

Paper – 11: Indirect Taxation

- 1.(a) Recovery from Buyer is an essential condition for levy of Indirect Taxes. Comment.**
- 1.(b) Special Audit under sec. 14A and 14AA of the Central Excise Act, 1944 can be done by a Cost Accountant only. Comment.**
- 1.(c) Whether services delivered by a person having a place of business in Jammu and Kashmir to a person having a place of business in Andhra Pradesh is subject to service tax?**
- 1.(d) A service was provided on 15th April, 2014. What would be the point of taxation in each case, if invoice was raised on (i) 15th April, 2014; (ii) 14th May, 2014; (iii) 30th June, 2014?**
- 1.(e) In which form and at what periodicity an SSI unit registered under Central Excise is required to file return in respect of manufacture and clearance of excisable goods and excise duty payable?**

Answer of 1(a):

It is not true that the recovery from buyer is an essential condition for levy of indirect taxes. Generally Indirect Taxes are recovered from buyer. It is not only the essential condition or feature of Indirect tax. Tax on goods and services will be levied even if it is not recovered from buyer.

Answer of 1(b):

The statement that the special Audit under sec. 14A and 14AA of the Central Excise Act, 1944 can be done by a Cost Accountant only is not valid. As per amendment made by the Finance (No. 2) Act, 2009, Chartered Accountants, in addition to Cost Accountants, are also eligible for Special Audit under Sections 14A and 14AA of the Central Excise Act, 1944.

Answer of 1(c):

Yes. Services delivered by a person having a place of business in Jammu and Kashmir to a person having a place of business in Andhra Pradesh is subject to service tax, as place of delivery of service is important.

Answer of 1(d):

The point of taxation in each of the following cases will be as follows:
(i) 15th April 2014; (ii) 14th May 2014; (iii) 15th April 2014.

Answer of 1(e):

The SSI unit registered under Central Excise is required to file return in Form ER-3 on quarterly basis within 10 days of end of quarter in respect of manufacture and clearance of excisable goods and excise duty payable.

- 2.(a) State any five circumstances under which export goods are liable to confiscation under section 113 of Customs Act, 1962.**

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2.(b) State with reasons in brief, whether Service Tax is payable in the following cases -

- (i) Services provided to Special Economic Zone (SEZ) and SEZ Developer, except where services are wholly consumed within SEZ;
- (ii) Services provided by SEZ to DTA (Domestic Tariff Area);
- (iii) Services provided by Indian Agents undertaking marketing in India of goods of a Foreign Seller.

Answer of 2(a):

As per section 113 of Customs Act, following export goods are liable to confiscation. These are 'goods attempted to be improperly exported':

- Goods attempted to be exported by sea or air from place other than customs port or customs airport appointed for the loading of such goods. [section 113(a)].
- Goods attempted to be exported by land or inland water through unspecified route [section 113(b)].
- Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station appointed for the loading of such goods. [section 113(c)].
- Goods attempted to be exported to prohibition under Customs Act or any other law [like FEMA etc.] [section 113(d)].
- Goods concealed in any conveyance brought within limits of customs area for exportation [section 113(e)].
- Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34. [section 113(f)].
- Goods stored at un-approved place or loaded without supervision of Customs Officer. [section 113(g)].
- Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage [section 113(h)].
- Any goods entered for exportation not corresponding in respect of value or any other particular in Shipping Bill or declaration of contents of Baggage [section 113 (h)(i)].
- Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback [section 113 (h)(ii)].
- Goods imported without duty but being re-exported under claim for duty drawback [section 113(j)].
- Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission of proper officer. [section 113(k)].
- Provisions in respect of 'Specified Goods' are contravened. [section 113(l)].

If brief, attempting to export goods in violation of law, mis-declaring goods, export under false claim of duty drawback or violating rules regarding movement, storage or loading of export goods will make them liable for confiscation under section 113. This is all covered in the definition of 'smuggling'.

Answer of 2(b):

- (i) Services provided to Special Economic Zone (SEZ) Unit and SEZ Developer, except where services are wholly consumed within SEZ:
 - Service Tax (ST) shall be charged, collected & paid by Service Provider. However, Refund of Service Tax Paid is given to Service Receiver, where the services are not wholly

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consumed within SEZ.

(ii) Services provided by SEZ to DTA:

- Provision of Services by Units in SEZ to Units in DTA shall be liable to Service Tax [C.No.105/8/2008 dt. 16.09.2008] The same is considered as Import of Services and the Receiver of Service shall be liable on Reverse Charge Basis.

(iii) Services provided by Indian Agents undertaking marketing in India of goods of a Foreign Seller:

- Booking of orders for Foreign Supplier, for supply of goods in India, cannot be treated as Export of Services, because service was not provided outside India, and not used outside India. Hence, the same is liable for Service Tax. **[Cani Merchandising P Ltd (2008) 11 STR10 (Tri-Del.)]**

3.(a) From the following particulars for the financial year 2014-15, find out whether M/s. Sweety Manufacturing Co. is eligible for small scale exemption under Notification No. 8/2003-C.E., dated 01.03.2003 for the financial year 2015-16.

| S. No | Particulars | ₹ (in Lakhs) |
|-------|---|--------------|
| (i) | Clearance of excisable goods exempted from payment under a Notification other than 8/2003-C.E | 100.00 |
| (ii) | Clearance of goods to United Nations exempted under Notification No. 108/95-C.E | 50.00 |
| (iii) | Total Exports [including export to Bhutan ₹ 50 lakhs]. Other exports are to USA & UK | 250.00 |
| (iv) | Clearance of goods (duty paid based on annual capacity of production under section 3A of the Central Excise Act, 1944). | 190.00 |

Show your calculations, working and explanations clearly, wherever required.

3.(b) Mr. Amit 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%) ₹ 2,58,750.

Manufacturing expenses is ₹ 1,60,000.

Profit on Cost @75%.

Excise Duty @12.36%

Output VAT @12.5%.

Answer of 3(a):

Eligibility of M/s Sweety Manufacturing Co. for SSI Exemption

| Particulars | (₹ Lakhs) |
|-------------|-----------|
| | |

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| | |
|---|---------------|
| (i) Clearance of excisable goods exempted from payment under a notification other than 8/2003 | 100.00 |
| (ii) Clearance of Account Books bearing Branch Name of another person (Heading 4820) - Removal under other's Branch name excluded | Nil |
| (iii) Clearance of goods to UN – excluded as exempted under Notification No. 108/95-C.E | Nil |
| (iv) Exports - Exports to Bhutan alone considered | 50.00 |
| (v) Clearance of goods (duty paid on Annual Capacity of Production) - included as it is excisable | 190.00 |
| Aggregate Clearances | 340.00 |

- **SSI Exemption** would be granted to a manufacturer if his aggregate value of clearances is does not exceed ₹400 Lakhs in the Previous Financial Year.
- To determine the aggregate value of clearances, all excisable goods cleared for home consumption must be included.
- In the given case, M/s Sweety Manufacturing Co. is eligible to avail SSI Exemption as his aggregate clearances in the Previous Financial Year are less than ₹ 400 Lakhs.

Answer of 3(b):

Computation of Tax Payable:

| | |
|--|-------------------------------------|
| Cost of Purchases | ₹ 2,30,000 [₹ 2,58,750 × 100/112.5] |
| Manufacturing expenses | ₹ 1,60,000 |
| Total cost | ₹ 3,90,000 |
| Profit @75% on cost | ₹ 2,92,500 [₹ 3,90,000 × 75/100] |
| Assessable Value | ₹ 6,82,500 |
| Add: Excise Duty | ₹ 84,357 [₹ 6,82,500 × 12.36/100] |
| Taxable Turnover | ₹ 7,66,857 |
| Add: Output VAT | ₹ 95,857 [₹ 7,66,857 × 12.50/100] |
| Aggregate Sales | ₹ 8,62,714 |
| Value Added Tax payable | ₹ 95,857 |
| Less: Input Tax Credit [₹ 2,58,750 - ₹ 2,30,000] | ₹ 28,750 |
| Net Value Tax Payable | ₹ 67,107 |

4.(a) Vendibility criterion/Marketability is a litmus test to be fulfilled before any goods can be subjected to levy of excise duty. Discuss this statement with the help of decided cases.

4.(b) M/s. Alok International Ltd. have imported one machine from England. They have given the following particulars:

| Particulars | Amount |
|--|---------|
| (i) F.O.B. value of machine | £ 8,000 |
| (ii) Air freight paid | £ 2,500 |
| (iii) Design and development charges paid in England | £ 500 |
| (iv) Commission @ 2% of F.O.B. Value paid to local agent in Indian Currency | |
| (v) Date of Bills of Entry is 24th October [rate of Basic Customs Duty is 20%. | |

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| | |
|---|--|
| Exchange rate as notified by C.B.E.C is ₹ 68 per Sterling Pound] | |
| (vi) Date of arrival of aircraft is 20th October when rate of Basic Customs Duty was 18%, exchange rate as notified by C.B.E.C. was ₹ 70 Per Sterling pound. | |
| (vii) CVD rate is 10% plus Education Cess 2% and Secondary and Higher Education Cess is 1%. | |
| (viii) Rate of Special additional duty is 4%. | |
| (ix) Insurance charges, though actually paid, details are not available. | |

Compute assessable value and determine Customs Duty Payable by M/s. Alok International Ltd. Give brief notes also wherever necessary.

Answer of 4(a):

The provisions relating to marketability of goods is discussed as under –

(1) Marketability: Marketability is the capability of the product of being bought and sold into the market. The Supreme Court in the Tariff schedule, it will not be liable to duty of excise unless it is marketable in the condition in which the department wants to levy excise duty.

(2) Important aspects of marketability: Certain important features with respect to marketability are –

- A. Actual sale is not necessary to constitute marketability.
- B. The usage in captive consumption is not a determining factor of marketability.
- C. There is no requirement that the article, material or substance must be commercially known product and must be worthwhile to trade in. [this is evident from the Explanation to section 2(d) of the Central Excise Act]
- D. The goods must be marketable in the condition in which the department wants to levy excise duty. Thus, theoretical possibility of goods being sold is not enough to constitute marketability. It must be shown that article is actually capable of being sold.
- E. The fact that the product in question is generally not bought and sold or has no demand in the market is irrelevant.
- F. Marketability is not confined to territorial limits of India.
- G. There need not be a market of whole lot of persons to constitute marketability. Even a single buyer can constitute marketability. – AP State Electricity Board v. CCEX. [1994] 70 ELT 3 (SC)
- H. Burden of proof of marketability is on the revenue department.

(3) Concept of “Deemed Marketability”: Explanation to Section 2(d) introduces a concept of “deemed marketability” by providing that “goods” include 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.

Answer of 4(b):

Part 1: Computation of assessable value

| | |
|--|------------|
| FOB Price | £ 8,000.00 |
| Exchange rate notified by the CBEC (in force on date of presentation of bill of entry) | ₹ 68.00 |

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| | |
|--|--------------------|
| | ₹ |
| FOB price in Indian ₹ | 5,44,000.00 |
| Add: Local agent's commission @ 2% of FOB [Includible] | 10,880.00 |
| Add: Development work [Development work other than in India is includible. Hence, £ 500 paid in UK is includible × ₹ 68 = ₹ 34,000] | 34,000.00 |
| Add: Cost of transport [Actual is £ 2,500; while in case of import by air, it cannot exceed 20% of FOB i.e. 20% of 8,000 = 1,600 £ × ₹ 68] | 1,08,800.00 |
| Add: Insurance @ 1.125% of FOB as not ascertainable | 6,120.00 |
| CIF | 7,03,800.00 |
| Add: Loading, unloading and handling charges under Rule 10(2)(b) @ 1% of CIF | 7,038.00 |
| Assessable Value | 7,10,838.00 |

Part 2: Computation of Duty

| Particulars | Duty | | Total |
|---|--------|--------------------|--------------------|
| | Rate | ₹ | ₹ |
| Assessable Value | - | - | 7,10,838.00 |
| Add: Basic Customs Duty [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 24th October viz. 20% shall be taken.] | 20.00 | 1,42,167.60 | 1,42,167.60 |
| | | 1,42,167.60 | 8,53,005.60 |
| Add: Additional duty i.e., CVD u/s 3(1) (excise duty excluding EC and SHEC due to exemption) | 10.00% | 85,300.56 | 85,300.56 |
| | | 2,27,468.16 | 9,38,306.16 |
| Add: Education Cess @ 3% on DUTY sub-total upto last stage | 3.00% | 6,824.04 | 6,824.04 |
| | | 2,34,292.20 | 9,45,130.20 |
| Add: Special CVD u/s 3(5) @ 4% of total value (including duty) | 4.00% | 37,805.21 | 37,805.21 |
| Total (rounded off to nearest rupee) | | 2,72,097.00 | 9,82,935.00 |

5.(a) State the consequences in case of inter-unit transfer among 100% EOU/EHTP/STP/BTP units.

5.(b) Radha Development Corporation (RDC) Ltd., a real estate developer, is engaged in construction of a residential complex (consisting of more than 20 houses) named Green County for Almeco Builders.

The particulars are as follows:

| | |
|--|-------------|
| Contracted Price (excluding VAT, if leviable) | ₹ 25,00,000 |
| Steel supplied by Almeco Builders to RDC | ₹ 1,00,000 |
| Excise duty paid on - | |
| (i) capital goods used in providing construction service | ₹ 40,000 |
| (ii) inputs used in relation to construction service | ₹ 17,000 |

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Service tax paid on input services used in construction service

₹ 25,000

You are required to calculate the net service tax payable by Radha Development Corporation in the following two cases:

- (A) The aforesaid contract for construction of residential complex involves the transfer of property in goods and materials involved in the construction of residential complex of worth ₹ 2,50,000. VAT of ₹ 10,000 has been paid on the said goods and materials. RDC has opted to pay service tax on a composite value as eligible under the service tax valuation rules.
- (B) The aforesaid contract for construction of residential complex does not invoke any transfer of property in goods and materials used in the construction of residential complex. It is to be noted that RDC has opted to avail abatement of service tax. The value of land (not included in the aforesaid price) is ₹ 14 lakh.

Answer of 5(a):

- (i) **Transfer of manufactured goods:** Transfer of manufactured goods from one 100% Export Oriented Unit / Electronic Hardware Technology Park / Software Technology Park / Bio-Technology Park unit to another 100% Export Oriented Unit / Electronic Hardware Technology Park / Software Technology Park / Bio-Technology Park unit is allowed with prior intimation to concerned DC and Customs authorities, following procedure of in-bond movement of goods. Transfer of manufactured goods shall also be allowed from EOU/EHTP/STP/BTP unit to a SEZ developer or unit following procedure prescribed in SEZ Rules, 2006.
- (ii) **Transfer of Capital Goods:** Capital goods may be transferred or given on loan to other EOU/EHTP/STP/BTP/SEZ units, with prior intimation to concerned DC and Customs authorities.
- (iii) **Goods to be regarded as imported goods for transferee, if sold in DTA by transferee:** Goods supplied by one unit of EOU/EHTP/STP/BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

Answer of 5(b):

Case (A) Works Contract Service u/s 66E(h) of Finance Act, 1994: Since transfer of property involved goods and material involved in construction is leviable to VAT/sales-tax as sale of goods, hence, it is "works contract" u/s 65B(54). Since data regarding valuation on actual basis is not available, hence, value is determined as per Rule 2A(ii) of Valuation Rules, 2006 and tax liability is as follows -

| | |
|--|------------------|
| Total amount as per Rule 2A(ii) = Amount charged (excluding VAT) + FMV of goods/steel supplied by client free of cost = ₹ 25 lakh + 1 lakh = ₹ 26 lakh | 26,00,000 |
| Taxable Value (it is original works) @ 40% of total amount | 10,40,000 |

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| | |
|--|---------------|
| Service Tax @ 12.36% | 1,28,544 |
| Less : CENVAT Credit on inputs not allowed | N.A. |
| Less /CENVAT Credit on input services and capital goods (It is assumed that capital goods were acquired in the current year and only 50% of duty paid is eligible for credit in the 1st year as per Rule 4(2)(a) of the CENVAT Credit Rules, 2004.) [25,000 + 50% of 40,000] | 45,000 |
| Service tax payable in cash | 83,544 |

Case (B) Construction service u/s 66E(b) : Since supply of goods and materials involved in the construction is not leviable to VAT/sales-tax as sale of goods, hence, it would not be "works contract". It would be construction services and assuming that the entire consideration is not received after issuance of completion certificate, it would be construction service u/s 66E(b) of the Act. The service tax payable is as under –

| | |
|--|------------------|
| Total amount as per Notification No. 26/2012-ST = Amount charged (excluding VAT) + FMV of goods/steel supplied by client free of cost + Value of land — ₹ 25 lakh + 1 lakh + 14 lakh = ₹ 40 lakh, (value of land is includible in the total sum) | 40,00,000 |
| Taxable Value @ 25% of total amount (Since total amount is inclusive of value of land, and amount charged per house (including land) is less than ₹ 1 crore, hence, abatement is 75%) | 10,00,000 |
| Service Tax @ 12.36% | 1,23,600 |
| Less : CENVAT Credit on inputs not allowed | N.A. |
| Less: CENVAT Credit on input services and capital goods (It is assumed that capital goods were acquired in the current year and only 50% of duty paid is eligible for credit in the 1st year as per Rule 4(2)(a) of the CENVAT Credit Rules, 2004.) [25,000 + 50% of 40,000] | 45,000 |
| Service tax payable in cash | 78,600 |

6.(a) Based on the following particulars, arrive at the CENVAT credit available on clearance of goods to Domestic Tariff Area (DTA) from an 100% Export Oriented Unit (EOU):

| | |
|--|-------------------|
| Assessable Value | ₹ 20 Lakhs |
| Basic customs duty | 10% |
| Excise duty | 12% |
| Education Cess | 2% |
| Secondary and Higher Education Cess | 1% |
| VAT payable under State VAT law | 4% |

6.(b) An interior decorator charges ₹ 6,50,000 from a client for providing professional services.

The breakup of the bill is as follows:-

- (i) Value of furniture sold to the client – ₹ 3,00,000
- (ii) Labour and facility charges – ₹ 2,00,000

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(iii) Value of materials consumed in providing the service – ₹ 1,50,000

Compute the amount of service tax to be charged from the client.

Answer of 6(a):

As per Notification No. 23/2003 -CE dated 31st March, 2003 as amended, it is stipulated that while calculating the aggregate of the customs duties, additional duty of customs leviable under Sub Section 5 of Section (3) of the Customs Tariff Act shall be included, if the goods cleared into Domestic tariff Area (DTA) are exempt from payment of Sales Tax or Value Added Tax. Hence in the given case, it is evidenced that VAT is payable. So section 3(5) is not attracted and the special CVD is exempted.

As per Notification No. 23/2003 CE dated 31.03.2003, 50% of basic customs duty is exempt in case of clearance of goods by an EOU to DTA. The amount of excise duty payable by EOU is calculated as under:

Calculation of duty payable by EOU/EHTP/STP is as follows, w.e.f. 17.03.2012:

| | Duty % | Amount (₹) | Total Duty (₹) |
|--|--------|------------|----------------|
| A. Assessable value | | 20,00,000 | |
| B. Basic customs duty | 5 | 1,00,000 | 1,00,000 |
| C. Sub - Total for calculating CVD (A+B)' | | 21,00,000 | |
| D. CVD [C × excise duty rate] | 12 | 2,52,000 | 2,52,000 |
| E. Sub - Total for education customs [B+D] | | 3,52,000 | |
| F. Education of Customs - 2% of 'E' | 2 | 7,040 | 7,040 |
| G. SAH Education Cess of Customs - 1% of 'E' | 1 | 3,520 | 3,520 |
| H. Sub - total for spl CVD [A+B+D+F+G] | | 23,62,560 | |
| I. Special CVD u/s 3(5) - 4% of 'H' (Nil if state VAT paid) | exempt | exempt | exempt |
| J. Total | | 23,62,560 | 3,62,560 |
| Notes - buyer who is manufacturer in DTA, is eligible to avail cenvat credit of D above. | | | |

As per second proviso to rule 3(7)(a) of CENVAT Credit Rules, 2004, the amount of CENVAT credit will be as under:

| | (₹) |
|----------------------------------|----------|
| Additional duty of customs (CVD) | 2,52,000 |
| Special CVD u/s 3(5) | exempt |
| Total amount of credit | 2,52,000 |

Answer of 6(b):

Computation of service tax payable (amounts assumed exclusive of service tax)

| | (₹) |
|--|-------------------|
| Value of furniture sold to the client | Sale, not service |
| [Sale of furniture is 'sale of goods', which cannot be regarded as a service. Though sale is in course of providing the service, however, it constitutes a separate sale, because the parties intend to have separate rights arising out of sale. Such sale cannot be charged to service tax.] | |

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| | |
|---|-----------------|
| Add: Labour and facility charges [They are for provision of interior decoration service; hence, includible in value] | 2,00,000 |
| Add: Value of materials consumed in providing the service [Materials consumed viz. consumables, etc. in providing services are a part of the value of the service, because service cannot be provided without them.] | 1,50,000 |
| Value of service | 3,50,000 |
| Service Tax @ 12.36% | 43,260 |

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

7.(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 ₹ 60. 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 of 7(a):

The following are the differences between direct tax and indirect tax:

| Particulars | Direct Tax | Indirect Tax |
|----------------------|---|--|
| 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 or more different people. |
| Nature of tax | Direct Taxes are progressive in nature. | Indirect Taxes are regressive in nature. |
| Levy & Collection | These taxes are levied and collected from the Assessee. | These taxes are levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer. |
| Taxable Event | Taxable Income / Taxable Wealth of the Assessee. | 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 | Tax 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 | Indirect taxes are easier to collect as indirect taxes are mainly on goods/ commodities/ services, for which |

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|---------------------|---|---|
| | transactions are carried out in lakhs of places and keeping an eye over all such transactions is virtually impossible. | 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 more in direct taxes where it is on unorganized sector, since control is difficult. | Tax evasion is comparatively less in indirect taxes in organized sector due to convenience of control. |
| 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. |

Answer of 7(b):

Calculation of duty payable:

| | (₹) |
|--|-----------|
| CIF value USD 30,000 X 60 | 18,00,000 |
| Add: Loading and unloading @1% | 18,000 |
| Assessable Value | 18,18,000 |
| Add: Basic Customs Duty @10% on ₹ 18,18,000 | 1,81,800 |
| | 19,99,800 |
| Add: Additional Customs Duty [@14% x ₹ 19,99,800] | 2,79,972 |
| | 22,79,772 |
| Add: Education Cess 2% on (₹ 1,81,800 + ₹ 2,79,972) | 9,235 |
| Add: SAH @1% on (₹ 1,81,800 + ₹ 2,79,972) | 4,618 |
| | 22,93,625 |
| Add: Special Additional Customs Duty [@4% x ₹ 22,93,625] | 91,745 |
| Total value of imported goods | 23,85,370 |

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

8.(b) Mr. Sen has provided the following services during the year 2014-15. Determine whether he is eligible for threshold exemption (Small Service Providers exemption) during the year 2015-16:

- (1) Services provided outside India: ₹ 3 lakh;
- (2) Services (falling under negative list): ₹ 5 lakh;
- (3) Services fully exempt under other notifications: ₹ 6 lakh;
- (4) Declared Services (Sum charged ₹ 4 lakh, but, value determined as per the valuation rules is 60% i.e., ₹ 2,40,000);
- (5) Services (where amount charged is ₹ 60,000, but, after abatement, value is ₹ 24,000) and

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- (6) Other services provided: ₹ 7 lakh (including ₹ 1 lakh towards services where whole of the service tax was payable by the service recipient). Provided Mr. Sen is not a GTA (Goods Transport Agency) service provider.

Answer of 8(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. 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.

Answer of 8(b):

Mr. Sen would be eligible for threshold exemption or small service providers' exemption if the "aggregate value" of taxable services provided during the year 2014-15 is upto ₹ 10 lakhs. The relevant computations are shown below —

| Case | Treatment | ₹ |
|-------------------------------------|---|-----|
| (1) Services provided outside India | Not taxable service, as not liable to service tax u/s 66B of Finance Act, 1994 – Not includible | NIL |

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| | | |
|---|--|------------------------|
| (2) Services (falling under negative list) | Not taxable service, as not liable to service tax u/s 66B of Finance Act, 1994 – Not includible | NIL |
| (3) Services fully exempt under other notifications | Specifically excluded in determination of aggregate value | NIL |
| (4) Declared Services | Value as determined as per section 67 of Finance Act, 1994 and Valuation Rules is to be taken | 2,40,000 |
| (5) Services eligible for abatement | Abatement is a form of partial exemption. Value as per section 67 of Finance Act, 1994 viz. ₹ 60,000 shall be taken. | 60,000 |
| (6) Other Services | Includible (Even services covered under reverse charge are includible). | 7,00,000 |
| Aggregate Value for Financial Year 2014-15 | | 10,00,000 |
| Since the aggregate value of service is ₹ 10 lakhs (i.e., not exceeding ₹ 10 lakhs) during financial year 2014-15, Mr. Sen is eligible for threshold exemption (Small Service Providers exemption) during the financial year 2015-16. | | Eligible for exemption |

9.(a) Define 'Associate Enterprise' in the context of International Transfer Pricing.

9.(b) State the provisions of safe harbour for domestic transactions in case of international taxation.

9.(c) A dealer claims that he has sent some goods out of State on stock transfer basis. What evidence he is required to produce before sales tax officer to prove the stock transfer? State the consequences, if he is unable to produce that evidence?

Answer of 9(a):

Associate Enterprise: An enterprise would be regarded as an associated enterprise of another enterprise, if:

- (i) it participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
- (ii) in respect of it one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise [Section 92A(1) of Income Tax Act].

Thus, either direct and indirect participation or control is covered.

Answer of 9(b):

Safe harbour provisions have been made for specified domestic transactions *vide* rule 10TH to 10THD of Income Tax Rules.

These are applicable to supply of electricity, transmission of electricity, wheeling of electricity where tariff is determined by Commission under Electricity Act, 2003.

Answer of 9(c):

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The dealer has to produce F form which is to be issued by the branch or depot which has received the goods despatched by dealer. If the dealer is unable to produce F form, the sale will be treated as sale within the State of dealer and will be liable to State Vat at applicable rate. Interest will also become payable for delayed payment.

10.(a) Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation Rules, 2000 (amount in ₹)

| | |
|---------------------------------------|---------------|
| Direct material | 11,648 |
| Direct wages & salaries | 8,400 |
| Works overheads | 6,200 |
| Quality control costs | 3,500 |
| Research and development costs | 2,400 |
| Administrative overheads | 4,100 |
| Selling and distribution costs | 1,600 |
| Realizable value of scrap | 1,200 |

**The Administrative Overheads are in relation to production activities.
Material cost includes Excise duty ₹ 1,648.**

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

Answer of 10(a):

Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000 (amounts in ₹)

| | |
|--|--------|
| Direct material (11,648 – 1,648 = 10,000) WN 1 | 10,000 |
| Direct wages & salaries | 8,400 |
| Works overheads | 6,200 |
| Quality control costs WN 2 | 3,500 |
| Research and development costs WN 2 | 2,400 |
| Administrative overheads WN 2 | 4,100 |
| Selling and distribution costs WN 3 | — |
| Total | 34,600 |
| Less: Realizable value of scrap WN 4 | 1,200 |
| Cost of production | 33,400 |
| Value of excisable goods under Rule 8 @ 110% of cost of production | 36,740 |

Working notes:

1. Raw-material cost shall be taken net of excise duty assuming Cenvat credit is available.
2. Quality control cost, Research and Development cost and Administration overheads related to production shall form part of cost of production as per CAS-4.
3. Selling and distribution costs shall not form part of cost of production.
4. Realizable value of scrap shall be deducted to arrive at cost of production.

Answer of 10(b):

As per Sec 2(b) of the CST Act - '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,

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- (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.

11.(a) 'Smartphone' is in the business of providing mobile telephone service. The assessee sells "SIMCARDS" to its mobile telephone subscribers for a price. 'Smartphone' pay service tax on the activation and other charges. On the 'SIMCARDS' sold to the customers, VAT under the applicable State law is paid. The Department's view is that the "SIMCARD" is used for provision of mobile services and is a part of the service and therefore the value of the "SIMCARD" has to be included in the category of 'telecommunication services' for purpose of service tax. Explain with a brief note and reference to decided case law whether the view taken by the department is correct in law.

11.(b) BMR Co. Pvt. Ltd., an SSI unit procured the following inputs during the month of Jan. 2015. Determine the amount of CENVAT credit available with necessary explanation for the treatment of various items.

| Items | Excise duty paid (₹) |
|-----------------------|----------------------|
| Raw materials | 52,000 |
| Manufacturing machine | 1,00,000 |
| Light diesel oil | 45,000 |
| Greases | 10,000 |
| Office equipment | 20,000 |
| Paints | 5,000 |

(Note: M/s. BMR Co. Pvt. Ltd. is not eligible to avail exemption under a notification based on value of clearances in a financial year)

Answer of 11(a):

On similar facts, it was held in **Idea Mobile Communication Ltd. v. CCEx. [2011] 12 taxmann.com 307 (SC)** that -

- Without SIM Card telecommunication services cannot be provided ;

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- It is a part and parcel of the mobile telecommunication service ;
 - The dominant nature test in selling SIM Card is to provide services ;
 - The parties never intended to buy and sell SIM Card as a separate object of sale ;
 - SIM Card doesn't have any value other than providing connection with telecom operator;
- Hence, it was a part of service and not 'sale'. The whole of the amount was liable to service tax. The view taken by Department, therefore, is correct in law.

Answer of 11(b):

Computation of CENVAT Credit available during Jan. 2015.

[Since the assessee is not eligible for SSI-exemption i.e., its value of clearances during preceding year exceeds ₹ 400 lakhs, hence, the credit of capital goods is admissible only upto 50% in the first year i.e. current year of acquisition and balance in the next year(s).]

| Name of Item | Eligible as | Reason | ₹ |
|--------------------------------|---------------|---|----------|
| Raw materials | Input | Used in factory and related to manufacture | 52,000 |
| Manufacturing machine | Capital goods | Used within factory [50% of ₹ 1,00,000] | 50,000 |
| Light diesel oil | Not eligible | Specifically excluded from 'input' [Rule 2(k)(A) of Cenvat Credit Rules, 2004] | NIL |
| Greases | Input | Used in factory and related to manufacture | 10,000 |
| Office equipment | Not eligible | Specifically excluded from capital goods [Rule 2(a) of Cenvat Credit Rules, 2004] | NIL |
| Paints | Input | Used in factory and related to manufacture | 5,000 |
| Total CENVAT Credit admissible | | | 1,17,000 |

12.(a) AB Ltd. carried out following works, all of which are leviable to sales-tax/VAT as transfer of property involved in the execution of works contract (the sum charged given below are exclusive of all taxes) -

- (1) New constructions: ₹ 50 lakh;
 - (2) Additions and alterations to damaged structures on land to make them workable: ₹ 25 lakhs;
 - (3) Supply along with erection, commissioning and installation of plants: ₹ 72 lakhs;
 - (4) Maintenance and repair of goods: ₹ 40 lakhs;
 - (5) Maintenance and repair of immovable property: ₹ 30 lakhs;
- Compute taxable value and service tax thereon.

12.(b) Compute the Assessable Value and amount of Excise Duty payable under the Central Excise Act, 1944 and Rules made there under from the following information -

| Particulars | No. of Units | Price at Factory Per Unit | Price at Depot Per Unit | Rate of Duty Advalorem |
|--|--------------|---------------------------|-------------------------|------------------------|
| (i) Goods transferred from Factory to Depot on 8 th March | 1,000 | ₹200 | ₹220 | 10% |
| (ii) Goods actually sold at depot on 18 th March | 750 | ₹225 | ₹250 | 8% |

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Answer of 12(a):

Computation of taxable value & service tax:

| | Amount Charged (₹) | % of amount charged | Taxable Value (₹) |
|--|--------------------|---------------------|-------------------|
| New constructions (It is "original works") | 50,00,000 | 40% | 20,00,000 |
| Additions and alterations to damaged structures on land to make them workable (It is "original works") | 25,00,000 | 40% | 10,00,000 |
| Supply along with erection, commissioning and installation of plants (It is "original works") | 72,00,000 | 40% | 28,80,000 |
| Maintenance and repair of goods | 40,00,000 | 70% | 28,00,000 |
| Maintenance and repair of immovable property | 30,00,000 | 60% | 18,00,000 |
| Total Taxable Value | | | 1,04,80,000 |
| Service Tax @ 12.36% | | | 12,95,328 |

Answer of 12(b):

As per Rule 7 of Central Excise (Determination of Value of Excisable Goods) Rules, 2000, when goods are removed from Factory Gate to Depot / Consignment Agent, etc. and there is no sale at the factory gate, then Assessable Value for such removals will be "Normal Transaction Value" of such goods prevailing at the depot at the time of removal from the factory.

Normal Transaction Value: Transaction value of the goods sold in greatest aggregate quantity should be considered as Normal Transaction Value subject to the following conditions -

- Buyer is not related to the Assessee; and
- Such price is the sole consideration for sale.

Rates: Excise Duty Rate as existing at the time of removal shall be considered. In respect of sales from depot, the time of removal shall be the time at which such goods are removed from the factory. Hence, the relevant date for excise duty rate shall be the date of removal from factory. The subsequent sale prices or excise duty rates are not relevant.

In the above case, goods are removed from the factory on 8th March, and the relevant value is the Price at the Depot on the same date i.e. ₹ 220 per unit. Relevant Rate of Duty is 10%.

Price on the date of actual sale (18th March), or price for sale at factory gate on the date of removal is irrelevant.

Assessable Value: Units Removed 1,000 x Price per Unit at Depot ₹ 220 = ₹ 2,20,000.

Duty Amount: Assessable Value ₹ 2,20,000 x 10% = ₹ 22,000.

13.(a) Write a short note on – Bond accepting Authority under Central Excise.

13.(b) Mr. Jain, an IT Professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used Microwave Oven (costing approximately ₹ 4,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months

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back, and he has been using that oven for his personal use in his kitchen. He is not aware of Indian Customs Rules. Discuss the consequences in this regard.

13.(c) Mention the areas which are covered by the deemed export under Foreign Trade Policy.

Answer of 13(a):

Authorised Officers: Bond may be accepted by any of the following Officers -

- (i) The Deputy Commissioner of Central Excise (DCCE) / Assistant Commissioner of Central Excise (ACCE) having jurisdiction over the Factory or Warehouse or any other premises approved by the Commissioner for storing Non-Duty paid Goods.
- (ii) Maritime Commissioners at Mumbai, Chennai, Kolkata, Paradeep, Kandla, Tuticorin, Visakhapatnam and Cochin.
- (iii) Authorised DCCE / ACCE (Export) Officers.

Exporters are required to indicate on ARE 1, the complete postal address of the Authority before whom the bond is executed, and to whom documents are to be submitted / transmitted for admission of Proof of Export.

Answer of 13(b):

As per Rule 5 of the Baggage Rules, 1998, Mr. Jain is entitled to bring the used household articles upto an aggregate value of ₹ 12,000 free of duty.

Hence, Mr. Jain can clear the used Microwave Oven free of duty within the permissible allowance.

Answer of 13(c):

Deemed exports broadly cover three areas -

- (i) Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty,
- (ii) Supplies to projects/ purposes that involve international competitive bidding (ICB), and
- (iii) Supplies to infrastructure projects of national importance.

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

14.(b) Lucky, a registered dealer submits the following information for the month of February, 2015:

(A) Details of purchase –

- (i) Raw material purchased from another State (CST @ 2%) - ₹ 10,00,000.
- (ii) Raw material X purchased within the State - ₹ 15,00,000. Vat rate 1%.
- (iii) Raw material Y imported from Singapore (includes customs duty paid @ 10%) - ₹ 11,00,000.
- (iv) Raw material Z purchased within the State - ₹ 6,00,000. Vat rate 12.5%.

(B) Details of sales –

- (i) Sale of goods produced from raw material X - ₹ 27,00,000. Rate of Vat 4%.

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- (ii) Sale of goods produced from inter-state purchase and imported raw materials - ₹ 32,00,000. Rate of Vat 1%.
 (iii) Sale of goods produced from raw material Z - ₹ 8,00,000. Rate of Vat 12.5%.
 (Note - The purchase and sales figures given above do not include VAT/CST.)

Assume that there was no opening or closing inventory. Compute the amount of Value Added Tax (VAT) payable by Lucky for the month of February, 2015.

Answer of 14(a):

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.

Answer of 14(b):

(A) Input Tax Credit (Set off) Available –

| | |
|---|-----------|
| (i) CST paid on purchases | No credit |
| (ii) ITC on purchase of X | ₹ 15,000 |
| (iii) Customs duty paid on imports of Y | No credit |
| (iv) ITC on purchase of Z | ₹ 75,000 |
| Hence, total Input Tax Credit available | ₹ 90,000 |

(B) Vat payable on sales –

| | |
|--|-------------------------------------|
| (i) Sale of goods produced from raw material X | ₹ 1, 08,000 (4% of ₹ 27 lakhs) |
| (ii) Sale of goods produced from inter - state purchase and imported raw materials | ₹ 32,000 (1% of ₹ 32,00,000) |
| (iii) Sale of goods produced from raw material Z | ₹ 1,00,000 (12.5% of ₹ 8,00,000) |
| Total Vat payable on sales | ₹ 2,40,000 |

Net Vat payable = ₹ 1,50,000 (₹ 2,40,000 - ₹ 90,000).

15.(a) Ria Mills Ltd. has produced 10,000 kg of yarn. The cost of production of the yarn is ₹ 230 per kg (as per CAS 4). The removal of yarn on 01-12-2014 is as under:

- (i) 2500 kg of yarn is sold to independent buyers at a transaction value of ₹ 250 per kg.
 (ii) 1500 kg of yarn is sold to relative distributor at a transaction value of ₹ 240 per kg. The said yarn is sold by relative distributor to independent parties at a normal transaction value of ₹ 255 per kg.
 (iii) 6000 kg of yarn is captively consumed by the company for manufacture of fabric

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which is exempt from duty.

- 15.(b) Reel Private Limited is engaged in providing the taxable services. Compute the value of taxable service and the service tax payable by it in the month of March, 2015 from the information furnished below:

| Receipts | ₹ |
|---|-----------|
| Free Services provided to friend of director (Similar services are rendered for consideration of ₹ 1,00,000). | Nil |
| Subsidy received from Government for making investment in backward area | 1,00,000 |
| Interest received from client who has not made timely payment of service | 2,00,000 |
| For free services rendered to customers, amount reimbursed by the manufacturer of such product | 50,000 |
| Other taxable services provided during the month | 15,00,000 |

Note: Reel Private Limited is eligible for small service providers' exemption under Notification No. 33/2012-ST, dated 20-06-2012.

All the above amounts are exclusive of service tax.

Answer of 15(a):

The valuation of yarn will be as under -

| S. No. | Transaction | Applicable statutory provision | Valuation |
|--------|---|--|---|
| (i) | 2500 kg of yarn is sold to independent buyers at a transaction value of ₹ 250 per kg. | Section 4(1)(a) of the Central Excise Act, 1944 | Assessable Value = Transaction Value 2500 kg. × ₹ 250 per kg. = ₹ 6,25,000 |
| (ii) | 1500 kg of yarn is sold to relative distributor at a transaction value of ₹ 240 per kg. The said yarn is sold by relative distributor to independent parties at a normal transaction value of ₹ 255 per kg. | Valuation as per amended rule 9 of Valuation Rules, 2000 | Assessable Value = Normal Transaction Value at which yarn is sold by relative distributor i.e. 1500 kg. × ₹ 255 per kg. = ₹ 3,82,500 |
| (iii) | 6000 kg of yarn is captively consumed by the company for manufacture of fabric which is exempt from duty. | Valuation as per amended rule 8 of Valuation Rules, 2000 | Assessable Value = 110% of Cost of Production i.e. 110% of ₹ 230 per kg = ₹ 253 per kg. Transaction Value = 6000 kg. × ₹ 253 per kg. = ₹ 15,18,000 |

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Answer of 15(b):

Computation of the value of taxable service and the service tax payable:

| Particulars | ₹ |
|---|------------------|
| Free Services provided to friend of director [WN-1] | NIL |
| Subsidy received from Government for making investment in backward area [WN-2] | NIL |
| Interest received from client who has not made timely payment of service [WN-3] | NIL |
| For free services rendered to customers, amount reimbursed by the manufacturer of such product [WN-4] | 50,000 |
| Other taxable services provided during the month | 15,00,000 |
| Total Value of services | 15,50,000 |
| Less: Small Service Providers' Exemption under Notification No. 33/2012-ST, dated 20-06-2012 | 10,00,000 |
| Total value of taxable services | 5,50,000 |
| Service tax @ 12.36% | 67,980 |

Working Notes:

- (1) Section 67(1)(iii) of the Finance Act, 1994 ensures payment of service tax based on valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 cannot apply.
- (2) As per Rule 6 of the Service Tax (Determination of Value) Rules, 2006, any subsidy or grant disbursed by the Government cannot form part of the value of taxable service unless such subsidy or grant directly influences the value of such service.
- (3) As per Rule 6 of the Service Tax (Determination of Value) Rules, 2006, interest on delayed payment of any consideration for the provision of services shall not form part of value of taxable services.
- (4) Amount received from manufacturer for free services rendered to customers is liable for service tax. The consideration towards the services may be received from any person, not necessarily the service receiver.

16.(a) Alia Tours Co. has arranged following tours during half year ended on March, 2015. The particulars of the services and charges are as under:

- (i) Tour 1: October- Charges received ₹ 40 lakhs. The package includes transportation, accommodation, food, tourist guide and entry fees for monuments.
- (ii) Tour 2: November - Charges received ₹ 65 lakhs. The package includes transportation and accommodation for stay.
- (iii) Tour 3: December - Charges received ₹ 40 lakhs. The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not mention it clearly that the charges are solely for arranging the accommodation for stay.
- (iv) Tour 4: January - Charges received ₹ 50 lakhs (inclusive of charges of stay). The bill

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issued to the clients mentions it clearly that the charges are solely for arranging the accommodation for stay.

(v) **Tour 5 : March - Charges received from Sri Lankan tourist in relation to a tour conducted wholly in Nepal: ₹ 35 lakhs**

All the charges are exclusive of service tax.

Compute the value of taxable service and service tax payable thereon.

16.(b) State the Resale Price Method (RPM) in computation of Arm's Length Price? Also state the adjustments required in the case of Resale Price Method where it is not possible to compare the transactions even by comparing with the transactions entered by the third party and that the differences have a material effect on price?

Answer of 16(a):

The service tax payable by M/s. Alia Tours Co., assuming that it opts for abatement under Notification No. 26/2012-ST and complies with the conditions thereunder, is as follows:

(amounts in ₹)

| Particulars | Gross value | % of abatement | Net value |
|--|-------------|----------------|-----------|
| Tour 1 - October: In case of package tours, an abatement of 75% of gross amount charged is available. It has been assumed that the bill issued for this purpose indicates that it is inclusive of charges for such a tour. | 40,00,000 | 75% | 10,00,000 |
| Tour 2 - November: Since, this tour package includes only transportation and accommodation for stay, it is not a package tour as per Notification No. 26/2012-ST, dated 20-06-2012. In case of services provided in relation to a tour other than in relation to a package tour or accommodation tour, an abatement of 60% of the gross amount charged is available. It has been assumed that the bill issued for this purpose indicates that the amount charged in the bill is the gross amount charged for such a tour. | 65,00,000 | 60% | 26,00,000 |
| Tour 3 - December: The abatement of 90% of the gross amount charged will not be available because the bills issued to clients do not indicate that the charges are solely for arranging the accommodation for stay. However, it is eligible for general abatement of 60%, assuming that the bill indicates that the amount charged in the bill is the gross amount charged for such a tour. | 40,00,000 | 60% | 16,00,000 |

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| | | | |
|---|--------------------|-----|------------------|
| Tour 4 - January: Since charges are inclusive of the charges of stay and the invoice issued to the clients mentions it clearly that the charges are solely for arranging the accommodation for stay, hence, it will be eligible for 90% abatement. | 50,00,000 | 90% | 5,00,000 |
| Tour 5 : March : Charges received from Sri Lankan tourist in relation to a tour conducted wholly in Nepal shall be exempt from tax under Mega Exemption Notification 25/2012. | Exempt | | Exempt |
| Total | 1,90,00,000 | | 57,00,000 |
| Service tax payable @ 12.36% | | | 7,04,520 |

Answer of 16(b):

The Resale Price Method (RPM) is a direct method which comprises the gross margins (i.e. gross profit over sales) earned in transactions between related and unrelated parties for the determination of the arm's-length price. The RPM method requires high level of functional comparability and is mainly applicable where the controlled party is a distributor.

The required adjustment to Resale Price Method (RPM):

- (1) Inventory adjustment: An adjustment to operating income for ratios other than the Return on Assets (ROA) is necessary if a comparable company has a different relative level of inventory holding than the tested party. The inventory adjustment thus estimates the implicit capital cost of holding inventory.
- (2) Accounts payable adjustment: This adjustment eliminates the implicit interest in the price of goods purchased on other than a cash basis from suppliers. The purpose of this adjustment is to identify and eliminate from profit comparisons the effect of companies' decisions on how to finance purchases.
- (3) Accounts receivable adjustment: This adjustment eliminates the implicit interest in the price of goods or services sold on other than cash basis to customers. The purpose of this adjustment is to identify and eliminate the profit related to finance decisions of the seller. A company selling on cash basis would receive a lower price than a company selling the goods on terms, because selling on terms subjects the seller to a capital cost that will be reflected in the price.
- (4) Contractual terms: where the contractual terms includes the provisions like warranties, terms of credit, facilities for transportation and transshipment of goods, facilities related to quantity of purchase or sale of goods.
- (5) The level of the market: The adjustments also consider the level of the market, i.e. wholesale, retail, etc.
- (6) Foreign currency adjustments: In case of an export transaction, the foreign exchange loss because of depreciation of the export income is disadvantageous to the exporter and it results in lower margin. The comparable companies having domestic sale transactions will be having higher margin. If the tested party imports raw material from foreign company, being an associated enterprise, it will be exposed to foreign exchange risk. The comparable companies using raw material procured from India will not be

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exposed from this risk. If the comparable companies hedge, the forex risk using financial instruments adjustment for the same is required for the tested party which does not perform the hedging.

17.(a) AB Ltd. procures duty-paid Kraft Paper and then laminates it in its own factory with a coating of Polyethelene resulting in Polyethelene Laminated Kraft Paper. In reply to Show-Cause-Cum-Demand Notice, AB Ltd. has challenged the demand of duty on the following grounds -

- (i) Lamination with Polyethelene does not amount to manufacture.**
- (ii) Both unlaminated and laminated Kraft Papers admittedly fall under the same entry under the Central Excise Tariff.**

As the jurisdictional Assistant Commissioner of Central Excise, explain the sustainability or otherwise of the duty demand on AB Ltd.

17.(b) Describe the significance of 'dashes' under the HSN Tariff System.

Answer of 17(a):

Manufacture means transformation of a commodity to a different commercial commodity having a distinct character, use and name.

In the instant case, the process of laminating Ordinary Kraft Paper with Polyethelene, results in manufacture of a commercially distinct product called Polyethelene Laminated Kraft Paper. Therefore, the process is a manufacture.

Input and Output being under same Tariff Entry is not relevant.

Answer of 17(b):

The dashes preceding a Tariff Heading or Tariff Item under the HSN Tariff System signify the following -

| Type | Denoted by | Significance / Meaning |
|-------------------------------|------------|--|
| Single Dash | - | Indicates that the Article or Group of Articles is covered by the Heading under which they are specified. |
| Double Dash | -- | Indicates a Sub-Group or Article which is part of a Group with Single Dash. They are sub-classifications of immediately preceding Article / Group with Single Dash. |
| Triple Dash or Quadruple Dash | ---/---- | Indicates a Sub-Sub-Group or Article which is part of a Sub-Group with Single or Double Dash. They are taken to be Sub-Classification of the immediately preceding Article / Group with Single or Double Dash. |

Only Sub-Headings at the same level are comparable. The "Dash" before an item or Article in the Tariff Schedule denotes the level of Article.

18.(a) State the circumstances where applications can be made to Settlement Commission.

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18.(b) Kanhai Experts Limited has exported goods worth ₹ 1,00,000 (FOB Value). Ascertain whether Kanhai Experts Limited is entitled to duty drawback. Given that the rate of duty drawback on such export of goods is 0.9%. Discuss.

Answer of 18(a):

An application to Settlement Commission can be made only in the following situations -

1. Case is pending before Adjudicating Authority on the date of application.
2. Where any excisable / dutiable goods, books of accounts, other documents, (in case of Customs including sale proceeds of the goods) have been seized, the application can be made only after the expiry of 180 days from the date of seizure..
3. The applicant has filed a Bill of Entry or a Shipping Bill or a Bill of Export or a Baggage declaration or a Label or declaration along with the goods imported or exported through post or courier and a Show Cause Notice has been issued to him by the Proper Officer.
4. The applicant has filed the Returns of production clearance of goods and excise duty paid thereon. However, if the Settlement Commission is satisfied that there are circumstances for not filing the returns, then it may allow the application after recording the reasons.
5. The Assessee must have paid the duties payable along with Interest u/s 28AA.

Answer of 18(b):

As per Rule 8 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, drawback is not allowed if Drawback Amount or Rate is less than 1% of FOB Value, unless Drawback Claim per Shipment exceeds ₹ 500. However, this restriction is not applicable to - (i) Exports made in discharge of export obligation against advance license issued under EXIM policy, & (ii) Export by Post.

In the given case, Rate of Duty Drawback is less than 1% of FOB Value., i.e. 0.9%

However, amount of drawback = 0.9% of FOB Value = 0.9% of ₹ 1,00,000 = ₹ 900, which is more than ₹ 500 per Shipment.

Hence, Kanhai Experts Limited is entitled to duty drawback.

19.(a) M/s. Rekha Associates deposits ₹ 7,50,000 as pre-deposit on 15-10-2014 and files an appeal with CESTAT. CESTAT decides the appeal in favour of M/s. Rekha Associates on 25-12-2014. M/s. Rekha Associates submits a letter seeking refund of the pre-deposit on 30-01-2015. The pre-deposit is refunded to M/s. Rekha Associates on 28-02-2015. Compute the amount of interest payable on refund of such pre-deposit, if any.

19.(b) Mr. Jeet was found engaged in smuggling in respect of certain imported goods, the value whereof, as computed for the purposes of section 14 of the Customs Act, 1962, is ₹

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25,00,000. Compute the maximum amount of penalty imposable on Mr. Jeet in the following independent cases -

- (i) if the said goods are prohibited goods, otherwise chargeable to duty @ 5% ;
- (ii) if the said goods are non-prohibited goods chargeable to duty @ 5% ;
- (iii) if the said goods are non-prohibited goods chargeable to Nil rate of duty, but the value declared by Mr. Jeet is ₹ 40,00,000 ;
- (iv) if the said goods are prohibited goods, which were declared by Mr. Jeet to be some other goods valuing ₹ 40,00,000 chargeable to duty @ 5%.
- (v) if the said goods are non-prohibited goods chargeable to duty @ 30%, but Mr. Jeet had declared them to be some other goods valuing ₹ 40,00,000 chargeable to duty @ 5%.

Answer of 19(a):

With effect from 06-08-2014, section 35FF of Central Excise Act, 1944 which provides for interest on delayed refund of pre-deposit has been substituted with a new section. The substituted section 35FF provides for payment of interest @ 6% per annum on the refund of such pre-deposit from the date of its payment [15.10.14] to the date of refund [28.02.15].

Thus, interest payable on refund of pre-deposit of ₹ 7,50,000 will be ₹ 16,767 (rounded off) [₹ 7,50,000 × 6% × 136/365].

Answer of 19(b):

The amount of penalty imposable on Mr. Jeet shall be as follows -

- (i) Penalty = Value of goods i.e. ₹ 25,00,000 or ₹ 5,000, whichever is greater = ₹ 25,00,000 ;
- (ii) Penalty = Duty sought to be evaded i.e. (₹ 25,00,000 × 5.15% = ₹ 1,28,750) or ₹ 5,000, whichever is greater = ₹ 1,28,750.
- (iii) Penalty being the greater of the following -
 - (A) Declared Value - Actual Value = ₹ 40,00,000 - ₹ 25,00,000 = ₹ 15,00,000 ;
 - (B) ₹ 5,000.i.e. ₹ 15,00,000.
- (iv) In this case, the goods are prohibited goods, which have been declared by Mr. Jeet to be some other goods valuing ₹ 40,00,000. Since the value declared by Mr. Jeet is greater than its actual value and the goods are prohibited, therefore, penalty being the highest of the following three -
 - (A) Actual value i.e. ₹ 25,00,000;
 - (B) Declared value - Actual Value = ₹ 40,00,000 - ₹ 25,00,000 = ₹ 15,00,000 ;
 - (C) ₹ 5,000.i.e. ₹ 25,00,000.
- (v) In this case, the goods are dutiable goods on which duty has been sought to be evaded and the value declared by Mr. Jeet is also greater than its actual value. Therefore, maximum penalty imposable being the highest of the following three -
 - (A) Duty sought to be evaded i.e. (30.9% of ₹ 25,00,000- 5.15% of ₹ 40,00,000) = ₹ 5,66,500 ;
 - (B) Declared Value - Actual Value = ₹ 40,00,000 - ₹ 25,00,000 = ₹ 15,00,000 ;
 - (C) ₹ 5,000.i.e. ₹ 15,00,000.

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20.(a) Sharan Ltd. commenced its business on 21st June, 2014 in Kolkata. It has provided/availed following services upto 31st March, 2015. Determine its service tax liability for the Financial Year 2014-15:

- (i) Taxable services provided under its own brand name : ₹ 9,00,000.
- (ii) Declared services (Sum charged ₹ 4 lakh, but value determined as per valuation rules is 60% ie. ₹ 2,40,000).
- (iii) Services wholly exempt under Notification No. 25/2012, dated 20-06-2012 : ₹ 6,00,000.
- (iv) Services provided under brand-name of other person (fully taxable): ₹ 3,60,000.
- (v) Availed services of goods transport agency and paid freight of ₹ 2,00,000.

The assessee is ready to opt any exemption available to it under Service Tax Law.

(Make suitable assumptions wherever required and show workings.)

20.(b) Abhijit who entered into a roll over contract, approached Syn Bank Ltd. for selling US \$ 46,000 at the rate of ₹ 60 per US dollar. RBI Reference rate at that time was ₹ 60.50 per US Dollar. However, the rate of exchange declared by CBEC for the day is ₹ 61.50 per US dollar. Calculate the value of taxable service with reference to rule 2B of the service tax (Determination of value) Rules, 2006 and Service Tax payable thereon.

Answer of 20(a):

M/s. Sharan Ltd. has commenced its business in the financial year 2014-15 i.e., its 'aggregate value of taxable services' during the financial year 2013-14 was NIL. Accordingly, it is eligible for threshold exemption of ₹ 10 lakhs in respect of its 'aggregate value' during the financial year 2014-15 under Not. No. 33/2012-ST.

The relevant computations are as follows —

| Particulars | ₹ |
|--|-----------|
| (i) Own brand name services: It is assumed that ₹ 9 lakh is the value of the services. Includible in determining aggregate value. | 9,00,000 |
| (ii) Declared services: Value of services = 60% of 4 lakh = ₹ 2,40,000. Value as determined as per section 67 of Finance Act, 1994 and Valuation Rules is taken. Includible in determining aggregate value. | 2,40,000 |
| (iii) Services fully exempt: Specifically excluded in determination of aggregate value | NIL |
| Aggregate Value for purposes of Not. No. 33/2012-ST for 2014-15 | 11,40,000 |
| Less : Threshold exemption under Notification No. 33/2012-ST | 10,00,000 |
| Sum liable to service tax | 1,40,000 |

Answer of 20(b):

As per Rule 2B of the Service Tax (Determination of Value) Rules, 2006, value of taxable services = (RBI Reference Rate - Buying Rate) × No. of units of currency = (₹ 60.5 per \$ - ₹ 60 per \$) × \$ 46,000 = ₹ 23,000.

Service Tax @ 12.36% = ₹ 23,000 × 12.36% = ₹ 2,842.80.

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Note: CBEC rate has no relevance under Rule 2B of the Service Tax (Determination of Value) Rules, 2006.

21.(a) M/s.Solid Cement Ltd. is engaged in the manufacture of Cement. Explosives are used for blasting the mines in order to excavate limestone, which is used in the manufacture of Cement/clinkers in the factory situated at some distance away from the mines. Cenvat credit on explosives has been denied by the Excise Department of the ground that the explosives are not used as inputs "within the factory of production". You are required to advise with reference to the CENVAT Credit Rules, 2004 whether the stand taken by the department is correct.

21.(b) A manufacturer has Head Office registered as input service distributor and four units. It furnishes following details and asks you to determine Cenvat Credit distributable under Rule 7 of Cenvat Credit Rules, 2004 for the month of April, 2015 –

| | Unit 1: Potlan | Unit 2: Kolkata | Unit 3: Jaipur | Unit 4: Ahmedabad | Unit 5: Surat | Total |
|--|-------------------|--------------------|-------------------|----------------------|------------------|--------------|
| Turnover for the year 2014-15 | ₹ 50 crores | ₹ 15 crores | ₹ 10 crores | ₹ 55 crores | ₹ 10 crores | ₹ 140 crores |
| Credit of service tax on security services (used at Jaipur only) | | | | | | ₹ 3 lakh |
| Credit of service tax on consultancy services (for Potlan) | | | | | | ₹ 2 lakh |
| Credit of service tax on Cleaning Services (for Potlan, Jaipur and Ahmedabad unit) | | | | | | ₹ 6.5 lakh |
| Credit of service tax on other services (common for all) | | | | | | ₹ 19.5 lakh |

You are informed that Unit 1 (Potlan) is exclusively engaged in manufacture of exempted goods. You are also informed that Unit 5 (Surat) was closed on 31-3-2015.

Answer of 21(a):

Goods must be used within factory of production and must have some relation with manufacture so as to qualify as 'input' under Rule 2(k) of the CENVAT Credit Rules, 2004. As per judgment in Vikram Cement v. CCE. [2006 (197) E.L.T. 145 (S.C.)], captive mines supplying goods only to assessee's factory are treated as extension of factory. Therefore, in case of captive mines, explosive used thereat may be regarded as 'input'. But, in case of non-captive mines, which are not regarded as extension of factory, explosive used shall not be eligible for CENVAT Credit.

Answer of 21(b):

Credit of service tax to be distributed as per Rule 7 of Cenvat Credit Rules, 2004

| | Unit: Potlan (wholly exempt) | Unit : Kolkata | Unit: Jaipur | Unit: Ahmedabad |
|-------------------------------|---------------------------------|-------------------|-----------------|--------------------|
| Turnover for the year 2014-15 | ₹50 crores | ₹ 15 crores | ₹ 10 crores | ₹ 55 crores |

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| | | | | |
|--|---------------------|-----------------|-----------------|------------------|
| Security Services - Since they are used at Jaipur only, credit will be distributed to Jaipur only | -- | -- | ₹ 3,00,000 | -- |
| Consultancy Services - It relate exclusively to Potlan Unit | ₹ 2,00,000 | -- | -- | -- |
| Credit of cleaning and other common services ₹ 26 lakh (₹ 6.5 lakh + ₹ 19.5 lakh) will be distributed in ratio of turnover viz, 50 : 15 : 10 : 55 [See Note 1] | ₹ 10,00,000 | ₹ 3,00,000 | ₹ 2,00,000 | ₹ 11,00,000 |
| Total Credit (₹) | NIL (Note 2) | 3,00,000 | 5,00,000 | 11,00,000 |

Notes:

- As per Rule 7 of the CENVAT Credit Rules, 2004, in case of credit of service tax attributable to service used by more than one unit, credit is distributed to all operational units, whether such service relates to that unit or not. In other words, credit of cleaning services will be distributed over all the four units, even if it relates only to Potlan, Jaipur and Ahmedabad units and not to Kolkata unit. Therefore, for ease of computation, cleaning services credit ₹ 6.5 lakh and other services credit ₹ 19.5 lakhs has been distributed in totality of ₹ 26 lakh — [Circular No. 178/4/2014-ST, dated 11-7-2014].
- Since Potlan unit is engaged in manufacture of exempted goods only, no credit can be taken/ distributed to such unit. Hence, total credit will be NIL.
- Since Unit 5 (Surat) was discontinued on 31-3-2015 i.e., it is not operational during the current financial year; therefore, the turnover of Surat Unit would not be considered for determining the turnover ratio under Rule 7 of the Cenvat Credit Rules, 2004.

22.(a) Distinguish between a Sale for Export and Sale in the Course of Export in the context of Central Sales Tax.

22.(b) Prediction Ltd. sold 100 units manufactured by it for ₹ 12,000 per unit. It had received interest-free advance of ₹ 6,00,000 from the buyer for the whole of the year. Compute the assessable value of 100 units sold in following independent case:

- The price charged from other buyers is ₹ 11,500 per unit.
- The price charged from other buyers is ₹ 12,800 per unit.
- The normal rate of interest is 12% per annum and the price charged from other buyers is ₹ 12,800 per unit.

Answer of 22(a):

Distinctions between a Sale for Export and Sale in the Course of Export

| Sale for Export | Sale in the Course of Export |
|--|---|
| i. A sale is effected by the dealer (seller) and he is not connected with the export of the goods which actually takes place subsequently. | Seller has an express between the sale and the export. |
| ii. Seller may or may not have the knowledge that the buyer intends to export the goods | The seller who purchases goods in India subsequently exports as such. |

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| | |
|--|---|
| purchased. | |
| iii. Seller does not know the ultimate destination of the goods he has sold. | Seller has clear address for ultimate destination of his goods. |
| iv. Seller has no intention for export. | Seller has clear intention to export. |
| v. This sale may be called as penultimate sale. | This sale is called as export sale. |
| vi. Sale exempted from CST provided Form-H received from his buyer. | Sale exempted from CST automatically. |
| vii. This sale is covered under Section 5(3) of the CST Act, 1956. | This sale is covered under Section 5(1) of the CST Act, 1956. |

Answer of 22(b):

Computation of Assessable Value of Prediction Ltd.: As per the explanation 2 to Rule 6 of the Central Excise Valuation Rules, 2000, where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods. Hence, the assessable value shall be determined as under:

- (i) Assessable value = ₹ 12,000 x 100 = ₹ 12,00,000.
No notional interest shall be added as advance received has not influenced the price.
- (i) Assessable value = (₹ 12,000 + ₹ 800) x 100 = ₹ 12,80,000.
₹ 800 (₹ 12,800 - ₹ 12,000) shall be added as notional interest as the price charged is influenced due to the receipt of advance.
- (ii) Assessable value = (₹ 12,000 + ₹ 800) x 100 = ₹ 12,80,000.
Rate of interest is irrelevant, however, ₹ 800 (₹ 12,800 - ₹ 12,000) shall be added as notional interest as the price charged is influenced due to the receipt of advance.

23.(a) Explain the effect on Cenvat credit in case of transfer/merger/shifting of undertaking.

23.(b) Explain abatements and composition schemes in the context of service tax. Also state the distinction between them.

Answer of 23(a):

If a manufacturer shifts his factory to another site or provider of output services shifts his business or a manufacturer/service provider transfers his factory/business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of factory to a joint venture, the manufacturer/service provider can transfer unutilised Cenvat credit to the transferred/sold/merged/leased or amalgamated factory/business - Rule 10(1) and 10(2) of Cenvat Credit Rules.

The transfer of credit after transfer/merger/shifting is subject to following -

- (i) There should be specific provision for transfer of liabilities of such factory /business of service provider [rule 10(1) and 10(2) of Cenvat Credit Rules]
- (ii) The transfer is allowed only if stock of inputs as such or in process, or the capital goods are also transferred along with the factory/premises of service provider to the new site or ownership and the inputs or capital goods on which credit has been availed of are duly accounted for to the satisfaction of Assistant/Deputy Commissioner. [rule 10(3) of Cenvat Credit Rules]

Answer of 23(b):

Service tax is payable on value of taxable service. In case of some services, composition schemes are available while in some cases, partial abatement is available.

Composition schemes - 'Composition scheme' is a simplified scheme for payment of service tax when calculation of 'value of service' for payment of service tax is very cumbersome or difficult.

In composition scheme, some easy method is prescribed (like deduction of some ad hoc amount) to arrive at the value of taxable service. Composition scheme is at the option of assessee.

Abatement i.e. partial exemption - In case of some services, service tax is payable on lower value, i.e. abatement is available from amount charged. Abatement is nothing but partial exemption from service tax. However, in case of some services, abatement is used as a composition scheme.

Abatement is subject to certain conditions like restrictions on availment of Cenvat credit. If assessee does not want to avail the abatement, he simply should not comply with the conditions. In that case, he is required to pay service tax.

Distinction between abatement and composition scheme: Practically, result of both abatement and composition scheme appears to be same. However, abatement is nothing but partial exemption from service tax payable, subject to prescribed conditions, while composition scheme is an easy mode of calculating value of service, where finding of value of taxable service is difficult. However, this distinction has not been fully followed. In case of some services, abatement is actually used as a composition scheme.

24.(a) Explain with reference to Foreign Trade Policy - Market Access Initiative.

24.(b) Define 'Enterprise' under the aspect of international taxation.

Answer of 24(a):

Market Access Initiative (MAI):

- (1) Under MAI scheme, Financial assistance is provided for export promotion activities on focus country, focus product basis. Financial assistance is available for Export Promotion Councils (EPCs), Industry and Trade Associations (ITAs), Agencies of State Government, Indian Commercial Missions (ICMs) abroad and other national level institutions/eligible entities as may be notified.
- (2) A whole range of activities can be funded under MAI scheme. These include, amongst others,-
 - (i) Market studies/surveys,
 - (ii) Setting up of showroom / warehouse,
 - (iii) Participation in international trade fairs,
 - (iv) Displays in International departmental stores,
 - (v) Publicity campaigns,
 - (vi) Brand promotion,

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- (vii) Reimbursement of registration charges for pharmaceuticals and expenses for carrying out clinical trials etc., in fulfillment of statutory requirements in the buyer country,
 - (viii) Testing charges for engineering products abroad,
 - (ix) Assistance for contesting Anti Dumping litigations etc.
- (3) Each of these export promotion activities can receive financial assistance from Government ranging from 25% to 100% of total cost depending upon activity and implementing agency.

Answer of 24(b):

As per Sec. 92F(iii) of Income-tax Act, 'Enterprise' means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be engaged in the following activities—

- any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods;
- know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights;
- any activity relating to the provision of services of any kind;
- carrying out any work in pursuance of a contract (e.g., construction contract);
- investment activity;
- activity relating to provision of loan;
- business of acquiring, holding, underwriting or dealing with shares, debenture or other securities of any body corporate.

A person would be an enterprise if it carries on the specified activity/business either directly or through one or more of its units or divisions or subsidiaries.

Permanent establishment - Permanent establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on [section 92F(iii) of Income-tax Act].

25.(a) Explain the important features of the Foreign Trade Policy.

25.(b) What is 'Importer Exporter Code Number' (IEC)? State the manner in which IEC has to be applied for. In what export/import documents should the same be stated?

Answer of 25(a):

The important features of the Foreign Trade Policy (FTP) are -

- (i) **Free Export-Import:** Export-Import is free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- (ii) **Restrictions for strategic and health reasons:** There are restrictions on exports and imports for various strategic, health, and other reasons. If the goods are not banned, the government can give a permission/ license for specific reasons.
- (iii) **Export Promotion Schemes:** Exports are promoted through various promotional schemes.

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- (iv) **Duty exemptions, drawbacks and rebates available:** To provide for tax free exports, the taxes on exports are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).
- (v) **Free import of capital goods for exports:** Even capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- (vi) **Special Schemes for EOU:** For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU.
- (vii) **Deemed Exports:** In certain cases imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

Answer of 25(b):

Importer Exporter Code Number (IEC Number): Every importer and exporter must obtain an 'Importer Exporter Code Number' (IEC) from DGFT (or officer authorised by it), by applying in prescribed Form. IEC is a unique 10 digit code issued by DGFT to Indian companies.

Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

Import and export without IEC number is not permitted, unless specifically exempted.

Application for IEC Number: An Application for IEC number has to be made to Regional Authority (RA) of DGFT in prescribed form ANF 2A, with fees of ₹250 and shall be accompanied by prescribed documents. In case of STP/EHTP/BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/Head Office of the STP unit is located shall issue or amend the IECs. Profile of importer/exporter should be given in form ANF 1.

Declaration of IEC number on import/export documents: IEC number will be declared on Bill of Entry, Shipping Bill and other documents relating to customs.

26.(a) State whether the principle of 'unjust enrichment' shall be applicable in the following cases:

- (i) Refund of duty paid on provisional basis under section 18 of the Customs Act;
- (ii) Refund of an advance payment made in anticipation of importation of goods;
- (iii) Refund of duty paid under protest.

26.(b) Having regard to the provisions of Section 4 of the Central Excise Act, 1944, compute the Assessable Value of Excisable Goods, for levy of duty of excise, given the following information:

| Particulars | ₹ |
|---|--------|
| Cum-duty Wholesale Price including Sales Tax of ₹ 2,000 | 15,000 |
| Normal Secondary Packing cost | 1,000 |
| Cost of Special Secondary Packing | 1,500 |

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| | |
|---|-----------------------|
| Cost of Durable and Returnable Packing | 1,500 |
| Freight | 750 |
| Insurance on Freight | 200 |
| Trade Discount (Normal Practice) | 1,000 |
| All Inclusive Rate of Central Excise Duty as per CE Tariff | 12% Ad Valorem |

State the reasons for the admissibility or otherwise of the deductions.

Answer of 26(a):

- (i) Yes. Section 18 of the Customs Act, 1962 statutorily provides that refund of import duty of customs paid on provisional basis can be made only if the importer proves that he has not passed on the incidence of duty to any other person. Hence, doctrine of 'unjust enrichment' is applicable in such case.
- (ii) No. The doctrine of "unjust enrichment" will not be applicable in case duty is paid in advance in anticipation of importation of goods. The Delhi High Court in United News of India v. UOI [2004] 168 ELT 442 (Del.) has held that till the advance payment is appropriated against the duty on actual importation of goods, such amount cannot be regarded as duty to be hit by doctrine of unjust enrichment. Thus, the time limit under section 27 and bar of unjust enrichment is not applicable in such cases.
- (iii) Yes. The Supreme Court in Allied Photographics India Ltd. [2004] 166 ELT 3 (SC) has held that every claim of refund, even if duty is paid under protest, shall be dealt in accordance with provisions of Section 27. Thus, refund of duty paid under protest is also governed by doctrine of unjust enrichment.

Answer of 26(b):

$$\text{Assessable Value (from cum-duty price)} = \frac{\text{Cum - Duty Excise Price Less Permissible Deductions}}{100 + \text{Rate of Duty}} \times 100$$

Computation of Assessable Value

| Particulars | ₹ | ₹ | Reasoning |
|---|-------------------|---------------|--|
| Cum-duty Wholesale Price | | 15,000 | Assumed to be all inclusive and all adjusted price. |
| Less: Sales Tax | (2,000) | | Sales Tax actually paid can be reduced from AV (Assessable Value) |
| Normal Secondary Packing Special Secondary Packing Durable and Returnable Packing | - - (1,500) | | Normal and Special packing cost includible in AV. Only Proportionate cost of Durable and Returnable Packing is includible in AV. It is assumed that the given value is total cost of durable packing and hence excluded. |
| Freight Insurance on Freight | (750) (200) | | Freight and Insurance are deductible, as they are incurred after removal. Assumed they are actual costs. |
| Trade Discount | - | (4,450) | Note-2 |
| Cum-Duty Price | | 10,550 | |
| Less: Excise Duty at 12.36% incl. | | (1,161) | |

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| | | |
|-------------------------|--------------|--------------------------------------|
| EC+SHEC | | $\frac{10,550 \times 12.36}{112.36}$ |
| Assessable Value | 9,389 | |

Notes:

1. Since Wholesale Price is given, it is assumed to include all costs and the profit margin.
2. Trade Discount is deductible on the assumption that it is part of the Manufacturer's policy to allow trade discount in ordinary course of his business. Since it is assumed that the cum-duty price is all inclusive and all adjusted price, it is assumed that the trade discount is already deducted in the price given.
3. Though the Excise Duty rate is given as 12%, EC and SHEC have to be considered apart from 12%.

27.(a) Beauty Ltd. imported a Shampoo. Maximum Retail Price (MRP) of a Shampoo under Customs Tariff Sub-Heading No. 3305 10 is ₹ 800. However, its Assessable Value as per Section 14(1) of the Customs Act, 1962 is ₹ 500. Shampoo is assessable under Central Excise, on the basis of MRP after allowing an Abatement of 40%. Basic Excise Duty Rate is 12% plus EC of 2% and SHEC of 1%. Basic Customs Duty rate is 10%. Calculate the total Duty Payable under the Customs Tariff Act, 1975 on the Shampoo.

- 27.(b) Compute the Duty Payable under the Customs Act, 1962 for an imported equipment based on the following information-**
- (i) Assessable Value of the imported equipment US\$10,100.
 - (ii) Date of Bill of Entry 27th April., 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 22nd April. Basic Customs Duty on this date 16% and Exchange Rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 50
 - (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) Educational Cess @ 2% and Secondary and Higher Educational Cess @ 1%.

Answer of 27(a):

Computation of Total Customs Duty Payable

| Particulars | ₹ |
|---|---------------|
| 1. Transaction Value u/s 14(1) | 500.00 |
| 2. Basic Customs Duty (BCD) at 10% | 50.00 |
| 3. Additional Customs Duty (ACD) u/s 3(1) [Refer Note Below] | 57.60 |
| 6. Total Customs Duty = BCD + ACD u/s 3(1) = (2) + (3) | 107.60 |
| 7. Education Cess on Customs Duty = 2% on 107.60 | 2.15 |
| 8. SHE Cess at 1% on Customs Duty = 1% on 107.60 | 1.08 |
| 9. Total Customs Duty, EC, SHEC payable (6) + (7) + (8) | 110.83 |
| 10. Total Customs Duty Payable (rounded off to nearest rupee) | 111.00 |

Note: Since the product is covered under MRP, ACD u/s 3(1) is payable on MRP. MRP is ₹ 800 and abatement is 40%.

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| Particulars | ₹ |
|---|--------|
| Assessable Value u/s 4A of CEA, 1944 (60% of ₹ 800) | 480.00 |
| Additional Duty of Customs (12% × 480) | 57.60 |

Answer of 27(b):

Assessable Value & Customs Duty

| Particulars | ₹ |
|---|----------|
| 1. Assessable value (AV) [10,100 USD × ₹65] | 6,56,500 |
| 2. Basic Customs Duty (BCD) @ 20% of AV [6,56,500×20%] | 1,31,300 |
| 3. ACD u/s 3(1) and 3(2) at 15% = 15% of (Assessable Value + BCD) = 15% of [6,56,500+1,31,300] | 1,18,170 |
| 4. Sub-total for EC , SHEC | 2,49,470 |
| 5. EC on Customs Duty = 2% on 2,49,470 | 4,989 |
| 6. SHEC on Customs Duty = 1% on 2,49,470 | 2,495 |
| 7. ACD u/s 3(5) at 4% = 4% on [AV + BCD + ACD u/s 3(1) + EC + SHEC thereon] = 4% on (6,56,500 + 1,31,300 + 1,18,170 + 4,989+ 2,495) | 36,538 |
| 8. Total Customs Duty including EC and SHEC = (2) + (3) + (5) + (6)+ (7) = [BCD + ACD u/s 3(1) and 3(2) + EC & SHEC u/s 3(1) and 3(2) + ACD u/s 3(5)] | 2,93,492 |

Note: Rate of Exchange notified by CBEC as applicable for the month of filing the B/E should be considered. Duty = Rate as per date of B/E or date of arrival of aircraft, whichever is later, should be considered.

28.(a) Based on the Place of Provision of Services Rules, 2012, determine the place of service as well as their taxability in each of the following independent cases :

- (i) A Mumbai based builder provides construction services to Gujarat based company in respect of construction of its new building in Afghanistan.
- (ii) A UK based company has been awarded mineral exploration contract in respect of specific sites in ZIMBABWE by a Chennai based corporation.

28.(b) Mr. P received advance of ₹ 1,01,124 (inclusive of service tax but after deducting TDS of ₹ 11,236) on 5-4-2014, but, such services could not be provided to the extent of 40% and he had to refund the proportionate total sum including service tax on 10-7-2014. State the treatment of such receipt and refund?

Answer of 28(a):

The two situations are discussed below —

| No. | Nature of service | LOCATION OF — | | | Place of Provision & Taxability |
|-----|-------------------|---------------|------------------|-------------------|---------------------------------|
| | | Property | Service Provider | Service recipient | |
| | | | | | |

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| | | | | | |
|-----|--|-------------------------------------|----------------------------|--|---|
| (1) | Construction Services [Relating to Immovable Property; Prima facie, falls under Rule 5] | Afghanistan (Non-taxable Territory) | Mumbai (Taxable Territory) | Case 1: Gujarat (Taxable Territory) | As per Rule 5, PoP = Location of Property = Afghanistan. But, as per Rule 8, since both service provider and recipient are located in taxable territory, PoP = Location of Recipient = Gujarat Liable to service tax |
| | | | | Case 2: Afghanistan (Non-taxable territory), if such building amounts to a separate fixed establishment in Afghanistan | As per Rule 5, PoP = Location of Property = Afghanistan Rule 8 inapplicable, as service recipient is located outside taxable territory. Not liable to service tax |
| (2) | Mineral exploration contract in respect of specific sites [Relating to Immovable Property] | Zimbabwe (Non-taxable territory) | UK (Non-taxable Territory) | Chennai (Taxable Territory) | As per Rule 5, PoP = Location of Property = Zimbabwe (Non-taxable territory) Rule 8 inapplicable, as service provider is located outside taxable territory. Not liable to service tax |

Answer of 28(b):

As per Rule 3 of Point of Taxation Rules, 2011, PoT = Date of receipt or Date of Invoice, whichever is earlier. Hence, owing to receipt of advance on 5-4-2014, service tax thereon shall be payable with reference to that date. But, when value of services along with service tax is refunded, as per Rule 6(3), the sum of service tax so refunded shall be eligible for credit. The relevant calculations are:

| | ₹ |
|--|---|
| Sum received (net of TDS) | 1,01,124 |
| Add: TDS (Tax deducted at source is a part of consideration) | 11,236 |
| Total Advance received [It is assumed as inclusive of service tax in view of section 67] | 1,12,360 |
| Service Tax @ 12.36% (Sum received X 12.36% ÷ 112.36%) | 12,360 |
| Service tax of ₹ 12,360 shall be payable on due date (Quarterly) | 6-7-2014 (5 th , if not e-payment) |
| Date of refund of 40% amount | 10-07-14 |
| Credit allowable on date of refund under Rule 6(3) (40% of service tax) | 4,944 |

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29.(a) M/s Abanti Associates is a registered dealer engaged in the manufacturing of steel in the State of Maharashtra. During the year 2014-15 the firm has procured raw materials of ₹ 25,50,320 (VAT @ 4%) and purchased plant and machinery of ₹ 20,00,000 (VAT @ 4%) and ₹ 5,00,000 (CST @ 2%) for use in the manufacturing of steel. Sales of steel materials made during the year is ₹ 40,00,000 (VAT @ 4%) and inter-state sale is ₹ 5,29,000 (@ 2% CST). Besides above, branch transfer of ₹ 3,20,000 was made to Kolkata. Calculate the following as per White Paper on VAT Law in India –

- (i) Output tax
- (ii) Input tax credit to be availed during the year
- (iii) Balance tax payable and
- (iv) Input tax credit, if any, to be carried forward.

29.(b) Ram & Co., a registered dealer with head office at Kolkata, furnishes to you the following information - (i) Inter-State sale of goods (it includes ₹ 10,00,000 being the value of goods transferred to Chennai Branch covered by Form F) - ₹ 49,20,000 (ii) Dharmada collected - ₹ 25,000 (iii) Weighment dues charged separately from buyers 2,15,000 (iv) Cash discount shown in invoice as per trade practice - ₹ 60,000 (v) Indemnity charges (recovered from buyers to cover transit loss based on their request) - ₹ 53,000. Calculate the turnover and CST payable, on the assumption that all the sales were made to registered dealers.

Answer of 29(a):

- (A) Output tax payable - (i) sale within State - ₹ 1,60,000 (4% of ₹ 40,00,000) (ii) Inter-state sale - ₹ 10,580 (2% of ₹ 5,29,000) (iii) Stock transfer of ₹ 3,20,000 - No tax. Total sales (including stock transfer) - ₹ 48,49,000. Total Tax payable - ₹ 1,70,580.
- (B) Input tax credit (set off) on raw material ₹ 1,02,012.80 (4% of ₹ 25,50,320 - It is presumed that the purchase price given is net of VAT).
Total sales (including stock transfer) are ₹ 48,49,000, out of which stock transfer is of ₹ 3,20,000 i.e. 6.6%. Hence, on 6.6% of input raw material, 2% Input Tax Credit is disallowed.
Total raw material - ₹ 25,50,320. Raw material used for stock transfer (6.6%) i.e. ₹ 1,68,321.12. Hence, 2% of ₹ 1,68,321.12 i.e. ₹ 3,366.42 is not allowed. Thus, Input Tax Credit available is ₹ 98,646.38 (₹ 1,02,012.80 - ₹ 3,366.42)
- (C) Input credit on Plant and machinery - ₹ 80,000 (4% of ₹ 20,00,000) - the credit is to be taken in three years. Hence, credit in first year is ₹ 26,666.67. Balance ₹ 53,333.33 will be carried forward.
- (D) No Input tax credit of inter-state purchases of ₹ 5,00,000.
- (E) Hence, total Input Tax Credit (set off) available for use = ₹ 1,25,313.05. [98,646.38 (On inputs) + ₹ 26,666.67 (On capital goods)]
- (F) Net tax payable by cash - ₹ 45,266.95 (₹ 1,70,580 - ₹ 1,25,313.05).
- (G) Credit of ₹ 53,333.33 on capital goods will be carried forward.

Note: It is assumed here that input tax credit on capital goods is to be taken in three years.

Answer of 29(b):

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CST is not payable on stock transfer. Hence, sales tax is payable on ₹ 39,20,000 (₹ 49,20,000 – ₹ 10,00,000) plus Dharmada ₹ 25,000 plus weighment dues ₹ 2,15,000. Cash discount is allowable as deduction. Indemnity charges are in nature of insurance charges and hence allowable as deduction.

Thus, 'turnover' = 39,20,000 + 25,000 + 2,15,000 - 60,000 - 53,000 = ₹ 40,47,000. CST @ 2% of ₹ 40,47,000 would be ₹ 80,940.

It is assumed that price given is exclusive of CST.

30.(a) In the context of international transfer pricing, which method is applied if there is comparability at functional level in two associated enterprise. Explain the method.

30.(b) S Ltd. received the following sums (exclusive of taxes). Compute service tax liability (Ignore small service provider's exemption) -

- (i) Manufacture of exempted excisable goods : ₹ 5 lakh ;
- (ii) Manufacture of dutiable excisable goods : ₹ 4 lakh ;
- (iii) Job-work on goods on which duty is paid by principal manufacturer : ₹ 3 lakh ;
- (iv) Job-work on goods on which no duty is payable by principal manufacturer due to exemption : ₹ 15 lakh;
- (v) Manufacture of alcohol/wine : ₹ 10 lakh
- (vi) Job-work of printing : ₹ 2 lakh ;
- (vii) Job-work of textile processing: ₹ 1 lakh.
- (viii) Manufacture of medicines containing alcohol: ₹ 2.5 lakhs.

Answer of 30(a):

Transactional Net Profit Method is applied if there is comparability at functional level in two associated enterprise in the context of international transfer pricing.

In this method, the net profit margin realised by the enterprise from an international transaction entered into with an associated enterprise is computed in relation to costs incurred or sales affected or assets employed or to be employed by the enterprise or having regard to any other relevant base. The net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base.

The net profit margin arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market. The net profit margin realised by the enterprise is established. The net profit margin thus established is then taken into account to arrive at an arm's length price.

Answer of 30(b):

Computation of service tax liability

- (i) Manufacture of exempted excisable goods : ₹ 5 lakh - Covered within negative list u/s 66D(f) of Finance Act, 1994;
- (ii) Manufacture of dutiable excisable goods : ₹ 4 lakh - Covered within negative list u/s 66D(f);

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- (iii) Job-work on goods on which duty is paid by principal manufacturer : ₹ 3 lakh – Exempt;
- (iv) Job-work on goods on which no duty is payable by principal manufacturer due to exemption : ₹ 15 lakh - Taxable, as no appropriate duty paid by principal manufacturer ;
- (v) Manufacture of alcohol/wine : ₹ 10 lakh - Covered within negative list u/s 66D(f);
- (vi) Job-work of printing : ₹ 2 lakh - Exempt;
- (vii) Job-work of textile processing: ₹ 1 lakh – Exempt;
- (viii) Manufacture of Medicines containing alcohol falls under M&TP Act - Covered in Negative list - Not taxable.

Taxable Value = ₹ 15 lakh; and service tax thereon @ 12.36% = ₹ 1,85,400.