Tax law, holding Permanent Account Number u/s 139A of the Income Tax Act, 1961.

Large Tax Payer Unit (LTU):

(i) LTU is a self-contained tax office that provides single point interface with the tax administration to the large taxpayers who pay direct and indirect taxes above the threshold limit

(ii) It is headed by a Chief Commissioner (CCIT or CCCE) and supported by other Commissioners and office`

(iii) Officers posted in LTU will have all India jurisdiction in respect of all registered premises of a Large Tax Payer registered in that particular LTU.

(iv) The existing Central Excise and Service Tax Commissionerate will have concurrent jurisdiction over the premises of the Large Tax Payers.

Eligibility: An assessee should satisfy one of the following conditions to be eligible for higher benefits of Large Tax payer:

(i) As a manufacturer, has paid duties of Central Excise of ` 5 crores or more;

(ii) As a provider of Taxable Service, has paid service tax of `5 crores or more;

(iii) As an Income Tax Assessee, has paid Advance Tax of `10 crores or more, during any financial year.

Question 19.

(a) What is captive consumption? How are intermediate products liable to excise duty?

(b) 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) Captive consumption means consumption of goods manufactured by one division or unit and consumed by another division or unit of same organization or related undertaking for manufacturing another product (s). For example yarn produced from fibre is consumed within the factory of production for production of fabric then such type of consumption is known as captive consumption.

Earlier there was a controversy regarding the duty liability of intermediate product. The rate of excise is to be determined at the time of removal of goods from factory as provided in Rule 5 of Central Excise Rules, 2002. The manufacturers' contention was that since intermediate products are not removed from the factory, they should not be liable to pay excise duty. This contention of the assessee was upheld in J K Cotton & Spinning Mills Co. Ltd. v UOI. However, Rules 9 and 49 of the erstwhile Central Excise Rules 1944 were retrospectively amended to provide that in case the goods are captively consumed such consumption shall be treated as deemed removal.

An intermediate product is goods by itself and as per Rule 4 of the Central Excise Rules, 2002, if it is used in the captive consumption for manufacture of other products it becomes chargeable to duty as soon as it is removed from the place of manufacture of production or from the storage or store room where it is kept after coming into existence.

However, all the intermediate products, which are captively consumed, are not dutiable. The captive consumption of only those articles is dutiable which are 'goods' and qualify the test of marketability and are excisable commodities. Rule 4 of Central Excise Rules, 2002 is to be reasonably applied and it is not that at every stage of manufacture duty is leviable. Therefore, articles captively consumed can be charged to duty only when they have reached the stage where they can be identified as 'goods'.

However, currently there is exemption notification in force exempting intermediate products from duty of excise, if the final products are chargeable with duty.

(b) 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. Ram was liable to pay the duty. *[Prachi Industries v 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 v UOI the Supreme Court held that the captive consumption would amount to removal, hence chargeable to duty. However, in Union Carbide v 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 v UOI.

Question 20.

(a) What is Duty Drawback? When it is not eligible as per Customs Act, 1962?

(b) Mr. Kabi, a consulting tax adviser raised a bill of ₹2,40,800 (including service tax @12.36%) on his client for consulting services rendered by him in the month of June, 2013. A partial payment of ₹1,38,350 was received by Mr. Kabi in the month of October 2013 as full and final settlement. Compute the service tax amount payable by Mr. Kabi and the due date by which service tax can be deposited. Previous year taxable services are ₹73 lakhs.

Answer:

(a) Duty drawback can be explained as:

i. Duty drawback is rebate of excise duty and customs duty paid on inputs used in exported final product u/s 75 of Customs Act.

ii. All Industry drawback rate is fixed on industry average basis for various products. Incidence of service tax is also taken into account while fixing drawback rate.

iii. An individual exporter can get brand rate fixed for his product.

iv. Drawback rate is fixed by Commissioner of Central Excise.

v. Duty drawback is available on re-export u/s 74 of Customs Act.

Section 75 of Customs Act, 1962 provides some disallowances or cases when drawback allowed can be recovered. Further, section 76(2) of Customs Act, 1962 authorises Central Government to issue notifications prohibiting drawback if the

goods are likely to be smuggled back to India after export. Drawback Rules also provide for some disallowances. These are summarised below:

i. If sale proceeds of export goods are not received within time stipulated by RBI [This provision does not apply to goods supplied from DTA unit to SEZ unit]
ii. If no customs/excise duty is paid on the inputs or service tax is not paid on input services
iii. If imported inputs were obtained under Advance License (DEEC scheme) without payment of duty
iv. If importer avails DEPB or DFRC
v. Goods manufactured under Customs Bond or Excise Bond where inputs were obtained without payment of duty
vi. Goods manufactured by EOU or a unit in Special Economic Zone (as they obtain inputs without payment of duty)
vii. If Cenvat was claimed on indigenous inputs. [In such case, excise portion of duty drawback will not be available].
viii. In case of negative value addition – i.e. selling price of exported goods is less than value of imported goods i.e. foreign exchange spent on import of raw material is more than FOB Value of exports.
ix. Jute batching oil used in manufacture of jute yarn, twist, twine etc.
x. Packing materials used in relation to export of jute yarn, jute fabrics and jute manufacture.
xi. Where specific rates are provided, drawback will not be paid if it is less than 1% of FOB Value of the product, unless drawback claim per shipment is over ₹500 – para 11 of Notification No. 81/2006-Cus(NT) dated 13-7-2006 [earlier Notification No. 36/2005-Cus(NT) dated 2-5-2005].
xii. If wholesale market price of goods in India is less than the amount of drawback due.
xiii. Exports to Nepal/Bhutan. However, exports to Nepal are eligible if payment is received under hard currency i.e. dollars, euro, Yen British pounds etc.
xiv. No drawback of sales tax, octroi or other taxes – drawback is of customs and Central Excise duties only.
xv. Export of alcoholic liquor, cigarettes, cigar and pipe tobacco; as stores; to foreign going vessel of less than 200 tons.
xvi. If goods exported by vessel of less than 1,000 tons; unless certificate is submitted that sale proceeds in foreign currency have been received and goods have landed at destination within three months.
xvii. If drawback is less than ₹50.

Broadly, drawback is not allowed if excise/customs duty or service tax has not been paid on inputs or manufacturer has availed some other benefit in respect of duty paid on inputs or input services. Principle is that there cannot be double benefit.

(b) Service tax is payable only on the basis of point of taxation rules. Hence, service tax is required to be paid on the entire bill value. The service tax is required to be paid on the value of service which is actually billed in the month of June 2013.

	₹
Value of taxable services (₹2,40,800 x100/112.36)	2,14,311

Service tax payable on ₹2,14,311 @ 12%	25,718
Education cess @ 2% on ₹25,717	514
Secondary and Higher Education cess @ 1% on ₹25,717	257
Total	**2,40,800**

Therefore, service tax payable to the government ₹26,489.

Due dates of payment of service tax is quarterly for an individual. Therefore, due date is on or before 5th July 2013.

Question 21.

(a) Explain how the various types of packing charges will be dealt with in case of valuation under the Central Excise Act, 1944.

(b) A manufacturer has appointed brokers for obtaining orders from wholesalers. The brokers procure orders for which they get brokerage of 5% on selling price. Manufacturer sells goods to buyers at ₹3000 per piece. The price is inclusive of State Vat and Central excise duty. State Vat rate is 4% and excise duty rate is 12% plus education cess and SAH education cess as applicable. What is the AV, and what is duty payable per piece?

Answer:

(a) The packing charges shall be dealt as follows :

i. Primary and Secondary packing: Section 4 of the Central Excise Act, 1944, does not make any specific reference to packing charges. In normal commercial transactions the price of goods charged includes the cost of packing charges. The charges that are recovered on account of packing are obviously the charges in relation to sale of goods under assessment and will form the part of transaction value. Whatever be the nature of packing that is whether the packing is primary or secondary or special, the cost of such packing shall be includible.

ii. Durable and Returnable packing: The durability of packing depends upon repeated use. For example, oxygen cylinders, bottles for aerated water etc. are durable packing materials. When the packing refers to packing being of a durable nature, the durability must be of such a nature that packing is capable of being reused by the manufacturer.

As regards the returnable packing, the courts have interpreted this to mean a contractual agreement between seller and buyer for return of packing from buyer of excisable goods to the seller.

Normally the cost of reusable containers (glass bottles, crates etc.) is amortised and included in the cost of the product itself. Therefore the question of adding any further amount towards this account does not arise, except where the audit of accounts reveals that the cost of the reusable container has not been amortised and included in the value of the product.

In case of rental charges or maintenance of reusable containers, if the amount has been charged in connection with the sale of goods, this amount will be added to the transaction value.

However, in Grasim Industries v. CCEs. [2004], the Tribunal has held that packing or rental charges paid by the buyer in respect of durable or returnable packing will not be included in the assessable value as such rental charges are not paid by the buyer by reason of, or in connection with, the sale because sale of goods and sale of durable and returnable packing are separate transactions.

(b) Assume that Assessable Value = x. No deduction is available in respect of brokerage paid to third parties from Assessable Value.

Since Excise duty is 12%, education cess is 2%, SAH education cess is 1% and State Vat rate is 4%, price including excise will be 1.1236x.

State Vat @ 4% of 1 .1236x is 0.0449x. Hence, price inclusive of sales tax and excise duty will be 1.1685x.

Now, 1.1685x = ₹3,000.00

Hence, x = ₹2,567.39

Check the answer as follows –

Assessable Value = ₹2,567.39

Add: Excise duty @ 12.36% of ₹2,567.39 = ₹317.33

Add: State Vat @ 4% on ₹2,884.72 (2,567.39 + 317.33) = ₹115.39

Total Price (Including duty and tax)

(2,567.39 + 317.33 + 115.39) = ₹3,000.00

Question 22.

(a) What are the documents on the basis of which CENVAT credit can be availed?

(b) 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.

Answer:

(a) According to Rule 9 of the Cenvat Credit Rules, 2004 the manufacturer/ provider of output service can take Cenvat Credit on the basis of the following documents:

i. An invoice issued by manufacturer of inputs/ capital goods for clearance of inputs or capital goods from his factory/ depot / premises of consignment agent of the said manufacturer/ any other premises from where the goods are sold by or on behalf of the said manufacturer;

ii. An invoice issued by a manufacturer for clearance of inputs / capital goods as such as per Rule 3 (5) of the Cenvat Credit Rules, 2004;

iii. An invoice issued by an importer;

iv. An invoice issued by an importer from his depot/ premises of consignment agent provided the said depot/ premises, as the case may be, is registered in terms of the provisions of the Central Excise Rules, 2002;

v. An invoice issued by a First stage dealer or a Second stage dealer;

vi. A supplementary invoice issued by the manufacturer of inputs/ capital goods in terms of Central Excise Rules, 2002 from his factory/ depot/ premises of consignment agent/ any other premises from where the goods are sold by or on behalf of the said manufacturer where such supplementary invoice is raised for any duty demand paid by the manufacturer or any duty deposited on account of price escalation;

Similarly, a supplementary invoice issued by the importer of inputs/ capital goods in terms of Central Excise Rules, 2002 from his factory/ depot/ premises of consignment agent/ any other premises from where the goods are sold by or on behalf of the said importer where such supplementary invoice is raised for any duty demand of additional duty of customs paid by the importer or any duty deposited on account of price escalation;

But Cenvat credit will not be allowed even if a supplementary invoice has been issued by the manufacturer/ importer on account of additional duty paid, where the additional duty is recoverable from the manufacturer/ importer on account of non-levy or short-levy by reasons of fraud, collusion or any willful mis-statement or suppression of facts or contravention of Acts/ Rules (both Central Excise and Customs) with the intent to evade payment of duty.

vii. A bill of entry;

viii. A certificate issued by an appraiser of customs in respect of the goods imported through foreign post office;

ix. A challan evidencing payment of service tax by the person liable to pay service tax;

However, if the invoice or the supplementary invoice bears an indication to the effect that no credit of the additional duty of customs levied u/s 3(5) of the Customs Tariff Act, 1975 shall be admissible, then, credit of such additional duty of customs shall not be allowed.

(b) 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 .

Question 23.

(a) Write a short note on Input Service Distributor.

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

Answer:

(a) As per CENVAT Credit Rules, 2004 (w.e.f. 1-4-2011) input service distributor may be explained as —

Rule 7: Manner of distribution of credit by input service distributor (w.e.f. 1-4-2012):

The input service distributor may distribute the CENVAT CREDIT in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:-

(a) The Input service distributor must ensure that such a distribution should not exceed the service tax paid.

(b) In case an input service is attributable to service use in a unit exclusively engaged in manufacture of exempted goods or exempted services, then such credit of service tax shall not be distributed.

(c) Credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and

(d) Credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

Rule 7A: Distribution of credit on inputs by the office or any other premises of output service provider:

Cenvat credit on input goods and capital goods can be distributed by the service provider only if such person registered as first stage dealer or a second stage dealer.

Rule 8: Storage of input outside the factory of the manufacturer: Input can be stored outside the factory with the prior permission of deputy commissioner or the assistant commissioner of central excise.

(b) 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	There is no criterion of minimum value addition, which is to be	It has been specifically provided that there should not be negative

addition	fulfilled before export for claim of drawback.	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.

Question 24.

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

(b) What is "location of the service provider" and "location of the service receiver"?

Answer:

(a) **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.

A. 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.

B. 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.

(b) **"location of the service provider"** means-

1. Where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
2. Where the service provider is not covered under sub-clause (1):
   (i) the location of his business establishment; or
   (ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
   (iii) where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and
   (iv) in the absence of such places, the usual place of residence of the service provider.

"location of the service receiver" means:-

1. where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
2. where the recipient of service is not covered under sub-clause (a):
   (i) the location of his business establishment; or
   (ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
   (iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and
   (iv) in the absence of such places, the usual place of residence of the recipient of service.

Question 25.

(a) Explain distinguishing features between provisions of 'pilferage' and 'loss or destruction of goods' under Customs Act.

(b) While importing goods under Duty Free Import Authorisation (DFIA), should any customs duty be paid? Is the DFIA transferable?

Answer:

(a) Difference in sections 13 and 23 (1) can be summarized as follows :

Section 13 - Pilferage	**Section 23 – Loss or destruction of goods**
Pilferage means loss arising out of theft	Such loss may arise by fire, natural calamity etc.
Section 13 deals with pilferage	Section 23 (1) deals with loss or destruction of goods, except pilferage.
No duty is payable at all under section 13, but liability revives for duty if goods are restored.	Duty is payable under section 23 (1), but it may be remitted by Asst. Comm. Of Customs. Thus, unless remitted, duty has to be paid under section 23 (1)
Importer does not have to prove pilferage.	Burden of proof is on importer to prove loss or destruction.
Pilferage should be before order for clearance is made.	Loss or destruction can be at any time before clearance.
Loss must be only due to pilferage.	Loss or destruction may be due to fire, accident etc., but not pilferage e.g., loss by leakage is covered under section 23.
Under section 13, normally duty is not paid. However, if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance are made.	Under section 23 (1), if duty is paid, then refund can be obtained only if remission is granted by Customs Authorities. Thus, remission under section 23 (1) is at the discretion of Customs Authorities. [of course, the discretion has to be exercised judiciously].
Section 13 is not applicable for warehoused goods.	Section 23 (1) is applicable for warehoused goods also [As goods transferred to warehouse are not 'cleared for home consumption'].

(b) Duty Free Import Authorisation (DFIA) has been introduced w.e.f. 1.5.2006. It is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst required for export products. Imports under DFIA will be exempted from payment of basic customs duty, additional customs duty/ excise duty, education cess, anti-dumping duty and safeguard duty, if any.

After export obligation is fulfilled, the scrip can be made transferable by Regional Authority. After endorsement f transferability, duty free inputs (except fuel) can be transferred.

Question 26.

(a) How the value of goods is determined based on Retail Sale Price?

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

Answer:

(a) Section 4A of CEA empowers Central Government to specify goods on which duty will be payable based on 'retail sale price'.

The provisions for valuation on MRP basis are as follows:

(i) The goods should be covered under provisions of Legal Metrology Act, 2009, w.e.f. 1-8-2011 (earlier Standards of Weights and Measures Act, 1976). [section 4A(1)].

(ii) Central Government has to issue a notification in Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Government can permit reasonable abatement (deductions) from the 'retail sale price' [section 4A(2)].

(iii) While allowing such abatement, Central Government shall take into account excise duty, sales tax and other taxes payable on the goods [section 4A(3)].

(iv) The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc. If under certain law, MRP is required to be without taxes and duties, that price can be the 'retail sale price' [Explanation 1 section 4A].

(v) If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered [Explanation 2(a) to section 4A]. If different MRP are printed on different packages for different areas, each such price will be 'retail sale price' for purpose of valuation [Explanation 2(c) to section 4A].

(vi) Removing excisable goods without MRP or wrong MRP or tampering, altering or removing MRP declared on a package is an offence and goods are liable to confiscation [section 4A(4)] If price is altered, such increased price will be the 'retail sale price' for purpose of valuation [Explanation 2(b) to section 4A].

(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 66 D. 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 provided by Govt. or local Authority	All services provided by Govt., in terms of their Sovereign right to business entities. • Grant of mining licenses • Audit of Comptroller and Auditor General, etc.	• Speed post, Express Parcel post, Life insurance and agency services carried out on payment of commission • Services in relation to vessel or an aircraft • Transport of goods and passengers • Support services.	Reverse charge applicable in case of support services Examples: Adv. Service, Construction Works contract, Renting of movable or immovable property, Security Testing and analysis.
(2) Services	All type of services	Services provided to	Services provided

provided by RESERVE BANK OF INDIA (RBI)	provided by RBI.	RBI.	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.

Question 27.

(a) How mega exemption is provided to health care services?

(b) 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 cesses as applicable. What is the total duty paid during the financial year?

Assume that the manufacture is not eligible for SSI concession.

Answer:

(a) Services in recognized systems of medicines in India are exempt. In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:

i. Allopathy
ii. Yoga
iii. Naturopathy
iv. Ayurveda
v. Homeopathy
vi. Siddha
vii. Unani
viii. Any other system of medicine that may be recognized by central government

Paramedic Services also exempted:

Services like nursing staff, physiotherapists, technicians, lab assistants etc are called as paramedic services which are exempt from service tax. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

However, the following services even if provided by Doctors or Hospitals shall be taxable:

(i) hair transplant or

(ii) cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or function of body affected due to congenital defects, developmental abnormalities, injury or trauma.

(b) **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 – (a) 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. (b) 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.

Question 28.

(a) R & Co. furnish the following expenditure incurred by them and want you to find the assessable value for the purpose of paying excise duty on captive consumption. Determine the cost of production in terms of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 and as per CAS – 4 (Cost Accounting Standard):

	(₹)
Direct material cost per unit inclusive of excise duty at 12.36%	**880**
Direct wages	**300**
Other direct expenses	**150**
Indirect materials	**75**
Factory overheads	**200**
Administrative overhead (25% relating to production capacity)	**200**
Selling and distribution expense	**150**
Quality control	**75**
Sale of scrap realised	**25**
Actual profit margin	**20%**

(b) In what circumstances refund of Cenvat credit can be claimed?

Answer:

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

	Total Cost (₹)
Material Consumed (Net of Excise duty) [₹(800-108.77)]	771.23
Direct wages	300
Other direct expenses	150
Works Overhead [indirect material (₹ 75) plus factory overhead (₹200)	275
Quality control	75
Administrative overhead (25% relating to production capacity)	50
Less: Sale of scrap realised	25
Cost of production	1,646.23
Add: 10% profit margin on cost of production (₹ 1,646.23 x 10%)	165
Assessable value as per Rule 8 of the valuation rules	1,811.23

Note: Actual profit margin is not relevant for excise valuation.

(b) The Notification No. 27/2012 –CE (N.T.) dated 18 June 2012 (the Notification) which is issued by Central Govt. prescribes new procedures, safeguards, conditions and limitations with respect to the manner in which the refund would be claimed by the exporter of goods / services as follows:

(i) In case of person exporting goods and services simultaneously, option has been provided to submit two refund claims, one in respect of export of goods and the other in respect of export of services;

(ii) Option to submit monthly claims under certain circumstances has been withdrawn. Therefore, every person will now have to file the refund claim on a quarterly basis;

(iii) In addition to the maximum cap provided in Rule 5 (to the extent of export turnover / total turnover), the Notification further provides for a restriction, wherein the amount of refund claim can neither exceed the closing balance of credit lying at the end of quarter to which the refund claim relates nor the balance of credit lying at the time of filing of refund claim;

(iv) The amount of refund would have to be debited to CENVAT credit amount at the time of filing of such claim. However, if the sanctioned amount of refund is less than the amount of refund filed, the difference may be taken back as credit by the claimant;

(v) Credit is being allowed on motor vehicles (except those of heading nos. 8702, 8703, 8704, 8711 and their chassis).

The Credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed;

(vi) Credit of insurance and service station service is being allowed to –

- Insurance companies in respect of motor vehicles insured and re-insured by them; and
- Manufacturers in respect of motor vehicles manufactured by them.

(vii) At present, credit on goods can be taken only after they are brought to the premises of the service provider. Rule 4(1) and 4(2) are being amended to allow a service provider to take credit of inputs or capital goods whenever the goods are delivered to him, subject to specified conditions.

(viii) Rule 7 for input service distributors is being amended to provide that credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit and that the credit of service tax attributable to service used in more than one unit shall be distributed prorate on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

(ix) Rule 9(1) (e) is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by the service receiver on reverse charge basis.

W.e.f 1.4.2012 Simplified scheme introduced for exporter and service providers who are exported goods and services.

Question 29.

(a) Nikunj Ltd., an advertising agency, used to provide advertisement services. It used to create original concept and design the advertising material for its clients (including brochures, annual reports etc.).
Discuss whether State-VAT could be imposed on the entire proceeds inclusive of charges for design making?

(b) Blue Mint Ltd. Manufactures paper and in the course of such manufacture, "waste paper" is produced (paper being the main product and dutiable goods). The Central Excise Tariff Act, 1985 (CE7) was amended w.e.f. 1-3-1995, so as to include waste paper. Blue Mint Ltd. was issued a show cause notice by the Central Excise Officer, demanding duty of ₹3.5 lakhs on waste paper produced during November, 1994 to February, 1995, but cleared during May-June, 1995. A reply is due to be filed immediately to the notice. As Counsel of Blue Mint Ltd. you we required to advise the company about the legality and validity of the proposed levy and collection of duty on waste paper.

Answer:

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

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

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

(b) The issue involve in the given case is determination of taxable event for the purpose of levy of excise duty. As per section 3 of the Central Excise Act, 1944, the taxable event for levy of Central Excise is "manufacture of excisable goods". The date for determination for rate of duty and tariff valuation is the date of actual removal of the goods from the factory or warehouse.

However, there must be a levy of duty of excise at the time of manufacture and only then, the duty can be collected at the time of removal as has already been held in Vazir Sultan Tobacco Industry's case 1996 (83) ELT 3(SC).

Therefore, the waste paper produced prior to the levy will not be chargeable to duty of excise even though it has been cleared after such levy and the proposed show cause notice demanding ₹ 3.5 lakhs of excise duty on such waste paper is invalid and illegal and liable to be quashed.

Question 30.

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

(b) What are the essential conditions of interstate sale as per section 3 of the Central Sales tax Act, 1956? Also mention the exceptions of this section.

Answer:

(a) The provisions are as follows :

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

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

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

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

(b) According to Section 3 of the Central Sales Tax Act, 1956, the essential conditions of interstate sale are as follows:

i. The transaction should be a complete sale.

ii. There should be movement of goods from one state to another state by virtue of agreement to sale.

iii. The completed sale must take place in a state different from the state in which movement of goods commences.

iv. It is not necessary that completed sale precedes the movement of goods. Sale can be either before or after the movement of goods.

v. There must be physical movement of goods from one state to another state.

vi. Where the movement of goods commences and terminates in the same state, it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other state.

vii. The movement of goods shall commence when the goods are delivered to the carrier or other bailee for transmission and the movement of the goods shall end when the delivery is taken from such carrier or bailee. Thus, the transfer of documents to the title of the goods (Lorry receipt/ Railway Receipt, Bill of

Lading, Airway Bill) shall be made during the movement of the goods from one state to another.

Exceptions to Section 3:

i. Generally, CST is leviable on interstate sale transactions which cover movement of goods from one state to another.

ii. However, all dispatches of goods from one state to another state do not ipso facto result in interstate sale u/s. 3 of the CST Act.

iii. Only when the movement is on account of a covenant or the sale effected by a transfer of document of title to the goods during their movement from one state to another, it will be an interstate sale U/s 3.

iv. The following are the instances where goods move from one state to another but do not amount to interstate sales:

- A movement of goods from one state to another will not amount to interstate sales unless the seller had the responsibility to deliver the goods outside that state or the movement was as a result of a covenant or incident of contract of sale;
- Stock transfer between head office & branch office will not amount to interstate sales as the basic elements of sale i.e., the presence of a buyer & seller; consideration & transfer of ownership etc. are not present;
- Sale or purchase in the course of Export/ Import does not attract levy of CST since these have been specifically covered u/s 5 of the CST Act, 1956;
- Sale through commission agent / on account sales will not amount to interstate sales as the agent only acts on behalf of the seller and he does not acquire any ownership of the goods. The agent is only entitled to receive commission on the sales effected by him and will also get re-imbursement of the expenses incurred by him.