Paper-16: Tax Management and Practice

Syllabus 2012

Question 1

(a) Can SSI avail CENVAT Credit? Explain the transitional provision, when the SSI unit starts availing the exemption.

(b) Dhanraj & Co. furnish the following expenditure incurred by them and want you to find the assessable value for the purpose of paying excise duty on captive consumption. Determine the cost of production in terms of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and as per CAS-4 (cost accounting standard)

(i) Direct material cost per unit inclusive of excise duty at 20% - ₹ 2,400
(ii) Direct wages - ₹ 500
(iii) Other direct expenses - ₹ 200
(iv) Indirect materials - ₹ 150
(v) Factory Overheads - ₹ 300
(vi) Administrative overhead (25% relating to production capacity) ₹ 200
(vii) Selling and distribution expenses - ₹ 200
(viii) Quality Control - ₹ 50
(ix) Sale of scrap realized - ₹40
(x) Actual profit margin - 20%.

(c) Explain Transaction Value with reference to Central Excise Act, 1944.

Solution to Question 1(a)

The assessee shall not avail input credit of excise duty paid on input services are used in relation to manufacture of clearances , till the aggregate clearances do not exceed ₹150 lakhs [notification no.8/2003]. CENVAT credit availed on inputs shall be reversed, if such input services are used in relation to manufacture of clearances, which are exempt based on the said notification. [Rule 6 of CENVAT Credit Rules, 2004]

CENVAT credit can be availed on capital goods but has to be utilized only after the aggregate value of the clearances cross the limit of ₹150 lakhs. [Rule 6(4) of the CENVAT Credit Rules,2004].

Transitional provisions- for availing exemption: an eligible person who has been paying excise duty but wishes to avail SSI exemption, should pay an amount equivalent to CENVAT credit taken on inputs lying in stock or in process or contained in final product lying in stock on the date of exercising the SSI option.

Example:

In March, 2014, a company purchased goods worth ₹1,50,000 plus ₹30,000 as Excise Duty. It contained the whole duty paid as credit for that month. Half of the stock is still not consumed as on 31st March, 2014. On 1st April, 2014, the unit opts for SSI exemption. In this case, it has to pay Excise duty of ₹15,000 before claiming exemption.

Solution to Question 1(b)

Particulars	**Amount (₹)**
Direct Material (exclusive of Excise Duty) [2,400 x 100/120]	2,000.00
Direct Labour	500.00
Direct Expenses	200.00
Works Overhead [indirect material (₹150) (+) Factory OHs (₹ 300)]	450.00
Quality Control Cost	50.00
Research & Development Cost	Nil
Administration Overheads (to the extent relates to production activity)	50.00
Less: Realizable Value of scrap	(40.00)
Cost of Production	3,210
Add 10% as per Rule 8	321
Assessable Value	**3,531**

Solution to Question 1(c)

Transaction value as per Section 4 of the Central Excise Act, 1944 is the price actually paid or payable for the goods when sold. It includes the amount a buyer is liable to pay to the seller or on his behalf, by reason of such sale or in its connection, either at the time of sale or any other time. It also includes the following:

(i) Advertising or publicity;

(ii) Storage;

(iii) Servicing, warranty;

(iv) Marketing and selling organization expenses;

(v) Outward handling;

(vi) Commission or any other matter

But excludes, excise duty, sales tax and other taxes, actually paid or payable on such goods.

Question 2

(a) Long Live Ltd. is a SSI which is producing 'Grow Fast', a tonic for growing children. Under the Annual Report for the financial year 2013-14, the unit shows a gross sales turnover of ₹1,89,20,000. The product 'Active' attracts excise duty @ 12% and sales tax @ 10%. Calculate the duty liability under notification no.8/2003.

(b) Fly Fast Airways Ltd. sold tickets to the travel agents in India at a minimum fixed commercial price. The agents were permitted to sell the tickets at a higher price. The price to be charged by the travel agents was restricted to a maximum of published price. Fly Fast Airways Ltd. was obliged to pay to its travel agents, a commission at the rate of 9% of published price, on which tax was deducted under Section 194H of the Income Tax Act, 1961 by the company. The Assessing Officer contended that company was also liable to deduct tax at source, on the amount of difference between the published price and the minimum fixed commercial price, by treating it as "additional special commission" in the hands of the agents.

Examine whether the contention of the Assessing Officer is tenable in law, in the light of decided case law.

Solution to Question 2(a)

Computation of duty liability under Notification No.8/2003

Particulars	Amount (₹)
Gross Sales Turnover (including ED & Sales Tax)	1,89,20,000
Sales Tax on first ₹150 lakhs clearance = ₹150 lakhs x 5% [for first 150 lakh clearances, excise duty is NIL and sales tax is 5%]	7,50,000
Balance sales (including excise duty and sales tax) = [1,89,20,000 - (1,50,00,000 + 7,50,000)]	31,70,000
Less: Sales Tax on the balance sales = 31,70,000 x 10/110 (since sales tax already included)	2,88,182
Cum-duty sales value	28,81,818
Excise duty (including 3% Cess)	3,17,010.24
Add: Education Cess @ 2%	6,340.20
Add: SHEC @1%	3,170.10
Total Excise Duty payable	3,26,520.54

Solution to Question 2(b)

Section 194H of the Income Tax Act, 1961 provides that, any person (other than an individual or Hindu Undivided Family), who is responsible for paying commission or brokerage (not being insurance commission), to a resident shall deduct tax at source, at the time of payment or credit, whichever is earlier. No tax is deductible if the amount paid/ credited during the financial year does not exceed ₹5,000.

In the present case, Fly Fast Airways Ltd. correctly deducted tax at source under Section 194H of the Income Tax Act, 1961, from the commission paid to the travel agents (@9% of the published price). The travel agents were permitted to sell the tickets, at a price higher than the minimum fixed commercial price, subject to a maximum of the published price. However, the Assessing Officer contended that, the airline company was also obliged to deduct tax at source on the difference between the published price and the minimum

commercial price, by treating it as "additional special commission", in the hands of the agents.

The facts of the case are similar to the case of **CIT v. Qatar Airways (2011) 332 ITR 253**. In this case, the Bombay High Court held that the difference between the published price and the minimum fixed commercial price of the tickets cannot be taken as "additional special commission" in the hands of the agents.

Firstly, the travel agents were given the discretion to sell the tickets at any rate between the minimum fixed commercial price and the published price (which was the maximum price). Secondly, in the absence of any communication/ feedback from the air travel agents, the airline company would not have any information about, the exact rate at which the tickets were finally sold by the travel agents. For deducting tax at source on the difference between the actual sale price and the minimum fixed commercial price (as contended by the Assessing Officer), the exact income in the hands of the agents must necessarily be ascertainable by the airline company.

Applying the rationale of the above case to the case of Fly Fast Airways Ltd, the airline company shall not be liable to deduct tax at source under Section 194H of the Income Tax Act, 1961, on the difference between the published price and the minimum fixed commercial price. However, the amount earned by the agent over and above the minimum fixed commercial price would be taxable as income in the hands of the agent.

Therefore, the contention raised by the Assessing Officer is not tenable in law.

Question 3

(a) Mr. Desai, Cost and Management Accountant rendered taxable service to Constraking Ltd. In this regard the company sent 200 cement bags free of cost, for the house construction of Mr. Desai. Explain how the value of the taxable service will be determined in this case. Will your answer be different if the service had been rendered free of charge?

(b) Mr. Himanshu Srivastav, a proprietor of Intellect Security Agency received ₹ 100,000 by an account payee cheque, as advance while signing a contract for rendering taxable services. He received ₹ 5,00,000 by credit card while providing the service and another ₹5,00,000 by a pay order after completion of service on January 31, 2014. All three transactions took place during financial year 2013-14. He seeks your advice about his liability towards value of taxable service and the service tax payable by him.

(c) Two factories located in the same premises are to be considered as one factory for the purpose of arriving at the aggregate value of clearances in terms of the SSI notification. Explain.

Solution to Question 3 (a)

Mr. Desai received 200 cement bags as consideration for his services rendered to Constraking Ltd. free of cost.

Thus, value of 200 cement bags will be treated as consideration for services received. It will be treated as gross value of service and service tax will be calculated by making back calculations.

However, if the service has been rendered free of charge, it shall not come within the ambit of service tax. In second case, no service tax is payable since 12.36% of Nil is Nil.

Solution to Question 3 (b)

Mr. Himanshu Srivastav, is liable on entire ₹11 lakhs, presuming that he is not eligible for exemption as small service provider. The entire amount, are to be taken as inclusive of service tax and service tax is payable by back calculations.

Assuming service tax rate as 12.36%, the 'value' would be ₹ 9,78,996.08 and service tax @ 12.36% would be ₹ 1,21,003.92.

Solution to Question 3 (c)

Situs of a factory alone should not be considered as the sole criterion for clubbing its clearances with the other factory's clearances. The clubbing of clearances is dependent upon the facts and circumstances of each case. Two factories located in the same premises with common boundaries cannot be treated as one factory for the purpose of SSI exemption if they had separate staff, management passage, separate entrance with separate central excise registration and produced different end products.

Mere common boundary did not make them as one factory even though at the apex level both the factories are maintained by one company. [Rollantainers Ltd. 170 ELT 257(SC)]

Question 4

(a) Mrs. Anuradha rendered taxable services to a client. A bill of ₹60,000 was raised on 29-4-2013. ₹25,000 was received from a client on 1-7-2013 and the balance on 23/10/2013. No service tax was separately charged in the bill. The questions are:

(i) Is Mrs. Anuradha liable to pay service tax, even though the same has not been charged by her?

(ii) In case she is liable, what is the value of taxable services and the service tax payable, if service tax rate is 12.36% plus education cess as applicable?

(b) M/s. Joyce & Associates, a firm of Cost and Management Accountants, raised an invoice for₹38,605 (35,000 + service tax of ₹4,326 @ 12.36%) on 12th April, 2013. The client paid lump sum of ₹36,000 on 2nd June, 2013 in full and final settlement:

(i) How much service tax M/s. Joyce & Associates have to pay and what is the due date for payment of service tax?

(ii) What will be the liability if the client refuses to pay service tax and pays only ₹ 35,000?

(c) Fuel Life Ltd. entered into a contract, with foreign suppliers for import of crude sunflower seed oil on 5th July, 2013. The contract was entered into for supply of crude sunflower seed oil at the rate of US$ 525 CIF/metric ton. The consignment was to be shipped in the month of August 2013, which was extended till mid-September, after mutual agreement between the parties. The crude oil consignment was actually shipped on 5th September, 2013, at the price prevailing at the contract date.

The Assessing Officer refused to accept the contract price as the 'transaction value', on the ground that, the international market price has increased drastically, after the expiry of the original shipment period.

In the light of decided case, discuss whether the contention of the Assessing Officer is tenable in law.

Solution to Question 4 (a)

(i) Ms. Anuradha is liable to pay tax, even if tax was not charged separately.

(ii) ₹ 60,000 will be treated as inclusive of service tax. Hence, 'Value' for service tax is ₹ 53,400 [(₹60,000 × 100)/112.36]. Service tax @ 12.36% is ₹6,600.24, including Education cess is ₹ 128.16 and SAH Education cess is ₹64.08.

The tax is payable on 5th July, 2013 if paid by cheque/cash and 6th July, 2013 if paid electronically.

Solution to Question 4 (b)

(i) ₹36,000 is treated as inclusive of service tax @ 12.36%. Hence, making back calculations, service tax will be ₹3,960.12 on value of ₹32,039.87.

(ii) ₹35,000 is treated as inclusive of service tax @ 12.36%. Hence, making back calculations, service tax will be ₹3,850.12 on value of ₹31,149.88.

Solution to Question 4 (c)

The facts of the given case are similar to the decided case of **Commissioner of Customs., Vishakhapatnam v. Aggarwal Industries Ltd. 2011(272) E.L.T 641 (S.C).**

In the said case, the assessee had entered into a contract on 26thJune, 2001, with foreign suppliers for import of crude sunflower seed oil at the rate of US$ 435 CIF/Metric Ton. Though, the consignment was supposed to be shipped in the month of July 2001, the consignment was actually shipped on 5th August, 2001. After expiry of the initial shipment period, the shipment period was agreed to be extended to 'mid August 2001'.

The Revenue refused to accept the contract price as the 'transaction value', in terms of Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, on the ground that, the international market price has increased drastically, after the expiry of the original shipment period. The Revenue intended to levy duty on the increased prices.

The Supreme Court held that, the extension of time limit for shipping of consignment was mutually agreed upon between the parties. Though, the commodity involved volatile fluctuations in its price in the international market, the supplier did not increase the price of the commodity even after increase in the international market price. There was no allegation of the supplier and the assessee, being in collusion. Thus, the increased price cannot be considered for valuation of the crude sunflower seed oil. The Apex Court allowed the appeal in favour of the assessee.

Thus, it can be inferred that the contention of the Assessing Officer, in the case of Fuel Life Ltd., is not tenable in law.

Question 5

(a) Mr. Devesh Verma, an Indian resident, aged 52 years, returned to India after visiting England on 31.10.2013. He had been to England on 10.10.2013. On his way back to India he brought following goods with him –

(i) His personal effect like clothes etc. valued at ₹ 40,000.
(ii) 1 litre of Wine worth ₹ 1,000.
(iii) A video cassette recorder worth ₹ 11,000
(iv) A microwave oven worth ₹ 20,000.

What is the customs duty payable?

(b) A consignment is imported by air. CIF price is 10,000 US Dollar. Freight is 4,000 US $. Insurance cost was $ 200. Following dollar rates are available on the date of presentation of bill of entry : (*a*) RBI Floor rate : ₹ 43.21 (*b*) Inter-bank closing rate : ₹ 43.23 (*c*) Rate notified by CBE&C under section 14 (3) (a) (i) of Customs Act : ₹ 44.66 (*d*) Rate at which bank has realised the payment from importer : ₹ 44.02. Find Value for customs purposes.

Solution to Question 5(a)

As per Rule 3 of the baggage Rules, 1998 passengers above 10 years of age and returning after stay abroad of more than 3 days are eligible for the following general free allowance :

(i) Used personal effect of any amount;
(ii) Articles other than those mentioned in Annex-I, up to a value of ₹ 35,000, if these are carried on the person or in the accompanied baggage of the passenger;

Therefore, in the instant case, the total customs duty payable by the passenger will be as follows:

Articles	**Duty**
1. Used personal effects	No Duty
2. Wine upto 1 Ltr. can be accommodated in General Free Allowance	₹ 1,000
3. Video cassette recorder is dutiable	₹ 11,000
4. A microwave oven	₹ 20,000
Total Dutiable goods imported (that can be accommodated in General Free Allowance)	₹ 32,000
Total General Free allowance (As per rule 3 of the Baggage Rules)	₹35,000
Balance Goods on which duty is payable	NIL
Duty payable	NIL

Solution to Question 5(b)

CIF Price	$ 10,000
(–) Freight	$ 4,000
(–) Insurance	$ 200
FOB Price	$ 5,800
(+) Freight @ 20% on FOB	$ 1,160
(+) Insurance	$ 65.25
CIF Value for Customs	$ 7,025.25
Equivalent INR USD 3,236 × 44.66 =	**₹ 3,13,747.66**
(+) Landing charges @ 1% =	**₹ 3,137.47**
ASSESSABLE VALUE	**₹ 3,16,885.14**

Question 6

(a) Customs value (Assessable Value) of imported goods is ₹ 10,00,000. Basic Customs duty payable is 10%. If the goods were produced in India, excise duty payable would have been 10%. Education cess is as applicable. Special CVD is payable at appropriate rates. Find the Customs duty payable.

(b) Discuss the admissibility of deduction of interest Paid on more than one loan borrowed for purchase or construction of same house.

Solution to Question 6(a)

		Duty (%)	Amount (₹)	Total Duty (₹)
(A)	Assessable Value		10,00,000.00	
(B)	Basic Customs Duty	10	1,00,000.00	1,00,000.00
(C)	Sub-Total for calculating CVD '(A+B)'		11,00,000.00	
(D)	CVD 'C' × excise duty rate	10	1,10,000.00	1,10,000.00
(E)	Education cess of excise – 2% of 'D'	2	2,200.00	2,200.00
(F)	SAH Education cess of excise – 1% of 'D'	1	1,100.00	1,100.00
(G)	Sub-total for Edu-cess on customs 'B+D+E+F'		1,13,300.00	
(H)	EduCess of Customs – 2% of 'G'	2	2,266	2,266
(I)	SAH Education Cess of Customs – 1% of 'G'	1	1,133	1,133
(J)	Sub-total for Spl CVD 'C+D+E+F+H+I'		12,16,699	
(K)	Special CVD u/s 3(5) – 4% of 'J'	4	48,667.96	48,667.96
(L)	Total Duty			2,65,366.96
(M)	Total duty rounded off			2,65,367

Solution to Question 6(b)

There is no bar in section 24 of the Income Tax Act regarding the number of loans on which interest is allowable simultaneously. In fact the simple rule of the deduction of interest u/s 24 of the Income Tax Act is that, whatever be the interest paid or due on loan borrowed for purchase or construction of house is allowable as deduction. So, whether you take loan from one bank or five banks, all loan should be utilised for buying or constructing the house for allowance of interest paid to all the banks.

However, as far as self occupied house is concerned, the allowance of interest is limited to ₹1,50,000 per owner.

Question 7

(a) Discuss briefly with reference to decided case laws as to how the 'value' shall be determined under section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 1988 in the following cases :

(i) Goods are offered at specially reduced price to buyer and the buyer is asked not to disclose the specially reduced price to any other party in India.
(ii) There has been a price rise between the date of contract and the date of importation.
(iii) The contract was over 6 months before the date of shipment.
(iv) The sale involves special discounts limited to exclusive agents.

(b) FOB Cost of a consignment is 10,000 UK Pounds. Insurance and transport costs are not available. What is Customs Value? On the date of filing of bill of entry, Reserve Bank of India reference rate of US $ was 43.37 and inter-bank closing rates were :₹ 43.38 per US $ and ₹ 69.38 per UK Pound. Exchange rate announced by Board (CBE&C) by customs notification was ₹ 69.78 per British Pound. T T buying rate was 69.70 and T T selling rate was ₹ 69.61 per UK pound.

(c) In respect of computation of income from house property, how shall one determine share in property?

Solution to Question 7(a)

(i) Where sales are made to buyers at specially reduced prices, the prices so offered cannot be said to be the ordinary prices. In Padia Sales Corporation v Collector of Customs (1993) 66 ELT 35 (SC) the Supreme Court held that where the goods are offered to the buyers is asked not to disclose the specially reduced price to any other party, then the said price will not be acceptable.

(ii) Where there is a price rise at the time when the goods are imported in comparison to the price when the contract was made then, the price at the time of importation will be taken to be the value of the goods. In Rajkumar Knitting Mills Pvt. Ltd. v Collector of Customs (1998) 98 ELT 292 (SC), the Supreme Court held that the contract price may have bearing while determining the value of the goods, but he value is to be determined at the time of importation of the goods.

(iii) In Eicher Tractors Ltd. v Commissioner of Customs, Mumbai (2000) 122 ELT 321 (SC) the Supreme Court held that the price paid by the importer to the vendor in the ordinary course of commerce shall be taken to be the value of imported goods. Since the buyer and the seller are not related and the price is the sole consideration for sale, the

discounted price was taken as the assessable value. However this decision has been nullified by the Customs Valuation Price of Imported Goods Rules, 2002 and consequently, where the sale involves special discounts limited to exclusive agents, such discounted price shall not be accepted as the assessable value.

(iv) Where high sea sales are made, the price charged by the importer from the assessee will be taken to be the value of the goods. Similar view was expressed by the Tribunal in Godavari Fertilizers v C.C.Ex. (1996) 81 ELT 535 (Tri.).

Solution to Question 7(b)

FOB Price	$ 10,000
Add : Freight @ 20%	$ 2,000
Add : Insurance @ 1.125% on FOB	$ 112.50
CIF	$ 12,112.50
Exchange Rate	₹ 69.78 per $
CIF Value (in ₹) ($ 7,267.50×69.78)	₹ 8,45,210.25
Add : Landing charges @ 1% on CIF Value =	₹ 8,452.10
Assessable Value for Customs	**₹ 8,53,662.35**

Solution to Question 7(c)

The document of registration of the property is the main document in which proportion of the house is registered along different co-owners. If nothing has been written specifically about share in which property is shared between two owners (as, in the case of husband-wife) in the registration document, the ownership should be deemed to be 50: 50.

Question 8

(a) An assessee has factory in Kolkata. As a sales policy, he has fixed uniform price of ₹ 2,000 per piece (excluding taxes) for sale anywhere in India. Freight is not shown separately in his invoice. During F.Y. 2011-12, he made following sales –

(i) Sale at factory gate in Kolkata – 1,200 pieces – no transport charges

(ii) Sale to buyers in Gujarat – 600 pieces –actual transport charges incurred – ₹ 28,000

(iii) Sale to buyers in Bihar – 400 pieces – actual transport charges incurred – ₹ 18,000

(iv) Sale to buyers in Kerala – 1,000 pieces – Actual transport charges – ₹ 54,800.

Find assessable value.

(b) An importer imports some goods @ 10,000 US $ on CIF basis. Following dollar rates are available on the date of presentation of bill of entry :

(i) RBI Floor rate : ₹ 43.21

(ii) Inter-bank closing rate :₹ 43.23.

(iii) Rate notified by CBE&C under section 14 (3) (a) (i) of Customs Act : ₹ 44.66

(iv) Rate at which bank has realised the payment from importer :₹ 44.02.

Find the assessable value for customs purposes.

(c) Given Mr.X and Mrs. X (husband-wife relationship)are both salaried employees, purchasing a house jointly. Mr.X is taking a loan of Rs 25 Lakhs from Govt. and another loan of Rs.10 Lakhs from HDFC which is on joint name of both self and wife. Total interest outgo will be approx₹ 2.5 Lakhs in initial years. Can we split the total interest equally between self and wife for the purpose of claiming deduction under Sec 24 C or only the interest component from ₹10 Lakhs loan (which is in joint name) can be shared? Also how to determine the share of property between husband and wife for the purpose of claiming tax deduction?

Solution to Question 8(a)

- The total pieces sold are 3,200 (1,200 + 600 + 400 + 1000).
- The actual total transport charges incurred are ₹ 1,00,800 (Nil + 28,000 + 18,000 + 54,800).
- Thus, equalized (averaged) transport charges per piece are₹ 31.50.
- Hence, assessable value will be ₹ 1968.50 (₹ 2,000 – ₹ 31.50). This will apply to all 3,200 pieces sold by the manufacturer.

Solution to Question 8(b)

The relevant exchange rate is ₹ 44.66.

Thus, CIF Value of goods is ₹ 4,46,000.

Landing charges [rule 9 (2) of Customs Valuation Rules] @1% of CIF Value are to be added - i.e. ₹ 4,460.

Thus, Customs Value or Assessable Value is ₹ 4,50,460.

Solution to Question 8(c)

As , Mr. X and his wife have taken joint loan from HDFC only , therefore, both co-owner can claim interest 50 % each in case of interest paid to HDFC. Mr. X can additionally claim for

interest on loan from Government sources to the extent, that aggregate cannot exceed ₹1.5 Lakh.

Question 9

(a) With reference to the provisions of section 4 of the Central Excise Act, 1944, compute/derive the assessable value of excisable goods, for levy of duty of excise, given the following information:

	Amount(₹)
Cum-duty wholesale price including sales tax of₹5,000	**30,000**
Normal secondary packing cost	**2,000**
Cost of special secondary packing	**3,000**
Cost of durable and returnable packing	**3,000**
Freight	**2,500**
Insurance on freight	**400**
Trade discount (normal practice)	**3,000**
Rate of Central Excise duty as per Central Excise Tariff	**12% Ad-valorem**

State in the footnote to your answer, reasons for the admissibility or otherwise of the deductions.

(b) In a case where a product is sold below the cost price for penetrating the market, should such price be considered as transaction value?

Solution to Question 9 (a)

The assessable value from cum-duty price can be worked out by the under-mentioned formula.

Computation of Assessable value

	₹	₹
Cum-duty price		30,000
Less : Deductions (See Notes)		
Sales tax	5,000	
Durable & returnable-packing	3,000	
Freight	2,500	
Insurance	400	
Trade-Discount	3,000	13,900
		16,100
Less: Central Excise Duty thereon @ 12.36% Ad-valorem		
16,100 × 12.36/112.36		1771.06
Assessable value		**14,328.94**

Notes:

1. The transaction value does not include Excise duty, Sales tax and other taxes.
2. The Excise duty is to be charged on the net price, hence trade discount is allowed as deduction.

3. With regards to packing, all kinds of packing except durable and returnable packing is included in the assessable value. The durable and returnable packing is not included as the such packing is not sold and is durable in nature.

4. Freight and insurance on freight will be allowed as deduction only if the amount charged is actual and it is shown separately in the invoice as per Rule 5 of the Central Excise Valuation Rules, 2000.

Solution to Question 9(b)

Relevant Judicial Case: CCEx., Mumbai v. Fiat India Pvt. Ltd. 2012 (283) E.LT. 161(S.C.)

Facts of the Case: The Fiat India Pvt. Ltd. (Fiat) was the manufacturer of motor cars. They were selling Fiat UNO model cars below cost and were making losses in wholesale trade. The purpose was penetration of market and competing with other manufacturers of similar goods. The prices were not based on manufacturing cost and profit. The cost of production of the cars was much more than their wholesale price, but they were being sold at loss for a consideration. This was happening over the period of five years.

Point of Dispute: - The Department disputed that as the extra commercial consideration was involved in this case, an additional consideration should be added to the price for the purpose of duty.

Observations of the Court: The Supreme Court observed that as per section 4(1)(a) of the Central Excise Act, 1944, duty is paid on the "transaction value' in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale. If any of these ingredients is missing, the price shall not be considered as transaction value.

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

Decision of the Case: The Apex Court therefore held that, in the instant case, the selling price could not be accepted as transaction value.

Question 10

(a) Determine the transaction value and the Excise duty payable from the following information: (i) Total Invoice Price ₹36,000; (ii) The Invoice Price includes the following :

1. Sales-tax	**₹ 2,000**
2. Surcharge on ST	**₹ 200**
3. Octroi	**₹ 200**
4. Insurance from Factory to depot	**₹200**
5. Freight from factory to depot	**₹ 1,400**
6. Rate of Basic Excise duty	**10% ad valorem**
7. Rate of Special excise duty	**24% ad valorem**

(b) Does assembling of the testing equipments for testing the final product in the factory amount to manufacture?

Solution to Question 10(a)

The Transaction Value of the excisable goods shall be calculated as under:

Particulars	**Amount(₹)**	**Amount(₹)**
Invoice price (taken as depot price)		36,000
Less: Sales Tax	2,000	
Less: Surcharge on Sales Tax	200	
Less: Octroi	200	2,400
		33,600
Rate of Excise Duty = 35.02% [10% Basic plus 24% special plus 3% Education Cess]		
Excise Duty Payable	₹ (33,600 × 35.02)/135.02	8,715
TRANSACTION VALUE	₹ (33,600 × 100)/135.02	24,885

NOTE: Deduction of insurance and transport charges from factory to depot will not be available.

Solution to Question 10(b)

Relevant Judicial Case: Usha Rectifier Corpn. (I) Ltd. v. CCEx., New Delhi 2011 (263) E.LT. 655 (S.C.)

Facts of the case: The appellant was a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products.

Balance sheet of the appellant stated that the testing equipments had been capitalised. The said position was further substantiated in the Director's report wherein it was mentioned that during the year, the company developed a large number of testing equipments on its own. However, the assessee contended that such items were assembled in the factory for purely research and development purposes, but research being unsuccessful, same were dismantled. Hence, it would not amount to manufacture.
The appellant further submitted that the said project was undertaken only to avoid importing of such equipment from the developed countries with a view to save foreign exchange.

Decision of the case: The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable. Hence, the Apex Court held that duty was payable on such testing equipments.

Question 11

(a) How would you arrive at the assessable value for the purpose of levy of excise duty from the following particulars :

- **Cum-duty selling price exclusive of sales tax ₹ 40,000**
- **Rate of excise duty applicable to the product 12.36%**
- **Trade discount allowed ₹ 4,800**
- **Freight ₹ 3,000**

(b) In a case where the manufacturer clandestinely removes the goods and stores them with a firm for further sales, can penalty under Rule 25 of the Central Excise Rules, 2002 be imposed on such firm?

Solution to Question 11(a)

The Assessable Value of the excisable goods shall be calculated as under:

Particulars	Amount(₹)	Amount(₹)
Cum-duty selling price		40,000
Less: Trade discount allowed	4,800	
Less: Freight	3,000	7,800

		32,200
ASSESSABLE VALUE	₹ (32,200 × 100)/112.36	28,658

Solution to Question 11(b)

Relevant Judicial Case: CCEx. v. Balaji Trading Co. 2013 (290) E.LT, 200 (Del.)

Facts of the case: Prabhat Zarda Factory was engaged in manufacturing zarda which had the brand name of "Ratna". It clandestinely cleared 'Ratna' zarda and stored them with Balaji Trading Co. (respondents) for further sales. The respondents were allegedly the related concerns of Prabhat Zarda Factory.

Commissioner (Adjudication) imposed a penalty under rule 25 of the Central Excise Rules, 2002 on the respondents. However, in an appeal filed by the respondents to CESTAT, CESTAT noted that penalty under rule 25 could be imposed only on four categories of persons:-

(a) producer;
(b) manufacturer;
(c) registered person of a warehouse; or
(d) a registered dealer.

Since, the respondents were neither producers nor manufacturers of the said zarda, neither were they the registered persons of a warehouse in which the said zarda had been stored nor were the registered dealers, penalty under rule 25 (higher of duty payable on excisable goods in respect of which contravention has been committed or ₹ 2,000), could not be imposed on the respondents.

Decision of the case: The Department aggrieved by the said order filed an appeal with High Court wherein it contended that rule 25(1)(c) of the Central Excise Rules, 2002 would be applicable in the instant case. However, High Court concurred with the view of the Tribunal and concluded that rule 25(1)(c) would have no application in the presentcase-

Note: Rule 25(1)(c) of the Central Excise Rules 2002 provides that in case of manufacture, production or storage of any excisable goods without having applied for the registration certificate, a penalty not exceeding the duty on such excisable goods or ₹ 2,000, whichever is greater is leviable on the producer, manufacturer, registered person of a warehouse or a registered dealer committing such contravention.

Question 12

(a) The cum-duty price per piece was ₹260 and the assessee had paid duty @ 20% ad-valorem. Subsequently, it was found that the rate of duty was 30% ad-valorem and the assessee had not collected anything over and above ₹260 per piece. Determine the assessable value.

(b) Health Ltd. is engaged in the manufacture of tablets that has an MRP of ₹500 per strip of 20 tablets. The company cleared 60,000 tables and distributed as physician's sample. The goods are not covered by MRP provisions, but MRP includes 12% excise duty and 4% CST. If the cost of production of the tablet is ₹10 per tablet, determine the total duty payable.

(c) The assessee claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. Is the CENVAT credit availed by the assessee required to be reversed?

Solution to Question 12(a)

If the price, as collected by the assessee, is inclusive of taxes, levied at a lesser rate, then the assessable value of the dutiable goods, shall be calculated as under:

Assessable value = ₹ (260 x 100)/ 130 = ₹200.

Solution to Question 12(b)

Where a product is not covered under MRP provisions, Section 4A does not apply and valuation is required to be done as per the Central Excise Valuation Rules. CBEC has vide its circular, clarified that physicians samples or other samples distributed free of cost are to be valued under Rule 11 read with Rule 4 of the Valuation Rules,2000.

Under Rule 4, such samples are to be valued at the value of such goods nearest to the time of removal.

Computation of Duty Payable

Particulars	₹
Maximum Retail Price per strip	500.00
Less: CST @ 4% [₹500 x 4/104]	19.23
Cum-duty Price	480.77
Less: Excise Duty (including Cess) @ 12.36% [480.77 x 12.36/112.36]	52.88
Assessable Value	427.89
Excise Duty (including Cess) [₹427.89x 12.36%]	52.88

Note: It is assumed that MRP is the cum-duty price collected by Health Ltd. on its normal sales. Excise duty rate is assumed to be inclusive of Education Cess and SHEC.

Solution to Question 12(c)

Relevant Judicial Case:CCE v. Tata Advanced Materials Ltd. 2011 (271) E.LT. 62 (Kar.)

Facts of the case: The assessee purchased some capital goods and paid the excise duty on it. Since, said capital goods were used in the manufacture of excisable goods, he claimed the CENVAT credit of the excise duty paid on it. However, after three years the said capital goods (which were insured) were destroyed by fire. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods. Excise Department demanded the reversal of the CENVAT credit by the assessee on the ground that the assessee had availed a double benefit.

Decision of the case: The High Court observed that merely because the Insurance Company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the CENVAT credit wrong or irregular. At the same time, it did not provide a reason to the Excise Department to demand reversal of credit or default to pay the said amount.

The assessee had paid the premium and covered the risk of these capital goods and when the goods were destroyed in terms of the Insurance policy, the Insurance Company had compensated the assessee. It was not a case of double payment as contended by the Department. The High Court, therefore, answered the substantial question of law in favour of the assessee. '

Question 13

(a) From the following data, determine the CENVAT allowable if the goods are produced or manufactured in a FTZ or by a 100% EOU and used in any other place in India.

Assessable value: ₹ 1,000 per unit,

Quantity cleared 1,10,000units,

BCD - 10%,

CVD – 10%

(b) M/S Illuminia has three units situated in Bangalore, Delhi and Pune. The total clearances from all these three Small Scale units of excisable goods were ₹ 350 lakhs during the financial year, 2013-2014. However, the value of individual clearances of excisable goods from each of the said units was Bangalore Unit ₹ 150 lakhs; Delhi Unit ₹ 100 lakhs; and Pune Unit ₹ 100 lakhs.

Discuss briefly with reference to the Notifications governing small scale industrial undertakings under the Central Excise Act, 1944 whether the benefit of exemption would be available to M/s Illuminia for the financial year, 2014-2015.

(c) Whether expenditure like travel, hotel stay, transportation and the like incurred by service provider in course of providing taxable service should be treated as consideration for taxable service and included in value for charging service tax?

Solution to Question 13 (a):

As per Rule 3 of CENVAT Credit Rules, 2002 the following formula is to be used if a unit in DTA purchases goods from EOU –

CENVAT = 50% of Assessable value × {[1 + BCD/100] × CVD/100}

Hence, CENVAT Available per unit is as follows –

CENVAT = 0.50 × 1,000 x {[1 + 10/100] × 10/100}

= 500 {1.10 × .10}

= ₹55 per unit

Hence, CENVAT allowable on 1,10,000 units =1,10,000 units ×₹ 55 = ₹60,50,000.

Solution to Question 13 (b):

Any SSI unit whose turnover was less than ₹400 Lakhs in the previous year is entitled for exemption irrespective of their investment in plant & machinery or number of employees.

Where the manufacturer has more than one factory, the turnover of all factories will have to be clubbed together for the purpose of calculating the SSI exemption limit of ₹ 400 lakhs.

Since in the above case, the total value of clearances during the preceding financial year 2013-2014 is 350 lakhs, hence it will be entitled for the SSI benefit.

Solution to Question 13 (c):

Relevant Judicial Case: Intercontinental Consultants & Technocrats Pvt Ltd. v. Union of India 2013 (29) S.T.R. 9 (Del.)

Observations of the Court: The above question came up for consideration before the Delhi High Court. The High Court noted that as per Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as Rules), expenditure/costs, such as travel, hotel stay, transportation, etc. incurred by service provider in course of providing taxable service has to be treated as consideration for taxable service and included in value for charging service tax.

The High Court observed that since section 67(1) of Finance Act, 1994 is subject to provisions of Chapter V - which includes section 66 (now section 66B) - the value of taxable services has to be in consonance with section 66 which levies tax only on taxable service. Thus, there

is an inbuilt mechanism to ensure that only taxable service are evaluated under section 67 which provides that value of taxable service is the gross amount charged by service provider 'for such service'.

The High Court, therefore, opined that it is only the consideration for the taxable service which is chargeable to tax under the relevant Sections. However, rule 5(1) goes far beyond the charging provisions as it includes the expenditure and costs - which are incurred by the service provider "in the course of providing taxable service" - in the value of the taxable service.
The High Court elaborated that power to make rules could not exceed or go beyond the section which provides for charge or collection of service tax. The High Court clarified that even though section 94 prescribes to lay every rule framed by Central Government before each House of Parliament, which have power to modify them; the same cannot add any greater force to the Rules than what they ordinarily have as species of subordinate legislation.

The High Court further observed that rule 5(1) may also result in double taxation, if expenses like air travel tickets, had already been subjected to service tax. The High Court was of the view that double taxation can be imposed only when it is clearly provided for and intended. It can never be enforced by implication.

Decision of the case: The High Court, therefore, held that rule 5(1) of the Rules runs counter and is repugnant to sections 66 and 67 of the Act and to that extent it is ultra vires the Finance Act, 1994.

Note: It may be noted that the since the Delhi High Court didn't refer to other judgments in this regard, which sought to include reimbursements as part of taxable value, it may be challenged at the Supreme Court.

Question 14

(a) What is the assessable value in the following case?

Dates	**4.2.2014**	**8.2.2014**	**12.2.2014**	**16.2.2014**	**20.2.2014**
X Computers(Y1 composition)	₹35,000	₹35,500	?	₹35,800	₹35,500
S Computers (Y2 composition)	₹28,000	₹29,000	₹32,000	₹31,800	₹30,900

(b) A society, running renowned schools, allows other schools to use a specific name, its logo and motto and receives a non-refundable amount and annual fee as a consideration. Whether this amounts to a taxable service?

Solution to Question 14 (a)

The price of the excisable goods removed is not available at the time of removal. Value of excisable goods shall be based on the value of such goods sold by the Assessee for delivery at any other time nearest to the time of removal of goods under assessment. Price prevailing at the nearest time may be adjusted for differences in dates of delivery & nearest dates.

Such goods: In the above case, for valuing X Computers cleared on 12.2.2014, value of such goods, i.e. X Computers, sold during the nearest time only should be considered. S Computers are not such goods, as the composition of the computers are different, referred as Y1 composition and Y2 composition. Such goods refer to same goods or identical goods.

Value on nearest date: Nearest date in the instant case, i.e. 8th February, 2014 and 16th February, 2014. Interpolating the value between these two dates, value as on 12th February, 2014 is ₹ 35,650 (adjustment for difference in dates).

Solution to Question 14 (b)

Relevant Judicial Case: Mayo College General Council v. CCEx. (Appeals) 2012 (28) STR 225 (Raj)

Facts of the case: The petitioner, Mayo College, was a society running internationally renowned schools. It allowed other schools to use the name 'Mayoor School', its logo and motto, and as a consideration thereof received collaboration fees from such schools which comprised of a non-refundable amount and annual fee. The schools were required to observe certain obligations/terms and unimpeachable confidentiality.

Points of dispute: The department contended that the petitioner was engaged in providing franchise service to schools that were running their institutes using its school name "Mayoor School". Therefore, a show cause notice proposing recovery of service tax along with interest and penalty was issued against them.

The petitioners submitted that they did not provide any franchise services to the said schools, rather they provided their expertise for the establishment and development of these schools. The agreement entered into between the petitioners and the said schools also did not reveal that any franchise service was provided by the petitioner to these schools. It was contended by the petitioners that they were a non-profit society carrying on non-commercial activities and that their main obligation was to maintain the high standard of the education in the said schools. Further, they did not collect any 'franchise fees' from the said schools and therefore, were not liable to pay service tax.

Decision of the case: The High Court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing 'franchise service' to the said schools and if the petitioner realized the 'franchise' or 'collaboration fees' from the franchise schools, the petitioner was duty bound to pay service tax to the department.

Question 15

(a) Determine the value on which Excise duty is payable in the following instances. Quote the relevant section/rules of Central Excise Law.

(i) A Ltd. sold goods to B Ltd., at a value of ₹ 100 per unit, In turn, B Ltd. sold the same to C Ltd. at a value of ₹ 110 per unit. A Ltd. and B Ltd. are related, whereas B Ltd. and C Ltd. are unrelated.

(ii) A Ltd. and B. Ltd. are inter-connected undertakings, under section 2(g) of MRTP Act. A Ltd. sells goods to B Ltd. at a value of ₹ 100 per unit and to C Ltd. at ₹ 110 per unit, who is an independent buyer.

(iii) A Ltd. sells goods to B Ltd. at a value of ₹ 100 per unit. The said goods are captively consumed by B Ltd. in its factory. A Ltd. and B Ltd. are unrelated. The cost of production of the goods to A Ltd. is ₹ 120 per unit.

(iv) A Ltd. sells motor spirit to B Ltd. at a value of ₹ 31 per litre. But motor spirit has administered price of ₹ 30 per litre, fixed by the Central Government.

(v) A Ltd. sells to B Ltd. at a value of ₹ 100 per unit. B Ltd. sells the goods in retail market at a value of ₹ 120 per unit. The sale price of ₹ 100 per unit is wholesale price of A Ltd. Also, A Ltd. and b Ltd. are related.

Depot price of a company are –

Place of removal	Price at depot on 1-1-2014	Price at depot on 31-1-2014	Actual sale price at depot on 1-2-2014
Amritsar Depot	₹ 100 per unit	₹ 105 per unit	₹ 115 per unit
Bhopal Depot	₹ 120 per unit	₹ 115 per unit	₹ 125 per unit
Cuttack Depot	₹ 130 per unit	₹ 125 per unit	₹ 135 per unit

Additional information: (i) Quantity cleared to Amritsar Depot – 100 units (ii) Quantity cleared to Bhopal Depot – 200 units (iii) Quantity cleared to Cuttack Depot – 200 units (iv) The goods were cleared to respective depots on 1-1-2014 and actually sold at the depots on 1-2-2014.

(b) Can the time-limit prescribed under section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Act?

Solution to Question 15(a)

(i) Transaction value ₹ 110 per unit (Rule 9 of Transaction value Rules). [Sale to unrelated party].

(ii) Transaction value ₹ 100 per unit for sale to B and ₹ 110 for sale to C – Rule 10 read with Rule 4 [Note that inter connected undertaking will be treated as 'related persons' for purpose of excise valuation only if they are 'holding and subsidiary' or are 'related person' as per any other part of the definition of 'related person'. Note that A is selling directly to C as per the question, and not through B Ltd].

(iii) Transaction value will be ₹ 100. – Section 4(1)—Incase of sale to unrelated person, question of cost of production does not arise.

(iv) Transaction value ₹ 31. – Section 4. – Since the goods are actually sold at this price, administered price is not considered.

(v) Transaction value ₹ 120 per unit – Rule 9 read with section 4 of Central Excise Act. Sale to an unrelated buyer. [Under new rules, there is no concept of 'wholesale price and retail price'].

(vi) Under Rule 7, the price prevailing at the Depot on the date of clearance from the factory will be the relevant value to pay Excise duty.

Therefore:

(i) Clearance to Amritsar depot will attract duty based on the price as on 1-1-2014. Transaction value ₹ 110 × 100 units = ₹ 11,000

(ii) Clearance to Bhopal depot. Depot price on 1-1-2014. Transaction value ₹ 120 × 200 units = ₹24,000

(iii) Clearance to Cuttack Depot. Depot price on 1-1-2014. Transaction value ₹ 130 × 200 units = ₹ 26,000.

Note: The relevant date is 1-1-2014, since the goods were cleared to the depots on that date. No additional duty is payable even if goods are later sold from depot at higher price.

Solution to Question 15(b)

Relevant Judicial Case: CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.LT. 401 (Guj.)

The aforesaid question came up for consideration before the High Court. The High Court noted that though section 46 does not provide for any time-limit for filing a bill of entry by an importer upon arrival of goods, section 48 permits the authorities to sell the goods after following the specified procedure, provided the same are not cleared for home consumption/ warehoused/ transhipped within 30 days of unloading the same at the customs station.

The High Court however held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit for filing of bill of entry.

Note: Section 46 of the Customs Act 1962 contains the provisions relating to filing of bill of entry in relation to imported goods by the importer with the proper officer. It provides that the bill of entry may be presented at any time after the delivery of the import manifest/import report as the case may be, but does not prescribe any specific time-limit for the presentation of the same.

Section 48 provides that if any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within 30 dap from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof.

Question 16

(a) An assessee cleared various manufactured final products during June 2013. The duty payable for June 2013 on his final products was as follows – Basic – ₹ 2,00,000; Education Cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows – Basic duty – ₹ 50,000, Education Cess – ₹ 1,000, SAH education Cess₹ 500. Excise duty paid on capital goods received during the month was as follows – Basic duty – ₹ 12,000. Education Cess - ₹ 240. SAH education cess - ₹ 120. Service tax paid on input services was as follows – Service Tax – ₹ 10,000. Education cess – ₹ 200 SAH Education Cess - ₹ 100. How much duty the assessee will be required to pay by GAR-7 challan for the month of June 2013, if assessee had no opening balance in his PLA account? What is last date for payment?

(b) In aforesaid example, calculate duty payable by GAR-7 challan if assessee had following balance in his PLA account on 6-6-2013 (after debiting utilised amount for payment of duty for May 2013) - Basic duty - ₹ 1,70,000, Service tax - ₹ 30,000. Education Cess - ₹ 4,000. SAH Education Cess - Nil.

Solution to Question 16(a)

Education Cess payable on final products is ₹ 4,000 (2% of ₹ 2,00,000). SAH education cess payable is ₹ 2,000.

The Cenvat credit available for June 2013 is as follows –

Description	Basic duty	Service Tax	Education Cess	SAH Education Cess
Inputs	50,000		1,000	500
Capital Goods (50% will be eligible and balance next year)	6,000		120	60

Input Service		10,000	200	100
Total	**56,000**	**10,000**	**1,320**	**660**

Credit of ₹ 66,000 (56,000 + 10,000) can be utilised for Basic duty Credit of education cess and SAH education cess can be utilised only for payment of education cess and SAH education cess on final product only.

Hence, duty payable through GAR-7 challan for June 2009 is as follows –

	Basic Duty ₹	**Education Cess** ₹	**SAH Education Cess** ₹
(A) Duty payable	2,00,000	4,000	2,000
(b) Cenvat Credit	66,000	1,320	660
Net amount payable (A-B)	1,34,000	2,680	1,340

Last date for payment is 5th July, 2013.

Solution to Question 16(b)

If credit was available on 1-6-2013, the total CENVAT credit available for June 2013 is as follows :

Description	**Basic duty**	**Service Tax**	**Education Cess**	**SAH Education Cess**
Opening balance	1,70,000	30,000	4,000	Nil
Inputs	50,000		1,000	500
Capital Goods (50% will be eligible and balance next year)	6,000		120	60
Input Service		10,000	200	100
Total	**2,26,000**	**40,000**	**5,320**	**660**

The duty payable will be as follows :-

Hence, duty payable through GAR-7 challan for June 2013 is as follows –

	Basic Duty	**Education Cess**	**SAH Education Cess**
(A) Duty payable	2,00,000	4,000	2,000
(b) Cenvat Credit (Basic plus service tax)	2,66 ,000	5,320	660
Net amount payable (A-B)	(-)66,000	(–1,120)	1,340

The credit of education cess of ₹ 1,120 is to be carried forward since the credit cannot be utilised for payment of any other duty. Credit of Basic duty can be utilised for payment of SAH education cess. Hence, the balance left in Basic duty account will be ₹64,660.

Thus, no Basic excise duty is required to be paid for the month of June 2013. Balance carried forward will be as follows - (a) Basic duty - ₹ 64,660 (b) Education Cess - ₹ 1,120.

Question 17

(a) The Profit & Loss Account of Fortuna Industries Ltd. for the previous year 2013-14, shows a net profit of ₹80 Lakhs after accounting for the following items:

(i) Depreciation of ₹24 Lakhs, was charged in the Profit and Loss Account. This amount included additional depreciation of ₹4 Lakhs on revalued assets. The amount of depreciation chargeable under Section 32 of the Income Tax Act, 1961, amounted to ₹18 Lakhs.

(ii) Interest of ₹6 lakhs due to a financial institution,was not paid before the due date of filling return of income.

(iii) Provision for doubtful debts was made at ₹1 lakh.

(iv) Provision for unascertained liabilities amounted to ₹2 lakhs.

(v) ₹5 lakhs was transferred to the General Reserve.

(vi) Net Agricultural Income amounted to ₹16 lakhs.

(vii) ₹3 lakhs was withdrawn from reserve created during the financial year 2010–11.

(Book profit was increased by the amount transferred to such reserve in Assessment year 2011 – 12.)

Compute Minimum Alternate Tax under Section 115JB of the Income Tax Act, 1961 for the A.Y. 2014 – 15.

(b) Can an amount paid under the mistaken belief that the service is liable to service tax when the same is actually exempt, be considered as service tax paid?

Solution to Question 17(a)

Computation of Book Profit under Section 115JB of the Income tax Act, 1961

Assessee: Fortuna Industries Limited

Assessment Year: 2014-15 **Previous Year: 2013-14**

Particulars	₹	₹
Net Profit as per Profit and Loss account		80,00,000
Add: Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB		
Transfer to general reserve	5,00,000	
Provision for unascertained liabilities	2,00,000	
Provision for doubtful debts	1,00,000	
Depreciation charged in the Profit and Loss Account (including the depreciation charged on revalued assets)	24,00,000	32,00,000

Less: Net Profit to be reduced by the following amounts as per Explanation 1 to Section 115JB		1,12,00,000
Amount transferred from reserve and credited to profit and loss account [since the book profit was increased by the amount transferred to such reserve in the Assessment Year 2010–11]	3,00,000	
Depreciation, as per Section 32 of the Income Tax Act, 1961		
Net Agricultural Income **[Exempt under section 10 (1)]**	18,00,000	
	16,00,000	37,00,000
Book Profit for computation of MAT under section 115JB		75,00,000

Computation of Minimum Alternate Tax (MAT) under Section 115JB of the Income Tax Act, 1961

Particulars	₹	₹
18.50% of book profit (18.5% of ₹75,00,000)		13,87,500
Add: Education cess @ 2%	27,750.00	
Secondary and higher education cess @ 1%	13,875.00	41,625
Minimum Alternate Tax payable under Section 115JB		**14,29,125**
Note – Explanation 1 to section 115JB does not require adjustment of interest not paid before due date of filling return of income, while computing book profit.		

Solution to Question 17(b)

Relevant Judicial Case: CCE (A) v. KVR Construction 2012 (26) STR195 (Kar.)

Facts of the Case: KVR Construction was a construction company rendering services under category of construction of residential complex service and were paying service tax in accordance with the provisions of the Finance Act, 1994. They undertook certain construction work on behalf of a trust and paid service tax accordingly. However, later they filed refund claim for the service tax so paid contending that they were not actually liable to pay service tax as it was exempt. Department also did not dispute the fact that service tax was exempted in the instant case.

However, the refund claim was rejected on the ground that same was filed beyond the limitation period provided in section 11B of Central Excise Act.

Point of Dispute: Is assessee eligible to claim refund on service tax paid on construction activity so done by them?

Observations of the Court: The High Court of Karnataka, distinguishing the landmark judgment by Supreme Court in the case of Mafatlal Industries v. UOI 1997 (89) E.L.T. 247 (S.C.) relating to refund of duty/tax, held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Therefore, mere payment of amount would not make it 'service tax' payable by the assessee.

The High Court opined that once there was lack of authority to collect such service tax from the assessee, it would not give authority to the Department to retain such amount and validate it. Further, provisions of section 11B of the Central Excise Act, 1944 apply to a claim of refund of excise duty/service tax only, and could not be extended to any other amounts collected without authority of law.

Decision of the Case: In view of the above, the High Court- held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.

Note: Under the negative list regime of taxation of services, the service of construction of a residential complex is a declared service under clause (b) of section 66E.

Question 18

(a) Mr. Vinod Dutta, an Indian resident, won a Tata Indica worth ₹ 6 Lakhs, as the first prize in a lottery. According to Section 194B of the Income Tax Act, 1961, tax has to be deducted at source from the winnings of lottery at the time of payment of the prize money.

Explain the procedure to be adopted before handing over the Tata Indica (the lottery prize) to Mr. Vinod Dutta.

(b) Is it necessary to establish omissions/commissions leading to evasion of duty before imposing the penalty under section 112(a)(ii) of the Customs Act 1962?

Solution to Question 18(a)

Section 194B of the Income Tax Act, 1961 provides that where the winnings are wholly in kind or partly in kind and partly in cash, but the cash part of it is not sufficient to meet the liability for tax deduction at source, in respect of the whole of the winnings, the person responsible shall, before releasing the winnings, ensure that, the tax has been paid in respect of the winnings.

Therefore, in the case under consideration, the entire winnings being in kind, a sum equal to the tax to be deducted at source (i.e. ₹1,80,000 being 30% of ₹6,00,000) must be collected from the assessee, by the agent and remitted to the Government account before releasing the lottery prize to him.

Thus, ₹1,80,000 - being 30% of ₹ 6,00,000 must be collected from the assessee, by the agent and remitted to the Government account before releasing the Tata Indica to him.

Solution to Question 18(b)

Relevant Judicial Case: O.T. Enasu v. UOI2011 (272) E.LT. 51(Ker.)
The High Court noted that under sub-clause (ii) of clause (a) of section 112, the liability to penalty is determined on the basis of duty sought to be evaded. Therefore, the jurisdictional fact to impose a penalty in terms of section 112(a)(ii) includes the essential ingredient that "**duty was sought to be evaded**". Being a penal provision, it requires to be strictly construed.
"Evade" means, to escape, slip away, to escape or avoid artfully, to shirk, to baffle, elude. The concept of evading involves a conscious exercise by the person who evades. Therefore, the process of "seeking to evade' essentially involves a mental element and the concept of the status "sought to be evaded" is arrived at only by a conscious attempt to evade.

In view of the above discussion, the High Court inferred that unless it is established that a person has, by his omissions or commissions, led to a situation where duty is sought to be evaded, there cannot be an imposition of penalty in terms of section 112(a)(ii) of the Act.

Note: Section 112(a)(ii) provides that any person who, in relation to any dutiable goods other than prohibited goods, does or omits to do any act which would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act shall be to a penalty not exceeding the duty sought to be evaded on such goods or rive thousand rupees, whichever is the greater.

Question 19

(a) Karuna Ashram, a charitable organization in India, imported 1200 metric tonnes of edible oil, for free distribution to a certain class of below poverty line citizens. The consignments were imported at a nominal price of US$ 15 per metric tonne, which was sufficient to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment, there were following imports of the same quality of edible oil:

Sl. No.	Quantity imported in metric tonnes	Unit Price in US$ (CIF)
1.	30	390
2.	150	330
3.	750	300
4.	1350	262.50
5.	600	270
6.	1170	240

The rate of exchange on the relevant date was 1US$ = ₹60 and the rate of Basic customs duty was 10% ad valorem. There is no countervailing duty or special additional duty. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations, where required.

(b) When shall a transaction be considered as an international transaction?

Solution to Question 19(a)

The following factors are required to be considered, while determining the transaction value of the goods:

1) In the given case, since US$ 15 per metric tonne has been paid only towards the freight and insurance charges and not towards the cost of the goods, transaction value cannot be ascertained. Thus, transaction value of identical goods under Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, has to be taken into account.

2) Rule 4(1)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, provides that subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of identical goods, sold for export to India and imported at or about the same time as the goods being valued. Thus, the particulars of the six imports are to be taken into account for determining the transaction value of identical goods.

3) Rule 4(1)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, provides that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. It is assumed that, the level of the transactions of the comparable consignments, are at the same commercial level.

4) Rule 4(3) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, provides that if more than one transaction value of the goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation would be US$ 240 per metric tonne.

5) In view of the above provision, all the consignments other than the consignments of 30 and 150 metric tonnes, can be considered to be substantially of the same quantity.

Computation of the amount of duty payable

Particulars	**Amount (₹)**
CIF Value of 1200 metric tonnes = 1200 × US$ 240 Exchange rate to be taken: 1US$= ₹60	US$ 2,88,000
CIF Value (in Rupees)	1,72,80,000
Add: Landing Charges @1%	1,72,800
ASSESSABLE VALUE	1,74,52,800
10% of Ad Valorem Duty on Assessable Value	17,45,280
Add: Education Cess @ 2%	34,905.60
Add: Senior and Higher Education Cess @ 1%	17,452.80
TOTAL CUSTOMS DUTY PAYABLE (ROUNDED OFF)	17,97,638

Solution to Question 19(b)

As per Section 92B of the Income Tax Act, 1961, an international transaction is one which satisfies the following criteria:

(i) The transaction is between two or more associated enterprises, either or both of whom are non-residents.

(ii) It is in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, lending/borrowing of money or, any other transaction having a bearing on the profits, income, losses or assets of such enterprises.

(iii) It includes a transaction in the nature of a mutual agreement/ arrangement between two or more associated enterprises, for the allocation or apportionment of any contribution, cost or expense incurred (or to be incurred) in connection with a benefit, service or facility provided (or to be provided) to any one or more of such enterprises.

Question 20

(a) Compute the service tax liability from the following particulars for the financial year 2013-14:

Particulars	Amount(₹)
Gross Amount (excluding all taxes) charged by the service provider for providing works contract service	**1,50,000**
Actual Value of material transferred in the above works contract (VAT under the relevant State VAT Law has been paid on this value)	**1,05,000**
Excise Duty paid on Inputs	**13,125**
Service Tax paid on input services	**1,500**
Excise Duty paid on the capital goods, purchased during the year, used in the provision of works contract service	**1,500**
Rate of Service Tax	**12.36%**

(b) State the provisions regarding drawback allowable on re-export of duty paid goods as such.

Solution to Question 20(a)

Computation of Service Tax Liability as per Rule 2A(i) of the Service Tax (Determination of Value) Rules, 2006:

Particulars	Amount(₹)
Gross Amount charged by the service provider for providing works contract service	1,50,000
Less: Actual Value of material transferred in the above works contract **[NOTE-1]**	1,05,000

Value of service portion in the execution of works contract		45,000
Service Tax on ₹45,000 @ 12.36%		5,562
Less: CENVAT Credit on Inputs	**[NOTE-2]**	---
Less: CENVAT Credit on input services		1,500
Less: CENVAT Credit on the capital goods (50%)	**[NOTE-3]**	750
Service Tax payable		**3,312**

NOTES:

1. Since VAT has been paid on the actual value of property in goods transferred in the execution of the works contract, such value adopted for the purposes of payment of VAT has been taken as the value of the property in goods transferred in the execution of the said works contract [Clause (c) of Explanation to Rule 2A(i) of the Valuation Rules].

2. CENVAT Credit of duties or cess paid on any inputs, used in or in relation to the said works contract, is not available. [Explanation to Rule 2A) of the Valuation Rules].

3. Only 50% of the duty paid on the capital goods is available as CENVAT Credit, in the current year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].

Solution to Question 20(b)

Sub-section (1) of Section 74 of the Customs Act, 1962 provides that, duty drawback on re-export of duty paid goods as such, shall be allowed, if the following conditions are fulfilled:

(i) The goods should have been imported into India.
(ii) The import duty should have been paid thereon.
(iii) The goods should be capable of being easily identified as the goods, which were originally imported.

(iv) The goods should have been entered for export either on shipping bill through sea or air, or on a billof export through land, or as baggage, or through post and the proper officer, after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export, should have permitted clearance of such goods for export.

(v) The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported.

(vi) The goods should have been entered for export within two years from the date of payment of duty on the importation thereof.

However, in any particular case, the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period, as it may deem fit. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback.

Question 21

(a) Quality Industries Ltd. manufactures both excisable and non-excisable goods in their factory building. This factory building has been taken on rent by Quality Industries Ltd., from 1st October 2013. With respect to the particulars furnished below, determine whether Quality Industries Ltd. is eligible for availing benefit of exemption in terms of Notification No. 8/2003-CE dated 01-03-2003 for the financial year 2014-15.

Particulars	Amount (₹ in Lakhs)
Clearances of branded goods	90
Export Sales to Nepal	120
Export Sales to USA and Canada	180
Clearances of goods (duty paid based on Annual capacity of production under Section 3A of the Central Excise Act, 1944)	105
Clearances of goods subject to valuation based on retail price under Section 4A of the Central Excise Act, 1944 (said goods are eligible for 30% abatement)	300
Job work under Notification No. 214/86-CE	90

During the period from 1st April 2013 to 30th September 2013, the previous tenant of the building (presently occupied by Quality Industries Ltd.) had cleared excisable goods of the aggregate value of ₹180 Lakhs.

(b) Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?

Solution to Question 21(a)

Computation of value of clearances for home consumption in the financial year 2013-14

Sl. No	Particulars	Amount (₹ in Lakhs)
(i)	Clearances of branded goods **[Working Note-1]**	Nil
(ii)	Export Sales to Nepal **[Working Note-1]**	120
(iii)	Export Sales to USA and Canada **[Working Note-1]**	Nil
(iv)	Clearances of goods (duty paid based on Annual capacity of production under Section 3A of the Central Excise Act, 1944)	105
(v)	Clearances of goods subject to valuation based on retail price under Section 4A of the Central Excise Act, 1944 (said goods are eligible for 30% abatement) **[Working Note-2]**	210
(vi)	Job work under Notification No. 214/86-CE **[Working Note-1]**	Nil
(vii)	Clearances of previous tenant of the building (currently occupied by Quality Industries Ltd.) **[Working Note-3]**	180
	TOTAL	615

Since, the value of clearances for home consumption exceeds ₹400 Lakhs in the financial year 2013-14, hence Quality Industries Ltd. is not eligible to claim the benefit of exemption under Notification No. 08/2003-C.E dated 01-03-2003 in the financial year 2014-15.

Working Notes:

1) In order to claim the benefit of exemption under Notification No. 8/2003-CE, dated 01-03-2003 in a financial year, the total turnover of a unit should not exceed ₹400 Lakhs in the preceding financial year. Notification No. 08/2003-CE dated 01-03-2003, provides that for the purpose of computing the turnover of ₹400 Lakhs:

a. Clearances bearing the brand name or trade name of another person are excluded. It has been assumed that the branded goods are excisable goods and they bear the brand name of another person and not the brand name of Quality Industries Ltd.

b. Export Turnover is excluded. However, exports to Nepal and Bhutan are not excluded, as these are treated as "clearance for home consumption". It has been assumed that goods exported by Quality Industries Ltd. to Nepal are excisable goods.

c. Clearances under specified job work notifications are excluded and Notification No. 214/86-CE dated 25-03-1986, is one of the specified notifications.

2) In case of the goods subject to valuation under Section 4A of the Central Excise Act, 1944, value for the purpose of SSI exemption would mean value fixed under Section 4A, i.e., retail sale price less abatement. Hence, value of such clearances would be ₹300 Lakhs – (₹300 Lakhs × 30%) = ₹210 Lakhs.

For the purpose of computing the turnover of ₹400 Lakhs, all the clearances made by different manufacturers from the same factory are to be clubbed together. Hence, clearances worth ₹180 Lakhs of previous tenant of the building (currently occupied by Quality Industries Ltd.) have been added.

Solution to Question 21(b)

Relevant Judicial Case: CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.LT. 487 (SC)

Observations of the Court: The question which arose before the Apex Court for consideration was whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification.

The Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling in the economy.

Decision of the case: Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

Question 22

(a) The total income of Merlin Enterprises Ltd., for the previous year ended 31st March, 2014 is ₹ 16,00,000. Tax deducted at source by different payers amounted to ₹37,000 and tax paid in foreign country on a doubly taxed income amounted to ₹15,000, for which the company is entitled to relief under Section 90 of the Income Tax Act, 1961, as per the double taxation avoidance agreement.
During the year the company paid advance tax as under:

Date of payment	Advance tax paid (₹)
15-06-2013	60,000
12-09-2013	98,000
15-12-2013	1,50,000
15-03-2014	93,000

The company filed its return of income for the A. Y. 2014-15 on 15th October, 2014. Compute interest, if any, payable by the company under Sections 234A, 234B and 234C of the Income Tax Act, 1961. Assume that transfer pricing provision is not applicable.

(b) In respect of a co-owned property, would the threshold limit mentioned in section 194-1 for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source?

Solution to Question 22 (a)

Interest under section 234 A

Since the return of income has been furnished by Merlin Enterprises Ltd. on 15th October, 2014 i.e. 15 days after the due date for filing return of income (30.9.2014), interest under Section 234A will be payable for 1 month @ 1% on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	₹
Tax on total income (₹16,00,000x 30.9%)	4,94,400
Less: Advance tax paid	4,01,000
Less: Tax deducted at source	37,000
Less: Relief of tax allowed under section 90	15,000
Tax payable on self assessment	**41,400**
Interest =₹41,400 x 1% = ₹414	

Interest under section 234B

Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

Computation of Assessed tax:	**₹**
Tax on total income (₹16,00,000x 30.9%)	4,94,400
Less: Tax deducted at source	37,000
Less: Relief of tax allowed under section 90	15,000
Assessed tax	**4,42,400**
90% of assessed tax = ₹4,42,400 x 90% = ₹3,98,160	

Since the advance tax paid by Merlin Enterprises Ltd. (₹4,01,000) is more than 90% of the assessed tax (₹ 3,98,160), it is not liable to pay interest under section 234B.

Interest under section 234C

Particulars	**₹**
Tax on total income (₹16,00,000 x 30.9%)	4,94,400
Less: Tax deducted at source	37,000
Less: Relief of tax allowed under section 90	15,000
Tax due on returned income /Total advance tax payable	**4,42,400**

Calculation of interest payable under section 234C:

(a)	**(b)**	**(c)**		**(d)**	**(e)**	**(f)**
Date	**Advance tax paid till date (₹)**	**Minimum % of tax due on returned income to be paid till date to avoid interest under section 234C**		**Advance tax payable till date in case condition mentioned in (c) is not met**	**Short- fall**	**Interest**
		%	**Amount (₹)**		**(₹)**	**(₹)**
15.06.2013	60,000	12%	53,088	15%	-	**Nil (See Note below)**
15.09.2013	1,58,000	36%	1,59,264	45%	1264	1,264 x1% x 3 months = ₹37.92
15.12.2013	3,08,000	75%	3,31,800	75%	23,800	23,800 x1% x 3 months = ₹714
15.03.2014	4,01,000	100%	4,42,400	100%	41,400	41,400 x1% = ₹414
Interest payable under section 234C (Nil + ₹37.92 + ₹714 + ₹414)						**₹1165.92**

Note: Since the advance tax paid by Merlin Enterprises Ltd. on 15th June, 2013 is more than 12% of the tax due on returned income (i.e. ₹4,42,400), it is not liable to pay any interest under Section 234C in respect of the first quarter.

Solution to Question 22(b)

Relevant Judicial Case: CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)

In the present case, the assessee was paying rent for the leased premises occupied. The said premise was co-owned and the share of each co-owner was definite and ascertainable. Also, the assessee made payment to each co-owner separately by way of cheque. The assessee did not deduct tax at source under section 194-1 stipulating that the payment made to each co-owner was less than the minimum threshold mentioned in the said section and therefore, no liability to deduct tax at source on the rent so paid is attracted, though the whole rent taken together exceeds the said threshold limit.

The Revenue contended that since the premises let out to the assessee had not been divided/partitioned by metes and bounds, it cannot be said that any specified portion let out to the assessee was owned by a particular person. Therefore, the assessee had to deduct tax at source on the rent so paid assessing the co-owners as association of persons and the threshold limit mentioned in section 194-1 was to be seen in respect of the entire rent amount. Hence, the Revenue was of the view that assessee was liable to deduct tax on the payment of rent and interest would be leviable on failure to deduct such tax under section 201.

Considering the above mentioned facts, the Allahabad High Court held that since the share of each co-owner is definite and ascertainable, they cannot be assessed as an association of persons as per section 26. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26.

Therefore, in the present case, since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit mentioned in section 194-1 has to be seen separately for each co-owner, Hence, the assessee would not be liable to deduct tax on the same and no interest under section 201 is leviable.

Question 23

(a) Compute the assessable value and the total customs duty payable, from the following particulars. Provide suitable notes, wherever necessary.

(i) Date of presentation of bill of Entry: 15-09-2013.
Rate of Basic Customs Duty: 25%;
Exchange Rate (₹/$) = ₹60.50
Exchange Rate (₹/$), notified by CBEC: ₹60.70

(ii) Date of arrival of goods in India: 25-09-2013
Rate of Basic Customs Duty: 20%;

Exchange Rate (₹/$) = ₹60.75

Exchange Rate (₹/$), notified by CBEC: ₹61

(iii) Rate of additional Customs Duty: 12%

(iv) CIF Value: $5,000

(v) Air Freight : $ 1,250

(vi) Insurance Cost: $ 250. [Landing Charges not ascertainable]

(vii) Education Cess applicable 3%.

(viii)Assume that there is no special CVD.

(b) State the provisions regarding transit and transhipment of goods without payment of duty under the Customs Act, 1962.

Solution to Question 23 (a)

Computation of Assessable Value and the total Customs Duty Payable

SL No.	Particulars	Currency	Amount
A.	CIF Value	US$	5,000
	Less: Freight	US$	1,250
	Less: Insurance	US$	250
B.	FOB Value	US$	3,500
C.	Add: Air Freight restricted to 20% of FOB Value	US$	700
	Add: Insurance (actual amount)	US$	250
D.	CIF Value	US$	4,450
	CIF Value (in ₹) [Conversion rate- ₹/$=60.70]	₹	2,70,115
E.	Add: 1% landing charges	₹	2,701.15
F.	Assessable Value	₹	2,72,816.15
G.	Add: Basic Customs Duty @ 20% of Assessable Value	₹	54,563.23
H.	Total for levy of additional duty of customs under Section 3(1) of the Customs Tariff Act,1975 [F + G]	₹	3,27,379.38
I.	Add: Additional Customs Duty [H× 12%]	₹	39,285.52
J.	Add: Education Cess on total customs duty [3% of (G+I)]	₹	2,815.46
K.	Total for levy of additional duty of customs under Section 3(5) of the Customs Tariff Act,1975 [H + I+ J]	₹	3,69,480.36

L.	Add: Additional duty of customs equal to sales tax	₹	Nil
M.	Total Cost of imported Goods	₹	3,69,480.36
N.	Total Customs Duty Payable (rounded off) [G+I+J+L]	₹	96,664

Solution to Question 23 (b)

1. Transit of goods: Section 53 of the Customs Act, 1962 provides that any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or any customs station, may be allowed to be so transited without payment of duty. However, the goods should have not have been prohibited under Section 11 of the Customs Act 1962.

Transhipment of goods: Transhipment of goods refers to transfer of goods from one conveyance to another. It may be from one port to any other major port or airport in India.

Section 54 of the Customs Act, 1962 provides that:

2. Where any goods imported into a customs station are intended for transhipment, the person-in-charge of conveyance will have to present a bill of transshipment to the proper officer in the prescribed form.

3. Where any goods imported into a customs station are mentioned in the import manifest or import report, as for the transshipment to any place outside India, such goods will be allowed to be so transhipped without payment of duty. However, the goods should not have been prohibited under Section 11 of the Customs Act, 1962.

4. Where any goods imported into a customs station are mentioned in the import manifest or import report for transhipment to any major port or, to customs airport or customs port, or to any other customs station and the proper officer is satisfied about the bonafide intention for the transhipment of the goods to such customs station, the proper officer may allow the goods to be transhipped, without payment of duty.

Question 24

(a) Virbhadra Ltd. commenced its business on 30th July, 2013 in New Delhi. It has provided /availed the following services upto 31stMarch, 2014. Determine its service tax liability for the Financial Year 2013-14:

(i) Taxable services provided under its own brand name :₹10,00,000.
(ii) Declared services (Sum charged ₹5 lakh, but value determined as per valuation rules is 60% i.e.₹3,00,000).
(iii) Services wholly exempt under Notification No. 25/2012, dated 20-06-2012 :₹7,00,000.
(iv) Services provided under brand-name of other person (fully taxable): ₹4,00,000.
(v) Availed services of goods transport agency and paid freight of ₹3,00,000.

The assessee is ready to opt any exemption available to it under Service Tax Law. (Make suitable assumptions wherever required and show workings.)

(b) Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?

Solution to Question 24 (a)

Virbhadra Ltd. has commenced its business in the financial year 2013-14 i.e., its 'aggregate value of taxable services' during the financial year 2012-13 was NIL. Accordingly, it is eligible for threshold exemption of ₹10 lakhs in respect of its 'aggregate value' during the financial year 2013-14 under Notification No. 33/2012-ST.

The relevant computations are as follows —

Particulars	₹
(i) Own brand name services: Includible in determining aggregate value. **[Note-1]**	10,00,000
(ii) Declared services: Value of services = 60% of ₹5 lakh = ₹3,00,000. Includible in determining aggregate value. **[Note-2]**	3,00,000
(iii) Services fully exempt: Specifically excluded in determination of aggregate value	NIL
Aggregate Value for purposes of Notification No. 33/2012-ST for 2013-14	**13,00,000**
Less: Threshold exemption under Notification No. 33/2012-ST	10,00,000
Value of taxable services after claiming exemption under Notification No. 33/2012-ST	**3,00,000**
Add: **(iv)** Services provided under others' brand-name **[Note-3]**	4,00,000
Add: **(v)** Services of Gross Transport Agency received by Virbhadra Ltd. Therefore, taxable value = ₹3,00,000 –(75% of ₹3,00,000) = ₹75,000 **[Note-4 & 5]**	75,000
Aggregate Value of services liable to service tax	**7,75,000**
Service tax @ 12.36%	**95,790**

NOTES:

1) It is assumed that,taxable services provided by Virbhadra Ltd. under its own brand name, is of the value ₹9 lakhs.

2) The value of declared services to be included in computing the aggregate value, has been determined as per the provisions of Section 67 of the Finance Act, 1994 and the valuation rules.

3) Services provided under brand name of other person, shall be excluded for the applicability of the Notification No. 33/2012-ST. Therefore, the said services are liable to service tax and shall not be included in the computation of 'aggregate value' under Notification No. 33/2012-ST.

4) Under reverse charge mechanism, Virbhadra Ltd., is liable to pay service tax, in respect of the services received from the Goods Transport Agency (GTA) (for which freight has been paid byVirbhadra Ltd.)

5) The services received by Virbhadra Ltd., from the Goods Transport Agency, shall not form part of the computation of 'aggregate value of taxable services provided' under Notification No. 33/2012-ST. The same will be liable to service tax after abatement @ 75%.

Solution to Question 24 (b)

Relevant Judicial Case: CIT v. Pruthvi Brokers & Shareholders (2012) 208 Taxman 498 (Bom.)

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

Also, the High Court considered the decision of the Apex Court in the case of Add/. CIT v. Gurjargravures(P.) Ltd.(1978) 111 ITR 7, wherein it was held that in case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same.

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

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

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

Question 25

(a) The following information is provided in respect of manufacture of a chemical product- "Brightex", for the purpose of captive consumption in the same factory. Determine the assessable value for the purpose of duty of excise in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and provide suitable notes, wherever necessary.

Particulars	Amount (₹)
Cost of direct materials (includes central excise duty ₹3,090)	33,090
Salaries paid to direct employees	24,600
Consumable stores and repairs	16,800
Quality Control Cost	8,600
Research and Development Cost	5,400
Administrative Cost:	
Production related	6,000
Others	3,000
Selling and Distribution Cost	7,200
Scrap Value realized	3,000

NOTE: CENVAT Credit of the excise duty so paid is available.

(b) Lakshmi Vilas Bank Ltd. provides the following information for the month of August 2013:

(i) CENVAT Credit available on Inputs : ₹3,00,000
(ii) CENVAT Credit available on Input Services: ₹6,00,000
(iii) Service Tax Liability before availing eligible CENVAT: ₹15,00,000

Determine the amount of CENVAT Credit available to Lakshmi Vilas Bank Ltd., for the month of August 2013, in view of Rule 6(3B) of CENVAT Credit Rules, 2004.

Determine the net service tax liability of Lakshmi Vilas Bank Ltd., after availing CENVAT Credit.

Solution to Question 25 (a)

Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, provides that, the value of the excisable goods used for captive consumption, is 110% of the cost of production of such goods. The cost of production is to be determined as per '**Cost Accounting Standard (CAS-4): Cost of Production for Captive Consumption**' issued by the Institute of Cost Accountants of India [CBEC Circular No. 692/8/2003 dated 13.02.2003].

Computation of cost of production as per Cost Accounting Standard-4 and assessable value of the excisable goods

Particulars	**Amount (₹)**	**Amount (₹)**
Cost of direct materials	33090	
Less: Central Excise duty paid **(Note-1)**	3090	30,000
Salaries paid to direct employees		24,600
Consumable stores and repairs		16,800
Quality Control Cost		8,600
Research and Development Cost		5,400
Administrative Cost (Production related) **(Note-2)**		6,000
TOTAL		**91,400**
Less: Scrap Value realized		3,000
COST OF PRODUCTION AS PER CAS-4		**88,400**
ASSESSABLE VALUE OF EXCISABLE GOODS	88400 ×110%	**97,240**

NOTES:

1) Since CENVAT Credit is available on central excise duty paid on direct materials, it has been deducted from the cost of direct materials in accordance with the Cost Accounting Standard -4.

2) Administrative Overheads in relation to activities other than manufacturing activities have not been included in the cost of production.[CAS-4]

3) Selling and distribution Cost have not been considered while computing the cost of production, as they are not in relation to production activity. [CAS-4]

Solution to Question 25 (b)

According to Rule 6(3B) of the CENVAT Credit Rules, 2004, a banking company and a financial institution including a non-banking financial company engaged in providing services by way of extending deposits, loans or advances, shall pay for every month, an amount equal to 50% of the CENVAT Credit available on inputs and input services in that month. Therefore, a banking company is entitled to avail only 50% of the CENVAT Credit in respect of inputs and input services.

Computation of CENVAT Credit available to Lakshmi Vilas Bank Ltd., for the month of August 2013

Particulars	**Amount (₹)**
CENVAT Credit available on Inputs	3,00,000
Less: Payment of 50% of CENVAT Credit available on inputs, by virtue of Rule 6(3B), i.e., 50% of CENVAT Credit available on inputs is disallowed	1,50,000
Net CENVAT Credit available on inputs	**1,50,000**
CENVAT Credit available on Input Services	6,00,000
Less: Payment of 50% of CENVAT Credit available on input services, by virtue of Rule 6(3B), i.e., 50% of CENVAT Credit available on input services is disallowed	3,00,000
Net CENVAT Credit available on input services	**3,00,000**

Computation of net service tax liability of Lakshmi Vilas Bank Ltd., for the month of August 2013

Particulars	**Amount (₹)**
Service Tax Liability of Lakshmi Vilas Bank Ltd., for the month of August 2013, before availing CENVAT Credit on inputs and input services	15,00,000
Less: Net CENVAT Credit available on inputs	1,50,000
Less: Net CENVAT Credit available on input services	3,00,000
Net Service Tax Liability of Lakshmi Vilas Bank Ltd., after availing eligible CENVAT Credit	**10,50,000**

Question 26

(a) Mr. Mahesh Kumar is engaged in providing a service which becomes taxable with effect from 01.07.2013. Determine whether service tax is payable by Mr. Mahesh Kumar, in each of the following independent cases, in accordance with the Point of Taxation Rules 2011?

Case	Date of issuance of invoice	Date of receipt of payment
(a)	25.06.2013 for ₹1,50,000	26.06.2013 for ₹1,50,000
(b)	25.06.2013 for ₹1,50,000	26.06.2013 for ₹ 90,000 10.07.2013 for ₹ 60,000
(c)	24.06.2013 for ₹90,000	20.06.2013 for ₹ 90,000
	07.07.2013 for ₹60,000	29.06.2013 for ₹60,000
(d)	23.07.2013 for ₹ 1,50,000	30.06.2013 for ₹1,50,000

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

Solution to Question 26 (a)

Rule 5 of the Point of Taxation Rules, 2011 stipulates the provisions relating to payment of service tax where a service is taxed for the first time. The taxability of services determined as per Rule 5 is as under:-

Case	Taxability
2.	No tax shall be payable on entire ₹1,50,000 as the invoice for ₹ 1,50,000 has been issued (on 25.06.2013) and the payment against such invoice has also been received (on 26.06.2013) before such service became taxable (on 01.07.2013).
3.	No tax shall be payable on ₹ 90,000 as the invoice for ₹ 90,000 has been issued (on 25.06.2013) and the payment against such invoice has also been received (on 26.06.2013) before such service became taxable (on 01.07.2013).
	Service tax is payable on ₹60,000 as the invoice for ₹60,000 has been issued (on 25.06.2013) before such service became taxable (on 01.07.2013), but the payment against such invoice has been received on 10.07.2013 (after the service became

	the taxable).
4.	No tax shall be payable on ₹90,000 as the advance of ₹90,000 has been received (on 20.06.2013) and the invoice for the same has also been issued (on 24.06.2013) before such service became taxable (on 01.07.2013).
	No tax shall be payable on ₹60,000 as the payment of ₹60,000 has been received (on 29.06.2013) before the service becomes taxable (on 01.07.2013) and invoice has been issued (on 07.07.2013) i.e. within 14 days of the date when the service is taxed for the first time.
5.	Service tax is payable on entire ₹1,50,000 as, although payment has been received (on 30.06.2013) before the service becomes taxable (on 01.07.2013), invoice has been issued (on 23.07.2013) i.e. after 14 days of the date when the service is taxed for the first time.

Solution to Question 26 (b)

Relevant Judicial Case: Smt A. Kowsaiya Bat v. UOI (2012) 346ITR 156 (Kar.)

As per the provisions of section 139A, inter alia, a person whose total income does not exceed the maximum amount not chargeable to income-tax, is not required to apply to the Assessing Officer for the allotment of a permanent account number (PAN).

However, as per the provisions of section 206AA, notwithstanding anything contained in any other provision of this Act, any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, i.e., the deductee, shall furnish his PAN to the deductor, otherwise tax shall be deducted as per the provisions section 206AA, which is normally higher. It is mandatory for an assessee to furnish his PAN, despite filing Form 15G as required under section 197A, to seek exemption from deduction of tax.

The provisions of section 139A are contradictory to section 197A, due to the fact that assessees whose income was less than the maximum amount not chargeable to income-tax, were not required to hold PAN, whereas their declaration furnished under section 197A was not accepted by the bank or financial institution unless PAN was communicated as per the provisions of section 206AA. The provisions of section 206AA creates inconvenience to small investors, who invest their savings from earnings as security for their future, since, in the absence of PAN, tax was deducted at source at a higher rate.

In order to avoid undue hardship caused to such persons, the Karnataka High Court, in the present case, held that it may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific

provision of section 139A, section 206AA is not applicable to such persons. Therefore, the banking and financial institutions shall not insist upon such persons to furnish PAN while filing declaration under section 197A. However, section 206AA would continue to be applicable to persons whose income is above the maximum amount not chargeable to income-tax.

Question 27

(a) Compute the Assessable Value and the amount of excise duty payable under the Central Excise Act, 1944 and rules made thereunder from the following information:

Sl. No	Particulars	No. of units	Price per unit (₹/unit)		Rate of Duty ad valorem
			At Factory	At Depot	
(a)	Goods transferred from factory to depot on 14th July, 2013.	1500	300	330	10%
(b)	Goods actually sold at depot on 24th July, 2013	1125	338	375	8%

(b) Pentagon Enterprises Ltd., a small scale industrial unit, manufactures "Lion-King" (a type of toy for infants). The small scale industrial unit has reported gross sales turnover of ₹2,92,65,000, inclusive of excise duty and VAT (the turnover is eligible for exemption under Notification No. 08/2003). The taxable clearances of Pentagon Enterprises Ltd. for the financial year 2012-13 was ₹2,40,00,000. The product "Lion-King" attracts excise duty @ 12% and VAT @ 1%. Calculate the excise duty liability under Notification No. 08/2003 dated 01-03-2003.

Solution to Question 27 (a)

Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, provides that where the goods are not sold at the factory gate, but are transferred by the assessee to his depot, the assessable value for the goods cleared from the factory and sold from depot, shall be the normal transaction value of such goods at the depot, at or about the same time at which the goods being valued are removed from thefactory.

In the given case, Assessable Value shall be the price per unit prevailing at the depot on 14th July, 2013 (i.e. date of transfer from the factory to the depot), multiplied by the number of units removed from the factory.

Thus, Assessable Value = 1500 units × ₹330/unit = ₹4,95,000.

Computation of Excise Duty payable by the assessee

Particulars	Amount(₹)
Basic Excise Duty @ 10% (₹4,95,000 × 10%)	49,500
Add: Education Cess @ 2%	990
Add: Senior and Higher Education Cess@ 1%	495
Total Excise Duty Payable	**50,985**

Solution to Question 27 (b)

Computation of duty liability of Pentagon Enterprises Ltd. under Notification No. 08/2003-CE dated 01-03-2003

SL. NO	Particulars	Amount (₹)	Amount (₹)
(i)	Gross sales turnover, inclusive of excise duty and Sales Tax		2,92,65,000
(ii)	Less: VAT @ 1%	(ii) × 1/101	2,89,752.47
(iii)	Turnover (inclusive of excise duty and exclusive of sales tax)	(i) – (ii)	2,89,75,247.53
(iv)	SSI Exemption (no duty was levied on this exemption)		1,50,00,000
(v)	Cum-duty price (on which no exemption was available)	(iii) – (iv)	1,39,75,247.53
(vi)	Less: Excise Duty @12.36%	(v) × 12.36/112.36	15,37,326.97
(vii)	Assessable Value of turnover not exempted	(v) – (vi)	1,24,37,920.55

Total excise duty payable (rounded off) = ₹15, 37,327.

Question 28

(a) Mr. Umesh Malhotra, a resident individual, furnishes the following information, in respect of the assets held by him on 31.03.2014. Compute the net wealth of Mr. Umesh Malhotra, by explaining the reasons, for inclusion/exclusion of the following items in the computation of net wealth.

(i) Mr. Umesh Malhotra gifted jewellery worth ₹35 Lakhs, to his wife. The fair market value of such jewellery, as on the valuation date was ₹60 Lakhs.

(ii) A flat in Pune was purchased in 1998, under installment scheme, for ₹15 Lakhs. The flat is used by the assessee for his own residence. The fair market value of this self-occupied property was ₹30 Lakhs on the valuation date, and installment of ₹10 Lakh was also outstanding.

(iii) The assessee is a medical practitioner and possesses medical instruments worth ₹9 Lakhs, which are used by him in his profession.

(iv) The assessee purchased a land in Nagpur, in July 2010, in the name of his minor son (who was suffering from a disability specified under Section 80U of the Income Tax Act, 1961), for ₹6 Lakhs.

(v) The house, situated in Gandhinagar, was shown to be of value of ₹70 Lakhs, in the wealth-tax return for the A.Y 2013-14. However, this property was sold on 26.03.2014 for ₹75 Lakhs.

The sale deed in respect of the transfer of property in Gandhinagar, was executed in 10.05.2014.

(b) Abhishek, a person of Indian origin was working in Austria since 1994. He returned to India for permanent settlement in May 2014 when he remitted money into India. For the valuation date 31.3.2014, the following particulars were furnished. You are required to compute the taxable wealth. The reason for inclusion or exclusion should be stated.

(i) Buildingowned and let-out for 270 days for residence. Net maintainable rent (₹1,00,000) and the Market Value (Excess of Unbuilt Area over Specified Area is 20% of the Aggregate Area) ₹ 30 lakhs.

(ii) Jewellery:

(a) Purchased in April 2013 out of money remitted to India from Austria - ₹12,00,000

(b) Purchased in May 2013, out of sale proceeds of motor-car brought from abroad and sold for ₹ 40 lakhs.

(iii) Value of interest in urban land held by a firm in which he is a partner ₹10 Lakhs.

(iv) Bonds held in companies ₹10 Lakhs.

(v) Motor car used for own business ₹ 25 Lakhs

(vi) Vacant house plot of 480 sq. mts. (purchased in December 2003) market value of ₹ 20,00,000.

(vii) Cash in hand -₹ 45,000.

(viii) Urban land purchased in the year 2008 out of withdrawals of NRE Account ₹ 15,00,000

Solution to Question 28 (a)

Computation of net wealth of Mr. Umesh Malhotra as on valuation date 31.03.2014

SL. NO	Assets held by the assessee on the valuation date	Reason for inclusion/ exclusion of assets from the net wealth of the assessee	Amount (₹)
1.	Jewellery held by assessee's wife.	Under Section 4(1)(a)(i) of the Wealth Tax Act, 1957, read with Rule 18 of Schedule III, the fair market value of the jewellery gifted to spouse, as on the valuation date will be included in the net wealth of the assessee.	60,00,000
2.	Flat located in Pune.	The flat, located in Mumbai, is used by the assessee for his own residence, and is an exempt asset, under the provisions of the Wealth Tax Act, 1957. Under Section 5(vi) of the Wealth Tax Act, 1957, the liability of outstanding installment is not deductible.	**Nil**
3.	Medical instruments held by the assessee	Medical instruments, held by the assessee, which are used by him in his profession, do not fall within the definition of "asset" under	**Nil**

	and used in his profession.	Section 2(ea) of the Wealth Tax Act, 1957.	
4.	Land situated in Nagpur, in the name of the assessee's son.	Urban Land is an "asset" under Section 2(ea)(v) of the Wealth Tax Act, 1957. However, the land situated in Nagpur, is held in the name of the assessee's son, who is suffering from disability under Section 80U of the Income Tax Act, 1961. Therefore, the clubbing provisions of Section 4(1)(a)(ii) of the Wealth Tax Act, 1957, shall not apply in the given case.	**Nil**
5.	House situated in Gandhinagar.	The house situated in Gandhinagar, was not held by the assessee, on the valuation date. Though the sale deed was executed on 10.05.2014, the property is not an asset, in the hands of the assessee. It will be treated as an asset in the hands of the beneficial owner, since the ownership in property passes on to the buyer, in the event of sale of the property. The sale deed only confirms the acts of the parties.	**Nil**
NET WEALTH OF THE ASSESSEE			**60,00,000**

Solution to Question 28(b)

Assessee: Abhishek Valuation Date: 31.3.2014 Assessment Year: 2014-15

Computation of Net Wealth

Nature of the Asset	₹	₹	**Reasons**
Value of the House		**18,50,000**	Asset u/s 2(ea). Working Note 1
Jewellery: Purchased in April 2011	12,00,000		Asset u/s 2(ea).
Less: Exempt u/s 5(v)	(12,00,000)	**Nil**	Purchased out of money brought into India
Jewellery: Purchased in May 2011	40,00,000		Asset u/s 2(ea).
Less: Exempt u/s 5(v)	(40,00,000)	**Nil**	Purchased out of sale proceeds of assets brought into India
Interest in Urban Land held by firm		**10,00,000**	Deemed Asset u/s 4(1)(b)
Bonds held in companies	—	**Nil**	Not an asset u/s 2(ea)
Motor car		**25,00,000**	Asset u/s 2(ea). Not held as

			stock-in-trade
Vacant House Plot (480 sq. mts.)	20,00,000		Asset u/s 2 (ea)
Less: Exempt u/s 5(vi)	(20,00,000)	**Nil**	House/part of house /plot less than 500 sq.mts.
Cash in hand		**Nil**	Since not exceeding ₹50,000
Urban Land Purchased	15,00,000		Purchased out of money brought into India
Less: Exempt u/s 5(v)	(15,00,000)	**Nil**	
NET WEALTH		**53,50,000**	
***Less* :** Basic Exemption		**30,00,000**	
Net Taxable Wealth		**23,50,000**	
Tax Payable @ 1%		**23,500**	

(1) Working Notes:

Valuation of Building:

Net Maintainable Rent(NMR)	₹1,00,000
Capitalized Value of NMR=NMR×12.5 (Owner of the land) = ₹ 1,00,000 × 12.5	₹12,50,000
Add : Premium for excess of unbuilt area (20%) over specified area = 40% of CNMR	₹ 5,00,000
VALUE OF THE HOUSE	**₹18,50,000**

Question 29

(a) Mr. Vinod Dutta, an Indian resident, won a Tata Indica worth ₹ 6 Lakhs, as the first prize in a lottery. According to Section 194B of the Income Tax Act, 1961, tax has to be deducted at source from the winnings of lottery at the time of payment of the prize money.

Explain the procedure to be adopted before handing over the Tata Indica (the lottery prize) to Mr. Vinod Dutta.

(b) Mr. Rupesh Kumar, an Indian resident, is a practisingCost and Management Accountant. He was paid ₹90,000 on 1st September, 2013 towards fees for his professional services, without deducting tax at source. Later on, a further sum of ₹1,00,000, was due to him on 1st March, 2014, from which tax of ₹20,000 was deducted at source. The tax so deducted, was

deposited on 26thJune, 2014. Compute interest payable by the deductor under Section 201(1A) of the Income Tax Act, 1961.

(c) Can the second proviso to section 32(1) be applied to restrict the additional depreciation under section 32(1)(iia) to 50%, if the new plant and machinery was put to use for less than 180 days during the previous year?

Solution to Question 29(a)

Section 194B of the Income Tax Act, 1961 provides that where the winnings are wholly in kind or partly in kind and partly in cash, but the cash part of it is not sufficient to meet the liability for tax deduction at source, in respect of the whole of the winnings, the person responsible shall, before releasing the winnings, ensure that, the tax has been paid in respect of the winnings.

Therefore, in the case under consideration, the entire winnings being in kind, a sum equal to the tax to be deducted at source (i.e. ₹1,80,000 being 30% of ₹6,00,000) must be collected from the assessee, by the agent and remitted to the Government account before releasing the lottery prize to him.

Thus, ₹1,80,000 - being 30% of ₹ 6,00,000 must be collected from the assessee, by the agent and remitted to the Government account before releasing the Tata Indicato him.

Solution to Question 29 (b)

Section 194J of the Income Tax Act, 1961 provides for deduction of tax at source @ 10%, in respect of fees for professional services. Since, there is delay in deduction and deposit of tax, interest under Section 201(1A) is attracted.

As per the provisions of Section 201(1A), if a person, who is liable to deduct tax at source, fails to deduct tax at source or after deducting such tax, fails to pay the tax required by the Act, then he is liable to pay interest as follows:

(i) 1% for every month or part of month, on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually deducted.

(ii) 1.5% for every month or part of the month on the amount of such tax from the date on which such tax was deducted to the date on which tax is actually paid.

Therefore, in the given case, interest under **Section 201(1A)** would be computed as follows:

Particulars	Computation	Amount (₹)
1% on tax deductible, but not deducted	1% on ₹9,000 for 7 months	630
1.5% on tax deducted, but not deposited	1.5% on ₹20,000 for 4 months	1,200
TOTAL		**1,830**

Thus, interest payable by the person liable to deduct tax at source, amounts to ₹1,830.

Solution to Question 29 (c)

Relevant Judicial Case: MM Forgings Ltd. v. ACIT (2012) 349ITR 0673 (Mad.)

In this case, the Assessing Officer, by applying the second proviso to section 32(1), restricted the allowability of depreciation to 50% of the amount of additional depreciation computed under section 32(1)(iia), since the new plant and machinery was put to use for less than 180 days during the previous year. The assessee argued that he has satisfied all the conditions stipulated under section 32(1)(iia), and therefore, the depreciation under section 32(1)(iia) should not be restricted to 50% by resorting to the second proviso to section 32(1).

The Commissioner (Appeals) and Appellate Tribunal, however, affirmed the action of the Assessing Officer.

On appeal, the Madras High Court observed that clause (iia) was inserted by the Finance Act, 2002, with effect from April 1, 2003, in the second proviso to section 32(1). Therefore, it was imperative that on and after April 1, 2003, the claim of the assessee made under section 32(1)(iia) had to be necessarily allowable by applying the second proviso to section 32(1).

As per the second proviso to section 32(1), which specifically mentions that where an asset referred to in, inter alia, clause (iia) of section 32(1) is acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period of less than 180 days in that previous year, the deduction in respect of such asset shall be restricted to 50% of the amount calculated at the prescribed percentage under section 32(1)(iia).

The Madras High Court held that if an asset is acquired on or after 1.04.2003, it was mandatory that the claim of the assessee made under section 32(1)(iia) had to be necessarily assessed by applying the second proviso to section 32(1). Since there is a statutory stipulation restricting the allowability of depreciation to 50% of the amount computed under section 32(1)(iia), where the asset is put to-use for less than 180 days, the amount of depreciation allowable has to be restricted to 50% of the amount computed under section 32(1)(iia). The High Court, accordingly, affirmed the order of the Tribunal.

Question 30

(a) Mr. Sanghai had sold a commercial property, which was a long term asset and invested the same in purchase and construction of a flat in a apartment in Mumbai, within the one year of sale of asset and claimed deduction u/s 54F of Income Tax Act, but later the builder has not completed the possession of the apartment within 3 years and the apartment remained under construction even after 3 years. The period of 3 years is lapsed without any mistake of Mr. Sanghai now? Will Mr. Sanghai be liable to tax on the capital gains derived from the sale of the commercial property (or) Will Mr. Sanghai be freed from the liability of capital gains tax?

Discuss allowability of exemption u/s. 54F if builder does not complete construction of house within three Years?

(b) Whether the transfer of goods as a contribution for capital be considered as Sale?

Solution to Question 30(a)

The exemption u/s 54F is for those assesses who gets long term gains on any asset other than house property and who uses all the sales consideration within a specified period for purchase or constructing a residential house. The specified period in case of house purchase is one year before or two years after the date of transfer of asset on which gains were made. However, for construction, section 54 provides, time limit of three years. Therefore, the case explained above gains all popularity here. What would be the plight of the assessee when the construction gets delayed for no fault of his?

While the plain reading and strict application of the provision u/s 54F compel one to think that exemption is not allowable in case of any delay beyond 3 years, higher judicial authorities have rescued taxpayers by giving relief in those cases where they found that most of the sales consideration have been spent for construction of house, still some portions were not complete for various reasons. The appellate authorities have taken the view that section 54F being relief provision, should be viewed in a bit of relaxed manner. **Few judgments are given below in this regard which provides that exemption can be claimed even if construction is not completed within 3 years.** However, remember the **court needs to be satisfied** that either full amount or **most** of the amount of **sales consideration was already used**.

The decision of Tribunal was:

To qualify investment **for construction under section 54F the crucial date is the date of allotment of flat by DDA and payment of installments was only a follow-up action and taking possession of the flat is only a formality**, of course, installments have to be paid by the allottee as per the schedule fixed by the DDA. The Board after referring to the above mentioned Circular extended the facility of exemption under sections 54 and 54F in respect of allotment of flats/house by co-

operative societies and other institutions, and the allotment and construction of the flat by co-operative societies and other institutions are to be considered in similar manner for the purpose of allowing exemption under section 54. The above circulars are binding on the revenue authorities under section 119 of the Act. Since the flat has been allotted to the assessee by the builder who would fall in the category of other institutions mentioned in the circulars, it has to be taken as a case of construction of the residential flat and not as a purchase of a residential flat.

The decision has elaborated on the reasons why the CBDT issued circulars for such relief and that the word "institution 'in the circular will include "builder".
Hence, exemption u/s. 54F can be claimed even if construction is not completed within 3 years but when substantial payment been made.

Reference Cases:
1. Mrs. Seetha Subramanian. vs Assistant Commissioner Of Income-Tax. [59 ITD 94] ITAT , Madras :- CIT ,
2. SatishChandraGupta v. Assessing Officer [1995] 54 ITD 508
3. CIT vs. Hilla J.B. Wadia [1995] 216 ITR 376 (Bom).

Solution to Question 30(b)

Query – *Transfer of goods on sale of the business as a whole by a proprietor to a company in which he is a promoter, as his contribution for capital, is a 'sale' under Uttar Pradesh Value Added Tax Act, 2008*

Analysis :Relevant Extracts **of the State Act**

Section 2(ac) of the State Act defines sale as follows:

"*sale*" with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) by one person to another, for cash or for deferred payment or for any other valuable consideration….

Section 2(aq) of the State Act defines turnover of sale as:

"*turnover of sale*" means the aggregate of amount of sale prices of goods, sold or supplied or distributed *by way of sale by a dealer,* either directly or through another, whether on his own account or on account of others;

Section 2 (h) of the State Act defines dealer as:
"*dealer*" means *any person who carries on* in Uttar Pradesh (whether regularly or otherwise) *the business of buying, selling, supplying or distributing goods* directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration….
Extract of Rule 8 of Uttar Pradesh VAT Rules, 2008 determining taxable turnover is as follows:

"For the purposes of determining taxable turnover of sale, amounts specified below shall be deducted from the turnover of sale, determined in accordance with rule 7, if included in such turnover of sale

(iii) all amounts realized from the sale by the dealer of his business as a whole;…"

It clear from the aforesaid provisions as well as from the scheme of the State Act that, what constitutes a "turnover" is only the aggregate amount for which goods are either bought or sold, and that the purchase or sale must be in respect of a "sale" as defined in the Act. In other words, *only sales which take place in the course of trade or business are taken into account in determining the turnover under the State Act.* The definition of the word "dealer" shows that every person, who buys or sells goods, is not a dealer, but only a person, who carries on the business of buying, selling, supplying or distributing goods. And the transaction must be in the course of his trade or business. Applying the above principles, it will be wrong to say that the transfer of a person's business or stock in trade into a firm or a company, as contribution of his capital therein amounts to a sale of goods in the course of trade or business as a dealer; and such a transaction involve any sale of goods. The transferor does not part with property in the goods. He only shares his rights therein with the other members under the contract of becoming a shareholder of the Company.

Even assuming there is a sale, it is not a sale in the course of trade or business, nor is it a transaction by a "dealer" as defined in the State Act.