

PAPER – 8 : INDIRECT TAX LAWS

PART – A

Question 1

- (a) Determine the total amount of excise duty payable under section 4 of the Central Excise Act, 1944 from the following information:

Particulars	Rs.
(i) Price of machinery excluding taxes and duties	5,50,000
(ii) Installation and erection expenses	21,000
(iii) Packing charges (primary and secondary)	11,500
(iv) Design and engineering charges	2,000
(v) Cost of material supplied by buyer free of charge	8,500
(vi) Pre-delivery inspection charges	500

Other information:

- (a) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.
- (b) Bought out accessories supplied along with machinery valued at Rs. 6,000.
- (c) Central excise duty rate 16% and educational cess as applicable @ 3%.

Make suitable assumptions as are required and provide brief reasons. (5 Marks)

- (b) XYZ Co. is engaged in the manufacture of water pipes. From the following details for the month of May, 2009, compute the available Cenvat credit under the Cenvat Credit Rules, 2004 :

Cenvat paid on purchases as detailed below:

Particulars	Rs.
Raw steel	22,000
Water pipe making machine	18,000
Spare parts for the above machine	7,500
Grease and oil	2,800
Office equipment	20,000
Diesel	12,000

Provide explanation for treatment of various items. (5 Marks)

The suggested answers for Indirect Tax Laws (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.

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- (c) Small & Company, a small scale industry, provides the following details. Determine the eligibility for exemption based on value of clearances for the financial year 2009-10 in terms of Notification No. 8/2003-CE dated 1.3.2003 as amended:

	Particulars	Rs. (Lakhs)
(i)	Total value of clearances during the financial year 2008-09 (including VAT Rs. 50 lakhs)	870
(ii)	Total exports (including for Nepal and Bhutan Rs. 200 lakhs)	500
(iii)	Clearances of excisable goods without payment of duty to a unit in Software Technology Park	20
(iv)	Job work under Notification No. 84/94-CE dated 11.4.94	50
	Job work under Notification No. 214/86-CE dated 25.3.86	50
(v)	Clearances of excisable goods bearing brand name of Khadi and Village Industries Board (sic).	200

Make suitable assumptions and provide brief reasons for your answers where necessary.

(5 Marks)

Answer

- (a) Determination of excise duty payable:

Particulars	Rs.
Price of machinery	5,50,000
Packing charges (Note 6)	11,500
Design and engineering charges (Note 7)	2,000
Cost of material supplied by buyer (Note-3)	8,500
Pre-delivery inspection charges (Note-4)	<u>500</u>
Total	5,72,500
Less : 2% cash discount on price of machinery=550,000 x 2 % (Note-5)	<u>11,000</u>
Assessable value	<u>5,61,500</u>
Excise duty @ 16.48%	92,535.20
Excise duty rounded off	92,535

Notes :-

While computing the assessable value:-

1. installation and erection expenses will not be included [Circular No. 643/34/2002 dated 01.07.2002].
2. bought out accessories, supplied along with the machinery, will not be included.

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3. cost of material supplied by buyer free of charge will form part of assessable value as it is the additional consideration flowing from buyer to seller.
4. pre-delivery inspection charges are includible [Circular No. 643/34/2002 dated 01.07.2002].
5. cash discount will be allowed as deduction if actually passed on to the buyer and if transaction is on principal to principal basis [Circular No. 643/34/2002 dated 01.07.2002].
6. amount charged from the buyer in relation to packing, whether primary or secondary, shall be included [Circular No. 354/81/2000 dated 30.06.2000].
7. design and engineering charges shall be included as such payment is 'in connection with sale'.

(b) CENVAT credit admissible to XYZ Co. for the month of May, 2009:-

Particulars	Rs.
Raw Steel	22,000
Water pipe making machine (Rs. 18,000 × 50%) (Note-1)	9,000
Grease and Oil	2,800
Spare parts for the machinery (Rs. 7,500 × 50%) (Note-1)	<u>3,750</u>
CENVAT credit admissible	<u>37,550</u>

Notes :

In respect of:-

1. water pipe making machine and spare parts, being capital goods, only 50% of CENVAT credit is available [Rule 4(2) of the CENVAT Credit Rules, 2004].
2. office equipment, no credit is available since the definition of capital goods under rule 2(a)(A) of the CENVAT Credit Rules, 2004 specifically excludes any equipment/appliance used in an office.
3. diesel, no credit is available since the definition of input under rule 2(k)(i) of the CENVAT Credit Rules, 2004 specifically excludes it.

(c) Calculation of value of clearances during financial year 2008-09:-

Particulars	Rs. (in lakhs)
Total value of clearance in 2008 - 09	870
Less : VAT included in above	<u>50</u>
	820
Less : 1. Exports excluding exports to Nepal and Bhutan Rs. (500-200) lakh	300

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2. Clearances of excisable goods without payment of duty to a unit in Software Technology Park	20
3. Job work done under Notification No. 84/94-CE dated 11.04.94 and under Notification No. 214/86-CE dated 25.3.86 i.e. Rs. (50 + 50) lakh	<u>100</u>
Value of clearances	<u>400</u>

In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. in a financial year, the total turnover of a unit should not exceed Rs.400 lakh in the preceding year. For the purpose of computing the turnover of Rs. 400 lakh:-

1. export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as “clearance for home consumption”.
2. job work under Notification No. 214/86 - CE and Notification No. 84/94-CE is not to be taken into consideration.
3. clearances of excisable goods without payment of duty to a unit in Software Technology Park are to be deducted.
4. clearances of excisable goods bearing brand name of Khadi and Village Industries Commission are includible.

Since the value of clearances in the previous financial year 2008-09 does not exceed Rs. 400 lakh, the Small & Company is eligible to claim the benefit of Notification No. 8/2003 dated 1st March, 2003 in the financial year 2009-10.

Question 2

- (a) I Ltd. was a manufacturer of excisable goods such as polyester yarn. A ground plan of the factory was provided by the assessee to the jurisdictional Central Excise Officer and the same was approved. The ground plan showed the area in which the manufacturing is carried out as also the areas occupied for purpose of storage godowns, cycle sheds, canteen as well as the housing complex for staff and workers. The assessee had a captive power plant in the approved area. The electricity generated was supplied to the housing complex as well as for use in the manufacturing activity. I Ltd. claimed Cenvat credit on the duty paid on furnace oil used for generation of electricity as it was used within the factory and was covered by the expression "for any other purpose" in rule 2(k) of the Cenvat Credit Rules, 2004. The Central Excise Department wanted to deny the Cenvat credit on the duty paid on furnace oil for generation of electricity which in turn is supplied to the housing complex on the ground that it was not used in relation to manufacture of the final product. Examine, with the help of a decided case law, if the stand of the Department is correct in law. (5 Marks)
- (b) The assessee manufactured compressors and filters and removed them as "stand alone" items. He also manufactured and removed safety valves and filters on payment of duty.

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The assessee also supplied bought out items like V belts, motor, pulley etc. to their buyers. The Excise Department relying on rule 2(a) of the General Interpretative Rules for classification has decided to include the value of safety valves and filters together with value of bought out items in the value of compressors for purposes of duty under section 4 of the Central Excise Act, 1944. Write a brief note, with any decided case law, whether the stand taken by the Department is correct. (5 Marks)

- (c) The assessee's premises were searched by the Anti Evasion wing of the Excise Department. A show cause notice was issued alleging that the assessee had cleared goods without the cover of duty paid invoice and without accounting the same in the stock register. The assessee was required to pay the duty demanded with interest. The assessee filed an application before the Settlement Commission to put an end to the litigation and buy peace. The application was dismissed by the Settlement Commission on the ground that the petitioner in its petition had not admitted the entire duty liability. The assessee's contention is that Department is yet to substantiate the allegations made in the show cause notice and the dismissal order is not correct in law. Briefly discuss, with a note, whether the action of the Settlement Commission is correct in law. (5 Marks)

Answer

- (a) The facts of this case are similar to the case of *M/s Indorama Synthetics (I) Ltd. v. CCE*. (2008) 226 ELT A181(SC). In this case, the Supreme Court maintained the judgment of the Bombay High Court wherein it was held that the CENVAT credit of the duty paid on furnace oil used in the generation of electricity in turn used in the residential complex was not allowable. The assessee submitted that "factory" under section 2(f) of the Central Excise Act, 1944 is wide enough to cover precincts thereof, even if the manufacturing is carried out only in a part of such premises. Therefore, the electricity supplied to the residential complex situated within the factory premises must be covered within the meaning of the word 'for any other purpose' set out in the erstwhile rule 57(B)(w) of the Central Excise Rules, 1944 [similar to present rule 2(k) of the CENVAT Credit Rules, 2004]. The assessee's submission was rejected by the High Court observing that credit of duty would be available on inputs used in the generation of electricity, provided the electricity is used for manufacture of final products or for any other purpose connected with or related to manufacture of final products. In other words, the use of electricity must have nexus with the goods manufactured in the factory. The mere fact that the residential complex is situated within the licensed premises would not entitle the assessee to avail the credit of duty paid on the furnace oil used in the manufacture of electricity supplied to the residential complex. Thus, the stand taken by the Department of disallowing the CENVAT credit is correct in law.
- (b) A similar question had come up for consideration before the Supreme Court in the case of *CCE, Delhi v. M/s Frick India Ltd.* 2007 (216) ELT 497 (S.C). In the instant case, the Supreme Court observed that rule 2(a) of the General Interpretative Rules for

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classification could not be applied in this case as:

- (i) The compressors manufactured by assessee were removed as 'stand alone' item and not in an unassembled or disassembled condition; and
- (ii) Section and Chapter notes in Tariff and the Interpretative Rules do not provide guidelines for valuation of excisable goods because they decide the classification, and valuation is different from classification.

Thus, the Supreme Court held that the parts and accessories could not be classified as 'compressors' and therefore, were independently classifiable under respective headings applicable to them. The concept of 'classification' is different from that of 'valuation'. Therefore, the contention of the Department is not correct in law.

- (c) The dismissal order is valid in law. In the case of Cus. & C.Ex. Settlement Commission v. Mars Therapeutics & Chem. Ltd 2008 (223) ELT 363 (AP), the High Court held that an application made under section 32E of the Central Excise Act, 1944 could be admitted and proceeded with only when Settlement Commission was satisfied that the applicant had made a full and true disclosure of duty liability and the manner in which same was arrived at. The assessee's plea that obligation to make truthful disclosure of duty liability would arise after application was admitted and not before and that Revenue was required to first establish the stand taken in show cause notice, was not acceptable.

HC further clarified that it was only when the Settlement Commission was satisfied that the applicant had made a full and true disclosure, the application could be admitted and proceeded with. This was for the reason that the object behind the enactment of the provisions relating to settlement was the creation of a forum for self- surrender. The Settlement Commission was constituted as an extraordinary measure for providing an opportunity to such persons to make a true confession and to have matters settled once for all. The Settlement Commission was not a forum for challenging the legality of orders passed under the provisions of the Act. The Settlement Commission, in the case on hand, having found that the applicant-petitioner did not fully satisfy the mandatory requirements of full and true disclosure of its liability, was justified in rejecting the application. Thus, the validity of the dismissal order was upheld by the Court.

Question 3

- (a) Explain briefly the concept of "excisable goods" as amended by the Finance Act, 2008.
(2 Marks)
- (b) Explain briefly, how the value of goods will be ascertained for purpose of excise duty where the assessee sells the goods partly to a related person and the balance to unrelated third parties.
(2 Marks)
- (c) Write a brief note on Cenvat monthly return of information relating to principal inputs in Form ER 6.
(2 Marks)

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- (d) Briefly mention any four categories of persons who are exempted from obtaining registration under rule 9(2) of the Central Excise Rules, 2002. (2 Marks)
- (e) Write a short note on the principle of "unjust enrichment" under Central Excise Law. (2 Marks)

Answer

- (a) As per section 2(d) of the Central Excise Act, 1944, "excisable goods" means goods specified in the First Schedule and Second Schedule to the Central Excise Tariff Act, 1985 as being subject to the duty of excise and includes salt.

By Finance Act, 2008, an explanation has been added which clarifies that "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. Thus, the concept of deemed marketability is introduced by this amendment.

- (b) There is no specific rule covering such a situation. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per section 4(1), transaction value is to be determined for each removal. For sales to unrelated buyers, valuation will be done as per section 4(1)(a) and for sales of the same goods to related buyers, recourse will have to be taken to the residuary rule 11 read with rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are made to related buyers only [Circular No. 643/34/2002 dated 01.07.2002].
- (c) ER-6 is a monthly return of receipt and consumption of each of principal inputs. It is to be submitted, by the assessee by 10th of the following month. Only those assessees who are required to submit ER-5 return are required to submit ER-6 return [Rule 9A(3) of the CENVAT Credit Rules, 2004].
- (d) Central Board of Excise and Customs, as per the power given under rule 9(2) of the Central Excise Rules, 2002, vide Notification No.36/2001-CE. (NT) dated 26.06.2001, has exempted the following specified categories of persons from obtaining registration:
 - (i) Persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification subject to the declaration to be made in a specified form.
 - (ii) Small scale units having the slab exemption based on value of clearances under a notification. However, they have to give the declaration when their clearances touch Rs. 90 lakh.
 - (iii) In respect of final products falling under chapter 61 or 62, the job-worker need not get registered if the principal manufacturer undertakes to discharge the duty liability. If the job worker undertakes to pay the duty, the principal manufacturer need not get registered.

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- (iv) Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962 subject to certain prescribed conditions.
- (v) The person who carries on whole sale trade or deals in excisable goods except first and second stage dealer, as defined in the CENVAT Credit Rules, 2004.
- (vi) A hundred percent Export Oriented Undertaking or a unit in EPZ or a unit in SEZ licensed or appointed; as the case may be under the Customs Act, 1962 if they do not procure excisable goods from Domestic Tariff Area or do not remove excisable goods to Domestic Tariff Area.
- (vii) Persons who use excisable goods for any purpose other than the processing or manufacture of goods availing benefit of concessional duty exemption notification.
- (viii) Person who gets his goods manufactured on his account from any other person subject to the conditions that the said person authorizes the person actually manufacturing or fabricating the said goods, to comply with all procedural formalities under the Central Excise Act, 1944 and the rules made there under and to furnish information in order to enable the determination of value of the said goods.

Note: Any four points may be mentioned.

- (e) If the manufacturer has charged excise duty to his buyer, it is clear that he has passed on the burden to the buyer and has already recovered duty from his customer. In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him. It will not be equitable to refund the duty to him as he will get double benefit-first from the customer and again from the Government. This is called "unjust enrichment". Accordingly, refund will be paid to the manufacturer only if he proves that he has borne the burden of duty. Otherwise, the amount will be paid to Consumer Welfare Fund.

PART - B

Question 4

- (a) Determine the taxable turnover, input tax credit and net VAT payable by a works contractor from the details given below on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 12.5%:

Particulars	Rs. (in lakh)
(i) Total contract price (excluding VAT)	100
(ii) Labour charges paid for execution of the contract	35
(iii) Cost of consumables used not involving transfer of property in goods	5
(iv) Material purchased and used for the contract taxable at 12.5% VAT (VAT included)	45

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The contractor also purchased a plant for use in the contract for Rs. 10.4 lakhs. In the VAT invoice relating to the same, VAT was charged at 4% separately and the said amount of Rs. 10.4 lakhs is inclusive of VAT. Assume 100% input credit on capital goods.

Make suitable assumption wherever required and show the working notes. (5 Marks)

- (b) Calculate the value of taxable service under 'cargo handling services' of Cargo Ltd., providing brief reasons where required with suitable assumptions based on the following information for the month of April, 2009:

Particulars	Rs. (in lakh)
(i) Total amount charged for all services	40
(ii) Receipts for services in relation to export cargo and handling of passenger baggage included in (i) above	13
(iii) Charges for storage and cleaning of empty containers of shipping lines included in (i) above	10
(iv) Charges for packing and transport of cargo included in (i) above	3
(v) Charges for handling of agricultural produce included in (i) above	2
(vi) Charges for transportation of cargo included in (i) above	5

(5 Marks)

Answer

- (a) Under the works contract, the turnover for imposition of VAT is the sale price of the goods in which there is a transfer of property. The amount representing the labour & other charges incurred for such execution is deductible.

Computation of the taxable turnover, input tax credit and net VAT payable by the works contractor:-

Particulars	Rs.
Total contract price	1,00,00,000
Less : Deductions admissible	
1. Labour charges paid for executing the contract	35,00,000
2. Cost of consumables in which no property is transferred	<u>5,00,000</u>
Total deductions	<u>40,00,000</u>
Taxable turnover	<u>60,00,000</u>
Output VAT payable @ 12.5% (on Rs. 60,00,000)	7,50,000 (A)

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Less : Input tax credit admissible

1. On the material purchased (on Rs. 45,00,000 x 12.5/112.5)	5,00,000	
2. On the plant purchases (on Rs. 10,40,000 x 4/104)	<u>40,000</u>	
Input tax credit	<u>5,40,000</u>	(B)
Net VAT payable	<u>2,10,000</u>	(A-B)

(b) Calculation of the value of taxable service under 'cargo handling services' of Cargo Ltd.:-

Particulars	Rs.
Total receipts from services rendered	40,00,000
Less : Exemptions:-	
1. Receipts in relation to export cargo & handling baggage of passenger (Note-1)	13,00,000
2. Charges received for storage, washing etc. of empty containers of shipping lines (Note-4)	10,00,000
3. Charges received in relation to handling of agricultural produce (Note-3)	2,00,000
4. Charges received only for transportation of cargo (Note-5)	<u>5,00,000</u>
Taxable services under cargo handling	<u>10,00,000</u>

Notes:

1. The definition of 'cargo handling service' under section 65(23) specifically excludes handling of export cargo or passenger baggage. Hence, they do not form part of taxable services.
2. Charges received for packing together with transportation of cargo, Rs.3,00,000, is taxable in view of amendment made in section 65(23) by Finance Act, 2008.
3. Notification No. 10/2002 dated 01.08.2002 exempts the taxable service provided to any person by a cargo handling agency in relation to agricultural produce or goods intended to be stored in a cold storage from payment of service tax.
4. Circular No. B.11/1/2002-TRU dated 1/8/2002 clarifies that activity of storing/washing/repairing and handling empty containers for the shipping lines does not come within the purview of "cargo handling services".
5. It is assumed that these are the charges merely for the transportation. The definition of 'cargo handling service' under section 65(23) specifically excludes mere transportation of goods. Hence, they do not form part of taxable services.

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Question 5

- (a) M/s M Construction Ltd. constructs, builds and sells premises/flats in a building. During the course of development and construction of the building, it enters into a flat purchase agreement in terms of which the buyers are allotted flats in the building. The buyers pay the consideration to M/s. M Construction in installments. The said 'flat purchase agreement' reflects the entire consideration for the purchase of flat. This agreement is registered and advance payments in installments are collected. The contention of M/s M Construction is that the consideration is for the purchase and sale of the entire flat/premises and the company does not carry out any construction activity. Examine, with a brief note, whether the company is liable to pay service tax in terms of the Finance Act, 1994. (5 Marks)
- (b) Good Luck Agencies is engaged in the purchase of lottery tickets in bulk from the State Government and sells them subsequently on behalf of the Government. However, no service tax is paid on the said activity. The Department has sought to levy service tax under the category of 'business auxiliary service' under section 65(19) as service in relation to promotion or marketing of service provided by the client. Discuss briefly, with a note and decided case law, if any, whether the action of the Department is correct in law. (5 Marks)

Answer

- (a) The facts of the given case are similar to the case of M/s Magus Construction Private Ltd. v. Union of India (11) STR 225 (Gauhati), wherein it has been held by the Gauhati High Court that Circular No. 332/35/2006-TRU dated 01.08.2006 (now Circular No. 96/7/2007-ST dated 23.8.07) clarifies that when a builder, promoter or developer undertakes construction activity for own self, then, in such cases, in absence of relationship of "service provider" and "service recipient", the question of providing taxable service, to any person by any other person does not arise at all. In this case also, the facts clearly show that the construction activity undertaken by the assessee was in respect of its own work and it was only the completed construction work which was sold by the petitioner company to the buyers, who might have made agreements for sale before the construction had actually started or during the progress of the construction activity. Any advance, made by the prospective buyer or the deposit received by the company, is against the consideration of sale of flat/building to such prospective buyer and not for the purpose of obtaining service from M Construction Ltd. Therefore, the contention of M Construction Ltd. is correct in law and it is not liable to pay service tax.
- (b) The action taken by the Department is valid in law. Section 65(19)(ii), inter alia, provides that 'business auxiliary service' means any service in relation to promotion or marketing of service provided by the client. Finance Act, 2008 has inserted explanation to section 65(19)(ii) which provides that for the purpose of this sub-clause, "service in

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relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo. This makes it amply clear that services of selling the lottery tickets are liable to service tax under the category 'business auxiliary service' with effect from 16.05.2008. Consequently, Good Luck Agencies is liable to pay service tax.

Question 6

- (a) Briefly explain whether the following are chargeable to service tax under the provisions of the Finance Act, 1994 :
 - (i) Service provided by a person to another person in relation to information technology software for use in course or furtherance of business or commerce.
 - (ii) Transaction allowing another person to use goods without giving legal right of possession and control to the user of the goods. (2 × 2 = 4 Marks)
- (b) Write a brief note explaining the circumstances under which expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable services under the Service Tax (Determination of Value) Rules, 2006. (4 Marks)
- (c) Briefly explain the provisions in the Service Tax Rules, 1994 relating to furnishing of list of records at the time of filing of return for the first time. (4 Marks)
- (d) Briefly explain the following with reference to the Service Tax Rules, 1994 and the Finance Act, 1994:-
 - (i) Gross amount charged
 - (ii) e-payment of service tax. (2 × 2 = 4 Marks)
- (e) Briefly explain the importance of VAT invoice. (2 Marks)

Answer

- (a) (i) Information technology software means any representation of instructions, data, sound or image including source code and object code recorded in a machine readable form that is capable of being manipulated or providing interactivity to a user by means of a computer or an automatic data processing machine or any other device or equipment. Services like service provided in relation to information technology software including development of information technology software, study, analysis, design and programming, providing advice, consultancy and assistance on these matters, acquiring right to use information technology software for commercial exploitation including right to reproduce, distribute etc. and acquiring the right to use information technology software supplied electronically, have been made liable to service tax with effect from 16th May, 2008.

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- (ii) Transfer of right to use any goods is leviable to Sales tax/VAT as a deemed sale of goods. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.

Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is liable to service tax with effect from 16.05.2008. The taxable service shall include service provided to any person by any other person in relation to supply of tangible goods, including machinery, equipment, and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances.

- (b) Expenditure or costs incurred by the service provider as a pure agent of the recipient of the service shall be excluded from the value of the taxable service if all the following conditions are satisfied:-
 - (a) The service provider acts as a pure agent of the recipient of the service while making payment to the third party.
 - (b) The recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service.
 - (c) The recipient of service is liable to make payment to the third party.
 - (d) The recipient of service authorizes the service provider to make payment on his behalf.
 - (e) The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party.
 - (f) The payment made by the service provider on behalf of the recipient of service is separately indicated in the invoice issued by the service provider to the recipient of service.
 - (g) The service provider recovers from the recipient of service only such amount as has been paid by him to the third party.
 - (h) The goods or services procured by the service provider from the third party as a pure agent are in addition to the service he provides on his own account.
- (c) Rule 5(2) of the Service Tax Rules, 1994 lays down that every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January 2008, whichever is later, a list in duplicate, of
 - (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,
 - (a) providing of any service, whether taxable or exempted;
 - (b) receipt or procurement of input services and payment for such input services;
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

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- (d) other activities, such as manufacture and sale of goods, if any.
- (ii) all other financial records maintained by him in the normal course of business.
- (d) (i) Gross amount charged:

Explanation to section 67 of the Finance Act, 1994 as amended provides that "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and 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, where the transaction of taxable service is with any associated enterprise.
- (ii) E-payment:

The assessee who has paid service tax of Rs. 50,00,000 or above in the preceding financial year or has already paid service tax of Rs. 50,00,000 in the current financial year has to compulsorily deposit the service tax liable to be paid electronically, through internet banking [Proviso to rule 6(2) of the Service Tax Rules, 1994].
- (e) Invoices are 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.

PART – C

Question 7

Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information:

- (i) Assessable value of the imported equipment US \$ 10,100,
- (ii) Date of bill of entry is 25.4.2009. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = Rs. 65.

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- (iii) Date of entry inwards is 21.4.2009. Basic customs duty on this date is 16% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = Rs. 50.
- (iv) Additional duty payable under section 3(1) and (2) of the Customs Tariff Act, 1975: 15%
- (v) Additional duty under section 3(5) of the Customs Tariff Act, 1975: 4%.
- (vi) Educational cess @ 2% in terms of the Finance Act (No.2), 2004 and secondary and higher educational cess @ 1% in terms of the Finance Act, 2007.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest rupee. (5 Marks)

Answer

Computation of custom duty payable:

Particulars	Rs.
Assessable value (10,100 x 65)	6,56,500
Add: Basic custom duty @ 20%	<u>1,31,300</u>
Total	7,87,800
Add : CVD @ 15.45%	<u>1,21,715.10</u>
Total	9,09,515.10
Add : Education Cess (131300 + 121715.10) x 3%	<u>7,590.45</u>
Total	<u>9,17,105.60</u>
Additional duty u/s 3(5) @ 4%	36,684.22
Total Custom Duty Payable (131300 + 121715.10+7590.45+36684.22)	2,97,289.77
Custom Duty (rounded off to nearest rupee)	2,97,290

Notes:

1. Since bill of entry was presented after grant of entry inwards, exchange rate Rs.65 per USD is applicable as it is the rate notified by CBEC on the date of presentation of Bill of Entry.
2. Basic customs duty @ 20% is applicable as it is prevalent on the date of presentation of bill of entry (Section 15 of the Custom Act, 1962).

Question 8

The assessee had imported capital goods under a licence with a condition to fulfill an export obligation within a certain time limit. The assessee failed to discharge the export obligation within the said time limit. Consequently, the Department invoked the bank guarantee and realized the amount. However, subsequently the assessee was able to fulfill the export obligation and the Department cancelled the bank guarantee. The assessee thereafter filed a refund claim for the amount realized by invocation of the bank guarantee by the Department. The Department rejected the refund claim on the ground that it was barred in terms of section

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27(1)(b) of the Customs Act, 1962 as the assessee had not been able to establish that the incidence of duty had not been passed on by him to any other person. Examine briefly, with the help of any decided case law, whether the stand taken by the Department is correct in law.

(5 Marks)

Answer

In CCus. (Exports) v. Jraj Exports (P) Ltd. 2007 (217) ELT 504 (Mad.), the High Court observed that when the Department had accepted the fulfillment of export obligation, there was no need to invoke the bank guarantee and retain the amount. The High Court opined that the Department's claim that refund had been time barred was not sustainable as furnishing of bank guarantee in order to fulfill the export obligation could not be regarded as payment of duty.

The High Court relied on the Supreme Court's ruling in the case of Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise 1994 (70) ELT 48 (SC), wherein it was held that furnishing of bank guarantee pursuant to an order of the Court would not be equivalent to payment of excise duty. The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue. Applying the principle laid down in this case, the Court stated that the requirement to establish that the duty incidence had not been passed on by the assessee to any other person would also not get attracted since section 27 has no application to this case. Therefore, the stand of the Revenue is not correct in law.

Question 9

- (a) Explain briefly the expression 'person-in-charge' under the Customs Act, 1962. (2 Marks)
- (b) Explain briefly the provisions of the Customs Act, 1962 relating to the powers vested in the customs officers to take samples. (2 Marks)
- (c) Explain, with a brief note, how the duty is arrived under the Customs Act, 1962 where the imported goods consist of articles liable to different rates of duty. (2 Marks)
- (d) Write a brief note on the 'residual method' of determination of value of imported goods under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. (2 Marks)
- (e) Briefly state the rights of the owner of warehoused goods under the Customs Act, 1962.

(2 Marks)

Answer

- (a) Section 2(31) provides that 'person in charge' means:
 - (a) in relation to a vessel, the master of the vessel.
 - (b) in relation to an aircraft, the commander or the pilot in charge of the aircraft.
 - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train.

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- (d) in relation to any other conveyance, the driver or other person in charge of the conveyance.
- (b) As per the provisions of section 144 of the Customs Act, the proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for:
 - (a) examination or testing or,
 - (b) ascertaining the value thereof, or
 - (c) any other purposes of this Act
- (c) Where goods consist of a set of articles, duty shall be calculated as follows as per section 19 of the Customs Act, 1962:
 - (a) articles liable to duty with reference to quantity shall be chargeable to that duty;
 - (b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
 - (c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b).
- (d) Residual Method under rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

Subject to the provision of rule 3 of the aforesaid rules, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India subject to the conditions laid down in rule 9(2) of the aforesaid rules.
- (e) With the sanction of the proper officer, and on payment of the prescribed fees, the owner of any goods either before or after warehousing the same -
 - (a) inspect the goods;
 - (b) separate damaged or deteriorated goods from the rest;
 - (c) sort the goods or change the containers for the preservation, sale, export or disposal of the goods;
 - (d) deal with the goods & their containers in such manner as may be necessary to prevent loss, deterioration or damage to the goods;
 - (e) show the goods for sale;
 - (f) take samples of the goods without entry for home consumption, if the proper officer so permits, without payment of duty on such samples.