

PAPER – 8 : INDIRECT TAXES

Attempt all questions.

PART – A

Question 1

- (a) Briefly explain the following with reference to the provisions of the Central Excise Act, 1944:

(i) Adjudicating authority

(ii) Excisable goods (2 x 2 = 4 Marks)

- (b) Mention the last date of filing the following returns under the Central Excise Rules, 2002:

(i) ER-4 for the financial year 2009-10

(ii) ER-7 for the financial year 2009-10 (1 x 2 = 2 Marks)

- (c) Distinguish between compounded levy scheme and duty based on annual production capacity under central excise. (4 Marks)

- (d) WM Ltd. is manufacturing a product which is captively consumed to produce a final product, which is exempt from the payment of excise duty. The intermediary product is having a distinct market of its own. The company is of the view that since the final product is exempt, no duty liability arises on intermediary product also. The department objected the view of the assessee.

Discuss, with reference to a decided case law, if any, whether the view of company is justifiable? (5 Marks)

- (e) An assessee sold certain goods to PQR Company Limited for Rs.20,000 on 09.09.2009. The buyer is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. The buyer did not sell the goods but used it as intermediary product. The cost of production of the goods was Rs.16,000. What should be the assessable value?

What should be the assessable value, if the goods were sold to unrelated person for Rs.20,000, who also used it as intermediary product?

You may assume that the price charged from the buyer is excluding excise duty and other taxes. (5 Marks)

The Suggested Answers for Indirect Taxes (Paper 8) are based on the provisions as amended by the Finance Act, 2008 and Notifications/Circulars issued up to 30.04.2009 which are relevant for November 2009 examinations.

FINAL EXAMINATION: NOVEMBER, 2009

Answer

- (a) (i) Section 2(a) of the Central Excise Act, 1944 defines adjudicating authority to mean any authority competent to pass any order or decision under this Act. However, it does not include the following:
- (a) CBEC constituted under the provisions of Central Board of Revenue Act, 1963;
 - (b) Commissioner of Central Excise (Appeals);
 - (c) Appellate Tribunal.
- (ii) Excisable goods have been defined vide section 2(d) of the Central Excise Act, 1944. It means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to duty of excise and includes salt. An explanation has been added in this definition with effect from 10.5.2008 which states that for the purposes of this clause "goods" includes any article material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.
- (b) (i) ER-4 for the preceding financial year to which it relates is filed annually by 30th November of the succeeding year [Rule 12(2) of the Central Excise Rules, 2002]. Therefore, the last date for filing ER-4 for the financial year 2009-10 shall be 30.11.2010.
- (ii) ER-7 for the financial year to which it relates is filed by the 30th April of the succeeding financial year [Rule 12(2A) of the Central Excise Rules, 2002]. Therefore, the last date for filing ER-7 for the financial year 2009-10 shall be 30.04.2010.
- (c) Compounded levy scheme: Under compounded levy scheme, the manufacturer has to pay the prescribed duty for a specified period on the basis of certain factors relevant to production, like size of equipment employed, production capacity or some other criteria [Rule 15 of Central Excise Rules, 2002].
- Compounded levy scheme is presently applicable to stainless steel pattas/patties and aluminum circles. It is an optional scheme, i.e. the manufacturer can opt to pay duty as per normal rules.
- Duty based on production capacity: In case of certain products, Central Government, by notification, can specify that duty on such notified products will be levied and collected on the basis of annual production capacity of the factory. [Section 3A(1) of the Central Excise Act, 1944].
- Excise duty on pan masala and gutkha is payable on the basis of annual production capacity under section 3A. The scheme is compulsory.
- (d) The duty of excise is a duty on manufactured goods which are movable and marketable. If any manufactured goods satisfies the movability and marketability conditions, it would become dutiable even if it is an intermediate product and the final product is not dutiable. Therefore, in the given case the intermediate product would be dutiable even though it is

PAPER – 8 : INDIRECT TAXES

captively consumed and the final product is not dutiable as it has a distinct market of its own and is marketable.

The Supreme Court's view in the case of White Machine Vs. CCEx Delhi 2008(224) ELT 347 was also the same. In the above case, the assessee manufactured C.I. Castings which were captively consumed for production of C.I Chilled Rolls. These Chilled Rolls were exempt from duty. The Apex Court opined that since the final product was exempt, the C.I Castings would become dutiable if they satisfied the marketability condition.

Therefore, the company's view is not justifiable and the Department's view is acceptable.

- (e) The proviso to rule 9 of the Central Excise Valuation (Determination of Excisable Goods) Rules, 2000 lays down that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value thereof shall be determined in the manner specified in rule 8.

Rule 8 provides that where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

Therefore, when the goods are sold to a related person, the assessable value shall be 110% of Rs.16,000 (Rs.16,000 + Rs.1,600) i.e., Rs.17,600. However, when the goods are sold to unrelated buyer, the assessable value will be Rs.20,000.

Question 2

- (a) M/s. XYZ Ltd. shifted its factory from Sitapura to Rampur and transferred all the available inputs and capital goods to the new site. The inputs, capital goods and the balance of unutilised CENVAT credit were duly received and accounted for in the registers of the new unit.

The said balance of unutilised CENVAT credit transferred was Rs.8,00,000. However, the quantum of CENVAT credit attributable to the inputs and capital goods so transferred to the new site was Rs.6,00,000 only. The Department raised the plea that the assessee was entitled to transfer only Rs.6,00,000 of CENVAT credit and not the entire balance of unutilized credit of Rs.8,00,000.

Explain, with the help of a decided case law, if any, whether Department's plea is justified in law? (4 Marks)

- (b) What are the circumstances under which the certificate of registration can be revoked or suspended under Central Excise? (3 Marks)
- (c) To whom should the matter be referred in a case where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise and how will the matter be settled under section 35E(1) of the Central Excise Act, 1944 ? (3 Marks)

FINAL EXAMINATION: NOVEMBER, 2009

- (d) Discuss in brief the powers of Settlement Commission to grant immunity from prosecution. (3 Marks)
- (e) What is the difference between short levy and short payment? (2 Marks)

Answer

- (a) As per rule 10 of the CENVAT Credit Rules, 2004, if a manufacturer of the final product shifts his factory to another site with the specific provision for transfer of liabilities of such factory, he shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to the new site if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of Central Excise.

The Madras High Court in the case of CCE, Pondicherry vs. CESTAT 2008 (230) ELT 209 (Mad.) has also affirmed this position. In this case, the High Court has held that erstwhile Rule 8 of the CENVAT Credit Rules, 2002 (new rule 10 of the CENVAT Credit Rules, 2004) does 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.

Thus, the plea of Department is not justified presuming that M/s. XYZ Ltd. shifted its factory from Sitapura to Rampur with the specific provision for transfer of liabilities of such factory and the inputs or capital goods on which credit has been availed of are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of the Central Excise.

- (b) The certificate of registration under the Central Excise Act, 1944, can be suspended or revoked by the Deputy Commissioner or the Assistant Commissioner of Central Excise under the following circumstances.
- (i) when the assessee or any person under his employment has committed any breach of any condition of the Central Excise Act or any rules made there under.
 - (ii) the assessee or a person under his employment has been convicted of an offence under Section 161 read with section 109 or section 116 of the Indian Penal Code.
- (c) The Finance Act, 2008 has added a proviso to section 35E(1) to cover a case where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise. In such a case the Committee shall state the point or points on which it differs and make a reference to the Board which after considering the facts of the order, if is of the opinion that the decision or order passed by the Commissioner of Central Excise is not legal or proper may direct such Commissioner or any other Commissioner to apply to Appellate Tribunal for determination of such points arising out of decision or order.
- (d) The Settlement Commission, subject to certain provisions, has the power to grant immunity from prosecution in respect of the case covered by the settlement, if the applicant has co-operated with the Commission and has made full and complete disclosure. If the payment is not made as per the settlement order or any particulars are

PAPER – 8 : INDIRECT TAXES

concealed or any false evidence is given, the immunity is withdrawn [Sub-sections (2) and (3) of section 32K].

Immunity can be granted only in respect of prosecution for any offence under the Central Excise Act and not in respect of prosecution for any offence under the Indian Penal Code or any other Central law. However, the immunity from prosecution for any offence under the Indian Penal code or any other central law can be granted in cases filed upto 31-05-2007 [Section 32K(1) of the Central Excise Act].

If prosecution has already been launched before submission of application for settlement, the immunity cannot be granted [Proviso to section 32K(1) of the Central Excise Act].

- (e) Short levy: Short levy arises when the charge itself is done at a lower rate. It may arise out of wrong classification.

Short payment : Short payment arises out of a short levy or short payment of a correct levy. It is a case of less payment of excise duty than what is due.

Question 3

- (a) M/s. Silver Enterprises is manufacturing packing material namely printed cartons of paper and paper board with brand name of another company. Its turnover for the year 2008-09 was Rs.2 crore and in the year 2009-10 it is expected to increase by 50%.

The firm has approached you as a consultant whether it is eligible for concession under Notification No. 8/2003 dated 01.03.2003 as amended. Is exemption available to the firm? If yes, what is the limit of turnover, for which the exemption is available for both the years, i.e. 2008 - 09 and 2009 -10? (5 Marks)

- (b) Which reasons shall not be considered as special and adequate for awarding sentence of imprisonment for a term of less than six months as per section 9(3) of the Central Excise Act, 1944? (4 Marks)
- (c) How can the goods kept in a warehouse for the purpose of export be diverted for home consumption? Explain briefly. (4 Marks)
- (d) Can the Department file an appeal in respect of same assessee, if in respect of some years, no appeal was filed involving identical dispute? (2 Marks)

Answer

- (a) Yes, the SSI exemption will be available to M/s. Silver Enterprises as Notification No. 8/2003 CE dated 01.03.2003 has been amended w.e.f. 01.09.2008 to provide that SSI exemption will be available to packing material including printed cartons of paper or paper board affixed with brand name of another company. It has been presumed that the turnover of M/s. Silver Enterprises for the year 2007-08 was less than Rs.400 lakh.

For the year 2008-09, the exemption will be available for turnover of first Rs.90 lakh from 01.09.2008 onwards.

FINAL EXAMINATION: NOVEMBER, 2009

Since, in the year 2008-09, the turnover of M/s. Silver Enterprises is Rs. 2 crore which is less than Rs.400 lakh, it is eligible for small scale exemption in the year 2009-10. For the year 2009-10, turnover upto Rs.150 lakh will be fully exempt, if M/s. Silver Enterprises does not avail CENVAT on inputs.

- (b) As per section 9(3) of the Central Excise Act, 1944, for the purposes of section 9(1) or 9(2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:
 - (i) the fact that the accused has been convicted for the first time for an offence under this Act;
 - (ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;
 - (iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;
 - (iv) the age of the accused (too young or too old)
- (c) The goods kept in a warehouse for being exported can be diverted for home consumption in the following manner:
 - (i) With the permission of the Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice prepared under rule 8 on payment of duty, interest and any other charges on TR-6 challans. Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.
 - (ii) Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse.
 - (iii) Goods can also be diverted for home consumption even after clearance of goods from warehouse under ARE- 1. The documents will be cancelled as per Notification No. 46/2001 CE (NT) dated 26.6.2001 as amended. The intimation of such cancellation is to be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.
 - (iv) The exporter has to pay an interest @ 24% p.a on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.

PAPER – 8 : INDIRECT TAXES

- (d) It has been held by the Supreme Court in the case of C.K Gangadharan v. CIT, Cochin, 2008 (228) ELT 497 (SC) that merely because in some cases Revenue has not preferred an appeal that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher Court when divergent views are expressed by the different High Courts. However, the Supreme Court in the case of CIT vs. J.K. Charitable Trust 2008 (232) ELT 769 (SC 3 members bench) has held that if in respect of some years, in respect of same assessee, no appeal was filed involving an identical dispute, revenue can be precluded from filing an appeal if the fact situation in subsequent years remains the same.

PART – B

Question 4

- (a) Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007:
- (i) Goods of the same class or kind
 - (ii) Computed value (3 + 3 = 6 Marks)
- (b) Mr. Vasu, the assessee, was summoned under section 108 of the Customs Act, 1962, to give his statement in an inquiry. He filed the application for anticipatory bail in the District and Sessions Court which was disposed on the ground of being premature. However, he later moved to the High Court, which granted him anticipatory bail with a direction to the authorities that he should not be arrested without giving a seven day's prior notice to him.
- The Revenue contended that the order passed by the High Court was illegal and erroneous. Explain, with the help of a decided case law, if any, whether the stand taken by the Revenue is sustainable in law? (5 Marks)
- (c) Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly. (5 Marks)
- (d) Ascertain whether the exporter is entitled to duty drawback in the following independent cases and if yes, what is the quantum of such duty drawback:
- (i) FOB value of goods exported is Rs.50,000. Rate of duty drawback on such export of goods is 1%.
 - (ii) FOB value of 2,000 kgs goods exported is Rs.2,00,000. Rate of duty drawback on such export is Rs.30 per kg. Market price of goods is Rs.50,000 (in wholesale market) (2 + 2 = 4 Marks)

FINAL EXAMINATION: NOVEMBER, 2009

Answer

(a) (i) As per rule 2(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(ii) As per rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with rule 8.

As per rule 8, subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of –

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

(b) The stand taken by the Revenue is valid. A similar issue has been dealt by the Supreme Court in the case of Union of India v. Padam Narain Aggarwal 2008 (231) ELT 397, wherein the Apex Court has observed that the power to arrest by a Custom Officer under section 104 of the Customs Act, 1962 is statutory in character and cannot be interfered with.

Supreme Court pronounced that the direction to issue 10 days prior notice before arrest even in case of a non-bailable offence could not be said to be legal or in consonance with law. Firstly, the order passed by the High Court was a blanket one and granted protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructed, interfered and curtailed the authority of Custom Officers from exercising statutory power of arresting a person said to have committed a non-bailable offence by imposing a condition of giving 10 days' prior notice, a condition not warranted by law. Hence, the order of the High Court was set aside.

Therefore, in the given case, it can be concluded that the stand taken by the revenue is sustainable in law.

(c) The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

(i) Maximum import duty will be restricted to duty drawback or rebate availed at the time of export – Notification No. 94/96 Cus. dated 16.12.1996.

(ii) Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs (including cost of materials used in repairs, insurance and freight charges, both ways) done abroad, whether such costs are actually incurred or not.

PAPER – 8 : INDIRECT TAXES

The above two concessions are given subject to the condition that:

- (a) the re-importation is done within 3 years or 5 years if time is extended.
- (b) the exported goods and re-imported goods must be the same.

In case of point (ii), the ownership of the goods should also not have changed.

However, these concession are not applicable in case of exports from EPZ or EOU and if repair amounts to re-manufacture - Notification No. 94/96 Cus dated 16.12.1996.

- (iii) When exported goods come back for repairs and re-export, the re-imported goods can avail exemption from paying of import duty subject to the following conditions:

- (i) the re-importation is for repairs only
- (ii) the time limit is 3 years
- (iii) the goods must be re-exported after repairs
- (iv) the time limit for export is 6 months (extendable to one year).

Notification No. 158/95 Cus. dated 14.11.1995.

- (d) (i) As per rule 8(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, no amount of drawback shall be allowed if the rate of drawback is less than 1% of the FOB value, except where the amount of drawback per shipment exceeds Rs.500. Further, as per section 76(1)(c) of the Customs Act, 1962 drawback is not allowed where the drawback due in respect of any goods is less than Rs.50.

In the given case, since the rate of duty drawback is not less than 1% and drawback due is Rs.500 (1% of FOB value) which is more than Rs.50, duty drawback shall be allowed.

- (ii) Section 76(1)(b) of the Customs Act, 1962 inter alia provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is Rs.50,000, which is less than the amount of duty drawback, i.e. 2,000 kgs x Rs.30 = Rs.60,000. Hence, no drawback shall be allowed.

Question 5

- (a) Assessable value of certain goods imported from USA is Rs.10,00,000. The packet contains 10,000 pieces with maximum retail price of Rs.200 each. The goods are assessable under section 4A of the Central Excise Act, 1944, after allowing an abatement of 40%. The excise duty rate is 8% ad valorem. Calculate the amount of additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 assuming basic customs duty @ 10% ad valorem. (4 Marks)
- (b) What are the provisions made under the Customs Act, 1962 regarding control of customs over the warehoused goods? (4 Marks)

FINAL EXAMINATION: NOVEMBER, 2009

- (c) What are the orders that are appealable to the High Court under the Customs Act, 1962? Can the delay in filing an appeal be condoned by the High Court? (4 Marks)
- (d) What are the provisions made under the Customs Act, 1962, regarding personal hearing and order under advance ruling? (4 Marks)

Answer

- (a) As the goods are assessable under section 4A of the Central Excise Act, 1944, additional duty of customs will be payable on the basis of maximum retail price printed on the packing; less abatement as permissible [proviso to section 3(2) of the Customs Tariff Act.]

	Rs.
Maximum retail price Rs.200 x 10,000	20,00,000
Less : Abatement 40%	<u>8,00,000</u>
Assessable value under section 3(2)	<u>12,00,000</u>
Additional duty of customs @ 8%	96,000
Add : Education cess @ 2%	1,920
Secondary and higher education cess @ 1%	<u>960</u>
Additional customs duty payable	<u>98,880</u>

- (b) Section 62 of the Customs Act, 1962 provides for the control of customs over the warehoused goods. The provisions are discussed as follows:
- (i) All warehoused goods shall be subject to the control of the proper officer.
 - (ii) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.
 - (iii) The proper officer may cause any warehouse to be locked with the lock of the customs department and no person shall remove or break such lock.
 - (iv) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.
- (c) As per section 130(1) of the Customs Act, 1962, an appeal can be made to the High Court against the order of the Tribunal if the case involves substantial question of law, except in cases relating to rate of duty and valuation.

Sub-section (2) of section 130 inter alia lays down that an appeal can be made to the High Court within 180 days from the date on which the order appealed against is received by the Commissioner of Customs or the other party. There is no provision in the Act to condone the delay in filing an appeal. This view has been confirmed in *CC v. Hongo India* (2009) 236 ELT 417 (SC 3 member bench). Hence, the High Court cannot condone the delay in filing an appeal.

- (d) The provisions regarding personal hearing and order under advance ruling are contained in section 28-I of the Customs Act, 1962. Section 28-I inter alia provides that if an

PAPER – 8 : INDIRECT TAXES

application for advance ruling is received, the authority of advance ruling will examine the material submitted by the applicant or obtained by the authority and issue an order either allowing or rejecting the application. However, no application shall be rejected unless an opportunity has been given to the applicant of being heard.

Where an application is allowed, personal hearing can be given before the pronouncement of the advance ruling, if requested by the applicant. Such hearing can be given to the applicant himself or to his duly authorised representative.

Authority then pronounces its advance ruling within ninety days of the receipt of the application. Copy of the order, signed by members of authority and certified in the prescribed manner is sent to the applicant and the Commissioner.

PART – C

Question 6

- (a) State with reasons in brief, whether service tax is payable in the following cases:
- (i) Services provided to Special Economic Zone (SEZ) unit and SEZ developer, except where services are wholly consumed within SEZ.
 - (ii) Services provided by SEZ to DTA (Domestic Tariff Area).
 - (iii) Services provided by Indian agents undertaking marketing in India of goods of a foreign seller. (2 x 3 = 6 Marks)
- (b) Briefly state the concept of export of taxable services under rule 3 of the Export of Services Rules, 2005. (3 Marks)
- (c) Ascertain whether the refund of service tax paid on input services can be claimed in the following case:
- | | | |
|---|-----------|-----------|
| Total credit of service tax on input services | Rs. 6,000 | |
| Total turnover of output service | Rs.30,000 | |
| Output service exported | Rs.20,000 | (3 Marks) |
- (d) Explain the provisions of best judgement assessment provided under section 72 of the Finance Act, 1994 as amended. (3 Marks)

Answer

- (a) (i) With effect from 03.03.2009, service tax is payable on the services provided to SEZ unit or SEZ developer irrespective of whether services are wholly consumed within SEZ or not. However, the SEZ unit or SEZ developer can get the refund of service tax paid by them by filing a refund claim as per the procedure prescribed in Notification No. 9/2009-ST dated 03.03.2009.
- (ii) Yes. CBE&C vide Circular No. 105/08/2008 ST dated 16.09.2008 has clarified that a special economic zone unit will be liable to pay service tax on services provided by it to a domestic tariff area unit.

FINAL EXAMINATION: NOVEMBER, 2009

- (iii) Rule 2 of the Export of Services Rules, 2005 inter alia provides that the provision of any taxable service specified in sub-rule (1) is treated as export of service when such service is provided from India and used outside India.

In this regard, CBE&C vide Circular No. 111/05/2009 ST dated 24.2.2009 has clarified that 'used outside India' means 'benefit should accrue outside India'. A service can be treated as exported even if all relevant activities take place in India, so long as the benefit of these services accrue outside India.

Thus, services provided by Indian agents undertaking marketing in India of goods of a foreign seller are 'export of service' on the presumption that the services provided by Indian agents are exported in accordance with Export of Services Rules, 2005 and hence service tax is not payable on them.

- (b) As per rule 3 of the Export of Services Rules, 2005, the following are export of services:-
- (i) When the service is provided in respect of immovable property which is situated outside India.
 - (ii) When the service is performed outside India.
 - (iii) When the service is provided from India but the recipient of service is outside India.

- (c) Rule 5 of CENVAT Credit Rules, 2004 inter alia provides that the CENVAT credit in respect of the input services used in providing output services which are exported shall be allowed to be utilized towards payment of service tax on taxable output services. However, where such adjustment is not possible, the refund of credit shall be allowed.

In this case the service tax liability on taxable services of Rs.10,000 (Rs.30,000 - Rs.20,000) is Rs.1030 @10.3%. Therefore, there is an excess credit of Rs.4,970 (Rs.6,000 – Rs.1,030) which can not be utilized. Thus, the refund of such credit can be claimed. However, the refund will be restricted to the extent of ratio of export turnover to the total turnover for the given period, i.e. Rs.4,000 [$\text{Rs.6,000} \times (\text{Rs.20,000}/\text{Rs.30,000})$].

- (d) Section 72 provides that best judgement assessment can be done by the Central Excise Officer if :
- (i) the assessee fails to furnish the return under section 70;
 - (ii) the assessee files the return but fails to assess service tax as per the provisions of the Finance Act, 1994 and rules made thereunder.

For making best judgement assessment, the Central Excise Officer may ask the assessee to produce such accounts, documents or other evidence as he may deem necessary. After taking into account all the relevant material, the Central Excise Officer shall make the assessment of the value of taxable service to the best of his judgement and determine the sum payable by, or refundable to, the assessee. He shall pass the order in writing, after giving an opportunity of being heard to the assessee.