

PAPER – 8 : INDIRECT TAXES

Question No. 1 is compulsory.

Attempt any five from the remaining **six** questions.

Question 1

- (a) XYZ & Co., a SSI unit, manufactures different products and the value of clearances for the financial year 2008-09 is given below:

(Rs. in lakhs)				
S. No.	Product	AA	AB	AC
(i)	Clearance for home consumption	55	40	60
(ii)	Captive consumption in the manufacture of excisable goods	100	80	60
(iii)	Export to U.S.A.	90	80	Nil
(iv)	Export to Nepal	50	40	39
(v)	Job work done under Notification No. 214/86-C.E.	55	30	60
(vi)	Goods manufactured in rural area with brand name of others	45	35	35

The unit seeks your advice as to whether they are eligible for SSI exemption for the year 2009-10.

Explain the basis for your conclusions. (5 Marks)

- (b) (i) Indicate the central excise authorities who can accept bonds executed for various purposes and obligations of exporter in respect of bond acceptance while filling in ARE-1 form. (3 Marks)
- (ii) What is the meaning of "normal transaction value" according to Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000? (2 Marks)
- (c) From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

		US \$
(i)	Cost of the machine at the factory of the exporting country	10,000
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	500

The suggested answers for Indirect Taxes (Paper 8) are based on the provisions as amended by the Finance (No. 2) Act, 2009 and Notifications/Circulars issued up to 30.04.2010 which are relevant for November 2010 examinations.

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|---|-------|
| (iii) Handling charges paid for loading the machine in the ship | 50 |
| (iv) Buying commission paid by the importer | 50 |
| (v) Freight charges from exporting country to India | 1,000 |
| (vi) Exchange rate to be considered : 1\$ = Rs. 45 | |

(5 Marks)

- (d) How do you classify a taxable service, which is, *prima facie* classifiable under more than one sub-clause of clause (105) of Section 65 of Finance Act, 1994? (3 Marks)
- (e) Who are the service tax assesseees required to compulsorily deposit service tax through internet banking? (2 Marks)

Answer

- (a) XYZ & Co. unit will be entitled to exemption in the year 2009 -10, if its turnover in the year 2008-09 was less than Rs.400 lakhs. As per *Notification No. 8/2003 CE dated 01.03.2003*, which governs the provisions relating to small scale exemption, following items will not be included for calculating the turnover limit of Rs.400 lakh of previous year:

- (i) Captive consumption in the manufacture of excisable goods
- (ii) Export to USA
- (iii) Job work done under *Notification No.214/86 CE*

Therefore, the turnover to be considered for the limit of Rs.400 lakh will be computed as under:

Product	Clearance for non-consumption	Export to Nepal	Goods manufactured in rural area with brand name of others	Total Turnover
(Rs. in lakhs)				
AA	55	50	45	150
AB	40	40	35	115
AC	60	39	35	134
				399

Since turnover of the unit during the year 2008-09 is less than Rs.400 lakh, the unit is entitled to SSI exemption from excise duty in the year 2009-10.

- (b) (i) Bonds may be accepted by any of the following officers:
- (i) Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory or warehouse or any other premises approved by the Commissioner for storing non-duty paid goods
 - (ii) Jurisdictional Maritime Commissioner in case of exports or

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- (iii) Deputy/Assistant Commissioner of Central Excise (Export) as officers authorized by the Board for this purpose.

Exporters are required to indicate on the ARE-1 the complete address of the authority before whom the bond is executed and to whom the documents are to be submitted for admission of proof of export.

- (ii) "Normal Transaction Value" means the transaction value at which the greatest aggregate quantity of goods are sold.

(c) Computation of Assessable Value

	US \$
(i) Cost of the machine at the factory	10,000
(ii) Transport charges upto port	500
(iii) Handling charges at the port	<u>50</u>
F.O.B.	10,550
(iv) Freight charges upto India	1,000
(v) Insurance charges @ 1.125% of F.O.B.	<u>118.69</u>
C.I.F.	11,668.69
C.I.F. in Indian rupees @ Rs.45/- per \$	Rs.5,25,091
(vi) Add: Landing charges @ 1% of CIF	Rs.5,250.91
Assessable Value	Rs.5,30,342

Notes:

- (1) Buying commission is not included [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (2) Transport charges incurred by the exporter from his factory to the port for shipment have been included on the presumption that the same have been recovered separately from the importer.
 - (3) Insurance charges and landing charges have been included @ 1.125% of FOB value of goods and 1% of CIF value of goods respectively [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (d) If prime facie, a taxable service is classifiable under two or more sub-clauses of section 65(105), classification shall be effected as follows:
- (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
 - (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this

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criterion is applicable;

- (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.
- (e) According to *Notification No. 01/2010 ST dated 19th February, 2010*, an assessee who has paid a total service tax of Rs.10,00,000 or more including the amount paid by utilization of CENVAT credit, in the preceding financial year, is required to compulsorily deposit the service tax liable to be paid by him electronically, through internet banking.

Question 2

- (a) *BCD Auto parts Ltd. is manufacturing rail assembly front seat, adjuster assembly slider seat, rear lock assembly used in motor vehicles for fitment along with seats. Assessee classified the items under Chapter Heading No. 8708 – parts and accessories of motor vehicles of the First Schedule to Central Excise Tariff Act, 1985. Department's contention is that goods manufactured are integral parts of seats and hence have to be classified under Chapter Heading No. 9401.00 – seats.*

Examine whether contention of the department is correct by referring to case law, if any, and principles for classification of goods. (5 Marks)

- (b) *Examine whether the rules for interpretation of tariff schedules applicable to classification of goods are also applicable to interpretation of exemption notification or to determination of the eligibility of goods for exemption under an exemption notification.* (3 Marks)
- (c) *AB Exim Ltd. exported a full container load of readymade shirts. The goods were inspected, samples were drawn and container was sealed by Central Excise Officers and container was allowed to be loaded by customs after ensuring that seal on the container was intact. However, while filing shipping bill, by mistake the declaration that drawback is being claimed was not made. AB Exim Ltd. has approached you for advice. What will be your advice?* (2 Marks)
- (d) *An importer filed bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of Rs. 10,000 by endorsement on the bill of entry. Since importer wanted to clear the goods he paid the penalty. Can penalty be imposed for late filing of bill of entry? Examine the issue in the light of relevant statutory provisions.* (4 Marks)
- (e) *Examine whether manufacture of non-excisable goods for or on behalf of a client attracts levy of service tax or not.* (2 Marks)

Answer

- (a) The facts of the given case are similar to the case of *CCEx. Delhi v. Insulation Electrical (P) Ltd. 2008 (224) ELT 512 SC* wherein the Apex Court held that the products manufactured by the assessee cannot be considered as parts of a seat. The rail assembly front seat, adjuster assembly slider seat etc. manufactured by the assessee were used to facilitate fitment of seat, in the motor vehicle and helped the driver and passenger of vehicle in adjusting the seat. The seat was complete and fully functional

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without rail assembly or adjuster assembly. None of the items manufactured could be considered as part of the seat.

Thus, in view of the above-mentioned decision of the Supreme Court, Department's contention is not correct.

- (b) This issue has been dealt by the Supreme Court in the case of *CCEx., Jaipur v. Mewar Bartan Nirman Udyog 2008 (231) ELT 27 (SC)*. In the instant case, the Apex Court clarified that it is a well settled position in law that exemption notification has to be read strictly and interpreted in terms of its language. Where the language is plain and clear, effect must be given to it. While interpreting the exemption notification one cannot go by rules of interpretation applicable to cases of classification under the Excise Tariff. The rules of interpretation applicable in the cases of classification under the Tariff cannot be applied to interpretation of exemption notification.
- (c) AB Exim Ltd. will be advised to make an application to Commissioner of Customs to exempt it from the requirement of making a declaration in the shipping bill by exercising his power under Rule 12 of the Drawback Rules, 1995 explaining the facts and circumstances and also pointing out that goods have been examined and samples have been drawn.
- (d) The Customs Act, 1962 does not prescribe any statutory time limit for filing Bill of Entry. However, under section 48 of the Customs Act, 1962, if imported goods are not cleared within 30 days from the date of unloading, goods can be disposed off by the Custodian. Therefore, since no offence is committed by late filing of bill of entry, penalty cannot be imposed for the same. However, the custodian after giving notice to the importer and with the approval of the proper officer can sell the goods.
- In the instant case, the importer can file an appeal before Commissioner (Appeals) since endorsement of penalty on the bill of entry can be considered as part of assessment.
- (e) The Finance (No.2) Act, 2009 has amended the definition of business auxiliary under section 65(19) of the Finance Act, 1994 so as to exclude any activity that amounts to manufacture of excisable goods. Therefore, manufacture of non-excisable goods for or on behalf of client attracts service tax.

Question 3

- (a) *M/s R & Co. Ltd. have cleared their manufactured final products during April, 2010 and the duty payable is 2,40,000 plus education cesses as applicable. Given below are the details of excise duty paid by them during the month at the time of purchase of goods:*

	Rs.	
(i) On inputs (RM)	1,00,000	(Invoice for excise duty of Rs. 20,000 paid was received by the assessee on 04.05.2010)

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(ii)	On input service	20,000
(iii)	On welding electrodes for repairs and maintenance of capital goods	5,000
(iv)	Fuel (excluding HSD/Petrol)	6,000
(v)	Storage Tank	8,000
(vi)	Tubes and Pipes (used in the factory)	14,000
(vii)	Air-conditioner for the office of the Factory Manager	12,000

Note: all the above payments are exclusive of education cesses as applicable.

Find the total duty payable by the assessee for the month of April, 2010 after taking into account the CENVAT credit available. (8 Marks)

- (b) *What are the provisions relating to effective date of notifications issued under Section 25 of the Customs Act, 1962?* (3 Marks)
- (c) *Who are the residents eligible to file an application for advance ruling under the Customs Act, 1962?* (3 Marks)
- (d) *Compute value of taxable service under "intellectual property service" using the details given below:*

	Rs.
(1) Royalty for providing designs and patents @ 5%	20,00,000
(2) Lumpsum royalty for permanent transfer of trademark	25,00,000
(3) Royalty under brand licensing arrangement for use of brand name	15,00,000
	(2 Marks)

Answer

(a) CENVAT credit available for the month of April, 2010

S. No.	Particulars	Excise Duty/service tax	Education Cess	Secondary and Higher Education Cess
		Rs.	Rs.	Rs.
1.	Inputs (RM)	80,000	1600	800
2.	Input service	20,000	400	200
3.	Welding Electrodes	5,000	100	50
4.	Fuel	6,000	120	60

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5.	Storage Tank (Capital Goods) – 50%	4,000	80	40
6.	Tubes and Pipes (Capital Goods) – 50%	7,000	140	70
7.	Air-conditioner (not available since it is office equipment)	-	-	-
	Total credit available	1,22,000	2,440	1220
	Excise duty payable for the month April, 2010	<u>2,40,000</u>	<u>4,800</u>	<u>2,400</u>
	Payable in cash after set off of the credit	<u>1,18,000</u>	<u>2,360</u>	<u>1,180</u>

Notes:

- (i) Since invoice for Rs.20,000 was not received as on 30.04.2010, credit thereon has not been considered.
 - (ii) CENVAT credit is available on welding electrodes as per Rajasthan High Court's decision in the case of *Hindustan Zinc Ltd. 2008 (228) ELT 517*.
 - (iii) It has been assumed that fuel excludes light diesel oil also.
- (b)** Date of effect of every notification issued will be the date of its issue by the Central Government for publication in the Official Gazette, unless provided otherwise in the notification. It shall be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the CBEC.
- A notification may come into force from a date later than the date of issue if so provided in the notification. In such a case it shall be published and offered for sale on or before the date on which it comes into force.
- The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.
- (c)** Under section 28E(c) of the Customs Act, following residents can apply for advance ruling-
- (i) A resident setting up a joint venture in India in collaboration with a non-resident who proposes to undertake any business activity in India;
 - (ii) A wholly owned subsidiary Indian company, of which the holding company is a foreign company, which proposes to undertake any business activity in India;
 - (iii) A public sector company as defined in section 2(36A) of Income-tax Act – *Notification No. 124/2009-Cus. (NT) dated 20.8.2009*;
 - (iv) Resident importing goods under project import scheme under heading 9801 – *Notification No. 124/2009-Cus. (NT) dated 20.8.2009*;

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(v) A joint venture in India.

In case of joint venture, an application for advance ruling can be made only when one of the partners is non-resident.

(d) Computation of value of taxable service

	Rs.
1. Royalty for providing designs and patents	20,00,000
2. Lump sum royalty for permanent transfer (Permanent transfer is not a service, but a sale, hence not taxable)	Nil
3. Royalty under brand licencing arrangement	<u>15,00,000</u>
Value of Taxable Service	35,00,000

Question 4

(a) *Pinkcity Zinc Ltd. (PZ Ltd.) was engaged in the manufacture of lead and zinc concentrates. At the time of carrying out the physical stock taking, some shortage of stock was found. According to PZ Ltd., the shortage was due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks. PZ Ltd. applied for remission of duty under rule 21 of the Central Excise Rules, 2002. Revenue claimed that the shortage could have been avoided or minimized by the assessee, as these were neither due to natural causes, nor due to unavoidable accident. Thus, the prayer for remission was declined.*

You are requested to examine the validity of the Revenue's claim with the help of decided case law. (5 Marks)

(b) *Duty demand of Rs. 10 lakh was made in terms of an order in original dated 25.02.2009 against XYZ Ltd. with interest as applicable on the ground of clandestine removal of the products manufactured by the assessee in the month of June, 2008. Penalty equal to duty demanded was also imposed. On an appeal filed by XYZ Ltd., the Commissioner (Appeals) required it to deposit an amount of Rs. 5 lakh as pre-deposit which was duly deposited on 03.06.2009. The case against XYZ Ltd. was finally decided and duty demand of Rs. 3,20,000 was confirmed and penalty was set aside on 30.06.2009. XYZ Ltd. filed a refund claim on 15.09.2009. Refund was sanctioned on 10.12.2009. Calculate the amount of refund admissible.* (3 Marks)

(c) *M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.2010. When order for clearance was passed by proper officer on 05.10.2010, it was found that there was some pilferage of such goods. As the imported goods were in the custody of Port Trust, the Department demanded duty from the custodian under Section 45(3) of the Customs Act, 1962, on such pilferage. The Port Trust denied such demand contending that it was not an approved custodian falling under Section 45 but possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods.*

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The importer has also asked the custodian to make good the loss of goods. Examine, whether the demands made by the Department and importer are justified in law, referring to decided case law. (6 Marks)

- (d) *Is CENVAT credit of service tax paid in relation to renovation or repair of premises of provider of output service admissible? Give reasons.* (2 Marks)

Answer

- (a) The Revenue's claim is not valid in law. The facts of the given case are similar to the case of *UOI v. Hindustan Zinc Ltd.* 2009 (233) ELT 61 (Raj) wherein the High Court held that the expressions 'natural causes' and 'unavoidable accident' are required to be given reasonable and liberal meaning, otherwise the provisions of rule 21, so far as they relate to admissibility of remission, on these two grounds, would be rendered altogether ineffective.

The Court noted that if the contention of Revenue was accepted no loss or destruction would fall under these two categories as in either case, grounds may be projected on the anvil of requirement of appropriate storage, or safety measures, and so on and so forth. Even in case of 'unavoidable accident', it could always be claimed that the accident could have been avoided by taking recourse of one or more measures. Thus, a bit liberal, rather more practical, approach is required to be taken in matter.

Thus, the prayer of PZ Ltd. for remission of duty may be accepted by Revenue under Rule 21. However, the aspect of satisfaction under Rule 21 is essentially a subjective satisfaction of the authority concerned.

- (b) As the Commissioner (Appeals) has confirmed the duty demand of Rs.3,20,000 and set aside the penalty, only Rs.1,80,000 will be payable as refund to XYZ Ltd. Interest would also be payable as per the provisions of section 35FF as the pre-deposit is not refunded within three months from the date of communication of such order to the adjudicating authority. Interest would be payable @ 6% on such refund after the expiry of three months from the date of the communication of the order of the appellate authority (01.10.2009) to the adjudicating authority till the date of refund of such amount (10.12.2009) i.e., for 71 days in total. It has been assumed that the order was communicated to the adjudicating authority on the same day (30.06.2009).

$$\text{Interest payable} = \frac{6}{100} \times \frac{71}{365} \times 1,80,000$$

$$= \text{Rs.2,101}$$

$$\text{Total refund admissible} = \text{Rs.1,80,000} + \text{Rs.2,101}$$

$$= \text{Rs.1,82,101}$$

- (c) The facts of the case are similar to the case of *Board of Trustees v. UOI* (2009) 241 ELT 513 (Bom HC DB), wherein the Court held that considering the language of section 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person under section 45 of the Act. Therefore, section 45(3) applies only to

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the private custodians who are required to be approved by Commissioner of Customs under section 45(1). Accordingly, the major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3).

However, the Board vide its *Circular No.13/2009-Cus. dated 23.2.2009* has clarified that major ports and airports would be required to discharge the responsibilities cast upon them as specified in Customs Areas Regulations, 2009 (which include the responsibility to pay customs duty on pilferage of goods).

Section 45(3) holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, in case of *IAA v. Ashok Dhawan (1999) 106 ELT 16 (SC)*, it was held that if the custodian has no explanation at all to show how the loss occurred in respect of goods in its custody, applying the principle *res ipo locquitor*, the custodian is liable for loss of goods.

- (d) Admissible. As per Rule 2(l)(ii) of CENVAT Credit Rules, 2004, services used in relation to setting up, modernization, renovation or repairs of a factory, premises of output service provider or an office relating to such factory or premises is called input service.

Question 5

- (a) How should value of samples, which are distributed free as part of marketing strategy, or as gifts or donations, or distributed as physicians' samples be determined according to the latest circular issued by Central Board of Excise & Customs? Indicate whether the procedure requires a change when products are notified for MRP based assessment. (4 Marks)
- (b) Write a brief note on taxable event for levy of excise duty. Quote the relevant Supreme Court decision. (4 Marks)
- (c) Importer BOPP Ltd. imported two consignments of ethyl alcohol which were allowed to be cleared for home consumption on execution of a bond undertaking to produce licence within a month. Since appellants failed to fulfill the obligation, proceedings were initiated which culminated in confiscation of the goods under Section 111(d) of the Customs Act, 1962 and imposition of penalty on the importer under Section 112(a) of Customs Act, 1962. Examine the correctness of the decision in terms of statutory provisions. (4 Marks)
- (d) Give description of the goods which have been fully exempted from additional customs duty under Section 3(5) of the Customs Tariff Act, 1975 (i.e., 4% special CVD). (2 Marks)
- (e) Penalty under Section 78 of the Finance Act, 1994 is mandatory when demand for service tax evaded has been confirmed on the ground of suppression, misdeclaration, fraud, collusion, etc. and no authority other than High Courts/Supreme Court has the power to waive the penalty. Examine the correctness of this statement. (2 Marks)

Answer

- (a) Circular No. 813/10/2005 CX dated 25.04.2005 clarifies that value of samples which are distributed free as part of marketing strategy, or as gifts or donations, or distributed as

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physicians' samples should be determined under Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Circular No. 915/05/2010 CX dated 19.02.2010 has clarified that even when the products are notified for MRP based assessment under section 4A of the Central Excise Act, 1944, samples thereof would be assessed under Rule 4 of the valuation rules by taking into consideration the deemed value under section 4A(1). Accordingly, the value for payment of excise duty for samples notified for MRP based assessment would be the value determined under section 4A for the similar goods (subject to adjustment for size and pack etc.).

- (b) As per section 3 of the Central Excise Act, 1944, the taxable event for charge of central excise duty is manufacture of the goods. However, collection of duty is postponed to the stage of removal of goods as per rule 4 of Central Excise Rules, 2002.

According to the decision of the Apex Court in the case of *Vazir Sultan Tobacco Co. Ltd. v. CCE (1996) 83 ELT 3*, exempted goods will be chargeable to duty if, subsequent to manufacture but before removal exemption is withdrawn. However, goods which are not listed in the Schedules to Central Excise Tariff Act, 1985 will not be liable to excise duty if they are subjected to levy after they are manufactured. The test for determining the liability is whether goods were covered in the tariff when they were manufactured. Therefore, date of removal is relevant only if levy was there at the time of manufacture.

- (c) When goods are confiscated ownership of the goods vests in the Government. If goods are not in possession of the importer or with Government, confiscation will have no meaning. Imposition of redemption fine also would not be possible since when fine is paid, importer can redeem the goods and when goods are not there question of fine does not arise.

However, when goods have been provisionally released, confiscation would be possible since release is provisional and importer gets conditional possession. The Supreme Court in the case of *Weston Components Ltd. v. CC 2000 115 ELT 278* has also held that goods released under bond can be confiscated and redemption fine can be imposed. Thus, confiscation of goods imported by BOPP Ltd. is in consonance with the provisions of the Customs Act, 1962.

Penalty under section 112 can be imposed *inter alia* when a person omits to do any act which would render such goods liable for confiscation under section 111. Thus, penalty can also be imposed on BOPP Ltd. as the confiscation of goods is justifiable.

- (d) In respect of following goods, additional duty leviable under section 3(5) of the Customs Tariff Act has been fully exempted:
- (i) All pre-packaged goods intended for retail sale covered under Standards of Weights and Measures Act, 1976
 - (ii) Wrist watches, pocket watches and other watches including stop watches
 - (iii) Telephones for cellular networks or for other wireless networks
 - (iv) Articles of apparel and clothing accessories

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- (v) Electrical energy
- (vi) Parts, components and accessories for the manufacture of mobile phones, battery chargers and hands-free headphones if the importer follows the procedure set out in the Customs (Import of Goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules, 1996
- (e) The statement is not correct. Section 80 of the Finance Act, 1944 provides that no penalty under sections 76, 77 or 78 of the Finance Act, 1944 shall be imposed if the assessee proves that there was "reasonable cause" for the failure referred to in the said sections. It is mandatory on the part of the department to follow the principles of natural justice i.e., to hear the other party before imposition of the penalty and provide the assessee an opportunity to prove that there was reasonable cause.

Question 6

- (a) *M/s. Cool and Kool Ltd. has two units, one in Jaipur and another in Delhi. Jaipur unit manufactures condensing units which are cleared to Delhi unit on payment of appropriate excise duty. Delhi unit procures cooling units manufactured locally and combines the same with such condensing units. After conducting quality control test and affixing the brand name, the Delhi unit clears the complete units along with pipe kits, electrical cord, remote control, etc. The Department contends that the process being carried out by Delhi unit amounts to manufacture as it is not a mere process of assembly whereas, the assessee argues that putting together various duty paid articles in a carton with a brand name to be marketed as 'air conditioner' is not manufacture. No process is involved except that all the items are put together in one box.*

Explain, with the help of decided case law, whether the contention of the Department is correct in law? (5 Marks)

- (b) *Indicate headings under which excise audit procedure is explained in EA – 2000.* (3 Marks)

- (c) *Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief.* (6 Marks)

- (d) *"Service tax is leviable on hire purchase finance transaction". Discuss the validity of the above statement.* (2 Marks)

Answer

- (a) Yes, the contention of the Department is correct in law. The facts of the given case are similar to the case of *Fedders Lloyd Corporation Ltd. v. CCEx. (2008) 221 ELT 3 (SC)* wherein it was held that neither the condensing unit nor the cooling unit by itself, was a complete air conditioner. It was only when these two were put together that the complete unit of air conditioner fit for use came into existence. The air conditioner, so cleared by Delhi branch was a commercially new article. Hence, the process amounted to manufacture.

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Processing and assembly of various parts and components may amount to manufacture if a new and identifiable product known in the market emerges, which is movable and marketable.

(b) The headings under which excise audit procedure under EA 2000 is outlined are:

- (i) Selection of assessee
- (ii) Desk review
- (iii) Documenting information
- (iv) Tour of the factory
- (v) Audit plan
- (vi) Verification
- (vii) Audit objection and audit plan
- (viii) Audit report

(Any six points out of the above points may be mentioned)

(c) Section 26A of the Customs Act, 1962 makes provision for refund of import duty paid on clearance of imported goods capable of being easily identified as such imported goods, if following conditions are fulfilled:

- (i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;
- (ii) the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
- (iii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;
- (iv) the importer does not claim drawback under any other provision of this Act; and
- (v) the goods are exported or the importer relinquishes his title to the goods and abandons them to customs or such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days can be extended up to 3 months.
- (vi) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.
- (vii) This section shall not apply to the goods regarding which an offence appears to have been committed under this Act or any other law.
- (viii) No refund shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.

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- (d) The statement is not valid. The Apex Court in the case of *CCE v. Bajaj Auto Finance Ltd. (2008) (10) STR 433* has held that service tax is not leviable on hire purchase finance transactions. Hire purchase finance is different from hire purchase and hire-purchase finance is not covered under category of 'banking and other financial services'.

There is a fundamental difference between a hire purchase agreement and hire purchase finance agreement, namely that in the case of the former, the title to the goods remains with the hire purchase company which bails the goods to the hirer in return for periodical payments and the title to the goods is transferred to the customer/hirer only if he exercises the option to purchase the same on full payment to the hire purchase company, while in the case of the latter, the title to the goods vests in the purchaser right from the beginning and the hire purchase finance company who has only a right to seize the goods for non-payment of the loan, is not the owner of the goods.

Question 7

Answer any **four** out of sub-questions (a) to (e) :

- (a) (i) Section 13 of Central Excise Act, 1944 relates to power to arrest. According to this Section, who has the power to arrest and subject to what conditions? (3 Marks)
- (ii) What is the meaning of 'fund' according to Section 2(ee) of Central Excise Act, 1944? (1Mark)
- (b) Explain the procedure for warehousing of excisable goods removed from a factory or a warehouse. (4 Marks)
- (c) (i) Examine the validity of the statement "Commissioner of Central Excise (Appeals) can enhance the amount of duty demanded or fine in lieu of confiscation or penalty while deciding appeal filed by an assessee". (2 Marks)
- (ii) For the purposes of valuation of taxable service, what is the meaning of a 'pure agent'? (2 Marks)
- (d) On the package, received as a post parcel from abroad, contents are indicated as calculators valued at Rs. 1,000. However, when the parcel was opened, it was found to contain ten mobile phones valued at Rs. 2,50,000. A show cause notice has been issued to the importer proposing to confiscate the goods and impose penalty on the importer. Examine the legality of action proposed in terms of statutory provisions under Customs Act, 1962. (4 Marks)
- (e) State the points of difference between valuation of imported goods under Customs Act, 1962 and imported services under Finance Act, 1994 and valuation of imported goods and services, as per relevant Accounting Standard. (4 Marks)

Answer

- (a) (i) According to section 13 of the Central Excise Act, 1944, any central excise officer not below the rank of Inspector of Central Excise has the power to arrest a person whom he has reason to believe to be liable to punishment under Central Excise Act or Rules. Prior approval of Commissioner of Central Excise is required for arrest.

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- (ii) As per section 2(ee) of the Central Excise Act, 1944, 'fund' means the consumer welfare fund established under section 12C.
- (b) 1. The consignor (i.e. the manufacturer or the registered person of the warehouse) shall prepare an application for removal of goods from a factory or a warehouse to another warehouse in quadruplicate in the specified Form.
2. The consignor shall also prepare an invoice in the manner specified in Rule 11 of the said Rules in respect of the goods proposed to be removed from his factory or warehouse.
3. The consignor shall send the original, duplicate and triplicate application and duplicate invoice along with the goods to the warehouse of destination.
4. The consignor shall send quadruplicate copy of the application to the Superintendent-in-charge of his factory or warehouse within twenty-four hours of removal of the consignment.
5. On arrival of the goods at the warehouse of destination, the consignee (i.e. the registered person of the warehouse who receives the excisable goods from the factory or a warehouse) shall, within twenty-four hours of the arrival of goods, verify the same with all the three copies of the application. The consignee shall send the original application to the Superintendent-in-charge of his warehouse, duplicate to the consignor and retain the triplicate for his record.
6. The Superintendent-in-charge of the consignee shall countersign the application received by him and send it to the Superintendent-in-charge of the consignor.
7. The consignor shall retain the duplicate application duly endorsed by the consignee for his record.
- (c) (i) The statement is valid. Section 35A provides that Commissioner (Appeals) can enhance penalty or fine in lieu of confiscation or duty demanded after making further enquiry as may be necessary and after giving an opportunity of being heard to the appellant. Further, enhancement of duty demand shall be subject to time limit under section 11A of the Central Excise Act, 1944.
- (ii) 'Pure agent' is a person, who
- incurs expenditure or costs on behalf of service recipient in terms of a contract
 - does not hold any title to goods or services procured or provided as pure agent of the recipient of services
 - does not use such goods or services
 - receives only actual amount incurred to procure such goods or services.
- (d) The proposed action is legal. According to section 82 of Customs Act, 1962, in the case of a post parcel, any label or declaration accompanying the goods which contains description, quantity and value is deemed to be an entry for import. Therefore in this case, goods become liable to confiscation under section 111 of Customs Act, 1962 since they are not covered by the entry for import. Importer becomes liable to penalty unless he is able to show that he was not responsible for import.

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- (e) As per the customs provisions, the rate of exchange used for conversion of foreign currency in to Indian currency for valuation purposes is the rate declared by the Central Board of Excise and Customs. However, as per AS 11 the rate of exchange for conversion of foreign currency into reporting currency in respect of a transaction is the rate prevalent at the date of the transaction. Thus, while valuing the imported goods for the purpose of paying customs duty, rate declared by CBEC is used whereas while recording the value of such goods in the books of accounts the exchange rate prevalent on the date of transaction as declared by the RBI is used.

Further, there may be more difference between the value of imported goods derived as per the customs provisions and the value computed as per the accounting principles. The differences may be on account of various additions or deductions made to/from the invoice value in terms of section 14 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. For example, customs laws provide for the addition of commission and brokerage, licence or royalty fees etc. to the value of the imported goods. Also, price reduced after importation is not considered for customs purposes whilst the same is considered for recording the value of the goods in the account books.

As regards imported services, there are no statutory provision similar to customs in the service tax law which provide for the rates of conversion of currency for the purpose of converting consideration of taxable services received in foreign currency into Indian currency.

