

PAPER – 8 : INDIRECT TAX LAWS

QUESTIONS

EXCISE

Excisability

1. An article does not become liable to excise duty merely because of its specification in Schedule to Central Excise Tariff Act, 1985. Vendibility criterion is a litmus-test to be satisfied, before any goods can be subjected to the levy of excise duty. Discuss the statement, with the help of a decided case law, if any.

CENVAT Credit

2. (a) Power Rise Industrial Corporation (PRIC) provides services from its office located at Saurashtra while its head office is located at Gorakhpur.

The excise duty paid at Saurashtra office of PRIC for the month of December '08 is as follows:-

Rs.

Excise duty paid on:-

Inputs used in providing output service	1,80,000
Capital goods purchased and involved in providing output service	2,50,000
Input services used in output service	4,20,000

The invoices in respect of aforementioned inputs, capital goods and input services are in the name of Gorakhpur office. Compute the amount of the CENVAT credit admissible to Saurashtra office of PRIC for the month of December '08.

- (b) Adecco Corporation Limited (ACL) was a manufacturer of polypropylene bags. It shifted its factory located at Kalyanpuri to Greater Kailash. ACL transferred a quantity of 20,000 kg of inputs (plastic granules) and one capital good i.e. automatic bag machine to the new site. These were the only available inputs and capital goods with ACL at the time of transfer. The inputs, capital goods and the balance of unutilized CENVAT credit were duly received and accounted for in the registers of the new unit.

The said balance of unutilized CENVAT credit transferred was Rs 6,00,000. However, the CENVAT credit corresponding to inputs and capital goods transferred to the new site amounted to Rs. 4,50,000 only. The Department raised the plea that assessee was entitled to transfer only Rs 4,50,000 of CENVAT credit and not the entire balance of

unutilised credit of Rs. 6,00,000. Explain, with the help of a decided case law, if any, whether Department's plea is justified in law.

- (c) Whether input services distributor can also opt for any of the options provided under rule 6(3) of CENVAT Credit Rules, 2004?

Classification

3. Amiga Tank and Manufacturing Company (ATMC), a manufacturer of storage tank, wrongly classified the said product under Chapter Heading 73.09 by taking it to be the storage of general use. Later on, it realized that since storage tank concerned was actively used for manufacturing activity of the plant and was an integral part of the manufacturing process, therefore, it ought to be classified under Chapter Heading 84.19. So, he claimed the correct classification under Chapter Heading 84.19.

Adjudicating Authority disallowed the assessee's claim of CENVAT credit, in respect of the input/capital goods used for the construction of storage tank, by taking the classification of the product under Chapter 73. Its primary contention was that classification once opted by the manufacturer could not be altered subsequently. Examine the validity of the proposed action of Adjudicating Authority, with reference to a decided case law, if any.

SSI

4. M/s Golden Enterprises, registered as a small scale unit, manufactures adhesive tapes under the brand name "CENTURY ADHESIVES". M/s Golden Enterprises has approached you as a consultant whether their Small Scale Unit is eligible for concession under Notification No. 8/2003 dated 01.03.2003. What would be your advice in this regard?

Refund

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

Notifications, Departmental Clarifications and Trade Notices

6. Will a notification have an overriding effect over circulars issued by CBEC on the same matter?

Central Excise Rules, 2002

7. Explain the validity of the following statements with reference to Central Excise Rules, 2002:-

- (a) Inputs received in the factory may be removed as such for further processing to a job worker without payment of excise duty.
- (b) The date of removal of any excisable goods being captively consumed within the factory of production is the date on which the final product in the production of which such goods are being used is removed.
- (c) The assessee can pay duty on the goods, removed from the factory in the month of December 2008, electronically through internet banking till 6.01.2009.
- (d) Goods removed from a 100% Export Oriented Unit to Domestic Tariff Area are exempt from the duty of excise.

Demand, Adjudication & Offences

- 8. Is there any discretion vested with authority under section 11AC of the Central Excise Act, 1944 to impose a penalty less than the amount equal to duty evaded?

Valuation

- 9. Surat Cloth Mills delivered 1000 meters of cloth to Purvanchal Readymade Garments on 10.01.2009 from its depot located at Ahmedabad @ Rs. 110 per meter. The goods were dispatched to the depot from the factory located in Surat on 05.01.2009. Ex-factory price on 05.01.2009 was Rs. 90 per meter. The sales of identical variety of cloth effected from Ahmedabad depot on the two relevant dates is as follows:-

On 05.01.2009		On 10.01.2009	
Cloth sold (in meters)	Rate per meter (Rs.)	Cloth sold (in meters)	Rate per meter (Rs.)
100	135	200	120
850	125	1,000	110
500	120	550	115
450	115	375	108

Calculate the assessable value of 1,000 meters of cloth sold by Surat Cloth Mills.

Filing of Return

- 10. State briefly the provisions relating to filing of Annual Installed Capacity Statement.

SERVICE TAX & VAT

Taxability of Services

- 11. Examine the validity of following statements:-
 - (a) Hindustan Infosystems is engaged in study, analysis, design and programming of information technology software. The said services are taxable under the category 'business auxiliary services'.

- (b) The services provided by a money changer in relation to dealing of foreign currency (buying or selling), at specified rates, without separately charging any amount as commission for such dealing, is not liable to service tax as foreign exchange broking under 'banking and other financial services'.
- (c) The services provided by a consulting engineer engaged in providing consultancy in the discipline of computer software engineering shall be exempt under the category 'consulting engineer's service'.
- (d) Some transporters undertake door- to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Such 'Express cargo service' is covered under 'courier agency service'.

Assessment Procedure

12. Explain the provisions relating to best judgment assessment under section 72 of the Finance Act, 1994 as amended.

Comparative valuation of service tax under a works contract service and under construction of complex service

13. Ramakrishna Development Corporation (RDC) – a real estate developer – is engaged in construction of a residential complex (consisting of more than 20 houses) named Apple County for Almeco Builders. The particulars are as follows:-

Contracted Price (excluding VAT, if leviable)	Rs.25,00,000
Steel supplied by Almeco Builders to RDC	Rs. 1,00,000
Excise duty paid on :-	
(a) capital goods used in providing construction service	Rs.40,000
(b) inputs used in relation to construction service	Rs. 17,000
Service tax paid on input services used in construction service	Rs. 25,000

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

- (a) The aforesaid contract for construction of residential complex involves the transfer of property in goods and materials involved in the construction of residential complex of worth Rs. 2,50,000. VAT of Rs. 10,000 has been paid on the said goods and materials. RDC has opted to pay service tax under Composition Scheme.

- (b) The aforesaid contract for construction of residential complex does not involve any transfer of property in goods and materials used in the construction of residential complex. It is to be noted that RDC has opted to avail the abatement of service tax equal to 67% under Notification No. 1/2003 dated 1.03.2006.

Due date for e-payment of Service Tax

- 14. Discuss briefly, the due date for e-payment of service tax.

Refund of service tax to exporters of goods

- 15. Boston Exporters Pvt. Ltd. exports goods to USA in August 2008. Singh Transporters transports these export goods by road in a truck from the inland container depot to the port of export and issues a consignment note to the exporter. Boston Exporters Pvt. Ltd. wishes to claim the refund of service tax paid on the service of transport of the said goods from the inland container depot to the port of export. You are required to state:-
 - (a) Who shall be the person liable to pay service tax on the aforesaid services provided by Singh Transporters?
 - (b) Do you think that Boston Exporters Pvt. Ltd. is entitled to the refund of service tax paid on the services provided by Singh Transporters? If yes, briefly discuss the conditions to be fulfilled for the said purpose and the time limit for filing the refund claim.

Delay in furnishing service tax return

- 16. State the provisions in respect of amount to be paid for delay in furnishing the prescribed return.

VAT invoice

- 17. VAT invoices act as the nucleus of entire machinery of VAT system. Elaborate.

Input Tax Credit

- 18. Enumerate the purchases eligible for availing input tax credit.

VAT and Hire Purchase Transactions

- 19. Explain briefly the following having regard to the VAT provisions relating to hire purchase transactions:-
 - (a) Finance charges/interest
 - (b) Goods returned
 - (c) Unpaid installments/forfeited installments
 - (d) Input tax credit

Computation of VAT liability

20. Calculate the total tax liability under the State VAT law and under the Central Sales Tax Act for the month of October 2008 from the following particulars:

Particulars	Rupees
Inputs purchased within the state	1,70,0000
*Capital goods used in the manufacture of the taxable goods	50,000
Inputs purchased from a registered dealer who opts for composition scheme under the provisions of the Act	10,000
High seas purchases of inputs	1,00,000
Finished goods sold :-	
(a) within the state	2,00,000
(b) in the course of inter-State trade	2,50,000

Applicable tax rates are as follows:-

(a) VAT rate on capital goods	12.5%
Input tax rate within the state	12.5%
Output tax rate within the state	4%
Central sales tax rate	2%
(b) VAT rate on capital goods	4%
Input tax rate within the state	4%
Output tax rate within the state	12.5%
Central sales tax rate	2%

*Note – The capital goods are not the goods included in the negative list.

CUSTOMS

Valuation

21. Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2008. However, entry inwards is granted on 7.08.2008.

The relevant details of the transaction are provided as follows:-

CIF value of the machine imported	\$ 13,000
Air freight paid	\$ 2,800
Insurance charges paid	\$200

Rate of exchange as announced by	As on 18.07.2008	As on 7.08.2008
CBEC	1 US \$=Rs 46	1 US \$=Rs 45.80
RBI	1 US \$=Rs 46.10	1 US \$=Rs 46.10

Calculate the assessable value (in rupees) for the purposes of levy of customs duty.

Make suitable assumptions wherever necessary.

Warehousing

22. M/s Gargi Polymers, India imports goods and warehouses them with PVC Containers Ltd. after the execution of necessary bond but does not clear them within the warehousing period nor seeks any extension. Meanwhile, PVC Containers Ltd. auctions the goods u/s 63 (2) of the Act and seeks the permission from the department for their clearance to the highest bidder and for the recovery of its warehousing charges. However, the custom authorities insist that under section 150 of the Customs Act, 1962, the entire auction proceeds have to be first adjusted towards the custom duty. You are required to examine the veracity of the custom authorities' claim with the help of a decided case law, if any.

Difference between detention and seizure

23. The goods imported by Fidelity Industries were detained on 22-5-2008. However, Fidelity Industries did not produce the required documentary evidence. Consequently, the impugned goods were seized on 2-8-2008. The Department issued a show cause notice to Fidelity Industries on 15-1-2009. Fidelity Industries put forth the question of limitation alleging that the impugned show cause notice had been issued after a period of six months from the date of the seizure as one envisaged under section 110(2) of the Customs Act, 1962 and hence, it was time-barred. The goods were taken on 22-5-2008; but, the show cause notice was issued on 15-1-2009 which was after a lapse of six months. So, Fidelity Industries sought for quashing of the said show cause notice and also for the return of the goods.

Do you think that the contention of the Fidelity Industries is tenable in law?

Duty Drawback

24. Explain the procedure for claiming drawback on goods exported by post.

Divergence between accounting and taxation principles

25. Explain how the accounting principles diverge from the taxation principles in the following cases:-
- Valuation in excise
 - Definition of capital goods
 - Review of CENVAT credit balances
 - Recognition of revenue in construction contracts

SUGGESTED ANSWERS/HINTS

EXCISE

1. The statement is absolutely correct. Recently, in case of CCEx., Chandigarh v. Gurdaspur Distillery 2008 (224) ELT 337, Supreme Court reiterated the principle that an article does not become liable to excise duty merely because of its specification in Schedule to Central Excise Tariff Act, 1985 unless it is salable and known to market.

In the instant case, the assessee was engaged in the manufacture of de-natured ethyl alcohol. During the manufacture of de-natured ethyl alcohol, a residue known as spent wash came into existence. The same was reacted in a closed type digester and methane gas was being produced. This methane gas was being consumed captively by the assessee as a fuel in distillery. Revenue appealed that duty should be levied on the methane gas thereby produced. However, the assessee took the stand that since methane gas was not marketable as such, it was not dutiable.

Tribunal referred to the case of Bhore Industries Ltd. v. Collector of Central Excise 1989 (40) ELT 280 (SC) wherein it was held that marketability is an essential ingredient in order to attract excise duty and thus, decided the case in favour of the assessee. Supreme Court upholding the Tribunal's decision held that since the Department failed to prove the marketability of the goods in question, methane gas produced by respondent was not marketable and hence, was not liable to duty.

2. (a) Computation of CENVAT credit admissible to Saurashtra office of PRIC-

Particulars	Rupees
CENVAT credit of inputs (Note – 1)	1,80,000
CENVAT credit of capital goods (50% of Rs. 2,50,000) (Note – 1 & 2)	1,25,000
CENVAT credit of input services (Note – 3)	<u>4,20,000</u>
Total CENVAT credit admissible	<u>7,25,000</u>

Note -

1. A provider of output services can avail the CENVAT credit of the inputs and capital goods received on the basis of an invoice, challan or bill issued by an office or any other premises (head office) of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods [Rule 7A of CENVAT Credit Rules, 2004 inserted w.e.f. 01.04.2008].
2. The CENVAT credit in respect of capital goods received in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such

capital goods in the same financial year [Rule 4(2)(a) of CENVAT Credit Rules, 2004]

3. The 'input service distributor' (Gorakhpur office) can distribute CENVAT credit in respect of the service tax among its units providing output service (Saurashtra office) provided the credit distributed does not exceed the service tax paid [Rule 7 of CENVAT Credit Rules, 2004].
- (b) The facts of the given case are similar to the case of CCE, Pondicherry v. CESTAT 2008 (230) ELT 209 (Mad.).

In this case, Madras High Court decided that erstwhile rule 8 of the CENVAT Credit Rules, 2002 [now rule 10 of the CENVAT Credit Rules, 2004*] did not provide that the assessee could transfer the CENVAT credit corresponding only to the quantum of inputs or capital goods transferred to the new factory, but permitted the assessee to transfer the entire balance of unutilised CENVAT credit along with inputs and capital goods in stock at the factory to the new location provided the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise. Thus, requirement of erstwhile rule 8 of the CENVAT Credit Rules, 2002 [now rule 10 of the CENVAT Credit Rules, 2004*] had been fulfilled by the assessee. Hence, he could avail the CENVAT credit transferred by him.

Thus, in the given question, Adecco Corporation Limited (ACL) can avail the entire balance of unutilized CENVAT credit of Rs.6,00,000 available with him.

*Note – Relevant portion of rule 10 of CENVAT Credit Rules, 2004 reads as follows:-

If a manufacturer of the final products shifts his factory to another site, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred factory.

Such transfer of the CENVAT credit shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

- (c) Circular no. 868/6/2008 – CX dated 09.05.2008 clarified that as an input service distributor does not provide any service, and is like a trader, the question of availing either of the options provided under rule 6(3) of CENVAT Credit Rules, 2004 would not arise.

3. The question, as to whether an erroneous claim to a particular classification made earlier precludes the assessee from making claim for correct classification subsequently, has been decided by Rajasthan High Court in case of Guljag Industries Ltd. v. Union of India 2008 (224) ELT 38. In this case, learned counsel for appellant contended that earlier claim to a particular classification by the manufacturer did not stop him from claiming correct classification under different head by pointing out that the classification earlier claimed was erroneous.

Rajasthan High Court held that the assessee's contention was justified. Erroneous claim made by the assessee earlier did not preclude him from subsequently making a claim for correct classification.

Hence, in view of above pronouncement, the proposed action of Adjudicating Authority is not valid. ATMC is entitled to alter the earlier classification and claim the classification of the said product under Chapter heading 84.

Note - The headings cited in the case law mentioned above may not co-relate with the headings of the present Excise Tariff as this case relates to an earlier point of time.

4. Yes, M/s Golden Enterprises can claim the benefit under Notification No. 8/2003 dated 01.03.2003. Notification No. 47/2008 CE dated 01.09.2008 has amended Notification No. 8/2003 CE dated 01.03.2003 to extend the benefit of small scale exemption of excise duty to Small Scale Industries producing goods bearing the brand name or trade name of another person provided these goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels. Since, Golden Enterprises manufactures the goods specified in the notification; the benefit of small scale exemption of excise duty shall be available to Golden Enterprises.

The said amendment would be applicable to the clearances of these goods affected on or after 1st September, 2008. However, this exemption shall be restricted to Rs.90 lakh for the remaining part of the financial year 2008-09.

5. Finance Act 2008 has amended section 11B to extend the benefit of 'refund of duty of excise' to 'refund of duty of excise and interest, if any paid on such duty'. Consequently, new section provides that any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner/Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed.

Prior to this amendment, an identical view was taken by the High Court in case of CCEx. v. Northern Minerals Ltd. 2007 (216) ELT 198 (P & H), when a similar issue came up for consideration before it.

From the above discussion, it can be inferred that Greenview Technologies Ltd. is entitled to the refund claim for the said interest. The objection raised by Department is not valid in law.

6. Supreme Court, in case of Sandur Micro Circuits Ltd. v. CCE., Belgaum 2008 (229) ELT 641, has held that a circular cannot take away the effect of notifications statutorily issued. Earlier also, in certain cases, it has been held that the circular cannot whittle down the exemption notification and restrict the scope of the exemption notification or hit it down. By issuing a circular, a new condition thereby restricting the scope of the exemption or restricting or whittling it down can not be imposed.
7.
 - (a) The statement is absolutely valid. Rule 16A of Central Excise Rules, 2002 provides that any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfillment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.
 - (b) The statement is not correct. The date of removal of any excisable goods being captively consumed within the factory of production is the date on which these goods are issued for such use and not the date on which the final product in the production of which such goods are being used is removed [Explanation to rule 5(2) of Central Excise Rules, 2002].
 - (c) The statement is absolutely justified. Rule 8(1) of the Central Excise Rules, 2002 has been amended to provide that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking.
 - (d) The statement is incorrect. Goods removed from a 100% Export Oriented Unit to Domestic Tariff Area are liable to duty of excise. Rule 17 of Central Excise Rules, 2002 provides that goods shall be removed from a 100% Export Oriented Unit to Domestic Tariff Area under an invoice by following the procedure specified in rule 11, and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8 of the said rules.
8. The question, whether there is any discretion under section 11AC of the Central Excise Act, 1944 to impose penalty less than the amount equal to duty evaded, came up for consideration before Bombay High Court in case of C.C.E. & C., Aurangabad v. Godavari Manar Sahakari Sakhar Karkhana Ltd. 2008 (228) ELT 172 (Bom.) wherein the Court pronounced that under section 11AC, there was no discretion vested with the authority to impose any penalty different than the one prescribed by the said provision. It was evident that legislature had not fixed any upper or lower limit, but prescribed only one quantum of penalty which was equal to the duty intentionally evaded.

Hence, there is no discretion under section 11AC of the Central Excise Act, 1944 to impose penalty less than the amount equal to duty evaded. The Court further observed that the reason for such stiff and stringent provision is that since the penalty under section 11AC is a sort of penal provision, the said provision ought to be harsh and stringent.

In view of above, it can be concluded that under section 11AC of the Central Excise Act, 1944, the amount of penalty cannot be less than the amount equal to duty evaded.

Note - Relevant portion of section 11AC of the Central Excise Act, 1944 reads as under:

Where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made there under with intent to evade payment of duty, the person who is liable to pay duty as determined under subsection (2) of section 11A of the Act, shall also be liable to pay a penalty equal to the duty so determined.

9. Computation of assessable value:-

1. In the given case, since goods are sold from depot, transaction value (viz. Rs. 110 per meter) cannot be accepted for ascertaining the assessable value of the goods. The value of the said goods shall be determined as per rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
2. Rule 7 of the said rules stipulates that if excisable goods are sold from a depot after their clearance from the place of removal, the value shall be the "normal transaction value" of such goods sold from such other place (depot) at the time of removal from factory/warehouse. Hence, the normal transaction value of 1,000 meters of cloth sold from the Ahmedabad depot on 05.01.2009 shall be taken as assessable value.
3. (a) Circular no. 354/81/2000 dated 30.06.2000 clarifies that "normal transaction value" under rule 2 of the aforementioned rules is the transaction value at which the greatest aggregate quantity of goods from depots etc., are sold at or about the time of removal of the goods from the factory/warehouse.
(b) Further, with regard to greatest aggregate quantity, circular no. 643/34/2002-CX dated 01.07.2002 clarifies that
 - (i) the time period should be taken as the whole day and,
 - (ii) the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day, irrespective of the number of buyers.
4. Accordingly, the price at which the largest quantity of identical variety of cloth is sold on 05.01.2009 shall be taken as greatest aggregate quantity. The largest quantity sold during the day is 850 meters of cloth. The price at which it is sold i.e. Rs. 125 shall be considered for computing the normal transaction value.

Therefore, assessable value of the goods = 1,000 mtrs. × Rs.125 = Rs. 1,25,000

10. Rule 12(2A) of the Central Excise Rules, 2002 provides that every assessee is required to file Annual Installed Capacity Statement in Form no. ER-7 every year, before 30th April. For the year 2007-08, the said statement shall be furnished by 31st day of October, 2008. [Notification No. 38/2008-C.E. (N.T.), dated 29-9-2008]

SERVICE TAX & VAT

11. (a) The statement is incorrect. The services of study, analysis, design and programming of information technology software are taxable under the category of 'information technology software services' under section 65(105)(zzzz) of the Finance Act, 1994 as amended by Finance Act 2008. Prior to this amendment, any information technology software service was taxable under the category of 'business auxiliary service'.
- (b) The statement is absolutely correct. Circular No. 96/7/2007 ST dated 23.08.2007 clarifies that moneychangers are authorized by RBI to buy and sell foreign exchange at the prevalent market rates. Buying or selling of foreign exchange by such persons without separately charging any amount as commission or brokerage does not fall within the scope of foreign exchange broking and is not liable to service tax under section 65(105)(zm) of the Finance Act, 1994 as amended.
- (c) The statement is incorrect. By amending the definition of taxable consulting service provided under sub – clause (g) of clause (105) of section 65, Finance Act 2008 has included the consultancy services in the field of computer software engineering within the scope of taxable services provided by a consulting engineer. Hence, the said services are no longer exempt and are taxable under the category 'consulting engineer's service'.
- (d) The statement is absolutely correct. Circular No. 96/7/2007 ST dated 23.08.2007 clarifies that the nature of service provided by 'Express Cargo Service' provider falls within the scope and definition of the courier agency. Hence, the said service is liable to service tax under courier agency service under section 65(105)(f) of the Finance Act, 1994 as amended.
12. The Finance Act, 2008 has inserted a new section 72 to empower the Central Excise Officer to make best judgment assessment. The provisions of new section are as follows:

If any person, liable to pay service tax,—

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,
- the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall

by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

13. (a) A contract for the construction of a new residential complex can be classified as a 'works contract' provided there is a transfer of property in goods involved in the execution of such contract leviable to tax as sale of goods [Explanation to section 65(105)(zzzza) of the Finance Act, 1994 as amended].

Therefore, a contract can be classified as a work contract if following two conditions are cumulatively satisfied:-

- (i) There is a transfer of property in goods involved in the execution of specified contract, and
- (ii) Such transfer is leviable to tax as sale of goods.

Thus, the contract in the instant case is a works contract. Now, since, the assessee has opted for Composition Scheme; valuation shall be made as per the provisions of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

Calculation of net service tax payable by RDC under Composition Scheme:-

Particulars	Rs.
Gross amount charged (excluding VAT)	25,00,000
Service tax @4.12%	1,03,000
Less: CENVAT credit of excise duty paid on capital goods (50%)	20,000
(Note – 4)	
Less: CENVAT credit of service tax paid on input service	<u>25,000</u>
Net service tax payable	<u>58,000</u>

Notes –

1. Since, the assessee has opted for Composition Scheme, value of transfer of property in goods and materials involved in the construction of residential complex of worth Rs. 2,50,000 shall be included in the gross amount charged for the works contract.
2. VAT of Rs. 10,000 paid on transfer of property in goods involved in the execution of the said works contract shall not be included in gross amount charged for the works contract [Explanation to rule 3(1) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007].
3. CENVAT credit of Rs.17,000 on inputs used in relation to said works contract shall not be available to the assessee [Rule 3(2) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007].

4. CENVAT credit in respect of capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].
 5. The value of material supplied by customer, Rs. 1,00,000, is not required to be added, in case of composition scheme under works contract service.
- (b) Since, the contract does not involve the transfer of property in goods and materials used in the construction of residential complex, the contract cannot be termed as a works contract. The services provided by RDC are taxable under the category of 'construction of complex service'.

Moreover, as the assessee has opted for paying service tax under Notification No. 1/2006 dated 01.03.2006, he has to fulfill the following conditions:-

1. The services provided are not merely the services of completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act.
2. The CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004; or
3. The service provider has not availed the benefit under the Notification No. 12/2003-ST, dated the 20th June, 2003.

Calculation of net service tax payable by RDC under Notification No.1/2006:-

Particulars	Rs.
Contracted Price	25,00,000
Add: Value of materials supplied by customer	<u>1,00,000</u>
Gross amount charged	26,00,000
33% of Gross amount charged	<u>8,58,000</u>
Net service tax payable @12.36% (rounded off)	<u>1,06,049</u>

14. Due dates for e-payment of service tax:-

Rule 6(1) of Service Tax Rules, 1994 provides the due dates for e-payment of service tax as follows:-

S.No.	Where the assessee is	Service tax shall be paid to the credit of Central Government
1	An individual or proprietary firm or partnership firm	by the 6th day of the month immediately following the quarter in which the payments are received towards the value of taxable services.
2	In other cases (company or HUF)	by the 6th day of the month immediately following the calendar month in which the payments are received towards the value of taxable services.

15. (a) Boston Exporters Pvt. Ltd. shall be the person liable to pay service tax. In relation to taxable service provided by a goods transport agency, the person for paying service tax shall be the consignor or consignee who is paying the freight (Boston Exporters Pvt. Ltd. in the instant case) [Rule 2(1)(d)(v) of Service Tax Rules,1994].
- (b) Yes, Boston Exporters Pvt. Ltd. is entitled to the refund of service tax paid on the services provided by Singh Transporters.

Notification No. 41/2007 ST dated 06.10.2007 provides that:-

- (i) Refund of service tax - where the service receiver is an exporter of goods and he has used any service out of the services specified in the said notification during the course of export of goods, the exporter can claim a refund of the service tax paid on such service.
- (ii) Procedure for claiming refund in the normal course - the service provider must collect the service tax from the exporter (service receiver) and deposit the same to the credit of the Central Government. Thereafter, the exporter can apply for the refund of the service tax so paid.
- (iii) Procedure for claiming refund if exporter is the person liable to pay service tax - where the exporter (service receiver) himself is the person liable to pay the service tax, the exporter must directly pay the tax to the Government account and apply for the refund of the same.

In the given case, the services provided by Singh Transporters, for transport of goods from the inland container depot to the port of export, is a service specified under the aforementioned notification. Further, since Boston Exporters Pvt. Ltd. is the person liable to pay service tax, it must pay the service tax directly to the Government and apply for the refund of the same.

Conditions for claiming refund:-

The exporter of the goods must satisfy the following conditions in order to be eligible for refund of service tax:-

- (a) the exemption shall be claimed by the exporter of the goods for the specified services received and used by the exporter for export of the said goods;
- (b) the exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;
- (c) the exporter claiming the exemption has actually paid the service tax on the specified services;
- (d) no CENVAT credit of service tax paid on the specified services used for export of said goods has been taken under the CENVAT Credit Rules, 2004;
- (e) the said goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;
- (f) exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.

Time limit for filing refund claim:-

The claim of refund is required to be filed within 60 days from the end of the relevant quarter during which the said goods have been exported. Since, in the given case, the goods have been exported in the quarter ending September '08, Boston Exporters Pvt. Ltd. is required to file the claim for refund of service tax till 29th November, 2008.

16. Notification No. 20/2007 ST dated 12.05.2007 has inserted rule 7C in the Service Tax Rules, 1994. Rule 7C provides for the amount to be paid for delay in furnishing the prescribed return as follows:-

S.No.	Number of days by which furnishing of return is delayed from the date prescribed for submission of such return	Amount to be credited to Central Government (Rs.)
1.	15 days	500
2.	beyond 15 days but less than 30 days	1,000
3.	beyond 30 days	1,000 plus Rs.100 for every day from the 31 st day till the date of furnishing the said return

However, total amount payable under rule 7C shall not exceed the amount specified in section 70 of the Act.

Further, where the assessee has paid the amount as prescribed under rule 7C, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.

17. VAT invoices act as the nucleus of entire machinery of VAT system. The statement is absolutely justified. Invoices are very crucial documents for administering VAT. In the absence of invoices, VAT paid by the dealer earlier cannot be claimed as set off. Invoices should be preserved with full care. In case any original invoice is lost or misplaced, a duplicate authenticated copy must be obtained from the issuing dealer.

A VAT invoice:-

- (i) helps in determining the input tax credit;
 - (ii) prevents cascading effect of taxes;
 - (iii) facilitates multi-point taxation on the value addition;
 - (iv) promotes assurance of invoices;
 - (v) assists in performing audit and investigation activities effectively;
 - (vi) checks evasion of tax.
18. For the purpose of claiming input tax credit, the taxable goods should be purchased for any one of the following purposes:
- (i) for sale/resale within the State;
 - (ii) for sale to other parts of India in the course of inter-State trade or commerce;
 - (iii) to be used as-
 - (a) containers or packing materials;
 - (b) raw materials; or
 - (c) consumable stores,
required for the purpose of manufacture of taxable goods or in the packing of such manufactured goods intended for sale in the State or in the course of inter-State trade or commerce;
 - (iv) for being used in the execution of a works contract;
 - (v) to be used as capital goods required for the purpose of manufacture or resale of taxable goods;
 - (vi) to be used as
 - (a) raw materials;

- (b) capital goods;
- (c) consumable stores and
- (d) packing materials/containers

for manufacturing/packing goods to be sold in the course of export out of the territory of India;

(vii) for making zero-rated sales other than those referred to in clause (vi) above.

19. VAT provisions relating to hire purchase transactions:-

- (a) Finance Charges/interest - The installment fixed for payment in the case of a hire-purchase arrangement involves an element of interest or finance charges in addition to the price of the goods sold. While some of the State VAT legislations have provided for deduction of such interest or finance charges in arriving at the sale price to be treated as turnover in a hire purchase transaction, some States have not done so.
- (b) Goods returned - The VAT is payable on the date of delivery of the goods. If for any reason the goods are returned, then refund of tax can be claimed as per the provisions of respective State VAT laws. Many States provide the time limit for granting the claim of goods returned. Therefore, if the goods are not returned during that specified period, no benefit will be available.
- (c) Unpaid installments/forfeited installments - If for any reason, the transaction of hire purchase fails, then the vendor takes possession of the goods. In substance, this is a sales return. Thus, the provisions of local VAT Act relating to sales return will apply. Normally in such cases the installment received for the intervening period are forfeited
- (d) Input tax credit - The hire purchase transaction is at par with normal sale transaction. Therefore normal provisions relating to input tax credit will apply. However, some States have provided for pro-rata credit.

20. (a) Computation of the tax liability for the month of October 2008:-

	Rs
Inputs eligible for input tax credit (see Note below)	1,70,000
Output sold in the month (within the State)	2,00,000
Inter-State sales	2,50,000
Input tax credit (including capital goods)	27,500
(Rs. 21,250 + Rs. 6,250)	
Output tax (@ 4%)	8,000

CST for Inter-State sale(@ 2%)	5,000
State VAT liability (Rs.8,000 – Rs.27,500)	Nil
Excess credit	19,500
Central sales tax to be paid (Rs.5,000 – Rs.19,500)	Nil
Excess credit carried forward to subsequent period	14,500

(b) Computation of the tax liability for the month of October 2008:-

	Rs
Inputs eligible for input tax credit (see Note below)	1,70,000
Output sold in the month (within the State)	2,00,000
Inter-State sales	2,50,000
Input tax credit (including capital goods) (Rs. 6,800 + Rs. 2,000)	8,800
Output tax (@12.5%)	25,000
CST for Inter-State sale(@ 12.5%)	5,000
State VAT liability (Rs.25,000 – Rs.8,800)	16,200
Central sales tax to be paid	5,000
Excess credit carried forward to subsequent period	Nil

Note:-Following purchases shall not be eligible for input tax credit:-

- (a) Inputs purchased from a registered dealer who opts for composition scheme under the provisions of the Act.
- (b) High seas purchases of inputs because no input tax is payable on high seas sales.

CUSTOMS

21. Computation of assessable value for Liberty International Group:-

	\$
CIF Value of the machine imported	13,000
Less:Air freight paid	2,800
Less:Insurance paid	<u>200</u>
FOB (Free on Board) Value	10,000
Add:Air freight (Note – 1)	2,000
Add:Insurance (actually paid)	<u>200</u>

CIF Value of the machine	12,200
Add: Landing charges (Note – 2)	<u>122</u>
Assessable value (in dollars)	<u>12,322</u>

Assessable Value (in rupees) = \$ 12,322 × Rs. 46 = Rs. 5,66,812

Notes - For the purpose of ascertaining the assessable value of imported goods:-

1. air freight shall not exceed twenty per cent of the FOB (Free on Board) value of the goods [Second proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Since, in given case, actual air freight paid is 28% of the FOB value, air freight is restricted to 20% of FOB value (20% of \$10,000) i.e. \$ 2,000.

2. landing charges at the rate of 1% of the CIF value of the imported goods, shall be included, whether ascertainable or not [First proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
3. the rate of exchange shall be the rate of exchange as in force on the date on which a bill of entry is presented under section 46 [Third proviso to section 14(1) of Customs Act, 1962].

Explanation to section 14(1) further clarifies that rate of exchange shall be the rate as notified by CBEC.

22. The facts of the given situation are similar to the case of Associated Container Terminals Ltd. v. Union of India 2008 (226) ELT 169 (Del.). In the instant case, Delhi High Court held that in section 150(2)(b), words “and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods” made it clear that it does not pertain to custom duty and refers to the payment of warehousing charges. So, the recovery of warehousing charges takes precedence over recovery of custom duty which is relatable to section 150 (2) (e) of the Customs Act, 1962.

Viewing from this angle, the right of the warehouse keeper – PVC Containers Ltd. to recover the warehousing charges from the sale proceeds appears to be superior to the right of the Revenue to recover customs duty.

Therefore, in the given case, the custom authorities' claim is not justified.

Note - Section 150 of the Customs Act, 1962 reads as under:-

The proceeds of any such sale shall be applied

- (a) firstly to the payment of the expenses of the sale,
- (b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,

- (c) next to the payment of the duty, if any, on the goods sold,
 - (d) next to the payment of the charges in respect of the goods sold due to the person having custody of the goods,
 - (e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods.
23. The facts of the given situation are similar to the case of *Pro Musicals v. Joint Commissioner Customs (Prev.)*, Mumbai 2008 (227) ELT 182 (Mad.) wherein after going through the relevant provisions under section 110(2) of the Customs Act, 1962, the Court observed that the show cause notice issued to assessee was not out of time because time limit under section 110(2) reckons from the date of seizure and not from the date of detention. Further, detention could, at no stretch of imagination, be considered to be same as seizure.

The Court clarified that the detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of seizure would arise. Thus, the detaining of goods is for the purpose of enquiry, and if sufficient proof is not furnished, question of seizure of the property would arise.

The Court referred to the case of *Gian Chand and Others v. State of Punjab* wherein it was stated that seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation of possession of goods.

Hence, the Court ruled out the assessee's contention that detention and seizure were one and the same. The Court further held that the show cause notice issued by the Department was valid. Therefore, in the given case, the contention of the Fidelity Industries is not tenable in law.

Note – Provisions of section 110(2) of the Customs Act, 1962 reads as under:-

Where any goods are seized under section 110(1) and no show cause notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.

24. Rule 11 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 lays down the procedure for claiming drawback on goods exported by post as under:-

1. Outer Packing

The outer packing of the parcel/package carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT".

2. Form of filing of claim
The exporter shall deliver a claim in the prescribed form, in quadruplicate, along with the parcel/package, to the competent Postal Authority.
 3. Date of filing of claim
The date of receipt of the aforesaid claim form by the proper officer of customs from the postal authorities shall be deemed to be date of filing of drawback claim by the exporter for the purpose of section 75A.
 4. Intimation to exporter
An intimation of the same shall be given by the proper officer of customs to the exporter in such form as the Commissioner of Customs may prescribe.
 5. Deficiencies in drawback claim form
In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within fifteen days of its receipt from postal authorities by a deficiency memo in the form prescribed by the Commissioner of Customs, and such claim shall be deemed not to have been received for the purpose of claiming drawback.
 6. Compliance of deficiencies and date of filing of claim in such case
When the exporter complies with the requirements specified in the deficiency memo within thirty days of its return, he shall be issued an acknowledgement by the proper officer in the form prescribed by the Commissioner of Customs and the date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.
25. Divergence between accounting principles and taxation principles in:-
- (i) Valuation in excise
The value of finished goods as per the excise provisions may differ from the value recorded in the financial records on account of various additions or deductions made to/from the invoice value in terms of section 4 and Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. For example, in financial records the invoice value shall be recorded as the value of finished goods while for excise purposes advertising expenses, storage and outward handling expenses, packing expenses etc. if any, borne by the buyer in connection with the sale shall be added to the invoice value.
 - (ii) Definition of capital goods
As per rule 2(a)(A)(iii) of the CENVAT Credit Rules, 2004 capital goods include components, spares and accessories of specified capital goods whereas these are not always treated as capital goods in the financial accounts. As per Accounting

Standard Interpretation 2 on Accounting for Machinery Spares, these items are treated as inventories for the purpose of AS 2 if they are not specific to a particular item of fixed asset and can be used generally for various items of fixed assets. These should be charged to profit and loss account as and when issued for consumption in the ordinary course of operations. Further, rule 2(a)(A)(1) clarifies that capital goods does not cover equipment or appliances used in the office of the manufacturer. However, such a distinction is not being made in the accounting principles. AS 10 on Fixed Assets does not call for exclusion of the capital goods used in the office from the definition of fixed assets.

(iii) Review of CENVAT credit balances

As per the Guidance Note on Accounting Treatment for MODVAT/CENVAT, balances in CENVAT Receivable Account pertaining to inputs and capital goods should be reviewed at the year end. If on such review any non usable excess credit (i.e. credit not likely to be used in normal course of business within reasonable time) is found the same should be adjusted in the accounts. However, the CENVAT provisions do not provide for such write off. The CENVAT credit balance can be carried forward to the next year for being used in setting off the duty/service tax liability. Therefore, a reconciliation statement should be prepared to explain the difference between financial accounts and excise records.

(iv) Recognition of revenue in construction contracts

The service providers engaged in construction services should account the revenue and expenses of the contract as per the percentage completion method prescribed by this accounting standard. Under this method, contract revenue is matched with the contract cost incurred in reaching the stage of completion. Therefore, only the revenue, expenses and profit that can be attributed to the proportion of work completed are reported. However, as per service tax provisions, the gross amount as and when received is considered for paying service tax. Therefore, cash basis is relevant for charging of service tax whereas accrual basis is adopted for accounting purposes.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2008 TO 31.10.2008

Students may note that the Study Material for Indirect Tax Laws contains all the relevant amendments made by the Finance Act, 2008. Further, circulars/notifications issued up to 30.04.2008 have also been incorporated therein. The following are the amendments which have been made between 01.05.2008 to 31.10.2008. It may be carefully noted that for the students appearing in June 2009 exams, the amendments made by the notifications, circulars and other legislations up to 31.10.2008 are relevant.

A. EXCISE

1. Following amendments have been made in the Central Excise Rules, 2002:

(i) Rule 12(2A) inserted- Annual Installed Capacity Statement

This rule provides that every assessee shall submit to the Superintendent of Central Excise, an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates in Form ER-7 by the 30th April of the succeeding financial year.

However, the Central Government may specify assessee or class of assessee who may not require to submit such an Annual Installed Capacity Statement.

For the year 2007-08, the said statement shall be furnished by 31st October, 2008.

[Notification No. 38/2008 CE (NT) and Notification No. 39/2008 CE (NT) dated 29.09.2008]

(ii) Amendments to rule 17 - Removal of goods by a 100% EOU for DTA

Notification No. 23/2008 CE (NT) dated 23.05.2008 has amended rule 17 of the Central Excise Rules, 2002 with effect from 01.06.2008 as follows:-

(a) Rule17(1)Monthly payment of duty by 100% EOUs

In case of removal of excisable goods from 100% Export Oriented Unit (EOU) to Domestic Tariff Area (DTA), the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8. Thus, duty can be paid monthly in case of removals from 100% EOUs also.

(b) Rule17(4)Scrutiny by the proper officer

The proper officer may on the basis of information contained in the return filed by the unit under rule 17(3), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.

(c) Rule17(5)Furnishing of documents and records by assessee

Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(d) Amendment of Form ER-2

Notification No. 24/2008 CE (NT) dated 23.05.2008 has amended Form ER-2 - form prescribed for monthly return for 100% EOU in respect of goods manufactured, goods cleared and receipt of inputs and capital goods.

2. Following amendment has been made in the CENVAT Credit Rules, 2004:

Proviso to rule 3(1)(xi) of the CENVAT Credit Rules, 2004

The amount equal to excise duty paid on the capital goods at the time of debonding of the unit in terms of the para 8 of Notification No. 22/2003 CE dated 31.03.2003 (which exempts certain goods when brought into 100% EOU / STP complex)shall be allowed as CENVAT credit.

[Notification No. 35/2008 CE (NT) dated 24.09.2008]

3. Pan Masala notified for the purpose of charging duty on the basis of capacity of production

Section 3A, as inserted by the Finance Act, 2008, contains the provisions to charge excise duty on the basis of capacity of production in respect of notified goods.

Notification No. 29/2008 CE (NT) dated 01.07.2008 has notified pan masala [falling under tariff item 2106 90 20 of the First Schedule to the Central Excise Tariff Act, 1985 (except the pan masala containing not more than 15% betel nut)] and pan masala containing tobacco, commonly known as gutkha (falling under tariff item 2403 99 90 of the said Tariff Act) manufactured with the aid of packing machine and packed in pouches, for the purpose of section 3A.

In this regard, Notification No. 30/2008 CE (NT) dated 01.07.2008 has notified the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. They have come into force on the 1st day of July, 2008.

Further, Notification No. 32/2008 CE (NT) dated 28.08.2008 has granted rebate of duty on Pan Masala containing tobacco (gutkha) on which duty of excise has been paid under section 3A of the Central Excise Act, 1944, on their exportation out of India on or after 1st July, 2008, to any country except Nepal and Bhutan subject to the conditions, limitations and procedures prescribed therein.

4. Condition of paying excise duty from account current, done away with, in the following cases:

- (a) Notification No. 39/2004 CE (NT) dated 25.11.2004 inter alia exempts class of manufacturers, who manufacture certain specified excisable goods prescribed therein and have paid excise duty of less than Rs.100 lakh from account current during the preceding financial year, from filing the annual information relating to principal inputs and monthly return of receipt and consumption of each of the principal inputs.

Notification No. 41/2008 CE (NT) dated 29.09.2008 has amended the said notification so as to remove the condition of paying the stipulated amount of duty from account current i.e., in cash. Now, the duty can be paid by utilizing the CENVAT credit also.

Consequently, now the manufacturers of the prescribed excisable goods shall be exempted from filing the annual information relating to principal inputs and monthly return of receipt and consumption of each of the principal inputs if they have paid the duty of less than Rs.100 lakh during the financial year, by any mode - either in cash or by utilizing CENVAT credit.

- (b) Notification No. 17/2006 CE (NT) dated 01.08.2006 inter alia exempts the assesseees who have paid excise duty of less than Rs.100 lakh from account current during the financial year, from filing of the Annual Financial Information Statement.

Notification No. 42/2008 CE (NT) dated 29.09.2008 has amended the said notification so as to remove the condition of paying the stipulated amount of duty from account current i.e., in cash. Now, the duty can be paid by utilizing the CENVAT credit also.

Consequently, now the assesseees shall be exempted from filing the Annual Financial Information Statement if they have paid the duty of less than Rs.100 lakh during the financial year, by any mode - either in cash or by utilizing CENVAT credit.

5. Proviso to clause (2) of Notification No. 35/2001 CE (NT) dated 26.06.2001*

If a person has more than one premise requiring registration, he may obtain a single registration for all such premises if following conditions are satisfied:-

- (i) such person manufactures Compressed Natural Gas (falling under heading 2711 of the First Schedule to the Central Excise Tariff Act, 1985), and
- (ii) all the premises fall within the jurisdiction of one Chief Commissioner of Central Excise, and
- (ii) he has submitted the details of all such premises along with the application for registration.

However, prior intimation shall be given before starting any additional premises subsequent to obtaining such registration:

Further, if the assessee is registered under the existing provision, he may apply for fresh registration or file amendment to the registration as the case may be, in accordance with provisions of this notification.

[Notification No.43/2008-CE (NT) dated 06.10.2008]

*Note - Clause (2) of Notification No. 35/2001 CE (NT) dated 26.06.2001 prescribes that if the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

6. SSI exemption extended to SSIs producing specified packing materials bearing the brand name of another person

Notification No. 47/2008 CE dated 01.09.2008 has amended Notification No. 8/2003 CE dated 01.03.2003 to extend the benefit of small scale exemption of excise duty to SSIs

producing goods bearing the brand name or trade name of another person if these goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels.

However, this exemption shall be restricted to Rs.90 lakh for the remaining part of the financial year 2008-09.

7. Clarification of certain issues relating to rule 6(3) of the CENVAT Credit Rules, 2004
Circular No. 868/6/2008 CX dated 09.05.2008 has clarified the following issues with regard to rule 6(3) of the CENVAT Credit Rules, 2004*:

S.No.	Question	Answer
1.	Whether an assessee availing option (i) or option (ii) under rule 6(3) is allowed to take CENVAT Credit of duty paid on inputs and input services which are used for both dutiable and exempted goods or services.	Yes, credit on such inputs and input services is allowed. However, an assessee following option (i) or (ii) under rule 6(3) shall not be allowed to take CENVAT credit of duty paid on those inputs and input services which are used exclusively for the manufacture of exempted goods or provision of exempted services [refer Explanation II of rule 6(3)]. For the purpose of the calculation of amount under formula given under rule 6(3A), the total CENVAT credit taken on inputs and input services does not include excise duty paid on inputs or service tax paid on input services which are used exclusively for the manufacture of exempted goods or provision of exempted services.
2.	Whether an assessee availing option (i) in respect of certain exempted goods/services can also avail option (ii) in respect of other exempted goods or services simultaneously?	An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him and all the exempted services provided by him and the option once exercised during a financial year (F.Y.) cannot be withdrawn during the remaining part of the FY. Therefore, the same assessee cannot avail both option (i) and option (ii) simultaneously during a

		financial year. [Explanation I to Rule 6(3)].
3.	Assessee opting for option (i) is required to pay an amount equivalent to 10% of value of exempted goods or 8% of value of exempted services. What is the scope of term "value" for the said purpose	Value of the exempted goods is the transaction value as determined in terms of section 4 of the Central Excise Act, 1944 or value determined under section 4A. However, in case of goods chargeable to specific rate of duty, the value, shall be the transaction value to be determined under section 4. Value of the exempted service is the gross amount charged for providing the exempted service [without abatement].
4.	What is the accounting code to be followed by the assessee who is required to pay 8% or other amount for the exempted service under Rule 6(3).	For the present, the assessee can pay the said amount under the accounting code applicable for service tax i.e. 0044.
5.	Whether input services distributor can also opt for option (i) or option (ii)?	As ISD does not provide any service, and is like a trader, the question of availing either of the options would not arise.
6.	Whether export of service without payment of service tax under Export of Service Rules shall be treated as exempted service for the purpose of rule 6(3)?	No, export of services without payment of service tax are not to be treated exempted services.
7.	What is the manner for calculation of CENVAT Credit amount attributable to inputs used in or in relation to the manufacture of exempted goods?	It is required to be done on the basis of actual consumption of inputs used and the quantification may be made based upon the stores/production records maintained by the manufacturer. Further, a certificate from Cost Accountant/Chartered Accountant giving details of quantity of inputs used in the manufacture of exempted goods, value thereof and CENVAT credit taken on these input may be submitted at the end of the year.

8.	Whether credit in respect of input services covered by rule 6(5) would be required to be taken into account for determination of amount payable as per formula provide in rule 6(3A).	No, the credit attributable to services mentioned in sub-rule (5) shall not be taken into account for determination of amount under rule 6(3A).
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*Note - Rule 6(3) pertains to an assessee opting not to maintain separate CENVAT credit accounts for dutiable and exempted outputs. Such assessee has to opt for one of the following two options:

- (i) Pay an amount equal to 10% of the value of the exempted goods or 8% of the value of the exempted services. Exempted service includes non-taxable service also.

OR

- (ii) Pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to manufacture of exempted goods or for provision of exempted services. Rule 6(3A) prescribes the conditions and procedure to determine the amount of CENVAT credit attributable to exempted outputs.

Schemes under rule 6(3) are optional and each individual scheme is comprehensive and self-contained. An assessee can exercise the option in relation to all his activities as an assessee and the option is not available only in relation to a part of his activity and the option once exercised cannot be withdrawn during the said financial year.

- 8. Section 11D not applicable to amount collected under rule 6(3) of the CENVAT Credit Rules, 2004

It has been clarified that so long as the amount of 8% or 10% is paid to the Government in terms of rule 6(3) of the CENVAT Credit Rules, 2004*, the provisions of section 11D shall not be applied even if the amount is recovered from the buyers. As per section 11D, the Central Government shall be liable to recover any amount which has been collected as excise duty and not paid to the credit of the Central Government. It is to be noted that the CENVAT credit can be taken by the buyer only if it is a payment of duty in terms of rule 3(1) of the aforementioned rules. Therefore, the CENVAT credit of the said amount of 8% or 10% cannot be taken since such payment is not a payment of duty in terms of rule 3(1) of the said rules. So, the said 10% amount should be shown in the invoice as "10% amount paid under rule 6 of the CENVAT Credit Rules, 2004".

[Circular No. 870/08/2008-CX dated 16.05.2008]

*Note - W.e.f. 01.04.2008, rule 6(3) of the CENVAT Credit Rules, 2004 has been amended and it provides for payment of an amount equal to 10% of value of the exempted goods, instead of 10% of the price of the exempted goods as provided earlier. The value is to be determined as per section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

9. Guidelines for provisional attachment of property under section 11DDA of the Central Excise Act, 1944

The key points of guidelines issued to implement section 11DDA of the Act to maintain uniformity in its implementation are as follows:-

- (a) The types of offences which may be considered for provisional attachment of property (resorted only when the duty or CENVAT Credit alleged is more than Rs. 25 lakhs) are as follows:
 - 1. When the goods are removed without the cover of an invoice and without payment of duty, or without declaring the correct value.
 - 2. CENVAT Credit has been taken without receipt of goods or on the basis of Excise duty invoices or other documents which a person has a reason to believe as not genuine.
 - 3. Excise duty invoice is issued without delivery of goods.
 - 4. Refund or rebate is claimed in a fraudulent manner.
- (b) The property which is attached is immovable property/ properties which is/ are used for commercial purpose. If immovable property is not sufficient to protect the interest of revenue then movable property can be attached
- (c) The property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 11A or Section 11D of the Act.
- (d) Provisional attachment of the property shall be made only between sunrise and sunset.
- (e) After attachment, the proper officer shall prepare an inventory and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.
- (f) All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final.

[Circular No. 874/12/2008-CX dated 30.06.2008]

B. CUSTOMS

Clarification in respect of procedure for sanctioning the custom duty refunds under section 27(2) of Customs Act, 1962

It has been clarified that in terms of sub-section (2) of section 27, the concerned Assistant/Deputy Commissioner of Customs has to go through:-

- (i) the facts of the case and the material placed before him in order to determine whether the amount claimed by an applicant is refundable to him or not, and
- (ii) the details of audited Balance Sheet and other related financial records, certificate of the Chartered Accountant etc., submitted by the applicant in order to decide whether the applicant had not passed on the incidence of the duty and interest thereon, if any, to any other person.

The Order-in-Original passed by the Assistant/Deputy Commissioner of Customs in the adjudication process should be a speaking order providing specific details including the relevant financial records that are relied upon to arrive at a conclusion whether the burden of duty or interest, as the case may be, has been passed on or not.

Refund orders issued in a routine and casual manner thereby sanctioning the amount but crediting the same to the Consumer Welfare Fund without going through the factual details of the case and the due process as provided in the first proviso cannot be considered as a complete and speaking order [Circular No.7/2008-Cus dated 28.05.2008].

C. SERVICE TAX

Notification No. 18/2008 ST dated 10.05.2008 has notified 16.05.2008 as the date on which the services introduced by the Finance Act, 2008 have become effective. Further, the amendments made in the existing service vide the Finance Act, 2008 have also become effective from 16.05.2008.

Exemptions:

1. Exemption from service tax on specified taxable services received by an exporter and used for export of goods – three more services notified

With effect from 16.05.2008, Notification No. 24/2008 ST dated 10.05.2008 has amended Notification No.41/2007 ST dated 06.10.2007 which exempts certain specified taxable services received by an exporter and used for export of goods. The following services received by an exporter and used for export of goods have also been exempted vide this notification subject to fulfillment of conditions specified therein:-

S.No.	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
1	Section 65(105)(zm)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.

S.No.	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
2	Section 65(105)(zzk)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.
3	Section 65(105)(zzzzj)	services of supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.	exporter shall produce evidence to prove that the services specified in column (3) are used in relation to export of goods.

2. Abatement of 30% from the gross amount charged in case of services provided in relation to chit

Notification No. 27/2008 ST dated 27.05.2008 has amended Notification No. 1/2006 ST dated 01.03.2006 so as to provide an abatement of 30% in case of services provided in relation to chit from the gross amount charged for such service.

"Chit" has been defined to mean a transaction whether called chit, chit fund, chitty, kuri, or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

3. Exemption from service tax leviable on services taxable under section 65(105)(zzzzj) provided to GTA for use in transportation of goods by road

Notification No. 29/2008 ST dated 26.06.2008 has exempted from the whole of the service tax, the service of supply of a goods carriage [taxable under section 65(105)(zzzzj)], without transferring right of possession and effective control of such goods carriage), provided by any person to a goods transport agency for transportation of goods by road in the said goods carriage.

Others:

4. Following amendments have been made in the Service Tax Rules, 1994:

(i) Amendments in rule 6

(a) Explanation to third proviso to rule 6(1)

For the removal of doubts, it is hereby declared that where the transaction of taxable service is with any associated enterprise, any payment received towards the value of taxable service, in such case shall include any amount credited or debited, as the case may be, to any account, whether called 'Suspense account' or by any other name, in the books of account of a person liable to pay service tax [Notification No. 19/2008 ST dated 10.05.2008].

(b) Rule 6(7B) - option to pay 0.25% of the gross amount in case of services provided in relation to purchase or sale of foreign currency

It provides that the person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in sub-clauses (zm) and (zzk) of clause (105) of section 65 of the Act, shall have the option to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act.

However, such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider.

Illustration

Buying rate \$US 1 = Rs.38, selling rate \$US 1 = Rs.40

(i) Person exchanged \$100 for equivalent rupees

Transaction value = Rs.3800 (Rs.38 x 100)

Service tax payable = Rs.9.5 (0.25% x 3800)

(ii) Person exchanged equivalent rupees for \$100

Transaction value = Rs.4000 (40 x 100)

Service tax payable = Rs.10 (0.25% x 4000).

[Notification No. 19/2008 ST dated 10.05.2008]

(c) Rule 6(1A) - amendment of Form ST-3

Notification No. 31/2008 ST dated 02.09.2008 has amended service tax return Form ST-3. Sub-rule (1A) empowers the assessee to pay advance service tax on his own volition and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period.

(ii) Amendment in rule 4A

With effect from 16.05.2008, in rule 4A, the words “to a customer” have been substituted by the words “to any person” [Notification No. 19/2008 ST dated 10.05.2008].

(iii) Amendment in rule 4B

With effect from 16.05.2008, in rule 4B, the words “to the customer” have been substituted by the words “to the recipient of service” [Notification No. 19/2008 ST dated 10.05.2008].

5. Following amendments have been made in the Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006:

- (a) With effect from 16.05.2008, Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been amended vide Notification No. 20/2008 ST dated 10.05.2008 and Notification No. 21/2008 ST dated 10.05.2008 so as to categorise the newly specified taxable services under Rule 3. Taxable services have been categorised as under:

Sl. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
1.	Information technology software services	zzzze	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
2.	Investment management services provided under ULIP	zzzzf	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
3.	Stock exchange services in relation to securities	zzzzg	Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
4.	Commodity exchange services	zzzzh	Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
5.	Processing and clearing house services	zzzzi	Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]

6.	Supply of tangible goods services	zzzzj	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
7.	Internet telecommunication services	zzzu	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]

(b) Similarly, Notification No. 21/2008 ST dated 10.05.2008 has amended the "Taxation of Service (Provided from Outside India and Received in India) Rules, 2006" by inserting a proviso after clause (iii) of rule 3. The proviso lays down that where the supply of tangible goods service [section 65(105)(zzzzj)] is received by a recipient located in India, then such taxable service shall be treated as taxable service provided from outside India and received in India subject to the condition that the tangible goods supplied for use are located in India during the period of use of such tangible goods by such recipient."

(c) Notification No. 20/2008 ST dated 10.05.2008 has amended Export of Services Rules, 2005 by inserting a second proviso after the first proviso to clause (iii) of sub-rule (1) of rule 3. The new proviso provides that where the supply of tangible goods service [section 65(105)(zzzzj)] is provided to a recipient located outside India, then such taxable service shall be treated as export of taxable service subject to the condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.

6. Amendments to abatement notification

With effect from 16.05.2008, Notification No. 22/2008 ST dated 10.05.2008 has made the following amendments in Notification No.1/2006 ST dated 01.03.2006 which prescribes various abatements in respect of certain taxable services specified therein:

In the said notification,

S.no.	in case of	for the words	the words that have been substituted are
1	mandap keeper services	to the client	to any person
2	convention services	client	recipient of service
3	erection, commissioning or installation service	customer	recipient of service

7. With effect from 16.05.2008, Notification No. 23/2008 ST dated 10.05.2008 has amended the following notifications in the manner given below:

S.No.	In Notification No.	for the words	the words that have been substituted are
1	18/2002 ST dated 16.12.2002: It exempts the taxable services provided by a consulting engineer to a client on transfer of technology from so much of the service tax leviable thereon as is equivalent to the amount of cess paid on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.	to a client	to any person
2	33/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon.	to a customer	to any person
3	34/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax where- (i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.	to a customer	to any person

8. Service Tax (Provisional Attachment of Property) Rules, 2008

These rules introduced by Notification No.30/2008 ST dated 01.07.2008 with effect from 01.07.2008 provide as follows:-

Rule 3 - Procedure for provisional attachment of property

- (a) The Assistant or the Deputy Commissioner of Central Excise, after due verification of the facts and circumstances of the case, for the purpose of protecting the interest of revenue, during the pendency of any proceeding under section 73/73A of the Finance Act, 1994, may forward a proposal for provisional attachment of property belonging to a person on whom a notice has been served under section 73(1)/73A(3) of the Act, to the Commissioner in the format prescribed in these Rules.
- (b) The Commissioner may cause service of a notice on such person who can make a submission in this regard within 15 days of service of the notice.
- (c) Upon consideration of submission, the Commissioner may pass an order to attach the property provisionally.

Rule 4 - The property that can be attached

- (1) Value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue against such person.
- (2) The movable property of such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue.

Rule 5 - Obligations of person whose property has been attached provisionally

The said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the Commissioner of Central Excise.

Rule 6 - Period for which order of provisional attachment of property remains in force

Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the service of the order passed.

However, Chief Commissioner of Central Excise may grant an extension for a maximum period of two years.

9. Guidelines in respect of provisional attachment of property

Circular No. 103/06/2008 ST dated 01.07.2008 has issued the following guidelines in respect of provisional attachment of property for the purposes of protecting the interests of revenue during the pendency of any proceedings under section 73 or section 73A of the Act:

1. The following types of offences committed by a service provider or an exporter may be considered for provisional attachment of property:-
 - (a) Provision of a taxable service without the cover of an invoice or any other document, as prescribed, and without payment of tax;
 - (b) Provision of a taxable service without declaring the correct value for payment of service tax, where a portion of value of taxable service, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account.
 - (c) Taking of CENVAT credit without the receipt of goods or services specified in the document based on which the said credit has been taken;
 - (d) Taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;
 - (e) Issue of service tax invoice or any other document, without providing or to be providing a taxable service, as specified in the said invoice or other document;
 - (f) Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.
2. The provisional attachment of property shall be resorted only in a case where the service tax or CENVAT credit alleged to be involved is more than Rs.25 lakh.
3. Personal property of a sole proprietor or partners shall not be attached. Personal property means any movable or immovable property which is in personal use of the sole proprietor or partner. However, immovable property/ properties which is/ are used for commercial purpose may be provisionally attached. Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper the normal business of the assessee. This would mean that inputs required for provision of a service should not be attached by the department.
4. Provisional attachment of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 73 or section 73A of the Act.
5. The provisional attachment of the property of the concerned person shall be made after sunrise and before sunset and not otherwise.
6. After provisional attachment of the property, the Central Excise Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to defaulter or the person from whose charge the property is distrained.

7. All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final.
10. Clarification of issues relating to service tax levy on goods transport road services
- Circular No. 104/07/2008-ST dated 06.08.2008 has clarified the following issues relating to service tax levy on goods transport by road services:

- (i) Issue: GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?

Clarification: GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU dated 28.2.2006 (para 3.2 and 3.3) and F. No. 334.1/2008-TRU dated 29.2.2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases are based on essential character by applying the principle of classification enumerated in section 65A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

- (ii) Issue: GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. It may be clarified whether in such cases service provided is to be classified under GTA service.

Clarification: Cargo handling service [Section 65(105)(zr)] means loading, unloading, packing or unpacking of cargo and includes the service of packing together with transportation of cargo with or without loading, unloading and unpacking. Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service.

- (iii) Issue: Whether time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified under courier service and not GTA service?

Clarification: On this issue, it is clarified that so long as, (a) the entire transportation of goods is by road; and (b) the person transporting the goods issues a consignment note, it would be classified as 'GTA Service'.

11. Clarifications of service tax issues relating to units in SEZ

Circular No. 105/08/2008 -ST dated 16.09 2008 has clarified the service tax issues relating to units in Special Economic Zones. It has been observed that there has been lack of clarity in the field formations administering service tax as regards the applicability of service tax levy on units located in SEZ. This lack of clarity has resulted in certain problems especially with respect to service tax administration. The issues and the proposed actions are mentioned below:

- (i) Non-payment of service tax by SEZ units providing taxable service outside SEZ

There is no exclusion to SEZs in the Chapter V of the Finance Act, 1994 Taxable services received by SEZ units and SEZ developers for consumption within the SEZ are exempt for service tax under notification No. 4/2004-ST, dated 31.3.2004. However, service tax is applicable on taxable services provided by SEZ units, except such services which are exempt by notification No. 4/2004-ST. The C &AG, has pointed out instances, where SEZ units in Chennai & Cochin were providing taxable services like manpower supply service, technical testing and analysis service etc., to units / persons outside SEZ, without payment of service tax. In this regard the Ministry of Commerce (MOC) has observed that monitoring and collection of service tax does not come under the jurisdiction of the Development Commissioner and that such responsibility rests with the jurisdictional service tax (or CX & ST) authorities under the Central Board of Excise and Customs. Therefore,

field formations should ensure that SEZs units, providing taxable services to any person for consumption in DTA (or providing any taxable service which is otherwise not exempt), or is otherwise liable to pay service tax under the service tax law, take registration with the jurisdictional service tax authorities and discharge their service tax liability in terms of the Finance Act, 1994.

(ii) Refund of Service Tax on taxable services used for the purposes of exports of goods by SEZ units

Refund of service tax paid on certain taxable services used in export of goods is permitted under notification 41/2007-ST. This notification prescribes that the refund would be allowed by the jurisdictional Deputy Commissioner/Assistant Commissioner of Central Excise. Doubts have arisen as to the authority that would process these claims when made by SEZ, i.e., the SEZ authorities or jurisdictional service tax authorities. As stated above, the Ministry of Commerce has already opined that administering the service tax law is responsibility of CBEC. Refund of service tax is to be processed by the respective jurisdictional authority administering service tax law. Accordingly, it is clarified that the SEZ units, claiming refund of service tax, should take registration with the jurisdictional ST authorities and file their claims there.

RECENT AMENDMENTS IN DIRECT TAX LAWS AND INDIRECT TAX LAWS

Students are advised to study thoroughly the Supplementary Study Paper-2008 on Direct Tax Laws and Indirect Tax Laws for the New Final Course. This contains the amendments made by the Finance Act, 2008 as well as the significant Notifications/Circulars issued between 01.05.2007 and 30.04.2008. This Supplementary Study Paper is available at various branch and regional sales counters of the Institute. This RTP contains the significant amendments made through notifications/circulars issued between 1.5.2008 and 31.10.2008.

This is very important since considerable weightage is being given to the latest amendments in the examinations. Students may note that the Board of Studies has come out with a publication "Select Cases in Direct and Indirect Taxes [2008] – An Essential Reading for Final Course". This contains important recent judgements of Supreme Court, High Court and Appellate Tribunal in both Direct Taxes and Indirect Taxes.