

PAPER – 8 : INDIRECT TAX LAWS

Answer **all** questions.

PART A

Question 1

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

	Particulars	No. of units	Price at factory per unit	Price at depot per unit	Rate of duty ad valorem
(i)	Goods transferred from factory to depot on 8 th February	1,000	Rs. 200	Rs. 220	10%
(ii)	Goods actually sold at depot on 18 th February	750	Rs. 225	Rs. 250	8%

(5 Marks)

- (b) M/s Royal Industries started its production activities on 15th March, 2010. In the month of March, 2010, 1,000 units of raw material were purchased at Rs.150 per unit, paying excise duty @ 8%. 800 units of raw material were consumed in manufacturing process and finished output was sold for Rs.1,40,000 (excluding excise duty @ 8%). For simplification, you may ignore the conversion cost and assume the rates of excise duty to be inclusive of education cess

Pass the Journal entries in the books of the assessee and show the balances in Balance Sheet as on 31.3.2010.

(5 Marks)

- (c) Mahesh Ltd., which is engaged in manufacturing of excisable goods, started its business on 1st June, 2009. It availed SSI exemption during the financial year 2009-10. The following are the details available to you:

		Rs
(i)	12,500 kg of inputs purchased @ Rs. 1,190.64 per kg (inclusive of Central excise duty @ 8.24%)	1,48,83,000
(ii)	Capital goods purchased on 31.5.2009 (inclusive of excise duty @ 14.42%)	80,09,400
(iii)	Finished goods sold (at uniform transaction value throughout the year)	3,00,00,000

The suggested answers for Indirect Tax Laws (Paper 8) are based on the provisions as amended by the Finance Act, 2009 and notifications/circulars issued up to 31.10.2009 which are relevant for May 2010 examinations.

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You are required to calculate the amount of excise duty payable by M/s Mahesh Ltd. in cash, if any, during the year 2009-10. Rate of duty on finished goods sold may be taken as 12.36% for the year and you may assume the selling price exclusive of central excise duty.

There is neither any processing loss nor any inventory of input and output. Out input ratio may be taken as 2:1. (5 Marks)

Answer

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

Assessable Value = 750 units x Rs. 220 = Rs. 1,65,000

Calculation of Central excise duty:-

Basic excise duty @ 10% (Rs. 1,65,000 × 10%)	16,500
Education cess @ 2%	330
Secondary and higher education cess @ 1%	<u>165</u>
Total duty payable	<u>16,995</u>

Note: It has been assumed that the price at depot on 8th February is the normal transaction value for sale to independent buyers.

- (b) **Journal entries in the books of M/s. Royal Industries:-**

On the date of purchase	Purchases A/c Dr.	1,50,000	
	CENVAT Credit Receivable A/c Dr.	12,000	
	To Sundry Creditors A/c		1,62,000
	(Purchase of 1,000 units of raw material & CENVAT credit receivable on it)		
At the time of sale	Sundry Debtors A/c Dr.	1,51,200	
	To Sales A/c		1,40,000
	To Excise Duty A/c		11,200
	(Sold goods & excise duty payable on it)		
On payment of duty	Excise Duty A/c Dr.	11,200	
	To CENVAT Credit Receivable A/c		11,200
	(Excise duty paid out of CENVAT credit available)		

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**Balance sheet as on 31st March, 2010
(Relevant portion of Assets side only)**

Current Assets, Loans and Advances		Amount (Rs.)
(A)	Current Assets	
	Inventory of raw material	30,000
(B)	Loans and Advances	
	CENVAT Credit Receivable	800

Note: Other balances are not shown here

- (c) **Computation of the excise duty payable by M/s. Mahesh Ltd. during the financial year 2009-10:-**

Excise duty on dutiable clearances:-

Particulars	Amount (Rs.)
Clearances of finished goods made during the year	3,00,00,000
Less : Exemption of Rs. 150 lakh under Notification No. 8/2003 dated 01-03-2003	<u>1,50,00,000</u>
Dutiable clearances	<u>1,50,00,000</u>
Excise duty @ 12.36% (Rs. 1,50,00,000 × 12.36%)	<u>18,54,000</u>

CENVAT credit available on inputs:-

(Used in the manufacture of dutiable clearance. No CENVAT credit will be available in respect of exempt clearances)

% of dutiable goods in the finished goods sold = $\frac{1,50,00,000}{3,00,00,000} \times 100$	50%
Excise duty paid on the value of inputs consumed in manufacture of dutiable clearances = $\left(\frac{\text{Rs. } 1,48,83,00 \times 8.24}{108.24} \right) \times 50\%$ (Since output input ratio is fixed)	5,66,500

CENVAT credit available on capital goods:-

(CENVAT credit will be available @ 50% of total excise duty in current financial year 2009-10; balance credit to be availed during the next financial year 2010-11)

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Particulars	Amount (Rs.)
(50% of Rs. 80.094 lakh) x $\frac{14.42}{-114.42}$	Rs. 5,04,700
CENVAT credit can be availed on capital goods, but can be utilized only in respect of duty payable on clearances after first clearances of Rs. 150 lakhs	

Excise duty payable

Particulars	Amount (Rs.)
Excise duty on dutiable goods	18,54,000
Less: CENVAT credit available on inputs	5,66,500
Less: CENVAT credit available on capital goods	<u>5,04,700</u>
Excise duty payable	<u>7,82,800</u>

Question 2

- (a) An assessee classified his product as per Central Excise Tariff subject to nil rate of duty. The Department contended that when the entries in the Harmonized System of Nomenclature (HSN) and the Central Excise Tariff are not aligned, reliance should be placed upon HSN for the purpose of classification of goods under the said Tariff. Relying upon the HSN for the purpose of classification of the impugned product, the Department classified it under another heading attracting 8% duty. Do you think that Department's plea is valid in law? Discuss briefly, with reference to a decided case law, if any. (5 Marks)
- (b) M/s Evasions Unlimited, manufacturing excisable goods, paid the differential duty, suo motu, to the Department as the prices of the said goods were revised with retrospective effect. The Revenue took the view that the assessee was liable to pay interest on differential duty under section 11AB of the Central Excise Act, 1944 and penalty thereof. The assessee replied that there was no question of charging interest and penalty as the payment of differential duty was made by it at the time of issuing supplementary invoices to the customers. Discuss, with reference to a decided case law, if any, whether the view taken by the Revenue is justifiable. (5 Marks)
- (c) An assessee made an application under section 32E of the Central Excise Act, 1944 to the settlement commission. The settlement commission was not satisfied saying that the applicant had not made a true and full disclosure of his duty liability and the manner in which same was arrived at was also not correct and rejected the application. The assessee contended that obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not before that. Is plea taken by the assessee acceptable in law? Explain in brief, with the help of a decided case law, if any. (5 Marks)

Answer

- (a) No, the Department's plea is not valid in law. Central Excise Tariff is based upon HSN, but it is not a copy of HSN. In case of *Camlin Ltd. v. CCEx. Mumbai* (2008) 230 ELT 193 (SC), the

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Supreme Court ruled that when the entries in HSN and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purposes of classification of goods. Central Excise Tariff of India should be followed in such cases. It should be appreciated that since the entries under the HSN and the entries under the said Tariff were completely different, the Department could not base its decision on the entries in the HSN.

- (b) The demand of interest by Revenue is justified, but penalty cannot be levied in the present case. The Apex Court, in a similar case of *CCEx. v. SKF India Ltd. 2009 (239) E.L.T. 385 (S.C.)*, has noted that section 11A, relating the recovery of duties, can be divided in two parts-
- (i) Where the non-payment or short payment etc. of duty is not intentional and for a reason other than deceit, such cases are dealt with under sub-section (2B) of section 11A.
 - (ii) Where the non-payment or short payment etc. of duty is intentional, deliberate and/or by deceitful means, such cases are dealt with under sub-section (1A) of section 11A.

The Apex Court, over ruling the Tribunal's decision in the said case, held that the present case clearly falls under the provision of sub-section (2B) of section 11A of the Central Excise Act, 1944. Further, from the combined reading of explanation 2 to section 11A(2B) and section 11AB, it can be concluded that the person who has paid the duty under sub-section (2B) of section 11A, shall, in addition to the duty, be liable to pay interest. No penalty is attracted.

- (c) The applicant is not correct.

The matter of the case is similar to the case of *Customs & Central Excise Settlement Commission v. Mars Therapeutics & Chemicals Ltd. 2008 (223) ELT 363 (HC)*. The High Court held that the application made under section 32E of the Central Excise Act, 1944 could be admitted and proceeded with only when Settlement Commission is satisfied that the applicant has made true and full disclosure of the duty liability and the manner in which the same was arrived at.

The High Court clarified that the onus is on the applicant to make full and true disclosure of the duty liability and the manner in which the same was arrived at. And the Settlement Commission will admit the application only when the Commission is satisfied on the true and full disclosure of the duty liability and the manner it was arrived at. The High Court also clarified that the object behind the enactment of the provisions of Settlement Commission is the creation of a forum of self surrender and true confession and to have matter settled once for all. The Settlement Commission is not a forum to challenge the legality of the order passed under the provisions of the Act. The Settlement Commission, in the case on hand, having found that the applicant did not fully satisfy the mandatory requirements of full and true disclosure of its duty liability, can reject the application.

Question 3

- (a) Differentiate between "non-excisable goods" and "non-dutiable goods". (3 Marks)
- (b) Under Excise Audit, 2000, the selection of unit for audit is based on 'risk factors'. Explain in brief the term 'risk factors' giving any two examples. (3 Marks)

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- (c) Explain the validity of the following statements with reference to the Central Excise Laws, as amended:
- (i) Records seized by Department during investigation but not relied upon in the show cause notice should be returned within 30 days of issue of show cause notice.
 - (ii) Special audit under section 14A and 14AA can be done by a cost accountant only.
 - (iii) Authority of Advance Ruling under the Income Tax Act, 1961 will be authority for purposes of Central excise also.
 - (iv) High Court is empowered to condone delay in filing appeal and cross objection filed under sections 35G and 35H of the Central Excise Act, 1944, beyond the prescribed period. (4 × 1 = 4 Marks)

Answer

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

Goods which are not listed in Tariff or goods which are mentioned in Tariff, but the column of rate of duty is blank are **non-excisable** goods, e.g. water (there is no entry in Tariff). Excise law is not applicable on non excisable goods.

Non dutiable goods are excisable goods listed in Excise Tariff. Excise law is applicable to them, but they are not liable to excise duty. Non dutiable goods may be of two types-

- (i) Nil duty goods, i.e Tariff rate is nil, and
 - (ii) Exempted goods, i.e. 100% exemption under section 5A.
- (b) 'Risk factors' under Excise Audit, 2000 means that the assessee who have a bad track record are taken up for audit on priority as opposed to those who enjoy a clean track record.

For example:

- (i) assessee having past duty evasion cases
- (ii) late payment of duty/late filling returns
- (iii) major audit objections against them
- (iv) no cash payment of duty (all CENVAT adjustment)
- (v) past duty dues, etc

Note : Any two examples may be given.

- (c) (i) Yes, the statement is valid as per rule 24A of the Central Excise Rules, 2002 inserted w.e.f. 7.7.2009.
- (ii) No, the statement is not valid. As per amendment made by the Finance (No.2) Act, 2009, Chartered Accountants, in addition to a cost accountant, are also eligible for special audits under sections 14A and 14AA of the Central Excise Act, 1944.

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- (iii) Yes, the statement is valid as per the amendment made by the Finance (No.2) Act, 2009 which has substituted the definition of authority by a new definition [Section 23A(e)].
- (iv) Yes, the statement is valid as per amendment made by the Finance (No.2) Act, 2009, i.e. sub-section (2A) inserted after sub-section (2) of section 35G and sub-section (3A) inserted after sub-section (3) of section 35H, thereby empowering the High Court to condone the delay in filing appeal and cross objections filed under sections 35G and 35H of the Central Excise Act, 1944 after the expiry of the prescribed period.

PART B

Question 4

- (a) Mr. Happy, a service provider, has provided services of Rs. 1,00,00,000. Out of this, Rs. 70,00,000 are taxable output services and Rs. 30,00,000 are exempt output services. Mr. Happy has opted not to maintain separate inventory and accounts and pay prescribed amount on value of exempt output services.

Service tax paid on his input services, excluding education cess and secondary and higher education cess (EC & SAHEC) is Rs. 6,00,000 which does not include any service specified in rule 6(5) of the CENVAT Credit Rules, 2004. Rate of service tax, excluding EC and SAHEC, is 10%. Calculate the total amount payable including service tax, EC and SAHEC by Mr. Happy by GAR-7 challan. (5 Marks)

- (b) The particulars regarding sale, purchase etc. of Shubham Udyog for the last quarter of the year 2009 -10 are as under:

			Rs.
1.		Purchases of raw material within the State	
	(i)	taxable @ 1%	40,00,000
	(ii)	taxable @ 4%	60,00,000
	(iii)	taxable @ 12.5%	10,00,000
2.		Sale of goods manufactured from raw material purchased @ 4% tax rate	
	(i)	Taxable sale within the State (tax rate 4%)	20,00,000
	(ii)	Exempted sale within the State	10,00,000
	(iii)	Sale in the course of Inter-State trade or commerce (tax rate 4%)	10,00,000
3.		Sale of raw material purchased @ 1% tax rate	44,00,000
4.		Goods manufactured from the raw material purchased @ 12.5% tax rate were given on lease. The deemed sale price of such goods is Rs. 12,00,000, taxable @ 12.5%.	

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You may assume that input tax credit of tax on raw material used in manufacture of leased goods is available immediately. Compute the amount of Value Added Tax (VAT) payable by M/s Shubham Udyog for the relevant quarter. There was no opening or closing inventory.

How can he utilise the balance of input tax credit available, if any? (5 Marks)

Answer

(a) Calculation of service tax and total amount payable under rule 6(3)(i) of the CENVAT Credit Rules, 2004:-

Particulars	Rs.
Service tax payable on taxable services (Rs. 70,00,000 × 10%)	7,00,000
Education cess @ 2% (Rs. 7,00,000 × 2%)	14,000
Secondary and higher education cess @ 1% (Rs. 7,00,000 × 1%)	7,000
Amount payable on exempt services under rule 6(3)(i) (Rs. 30,00,000 × 6%) [Note (1)]	<u>1,80,000</u>
Total	<u>9,01,000</u>

Particulars	Service tax and amount payable under rule 6(3)(i)	Education cess	Secondary and higher education cess
Amount payable (A)	Rs. 7,00,000 + Rs. 1,80,000 = Rs. 8,80,000	Rs. 14,000	Rs. 7,000
Less: CENVAT credit (B)	Rs. 6,00,000	Rs. 6,00,000 × 2% = Rs. 12,000	Rs. 6,00,000 × 1% = Rs. 6,000
Net amount payable = (A) - (B)	Rs. 2,80,000	Rs. 2,000	Rs. 1,000

Amount payable by GAR-7 challan = Rs. 2,80,000 + Rs. 2,000 + Rs. 1,000 = Rs. 2,83,000

Notes :

- (1) Education cess & secondary and higher education cess are not payable on 'amount' payable @ 6% of the value of exempt services under rule 6(3)(i) of the CENVAT Credit Rules, 2004.
- (2) Credit of education cess and secondary and higher education cess on input services can be utilized only for the payment of education cess and secondary and higher education cess payable on output services (or on excisable goods) respectively [First and second proviso to rule 3(7)(b) of the CENVAT Credit Rules, 2004].

(b) Computation of VAT payable for the quarter ending 31st March, 2010:-

	Particulars	Rs.
(A)	Output tax payable	
(i)	On sale of taxable finished goods within the state (Rs. 20,00,000 × 4%)	80,000

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(ii)	On raw material (Rs. 44,00,000 × 1 %)	44,000
(iii)	On leased goods (Rs. 12,00,000 × 12.5%) (Deemed sale)	<u>1,50,000</u>
	Total (A)	<u>2,74,000</u>
(B)	Input tax credit available	
(i)	On raw material purchased @ 1% (Rs. 40,00,000 × 1%)	40,000
(ii)	On raw material purchased @ 4% (Rs. 60,00,000 × 4%) × 75% (Note-1)	1,80,000
(iii)	On raw material purchased @ 12.5% (Rs. 10,00,000 × 12.5%)	<u>1,25,000</u>
	Total (B)	<u>3,45,000</u>
	Net VAT payable = (A)-(B)	(71,000)
	CST payable on inter state sale adjusted (Rs.10,00,000 × 4%)	<u>40,000</u>
	Balance of input tax credit carried forward to next quarter (Rs. 40,000-Rs. 71,000)	<u>31,000</u>

Notes :

1. If the goods manufactured from raw material are exempt from tax, no input tax credit is available on such raw material. Out of total sales of Rs. 40,00,000 of goods manufactured from raw material purchased @ 4%, credit will not be allowed in respect of the inputs used in the manufacture of exempted goods sold. It has been assumed that the amount of raw material used in the manufacture of exempted goods is proportionate to amount of the exempted sale in the total sales of goods manufactured from raw material purchased @ 4% assuming the input output ratio to be constant. Hence, input tax credit has been allowed to the extent of 75%.
2. If finished goods are sold in the course of inter-state trade and commerce, credit is allowed.

Question 5

- (a) The term 'business auxiliary service' was inserted by Finance Act, 2003 which came into force on 1.7.2003. The Parliament by Finance Act, 2008 inserted an explanation in the relevant sub-clause (ii) of section 65(19) stating that for the purpose of this sub-clause -

"Service in relation to promotion or marketing of service provided by the client includes any service provided in relation to marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo."

Discuss, whether the explanation appended to sub-clause (ii) of section 65(19) is clarifactory in nature so as to be construed having retrospective effect and retroactive operation. You may take help of a decided case law, if any. (5 Marks)

- (b) Mr. Yes is the owner of a collection centre with facilities and trained employees for collection of human blood, urine and stool samples for biological testing. He sends the samples collected to its principal lab for actual test to be done. The assessee receives 25% of the price charged by the principal lab as commission for work of collection. The Revenue wants

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to charge service tax on such collection service as it amounts to promotion or marketing of services provided by its principal lab. Mr. Yes seeks your advise in this regard with reference to a decided case law, if any. (5 Marks)

Answer

- (a) The Apex Court, in a case of *Union of India and Others v. Martin Lottery Agencies Ltd.* (2009) 14 STR 593 (SC), ruled that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect. Subject to the constitutionality of the Finance Act, 1994 in view of the explanation appended to this, the Apex Court opined that the service tax, if any, would be payable only with a prospective effect and not with retrospective effect.

In a case of this nature, the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law. For the aforementioned purpose, the expressions like 'for the removal of doubts' are not conclusive. The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service. It held that the explanation is not clarificatory or declaratory in nature. Hence, it could not be construed having retrospective effect and retroactive operation.

- (b) The facts of the given case are similar to the case decided by High Court i.e. *CCE v. Dr Lal Pathological Lab (P) Ltd* 2007 (8) STR 337 (P&H).

The High Court held that merely because the assessee renders incidental services like putting across or dropping of the name of the principal company, it would not amount to business auxiliary services. The High Court also observed that the activity conducted by the assessee was covered by the exception postulated by the provision of section 65(106) of the Finance Act, 1994 which excluded any testing or analysis service provided in relation to human beings or animals from the scope of the taxable technical testing and analysis service.

It affirmed the decision of the Tribunal that the service provided by the assessee is incidental to testing and analysis service. Drawing of samples and producing for testing and analysis are inter-connected services or incidental to testing and analysis. Hence, these services are exempted from service tax.

Hence, the contention of the Department is not correct.

Question 6

- (a) State, with reasons in brief, whether the following services are taxable, under the provisions of the Finance Act, 1994 relating to service tax:
- (i) Services in relation to production of alcoholic liquor on job work basis.
 - (ii) Service of transport of goods in container by Government Railway. (2 × 2 = 4 Marks)
- (b) Whether the value of material supplied by the contractee to the contractor for use in the execution of the works contract shall be included in the value of works contract for payment of service tax under the composition scheme? What is the present rate of service tax under this scheme? Can the service provider avail CENVAT credit also? (4 Marks)

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- (c) *What is the general exemption available to small service providers? Who are the persons excluded from this exemption?* (4 Marks)
- (d) *Explain in brief the disadvantages of composition scheme available for small dealers under VAT system.* (4 Marks)
- (e) *What is VAT invoice? What are the mandatory provisions to be complied with while issuing a VAT invoice by a registered dealer?* (4 Marks)

Answer

- (a) (i) Yes, as per amendment made by the Finance (No. 2) Act, 2009, the definition of business auxiliary service under section 65(19) of the Finance Act, 1994 has been amended to exclude any activity that amounts to manufacture of excisable goods. Therefore, services provided in relation to manufacture of alcoholic liquor, which is not excisable, for or on behalf of the client shall attract service tax.
- (ii) No, as per section 65(105)(zzp), transport of goods in container by rail by any person other than Government railway is liable to service tax. Therefore, services of transport of goods in container by Government Railway shall not attract service tax.
- (b) Yes, according to amended explanation to rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, the gross amount charged for the works contract shall include the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise.
- Present rate of service tax under the composition scheme is 4.12% (inclusive of education cess and secondary and higher education cess) of gross amount charged for the works contract. The assessee cannot avail CENVAT credit of inputs. However, he can avail CENVAT credit of input services and capital goods.
- (c) A small service provider is eligible to avail exemption from service tax on aggregate value of taxable services not exceeding Rs. 10 lakh in any financial year subject to the condition that during the preceding financial year, the aggregate value of all taxable services provided by him did not exceed Rs. 10 lakh.
- Such general exemption is not applicable in following cases-
- (i) The taxable services provided by a person under a brand name or trade name, whether registered or not, of another person.
- (ii) If the provider of taxable service is availing the CENVAT credit of service tax paid on any input services.
- (iii) Where the service receiver is liable to pay service tax as per provisions of section 68(2) read with rule 2(1)(d) of the Service Tax Rules, 1994.
- (d) Small dealers with annual gross turnover not exceeding Rs. 50 lakh who are otherwise liable to pay VAT, shall have the option for a composition scheme with payment of tax at small percentage of his gross turnover. The dealers opting for this scheme will not be entitled to input tax credit.

As VAT chain is broken under the composition scheme, following are its disadvantages –

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1. The purchaser shall not get any tax credit for the purchases made by him from the dealer operating under the composition scheme. Hence, the dealers who have desired to avail input tax credit on their purchases may not prefer to buy from composition dealers.
 2. The dealer cannot avail input tax credit in respect of input tax paid by him. He will not be able to pass on the benefit of input tax credit, which will add to the cost of goods.
- (e) VAT invoice is a document listing goods sold with price, tax charged and other details as may be prescribed and issued by a dealer authorized under the Act.

Mandatory provisions to be complied with:

- (i) Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, cash memo or bill with the prescribed particulars.
- (ii) The VAT invoice shall be dated and signed by the dealer or his regular employee, showing the required particulars.
- (iii) The dealer shall keep a counterfoil or duplicate of such VAT invoice duly signed and dated.

Exception: Composition scheme dealer cannot issue a VAT invoice.

PART C

Question 7

- (a) Miss Priya imported certain goods weighing 1,000 kgs. with CIF value US\$ 40,000. Exchange rate was 1 US\$ = Rs. 45 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and education cess as applicable. There is no excise duty payable on these goods, if manufactured in India.

As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US \$ 60 per kg and 'landed value' of goods. You are required to compute custom duty and anti - dumping duty payable by Miss Priya. (5 Marks)

- (b) M/s Marwar Industries imported finishing agents, dye - carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for additional duty of customs (CVD) leviable under section 3 of the Customs Tariff Act, 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the 'same factory' for manufacture of textile articles. The Department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the 'same factory'. You are requested to comment upon the contention of Department, with reference to a decided case law, if any. (5 Marks)

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Answer

(a) Computation of customs duty payable:-

Particulars	Rs.
Total CIF value in INR = US \$ 40,000 x Rs. 45	18,00,000
Add: Landing charges @1%	<u>18,000</u>
Assessable value (AV)	<u>18,18,000</u>
Basic customs duty (BCD) @10%	1,81,800
Education cess (EC) @ 2% on BCD	3,636
Secondary and higher education cess (SAHEC) @ 1% on BCD	<u>1,818</u>
Landed value of imported goods	<u>20,05,254</u>
Total customs duty payable (BCD + EC+ SAHEC)	<u>1,87,254</u>

Computation of Anti dumping duty payable:-

Particulars	Rs.
Value of goods in INR as per Notification = 1,000 Kgs x US \$ 60 x Rs. 45	27,00,000
Less : Landed value of goods	<u>20,05,254</u>
Anti-dumping duty payable	<u>6,94,746</u>

- (b) The contention of the Department is not valid in law. The Supreme Court in a similar case of *CCus. v. Malwa Industries Ltd.* (2009) 235 ELT 214 (SC) held that literal meaning should be avoided if it leads to absurdity. When the goods are imported, obviously, the same would not be manufactured in the same factory and therefore, it would become impossible to apply the provision of section 3(1) of the Customs Tariff Act, 1975. It was observed that the object of countervailing duty (CVD) is that importer should not be placed at some more advantageous position vis-a-vis purchaser/manufacturer of similar goods in India.

Considering the purpose of exemption, it was held that 'same factory' means imported goods should be used in factory belonging to importer where manufacturing activity takes place. Hence, the exemption will be available to imported goods also and CVD is not applicable.

Question 8

- (a) Explain in brief the duty exemption to baggages under section 79(1) of the Customs Act, 1962. (3 Marks)
- (b) Can an application be withdrawn in the following cases? If yes, state the time limit for withdrawal of such application:
- application for advance ruling
 - application for settlement. (4 Marks)

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- (c) *Clearly mention the relevant date in the following cases of goods warehoused under bond:*
- (i) *Rate of exchange, when goods are removed for home consumption.*
 - (ii) *Rate of duty, when goods are removed for home consumption.*
 - (iii) *Rate of duty if the goods are not removed from warehouse within the permissible period.*
- (4 Marks)*

Answer

- (a) Section 79(1) of the Customs Act, 1961 exempts the bona fide baggage of the passengers. Following baggage is passed free of duty-
- (i) articles in use by passenger/crew for the minimum period prescribed by the Baggage Rules, 1998.
 - (ii) articles for use by passenger or his family or bona fide gifts or souvenirs within the limits prescribed in the aforesaid rules.
- (b) (i) Application for advance ruling can be withdrawn within 30 days from the date of application **[Section 28H(4) of the Customs Act, 1962]**.
- (ii) Application once made cannot be withdrawn in case of settlement **[Section 127B(4) of the Customs Act, 1962]**.
- (c) (i) The relevant date for rate of exchange is the date on which the bill of entry is presented for warehousing under section 46 of the Customs Act, 1962 and not when bill of entry is presented under section 68 for clearance from warehouse.
- (ii) As per section 15(1)(b) of the Customs Act, 1962 rate of duty as prevalent on date of presentation of bill of entry for home consumption for clearance from warehouse is applicable and not the rate prevalent when goods were removed from customs port.
- (iii) Goods which are not removed within the permissible period are deemed to be improperly removed on the day it should have been removed. Thus, duty applicable on such date i.e. last date on which the goods should have been removed is relevant and not the date on which the goods were actually removed.