

PAPER – 8 : INDIRECT TAXES

QUESTIONS

1. Pravaal purchases duty paid wire rods and draws them into a thinner gauge. The two items fall under different tariff headings. Pravaal claims that the process undertaken by him does not amount to manufacture. His claim is based on a decision given by the Apex Court in the case of *Collector of Central Excise v Technowled Industries 2003 (155) E.L.T. 209 (S.C.)*. Is the claim of the assessee correct in the present position of law?
2. Alpha Industries Ltd. manufactures shoes on the basis of bulk orders received from various Government Departments. Footwear is covered under the Third Schedule to the Central Excise Act, 1944. Alpha Industries Ltd. does not make any retail sale to individual buyers, nor does it affix any MRP on shoe packages sold by it. Even the necessary declarations required under statutes are not filed by it. How should the goods be valued?
3. The value of the operational software should not be included in the value of the computer. Discuss the correctness of the statement with reference to the provisions of the Central Excise Act, 1944.
4. M/s. Della Traders is in the practice of charging each of its customers compulsorily, a certain amount as labour charges for repair of the finished products during warranty period. This repair is done by the dealers. The Central Excise Officer added the value of such charges in the assessable value of the finished products for the purpose of computation of duty, on the ground that such repair charges are in the nature of 'after sale service' done by M/s. Della Traders to promote marketability. However, the contention of M/s. Della Traders is that such charges are recovered as service charges for repairs, a service being provided by the dealers. Do you agree to the stand taken by the Central Excise Officer? Give reasons.
5. With reference to Cenvat Credit Rules, 2004 answer the following questions:
 - (i) How can the credit of duties of excise and service tax be utilized? Are there any restrictions in this regard?
 - (ii) Whether it is necessary that credit can be taken, only after making payment against the bill/invoice/challan?
 - (iii) Who is an "input service distributor"?
6. India Cements Ltd. is engaged in the business of manufacturing cement. For this purpose, limestone is excavated from a mine, which is situated at a distance of few kilometres from the plant where the cement is manufactured. The mine is connected to the main plant through a ropeway. Explosives are used for blasting the mine to excavate limestone. Can Cenvat credit be taken on such explosives?
7. Discuss the mechanism for removal of goods at concessional rate of duty for manufacture of excisable goods with reference to Central Excise Act, 1944 and the rules made thereunder.
8. Discuss the provisions governing packing, re-packing, labelling or re-labelling within the warehouse in respect of Export Warehousing.
9. Write short notes on:
 - (a) Compounding of offences
 - (b) Offence by companies
10. Discuss the provisions prescribed in Cenvat Credit Rules, 2004 for a situation where a output service provider renders both taxable as well as exempted output services by using common inputs/input services and maintains only one set of books of accounts for taxable and exempted services.
11. When can the 'transaction value' be accepted under the Customs Act, 1962 and the Customs Valuation (Determination of Price of Imported goods) Rules, 1988 even if the buyer and seller are related persons? Write a brief note.

12. M/s. Neeraj Containers imported by air from USA certain goods at CIF value \$ 8400.00. Air freight US \$ 1,600 and insurance charges US \$ 800 were also paid. Bill of Entry was presented on 28-2-04, but the date of arrival of the aircraft was 10-03-04. Other relevant information is as follows:

	As on 28-02-04	As on 10-03-04
Rates of Exchange		
As announced by CBEC US \$ 1 =	Rs.48.50	Rs.48.20
As announced by RBI US \$ 1 =	Rs.48.90	Rs.48.50
Rates of Custom Duty		
Basic Customs Duty	14%	16%
Additional Customs Duty	16%	16%
Special Additional Duty	4%	4%

The same goods are exempt from excise duty in India, if manufactured without the aid of power.

Compute the assessable value and give the rates of Basic, Additional and Special Additional Duty to be adopted in this case, and also the basis for arriving at the Basic, Additional and Special Additional Duty (actual duty calculations need not be given). Clearly show your assumptions.

13. Does the principle of unjust enrichment apply to refund of import duty paid on capital goods?
14. Pranjal had imported certain goods. Due to some technical problems he had to pay the redemption fine. Later on, he decides to abandon the goods. So, he claims the refund of redemption fine being paid by him. Is his claim tenable in law? Discuss.
15. Sudha Traders had imported certain goods and got them cleared for home consumption. Later, the Department found that the goods had been imported in contravention of Import Control Act and Import Control Order and, therefore, were liable for confiscation under section 111(d) of Customs Act and penalty under section 112 of the Act. Is the stand taken by the revenue correct in law? Examine the situation with the help of the case laws, if any.
16. Write short notes on :
- Education cess on customs duty
 - Fee for filing an appeal to Appellate Tribunal
17. Discuss the provisions of section 143A of Customs Act, 1962 in respect of duty deferment.
18. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of Service Tax.
- Services provided by multi-system operator to cable operators.
 - Maintenance services provided by M/s. Complete Software Solutions for computers sold by it.
 - Services provided by Sarwan Tent House in respect of pandal and shamiana for the purpose of holding a purely religious congregation.
 - Route navigation services provided by Airports Authority of India to various airlines.
 - Service provided by an individual in respect of procuring the inputs and managing the inventory for a company.
19. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of Service Tax.
- Service provided by a sub-broker to a main broker.
 - Services provided by a banking company or financial institutions to Government of India or a State government.
 - Services provided by the outdoor caterer to a client on a railway train.

- (iv) Premium paid on a life insurance policy.
 - (v) Advance received for rendering a particular service.
20. Briefly discuss the provisions of the Finance Act, 1994 as amended relating to Service tax with respect to any one of the following taxable services:
- (i) Business Exhibition Service
 - (ii) Opinion poll service.

SUGGESTED ANSWERS/HINTS

1. The Apex Court had held in the case of *Collector of Central Excise v Technowled Industries 2003 (155) E.L.T. 209 (S.C.)* that there is no manufacture of a new product when the guage of the rod is made thinner and the product is finished a little better.

However, Finance (No. 2) Act, 2004 has inserted a section note in section XV of the First Schedule to the Central Excise Tariff Act so as to provide that 'the process of drawing or redrawing a rod, wire or any other similar article, into wire' shall amount to 'manufacture'. Therefore, this chapter note overrules the judgment of the Supreme Court.

Hence, the contention of the assessee is not correct in law.

2. A similar issue came up for consideration before the Tribunal in the case of *Commissioner of C. EX. & Cus., BBSR –II v. Mehar Shoes Industries 2004 (172) E.L.T. 409 (Tri. – Kolkata)*. The question, which arose before the Tribunal, was that whether the goods had to be valued as per the provisions of section 4 or as per the provisions of section 4A. The Tribunal followed the *Circular No. 625/16/2002 – C.X., dated 28.02.2002* that read:

"Sec.4A of the Central Excise Act, 1944 is applicable in respect of those cases only where the manufacturer is **legally obliged** to print the MRP on the packages of the goods, under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law for the time being in force.

The basic issue, therefore, is to determine the circumstances in which sec.4A of the C.E. Act can be applied. The wording of Sec.4A (1) makes it very clear that it will apply only to such goods "..... in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976, or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods....". In other words, if there is no statutory requirement under the provisions of Weights and Measures Act to declare the retail sale price on the packages, Sec.4A will not apply. As for example, in respect of bulk sale of ice-cream to hotels/restaurants which are not meant for retail sales as such, the provisions of the Weights and Measures Act will not apply. Chapter V of the Weights & Measures (Packaged Commodity) Rules, 1977 mentions the instances where MRP is not required to be printed on the packages. Thus, in these cases valuation will have to be done under sec.4 of the C.E. Act, 1944.

It is, therefore, clarified that, in respect of all goods (whether notified u/s.4A or not) which are not statutorily required to print/declare the retail sale price on the packages under the provisions of the Standards of Weight & Measures Act, 1976, or the rules made there under or any other law for the time being in force, valuation will be done u/s.4 of the C.E. Act, 1944 (or under section 3(2) of the Central Excise Act, 1944, if tariff values have been fixed for the commodity). Thus, there could be instances where the same notified commodity would be partly assessed on the basis of MRP u/s.4A and partly on the basis of normal price (prior to 1.7.2000) or transaction value (from 1.7.2000), u/s.4 of the C.E. Act, 1944.

It may be kept in mind that if an assessee does not declare or print the retail sale price in respect of a notified commodity, which it is statutorily required to do under the provisions of the Weights & Measures Act, or any other law for the time being in force, the goods, on removal, will be liable to confiscation u/s. 4A(4) of the C.E. Act, 1944."

In the situation referred to in the question there is no legal obligation on the manufacturer to print the MRP on the shoe packages as the shoes are not sold in retail. Therefore, the basic condition for the shoes to be valued as per provisions of section 4A is absent i.e., the MRP is not affixed on the goods. Thus, abovementioned Circular should be followed in this case also and the valuation of the goods sold in bulk should be done as per section 4 and not as per section 4A.

3. The issue was discussed in detail by the Supreme Court in the case of *CCE, Pondicherry v. Acer India Ltd. 2004 (172) E.L.T. 289 (S.C.)* wherein it was held by the Apex Court that the value of the operational software loaded on the computer is not includible in the assessable value of the computers.

Computer and operative softwares are different marketable commodities. They are available in the market separately and are classified differently. The rate of excise duty for computer is 16% whereas that of software is *nil*.

The computer and software are distinct and separate, both as a matter of commercial parlance and also under the statute. A computer may not be capable of functioning effectively without being loaded with software. However, it will not tantamount to bringing them within the purview of the part of the computer so as to include their value in the assessable value of the computers. Both computer and software must be classified under their respective headings viz., 84.71 and 85.24 and must be subjected to corresponding rates of duties separately.

Although the information contained in software is loaded in the hard disc, but the operational software does not lose its value and is still marketable as a separate commodity. It does not lose its character as a tangible goods being of the nature of CD-ROM. The fact that the manufacturers put different prices for the computers loaded with different types of operational software does not make any difference as regards nature and character of the 'computer'. Even if the manufacturers in terms of the provisions of a licence are obliged to preload software on the computer before clearing the same from the factory, the characteristic of the software cannot be said to have transformed into hardware so that it can be charged to excise duty along with the computer.

As regards valuation it was pointed out by the Apex court that the valuation of goods would be subjected to the charging provisions contained in section 3 of the Act and also subsection (1) of section 4. The definition of 'transaction value' must be read in the text and context of section 3, the charging section i.e., the expressions 'by reason of sale' or 'in connection with the sale' contained in the definition of 'transaction value' cannot be used to justify the chargeability of software to excise duty. These expressions refer to such goods, which are excisable to excise duty and not the one, which are not excisable. The legal text contained in Chapter 84, as explained in Chapter Note 6, clearly states that software, even if contained in hardware, does not lose its character as such. When an exemption has been granted from levy of any excise duty on software whether it is operating software or application software in terms of heading 85.24, no excise duty can be levied thereupon indirectly as it is impermissible to levy a tax indirectly.

The excise duty is chargeable on the excisable goods and not on the goods, which are not excisable. Thus, if non-excisable goods are transplanted into excisable goods, the assessee is not liable to pay excise duty on the combined value of both. Excise duty, in other words, is leviable only on the goods, which answer the definition of 'excisable goods' and satisfy the requirement of section 3. A machinery provision contained in section 4 and that too the explanation contained therein by way of definition of 'transaction value' can neither override the charging provision nor by reason thereof 'goods' which is not excisable will become excisable only because one is fitted into the other. While computing costs of manufacturing, expenses that add to the value of the excisable goods are to be considered and not the value of non-excisable goods.

4. The facts of the case are similar to the case of *Collector of Central Excise, Chandigarh v. Eicher Tractors Ltd. 2004 (164) E.L.T. 129 (S.C.)*. On this issue, the Supreme Court observed that service is distinct and separate from repairs. Dealers providing 'service' have nothing to do with 'repairs' during warranty period. If there is a provision for free repair during warranty period then

that is something which is being provided by manufacturers. Such service may be provided through dealers for benefit of the customer to whom an additional value is provided. Hence, it was held by the Apex Court that cost of labour charges recovered from the buyers for free repair provided by dealers during warranty period should be included in the assessable value.

Applying the ratio of the abovementioned decision in the given case, it can be said that the contention of M/s. Della Traders of service being provided by dealer is erroneous. Therefore, the stand taken by the Central Excise Officer is correct in law.

5. (i) Credit of the duties of excise paid on inputs and capital goods can be availed by the manufacturers of excisable goods for payment of their excise duty liability on the final products.

Credit of the duties of excise paid on inputs and capital goods can be availed by output service providers for payment of their service tax liability on the output services rendered by them.

Credit of service tax paid on input services can be availed by the manufacturers of excisable goods for payment of their excise duty liability on the final products.

Credit of service tax paid on input services can be availed by output service providers for payment of their service tax liability on the output services rendered by them.

However, such utilisation is subject to following restrictions:

- (i) Credit of Additional Excise Duty (Textile and Textile Articles) [AED (TTA)] can be used **only** for payment of AED (TTA), if leviable on final products..
 - (ii) Credit of National Calamity Contingent Duty (NCCD) can be used **only** for payment of NCCD, if leviable on final products.
 - (iii) Credit of Education cess on excise duty and service tax can be used **only** for payment of Education Cess on excise duty (in case of manufacturers) or for payment of Education Cess on service tax (in case of output service providers).
 - (iv) Credit of Additional Duty of Customs (CVD) equivalent to AED (TTA), NCCD or Education Cess on excise duty can be used **only** for payment of such AED (TTA) or NCCD or Education Cess on final products, respectively
 - (v) Additional Duty of Excise on Tea and Tea waste can be used **only** for payment of such Additional Duty of Excise on Tea and Tea waste, if leviable on final products.
- (ii) There are no such restrictions with regard to availment of credit of duties of excise, as the input/capital goods supplier has to discharge the duty indicated in the invoice, irrespective of the realisation of the proceeds. However, as per Cenvat Credit Rules, 2004, credit of service tax on input services, can be availed, only after making payment of the amount indicated in the invoice/bill/challan. This is necessary because the input service provider pays the service tax to the government only after he realises the payment, as the payment of service tax is only upon realisation. It is to be noted that if part of a bill is paid, service tax credit can be availed on proportionate basis.
- (iii) As per Rule 2(m) of Cenvat Credit Rules, 2004 an "input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

In many cases, various input services are consumed in the headquarters/administrative offices of manufacturers and output service providers. In such a case, the invoices indicating the payment of service tax are issued in the name of such headquarters/administrative offices. Rule 7 of Cenvat credit Rules, 2004 provides for availing credit of such service tax, in the premises where manufacturing activity is

undertaken or the premises where the output services are rendered. Such headquarters/administrative offices are known as “input service distributor (ISD)”. The input service distributor can distribute the total amount of service tax paid by it, to various manufacturing premises/various premises rendering the output service.

6. As per rule 3 of the Cenvat Credit Rules, 2004 credit can be taken only on the *inputs received in the factory of production*. Inputs has been defined in rule 2(g) of the said rules as “inputs.....used for manufacture of final products or for any other purpose, *within the factory of production*.” Thus, if the inputs are not used within the factory of production, they cannot be termed as eligible inputs under Rule 2(g) and also actual receipt and use of inputs within the factory is essential for availing credit on them.

Therefore, the issue which arises is that whether the mine connected with a ropeway to the main plant can be treated as a factory so that the credit can be taken on the explosives used therein. A similar issue came up for consideration before the Supreme Court in the case of *CCE, Jaipur v. J.K. Udaipur Udyog Limited 2004 (171) E.L.T 289 (S.C.)*. The Apex Court observed that as per section 2 (e) of Central Excise Act, “factory means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.” *Therefore, it was held by the Supreme Court that a mine connected to the factory by a ropeway could not qualify to be a factory as no manufacturing process was carried out there. Hence, credit would not be available on the explosives as they were not used within the factory of production but were used in the mine, which could not qualify to be a factory.*

The ratio of this decision can be applied in the present case also. Thus, credit cannot be availed by India Cements Ltd. on the explosives used by it for blasting the mines.

7. Under Notification No.34/2001-C.E. (N.T.) dated 21.6.2001 the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 have been issued by the Central Government.

Under Rule 3 of the said Rules, a manufacturer who intends to receive the specified goods at concessional rate of duty is required to make an application in quadruplicate in the specified form to the jurisdictional Assistant/Deputy Commissioner of Central Excise. However, he is required to make separate application in respect of each supplier of subject goods.

Further, the manufacturer is required to execute a general bond with surety or security to cover the recovery of duty liability estimated to be involved at any given point of time.

The application shall be countersigned by the said Assistant/Deputy Commissioner of Central Excise certifying that the manufacturer has executed the required bond.

Of the four copies of application, one copy shall be forwarded to the jurisdictional range superintendent of the manufacturer of the subject goods and two copies shall be handed over to the applicant manufacturer and one copy shall be retained by the Assistant/Deputy Commissioner of Central Excise.

Under Rule 4, the manufacturer of the goods can avail the exemption from duty based on the above-referred application.

As per Rule 5, the manufacturer receiving the above goods is required to maintain a simple account indicating the quantity and value of subject goods received, consumed and quantity remaining in stock. Further, he is also required to submit a monthly return in the specified form.

As per Rule 6, if the material received at concessional rate of duty is not used for intended purpose, manufacturer shall be liable to pay differential duty along with interest. Provisions of Section 11A and section 11AB shall apply *mutatis mutandis* for effecting such recoveries.

If the manufacturer on receiving the subject goods finds them to be defective or damaged or unsuitable or surplus to his needs, he may return the subject goods to the original manufacturer

of the goods. Such returned goods shall be added to the non-duty paid stock of the manufacturer of the subject goods and dealt with accordingly.

If the goods are lost or destroyed by natural causes or by unavoidable accident during transport from place of procurement to the manufacturer's premises or from place of manufacturer to the place of procurement (if goods are returned) or during handling or storage in the manufacturer's premises, it will not be treated as used for 'intended purpose'. Consequently, differential duty and interest will become payable.

8. The operations of packing, re-packing, labelling or re-labelling in relation to excisable goods received and stored in the warehouse will be governed by the procedure specified under Rule 20. Suitable entries must be made in the Export-Warehouse register. In case of non-reconciliation of quantity, after adjusting any wastage or refuse, the differential quantity shall be treated as unaccounted and action for recovery of duty will be initiated.

The exporter may procure packing or labelling material and bring the same into the warehouse under the warehousing procedure itself. No duty paid goods will be permitted to be brought into the warehouse.

Where the process of packing, repacking, labelling or relabelling amounts to manufacture in terms of the provisions of the Central Excise Tariff Act, 1985, the goods permitted for clearance for home consumption shall be assessed accordingly.

9. (a) Finance (No. 2) Act, 2004 has inserted sub-section (2) in section 9A of the Central Excise Act, 1944. The sub-section (2) provides for compounding of offences, either before or after the institution of prosecution, under Chapter II of the Central Excise Act by Chief Commissioner of Central Excise on payment of compounding amount prescribed by the rules. Such amount shall be paid to the Central Government by the person accused of the offence.

A corresponding amendment has been made in section 37 to empower Central Government to make rules for specifying the amount to be paid for compounding of offences under section 9A.

- (b) This concept is known as the principle of vicarious liability. Section 9AA of the Act makes every person responsible to and every person in charge of the business of the company at the time of commission of the offence to be guilty of offence besides the company itself. However it will be a defence for such a person that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of the offence.

The section also deems any director, manager, secretary or other officer to be guilty where the offence is attributable to their consent or connivance or neglect. The term "company" includes a firm and association of individuals and the term "director" will mean a partner in relation to a firm.

The Delhi High Court has held in *Vidya Wati v. State - 1988 (37) E.L.T. 341* that the term "incharge of and responsible to the company" would mean that the person was in overall control of the day-to-day affairs of the company. Only if this can be proved, the person can be deemed guilty of offence.

10. As per Rule 6 of the Cenvat Credit Rules, 2004, the provider of output service, opting not to maintain separate accounts, shall utilize credit only to extent of an amount not exceeding twenty percent of the amount of service tax payable on taxable output service. In other words, credit can be utilised only to an extent of 20% of service tax liability. For example, if the service tax liability for a specific period is Rs.10000 and the credit available is Rs. 4000, the credit can be utilised only to an extent of Rs.2000 and the balance liability of Rs.8000 has to be paid in cash. The remaining credit of Rs. 2000 can be carried forward and used for the subsequent period. However, credit of the whole of service tax paid on following taxable services:

- Consulting engineer;
- Architect;

- Interior decorator;
- Management consultant;
- Real estate agent;
- Security agency;
- Scientific or technical consultancy;
- Banking and other financial services;
- Insurance auxiliary services;
- Erection, commissioning and Installation agency;
- Maintenance or repair;
- Technical testing and analysis;
- Technical inspection and certification;
- Foreign exchange brokers;
- Construction service;
- Intellectual property service;

shall be allowed unless such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services. In other words, even if the abovementioned input services are used commonly in rendering taxable as well as exempted services, the obligations prescribed under the rules, will not be attracted. However, if these services are exclusively used in rendering exempted service, no credit can be availed.

If the provider of output service fails to pay the said amount, it shall be recovered along with interest in the same manner, as provided in rule 14, for recovery of CENVAT credit wrongly taken.

No CENVAT credit shall be allowed on capital goods, which are used exclusively in providing exempted services.

11. Rule 4(3) of Customs Valuation Rules provides for acceptance of transaction value of sale between related persons provided:

- (a) the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.
- (b) the importer demonstrates that the price is similar to identical or similar goods sold to unrelated buyers in India. The value of identical or similar goods may be ascertained from
 - (i) Transaction value or
 - (ii) Deductive value or
 - (iii) Computed value of identical or similar goods.

While comparing prices of identical or similar goods to unrelated buyers, account should be taken of difference in commercial levels, quantity levels, adjustments in accordance with the provision of Rule 9 of these rules and cost incurred by the seller in sales in which he and the buyer are not related.

- (c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

Rule 10A also states that the customs officer can ask for further information and evidence. Thus, burden of proof is on the importer.

12. In the case of import by air, airfreight should not be higher than 20% of FOB price, hence FOB price may be ascertained.

	US \$	US \$
CIF value		8400
Less: Air freight	1600	
Insurance charges	<u>800</u>	<u>2400</u>
FOB value		<u>6000</u>

<i>Computation of Assessable value</i>	US \$
FOB value as calculated above	6000
Add: Freight restricted to 20% of FOB value	1200
Insurance charges (actual)	<u>800</u>
	<u>8000</u>

CIF value in Indian Rupees	Rs.
US \$ 8000 x Rs.48.50	3,88,000.00
Add: landing charges at 1% of CIF value	<u>3,880.00</u>
Assessable value	3,91,880.00
	=====

Rates of Basic, Additional, Special Customs Duty to be adopted

Basic 16%; Additional 16%, Special 4%

Basis for calculation of Basic, Additional, Special Customs Duty

Basic 16% of Assessable value

Additional 16% of (Assessable value + Basic Customs Duty)

Special 4% of (Assessable value + Basic Customs Duty + Additional Customs Duty)

Notes:-

- (i) Landing charges have been considered as per Rule 9(2)(b) of the Customs Valuation Rules, 1988.
- (ii) Rate of exchange as applicable on date of presentation of Bill of Entry as notified by CBEC has been considered.
- (iii) Rate of duty as applicable on the date of arrival of aircraft which is later than the date of submission of the Bill of Entry has been considered.
- (iv) Rate for Additional Duty (CVD) is considered as mentioned in the Central Excise Tariff Act, 1985, subject to any general exemption notification. Any specific exemption notification (as in the given case) has not been considered while calculating CVD.

13. The Apex Court in the case of *Solar Pesticides* has held that the doctrine of unjust enrichment applies in respect of raw material imported and consumed in the manufacture of final products. However, the position in respect of capital goods is not very clear.

Recently, the Tribunal in the case of *Design Classics Exports (P) Ltd. v. Commissioner of Customs, Chennai 2004 (172) E.L.T. 423 (Tri. – Chennai)* had addressed this issue. The CESTAT followed the judgements given by the Tribunal in the case of *Grasim Industries v. CCE, Chennai III -2003 (157) E.L.T. 123* and *Golden Iron & Steel Forgings* wherein it was held that the ratio of the decision in *Solar Pesticides* was not applicable to a claim of refund of customs duty paid on imported capital goods. Therefore, it was held by the Tribunal that the *doctrine of unjust enrichment under section 27 of the Customs Act did not apply to the claim for refund of import duty paid on capital goods*.

14. The facts of the case are similar to that of *Purfin Chemicals Pvt. Ltd. v. CEGAT Madras 2004 (167) E.L.T. 145 (Mad.)*. The High Court, in this case, asserted that provisions of section 125 of the Customs Act give an option to the importer to either allow the goods to be confiscated or pay redemption fine in lieu of confiscation. Therefore, the redemption fine becomes leviable only in lieu of confiscation. The High Court observed that in this case the importer had abandoned the goods and thus, there remained no scope for confiscation of the same. Therefore, it was held by the High Court that the fine should be refunded.

Applying the ratio of this decision in the given case, it can be said that Pranjal can claim the refund of the redemption fine.

15. The facts of the given case are similar to the case of *Bussa Overseas & Properties P. Ltd. v C.L. Mahar, Asstt. C.C., Bombay 2004 (163) E.L.T. 304 (Bom.)* wherein the High Court has held that once goods are cleared for home consumption they cease to be imported goods as defined in section 2(25) of the Customs Act and as per section 111(d) only 'imported' goods can be confiscated. Hence power to confiscate the goods, after their clearance for home consumption, can be exercised only in cases where the order of clearance is revised and cancelled.

On the issue of penalty the contention of the assessee was that since the goods were not liable for confiscation penalty could not be levied. Section 112(a) provides that any person who in relation to any goods, does or omits to do any act which act or omission will render such goods liable to confiscation under section 111, or abets the doing or omission of such act, is liable to a penalty. The High Court observed that the power to impose penalty could be exercised not only when the goods were available for confiscation but when such goods were liable to confiscation. *The Court held that the expression 'liable to confiscation' clearly indicated that the power to impose penalty could be exercised even if the goods were not available for confiscation. The mere fact that the importers secured such clearance and disposed of the goods and thereafter goods were not available for confiscation could not divest Customs Authorities of the powers to levy penalty under section 112 of the Act.*

Hence, in case of Sudha Traders also the same analogy will apply i.e., the goods cannot be confiscated but the penalty will be levied.

16. (a) With effect from 10.09.2004 an Education Cess has been levied by the Finance (No. 2) Act, 2004 on items imported into India. It is leviable @ 2% of the aggregate of duties of customs (except safeguard duty under section 8B and 8C, countervailing duty under section 9 and anti dumping duty under section 9A of the Customs Tariff Act) leviable on such goods. Items attracting customs duty at bound rates under International Commitments have been exempted from this cess. The cess attributable to the additional duty of customs leviable under section 3 of the Customs Tariff Act, paid on inputs and capital goods will be available as credit for payment of cess on the final products manufactured in India. The Education Cess so collected shall be utilized for providing and financing universalised quality basic education.

The Education Cess on imported goods shall be in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force. The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods under the Customs Act, 1962 or the rules or the regulations, as the case may be.

- (b) Sub-section (6), of section 129A, which prescribes the amount of fee for filing an appeal to the Appellate Tribunal, has been amended by Finance (No. 2) Act, 2004 from the date to be notified. The fee for filing an appeal has been increased. The details of increase in the fees are given below:

Amount of duty, interest demanded and penalty levied	Fee for filing an appeal
Less than or equal to Rs. 5,00,000	Rs. 1,000.00
More than Rs.5,00,000 but not exceeding Rs.50,00,000	Rs. 5,000.00
More than Rs.50,00,000	Rs.10,000.00

However, no such fee shall be payable in the case of an appeal preferred by Commissioner of Customs. Also, no fee shall be payable in case of filing of a memorandum of cross-objections.

Further, a new sub-section (7) has been inserted in section 129A, which prescribes a fee of Rs.500 for every application made before the Appellate Tribunal. The application can be an appeal for grant of stay or for rectification of mistake or for any other purpose; or for restoration of an appeal or an application. However, no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Customs.

17. When any material is imported under an import licence belonging to the category of Advance Licence granted under the Imports and Exports (Control) Act, 1947, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act, permit clearance of such material without payment of duty leviable thereon. There has to be an obligation to export the goods as are specified in the said licence within the period specified therein [Sub-section (1)].

The permission for clearance without payment of duty under sub-section (1) shall be subject to the following conditions:

- (a) the duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act or under any other law for the time being in force on the export of goods specified in the said Advance Licence; and
- (b) where the duty is not so adjusted either for the reason that the goods are not exported within the period specified in the said Advance Licence, or within such extended period not exceeding six months as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, on sufficient cause being shown, allow, or for any other sufficient reason, the importer shall, notwithstanding anything contained in section 28, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.[Sub-section (2)]

While permitting clearance under sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may require the importer to execute a bond with such surety or security as he thinks fit for complying with the conditions specified in sub-section (2).

18. (i) Finance (No.2) Act, 2004 has expanded the scope of the definition of cable operators to include services provided to *any person* by a cable operator including a *multi-system operator*. Therefore, now the services provided by multi-system operator to cable operators will be chargeable to service tax.
- (ii) *Notification No. 20/2003-ST dated 21-8-2003* has been rescinded to withdraw the exemption to maintenance or repair service in relation to computers, computer systems or computer peripherals [**Notification No. 7/2004-ST dated 09.07.2004**]. Hence, the maintenance services provided by M/s. Complete Software Solutions for the computers sold by it will be chargeable to service tax.
- (iii) As per the clarification *M.F. (D.R.) Letter F. No. B2/8/2004 – TRU, dated 10.09.2004* pandal/shamiana services provided for pure religious ceremonies or congregation are not liable to service tax.
- (iv) Finance (No.2) Act, 2004 has introduced service tax on services provided in an airport or civil enclave, to any person by Airport Authority of India. Route navigation is one such service provided by Airport Authority of India to various airlines. Therefore, service tax will be chargeable on it.
- (v) Finance (No.2) Act, 2004 has enlarged the scope of business auxiliary services to include services relating to procurement of inputs and management of inventory of an organization. However, the tax is leviable only when the service provider is a *commercial concern*. Therefore, in this case, the service provided by the individual shall not be charged to service tax.
19. (i) Prior to 10.09.2004, only the services provided by a stock-broker to an investor were liable to service tax. Further, section 65(101) did not include sub-brokers in the definition of stockbrokers. However, after the enactment of Finance (No.2) Act, 2004 service tax has

been levied on the service provided by stock-brokers to any person and not only to the investors. Also, the sub-brokers have been included in the definition of stockbrokers. Thus, the service provided by a sub-broker to his main broker will be taxable.

- (ii) Banking company or financial institutions have been exempted from service tax payable on the service provided to Government of India or a State Government for collection of any duties or taxes vide **Notification No. 13/2004-S.T., dated 10.09.2004.**
- (iii) Service provided by the outdoor caterer to a client on a railway train has been exempted from payment of service tax vide **Notification No. 19/2004 S.T., dated 10.09.2004.**
- (iv) The scope of life insurance services has been restricted by Finance (No.2) Act, 2004. Now only the component of premium attributable to the risk cover shall be liable for service tax under the category of life insurance business.
- (v) An explanation has been inserted in Rule 6 of Service Tax Rules, with effect from the date to be notified in the Official Gazette, to clarify that in case payment is received in advance, service tax will be payable on *pro rata* basis [**Notification No.5 /2004-ST dated 09.07.2004**].

20. (i) **Business Exhibition Service**

The taxable service in case of business exhibition service means any service provided to an exhibitor, by the organiser of a business exhibition, in relation to business exhibition [Section 65(105)(zzo)].

Here, business exhibition means an exhibition,—

- (a) to market; or
- (b) to promote; or
- (c) to advertise; or
- (d) to showcase,

any product or service, intended for the growth in business of the producer or provider of such product or service, as the case may be [Section 65(19a)].

(ii) **Opinion poll service**

The taxable service in relation to opinion poll service means any service provided to any person, by an opinion poll agency, in relation to opinion poll [Section 65(105)(zzs)].

Here, opinion poll means any service designed to secure information on public opinion regarding social, economic, political or other issues [Section 65(75a)].

Opinion poll agency means any person engaged in providing any service in relation to opinion poll [Section 65(75b)].

RECENT AMENDMENTS IN DIRECT TAXES AND INDIRECT TAXES

Students are advised to study thoroughly the Supplementary Study Paper on Direct taxes and Indirect taxes for the Final Course. This contains the amendments made by the Finance (No.2) Act, 2004 as well as the relevant notifications. This Supplementary Study Paper is available at various branch and regional Sales Counters of the Institute. This is very important since considerable weightage is being given to the latest amendments in the examinations.

Students should also regularly read the monthly publication of the Board of Studies – ‘The Chartered Accountant Student’ - for legal decisions and relevant notifications and circulars .

Students may note that the Board of Studies has come out with a new publication “Select Cases in Direct and Indirect Taxes [2004] – An Essential Reading for Final Course”. This contains important recent judgements of Supreme Court, High Court and Appellate Tribunal in both Direct Taxes and Indirect Taxes.

(Total pages – 12)

PAPER - 8 : INDIRECT TAXES

QUESTIONS

NOV 2005

1. Define the following with reference to Central Excise Act, 1944:
 - (i) Factory
 - (ii) Wholesale dealer
 - (iii) Sale and purchase
 - (iv) Excisable goods
 - (v) Broker or commission agent
2. Discuss whether the following can be considered as excisable goods for the purpose of levying excise duty:
 - (a) Turn key projects
 - (b) Lifts and escalators
 - (c) Refrigeration or Air conditioning plants
3. Vertex Ltd. manufactures a product known as "MICEL" which is used for killing lice in human hair. Vertex Ltd classifies their product under Tariff sub-heading 3808.10 as an insecticide. However, the Central Excise Officer is of the view that the product is classifiable under Tariff subheading 3003.10 as a medicament as it has therapeutic and prophylactic properties. Vertex Ltd.'s claim is supported by the reports of chemical examiners and the Department of Dermatology & Venereology, which confirm that "MICEL" is an insecticide. Further, various statements of dealers also state that in the market the product is considered to be an insecticide. The claim of the Central excise officer is substantiated by the fact that Chapter Note 1(c) of Chapter 38 indicates that Chapter 38 would not cover "Medicaments under Heading No. 3003 or 3004". Chapter Heading 2(i) of Chapter 30 defines "Medicament", *inter alia*, as a product comprising of two or more constituents which have been mixed or compounded together for therapeutic or prophylactic use.

Give your opinion on the issue with the help of decided case laws, if any.
4. ABC Ltd. of Kanpur agreed to sell an electric motor to DEF Ltd. of New Delhi for Rs.15000.00 on ex-factory basis. Other particulars are:
 - (i) Transportation and transit insurance were arranged by ABC Ltd. at the request of DEF Ltd. for Rs.1250.00 and Rs.1500.00 respectively which were charged separately. Actual transportation charges amounted to Rs.1000.00 only.
 - (ii) A discount of Rs.1000 was given to DEF Ltd. on the agreed price on payment of an advance of Rs.3500.00 with the order. (Ignore notional interest on advance)
 - (iii) Interest of Rs.800.00 was charged from DEF Ltd. as it failed to make the payment within 30 days.
 - (iv) Packing charges of the motor amounted to Rs.1300.00.
 - (v) The expenditure incurred by ABC Ltd. towards 'free after sale service' during warranty period comes out to be Rs.500 per motor.
 - (vi) Dharmada charges of Rs.200 were recovered from DEF Ltd.
 - (vii) ABC Ltd. sold a lubricant worth Rs.250.00 along with the motor to the interested customers. Lubricant which was purchased from the market by ABC Ltd. at Rs.200 ensured durability and high efficiency of the motor. DEF Ltd. opted for the said lubricant.

Compute the assessable value.
5. Answer the following with reference to CENVAT Credit Rules, 2004:
 - (a) 'A' manufactures a certain final product in which petrol is used among other inputs. Can he

avail CENVAT credit on petrol?

- (b) 'B' is an outdoor caterer. He has purchased a lorry for carrying utensils, tables, groceries, vegetables etc. to the place of service. Can 'B' avail credit of the excise duty paid by him on the purchase of the lorry?
 - (c) Can a manufacturer located in Jammu utilize the credit of service tax availed on input services received in New Delhi for payment of excise duty on his final products cleared in Jammu?
 - (d) 'R' has taken CENVAT credit on inputs without ensuring that excise duty as indicated in the invoice has been paid on such inputs. Is he liable to any penalty? If yes then what penalty can be imposed on him?
 - (e) Inputs are received in the factory of the manufacturer on 10.11.2004 but are issued for the production process on 10.12.2004. When should the manufacturer avail credit?
6. Discuss the provisions in respect of removal of goods by a unit in Hundred Percent Export Oriented Undertaking for Domestic Tariff Area.
 7. What are the conditions to be followed while exporting to Bhutan under bond, where payment is in freely convertible currency?
 8. A sum of Rs.50,00,000.00 is due from 'A' towards his excise duty liability. How does the Central Excise Act, 1944 provide for recovery of such money? Will it make any difference if 'A' transfers his whole business to 'B'? Discuss.
 9. Enumerate the circumstances under which refund of duty would be granted to the assessee instead of being credited to the Consumer Welfare Fund.
 10. Who can sign the grounds of appeal and the form of verification as contained in Form No. E.A. – 1?
 11. Define the following terms as used in Customs Act, 1962:
 - (i) Conveyance
 - (ii) Goods
 - (iii) Person-in-charge
 - (iv) Stores
 - (v) Foreign going vessel or aircraft
 12. 'Queen Marry', the vessel containing the goods imported by XML Ltd. entered the Indian Territorial waters on 26.05.2005. The Import Manifest was submitted on 24.05.2005. The vessel arrived at the customs port on 29.05.2005 but the Entry Inwards was given to the vessel on 04.06.2005. An 'Into Bond Bill of Entry' was presented by XML Ltd. on 06.06.2005 and thus, the goods were classified, valued and stored in the bonded warehouse. On 03.07.2005 safeguard duty @ 8% was imposed on such goods. XML Ltd. had presented the 'Bill of Entry for Ex-Bond Clearance' in respect of such goods on 01.07.2005 and cleared the goods from the bonded warehouse on 05.07.2005. Discuss whether XML Ltd. is liable to pay safeguard duty on the goods imported by it. Will your answer be different if the 'Bill of Entry for Ex-Bond Clearance' is presented by XML Ltd. on 04.07.2005? Give reasons in support of your opinion.
 13. 'A' had imported a lift from Finland. Due to safety reasons the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to Rs.18000 and the cost incurred on transport of the lift from outer anchorage to the jetty was Rs.3500.00. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the addition of 1% of the CIF value of the lift, made under Rule 9(2)(a). Discuss the tenability of 'A's' claim with reference to recent Circulars, if any.
 14. Discuss briefly:
 - (a) Temporary detention of baggage

- (b) Relevant date for rate of duty and tariff valuation in respect of goods imported and exported by post
15. Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.
 16. With reference to section 75 of the Customs Act, 1962, state the cases where drawback on imported materials used in the manufacture of export goods is not allowed.
 17. Cameras and photo films of foreign origin were seized from the possession of Mr. 'A' when he was travelling from Mumbai to Pune on the ground that the same were smuggled. These goods were non-notified goods and were valued at Rs.3.5 lakhs. Mr. 'A' did not have any vouchers in his possession relating to the goods. He pleaded non-guilty on the ground that the goods were purchased from street hawkers at Mumbai to be sold at his shop in Pune and that the goods were not smuggled goods. Discuss whether these goods are liable to confiscation under the Customs Act, 1962.
 18. Answer the following questions:
 - (i) From which Entry of the Union List of the Constitution, does the authority to levy service tax arise?
 - (ii) Under which Act, does the service tax is levied?
 - (iii) Which were the first three services to be brought under the service tax net?
 - (iv) How many new services have been introduced by Finance (No.2) Act, 2004?
 - (v) What is the relevant date for payment of service tax in case of a company for the month of February and March?
 19. A & Co., Chartered Accountants are rendering the following services:
 - (a) Preparation and filing of Form 'A' with BIFR
 - (b) Preparation and filing of Income tax returns
 - (c) Concurrent Audit
 - (d) Certification under the provisions of Income tax Act, 1961
 - (e) Services rendered to a Nationalised bank to recover NPA
 - (f) Advice on amalgamations and mergers

Which of the above services are chargeable to service tax? Discuss with reference to the Finance Act 1994 and the relevant notifications.
 20. (i) Discuss the provisions governing classification of taxable services.
 - (ii) What is the extent and application of the provisions of Finance Act, 1994 relating to service tax?
 21. (i) Does the service tax law provide for any basic exemption in respect of service tax payable by small service providers?
 - (ii) When is the invoice, in respect of provision of service, issued?
 - (iii) Who is responsible to make the payment of service tax in case of service rendered by a Goods Transport Agency?

SUGGESTED ANSWERS/HINTS

1. (i) "Factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on. [Sec 2(e)]
 - (ii) "Wholesale dealer" means a person who buys or sells excisable goods wholesale for the

purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale. [Sec 2(k)]

- (iii) "Sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration. [Sec 2(h)]
 - (iv) "Excisable goods" means 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. [Sec 2(d)]
 - (v) "Broker" or "commission agent" means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others. [Sec 2(aaa)]
2. The issue relating to excisability in the three cases stated in question have been dealt with by CBEC in its *Circular No. 58/1/2002-CX, dated 15-1-2002*.
- (a) Turn key projects like Steel Plants, Cement plants, Power plants etc. involving supply of large number of components, machinery, equipments, pipes and tubes etc. for their assembly/installation/erection/integration/inter-connectivity on foundation/civil structure etc. at site, are not considered as excisable goods for imposition of central excise duty. However, the components would be dutiable in the normal course.
 - (b) Though lifts and escalators are specifically mentioned in sub heading 8428.10, those which are installed in buildings and permanently fitted into the civil structure, cannot be considered to be excisable goods. Such lifts and escalators have also been held to be non-excisable by the Govt. of India in the case of *Otis Elevators India Co. Ltd. 1981 (8) E.L.T. 720 (GOI)*. Further, this aspect was also a subject matter of C&AG's *Audit Para No. 7.1(b)/98-99 [DAP No. 186]* which has since been settled by the C&AG accepting the Board's view that such lifts and escalators are not excisable goods.
 - (c) Refrigeration or Air conditioning plants are basically systems comprising of compressors, ducting, pipings, insulators and sometimes cooling towers etc. They are in the nature of systems and are not machines as a whole. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the refrigeration/air conditioning system as a whole cannot be considered to be excisable goods. Air conditioning units, however, would continue to remain dutiable as per the Central Excise Tariff.
3. The facts of the given problem are similar to the case of *Sujanil Chemo Industries v CC.Ex., & Cus., Pune 2005 (181) E.L.T. 206 (S.C.)* wherein the Supreme Court observed that even though, in normal parlance, a product might be considered to be an insecticide if that product had any therapeutic and prophylactic use, but for the purposes of classification, that product could not fall under Chapter 38. The Apex Court clarified that any medicine or substance which treats disease or is a palliative or curative is therapeutic. Therefore, since Licel cured the infection or infestation of lice in human hair, it was therapeutic. Further, it was also prophylactic in as much as it prevented disease which would follow from infestation of lice. Thus, the Apex Court held that 'Licel' was a product which was used for therapeutic and prophylactic purposes. It would thus be a Medicament within the meaning of the term "Medicament" in Note 2 of Chapter 30 and would be excluded from Chapter 38.
- Applying the ratio of the above decision, "MICEL" will be classified as a medicament under Tariff subheading 3003.10 and not as an insecticide under Tariff sub-heading 3808.10.
4. (i) Transportation charges will not be included in the assessable value as the sale is at the factory gate and the seller has merely arranged for the delivery. The payment made by the buyer in this case is not in connection with the sale but in connection with the transportation as the sale is over at the factory gate itself. Transit insurance will also not be included in the assessable value as delivery of goods to transporter is prima facie delivery of goods to buyer hence sale gets over at the factory gate itself. [*Escorts JCB Ltd. v. CCE 2002 146 ELT 31*]

(SC)]. Profit of Rs.250 earned on transportation charges will not be included in the assessable value [*Baroda Electric Meters Ltd. v. CCE 1997 (94) ELT 13 (SC)*].

- (ii) Discount of Rs.1000 is given on Rs.15000 (agreed price) i.e., the discounted price is Rs.14000 however, as in this case price is not the sole consideration, the extra discount of Rs.1000.00 will be included in the assessable value.
- (iii) Interest of Rs.800 will not be included in the assessable value as the payment of such interest is not in connection with the sale but in connection with the payment of the consideration for sale. *CBEC Circular No. 643/34/2002-CX dated 1.7.2002* has confirmed that delayed payment charges will not be includible in the assessable value, if shown or indicated separately in invoice and charged over and above the sale price.
- (iv) Packing charges will form part of the assessable value.
- (v) Charges for 'free after sale service' during warranty period are includible in the assessable value.
- (vi) Dharmada charges are includible in the assessable value [*CBEC Circular No. 763/79/2003 C.X. dated 21.11.2003*].
- (vii) Value of such lubricant will not be included in the assessable value as it is a purely trading activity and the sale of main article (motor) is independent of sale of optional bought out item (lubricant). Even the profit earned on such bought out item is not included in the assessable value of manufactured product [*Triveni Engineering v. CCE 2000 (122) ELT 386 CEGAT*].

Therefore, the assessable value will be:

Rs.14000 + Rs.1000 + Rs.1300 + Rs.500 + Rs.200 = Rs.17000.00.

5. (a) No. Petrol (motor spirit) is specifically excluded from the list of eligible inputs under Rule 2(k).
 - (b) Yes. As per Rule 2(a) motor vehicles are treated as capital goods in the case of an outdoor caterer.
 - (c) No. Cenvat Credit Rules, 2004 in relation to availment and utilization of service tax credit are not applicable in the State of Jammu and Kashmir, as service tax law does not apply in Jammu and Kashmir.
 - (d) Yes. 'R' shall be liable to a penalty not exceeding the duty on the goods in question or Rs.10,000.00 whichever is greater.
 - (e) Credit can be availed on 10.11.2004 immediately on receipt of the inputs in the factory of the manufacturer [Rule 4(1)].
6. Rule 17 provides that where any goods are removed from a 100% EOU to domestic tariff area, such removal shall be made under an invoice in the procedure specified under rule 11. Further, removal shall be made only after payment of appropriate duty by debiting the account current maintained for this purpose or by utilizing the Cenvat credit.

Such unit is required to maintain appropriate accounts related to production in the prescribed form giving the following details :

- (i) description of goods
- (ii) quantity removed
- (iii) duty paid.

Such unit is further required to submit a monthly return in the specified form (E.R. 2) in respect of the excisable goods manufactured in, and receipt of inputs and capital goods, in the unit. The return is to be submitted to the Superintendent of Central Excise within 10 days from the close of the month to which the return relates.

7. Export under bond to Bhutan where payment is in freely convertible currency, shall be subject to following conditions, namely: -

- (i) the importer of the goods in Bhutan shall make full payment for said goods to the exporter thereof by furnishing Foreign Inward Remittance Certificate for such payment from any bank authorized to deal with foreign exchange by Reserve Bank of India or shall open an irrevocable letter of credit in favour of such exporter in India, before the export of such goods takes place. However, this is not necessary in the following case:
 - (a) excisable goods other than consumer goods, but excluding motor vehicles, are exported without payment of duty as:-
 - (i) supplies to projects financed by any United Nations agency, the International Bank for Reconstruction and Development, International Development Association, the Asian Development Bank or any other multilateral agency of like nature;
 - (ii) to all diplomatic missions in Bhutan provided the Indian Embassy or the Ministry of External Affairs certifies that the import is for the personnel of the diplomatic community;
 - (ii) the exporter shall furnish a bond in the prescribed form before the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory, warehouse, or the approved premises or such other officer as authorized by the Board on this behalf, from where the goods are removed for export to Bhutan;
 - (iii) where the export is against an irrevocable letter of credit, the exporter shall furnish a certificate in the prescribed form from the Reserve Bank of India or any other bank authorized to deal in foreign exchange by the Reserve Bank of India, showing that full payment for the goods has been duly received in freely convertible currency. On receipt of such a certificate and on the satisfaction that the goods have been exported in terms of the bond, the Assistant/Deputy Commissioner of Central Excise or such other officer as authorized by the Board on this behalf shall discharge the exporter of his liabilities under the bond.
8. Section 11 contains the provisions, which determine the procedure for recovering the sums payable by any person to the credit of the Government. The section provides that the officer empowered by the Central Board of Excise and Customs may recover the duty and any other sums of any kind payable to the Central Government by:
- (i) deducting the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be under his control, or
 - (ii) attachment and sale of excisable goods belonging to such person.

However, if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business. The said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue. Therefore, the above-mentioned procedure can be followed to recover Rs.50,00,000.00 from 'A'.

The proviso to section 11 lays down that if a person from whom some recoveries are due, transfers his business in whole or in part to another person, then all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the possession of the transferee can be attached and sold for recovery. An officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, can make such recovery. Therefore, recovery can be made from 'B' as well.

Central Excise Officers not below the rank of Assistant Commissioner have been empowered vide *Notification No.4/2004 – C.E.(N.T.), dated 17.02.2004* to require the payment of duty and any other sums of any kind payable to the Central Government, under any of the provisions of the Act or of the rules made thereunder, within their jurisdiction and thereby to exercise all the powers of such officers specified under section 11.

9. A refund of excise duty can be granted to the assessee instead of being credited to the Consumer

Welfare Fund where the amount of refund is relatable to:

- (a) rebate of excise duty on excisable goods exported out of India;
 - (b) rebate of excise duty on excisable materials used in the manufacture of goods exported out of India;
 - (c) unspent amount lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;
 - (c) refund of credit of duty paid on excisable goods used as inputs;
 - (d) the excise duty paid by the manufacturer if he has not passed on the incidence of such duty to any other person;
 - (e) the excise duty borne by the buyer if he has not passed on the incidence of such duty to any other person;
 - (f) the excise duty borne by any other class of applicants as notified by the Government if the incidence of the excise duty has not been passed on to any other person.
- 10.** As per Rule 3(2), of Central Excise (Appeals) Rules, 2001 the grounds of appeal and the form of verification as contained in Form No.E.A.-1 shall be signed -
- (i) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorized by him in this behalf; and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
 - (ii) in the case of a Hindu undivided family, by the karta and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;
 - (iii) in the case of a company or local authority, by the principal officer thereof;
 - (iv) in the case of a firm, by any partner thereof, not being a minor;
 - (v) in the case of any other association, by any member of the association or the principal officer thereof; and
 - (vi) in the case of any other person, by that person or some person competent to act on his behalf.
- 11. (i)** Conveyance includes a vessel, an aircraft and a vehicle [Sec 2(9)]. As the Customs Act seeks to consolidate the laws relating to levy of duties on import and export of goods, it is necessary to cover all the modes of transport. Therefore, the Act uses the term conveyance with an inclusive definition covering all the 3 modes of transport i.e., water, air and land. The specific terms are: vessel (by sea), aircraft (by air) and vehicle (by land).
- (ii)** Goods includes-
- (a) vessels, aircrafts and vehicles;
 - (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments;
 - (e) any other kind of movable property [Sec 2(22)].
- (iii)** 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;
 - (d) in relation to any other conveyance, the driver or other person-in-charge of the

conveyance [Sec 2(31)].

- (iv) Stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting [Sec 2(38)].
- (v) Foreign going vessel or aircraft means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-
 - any naval vessel of any foreign Government taking part in any naval exercise;
 - any vessel engaged in fishing or any other operations outside the territorial waters of India;
 - any vessel or aircraft proceeding to a place outside India for any purpose whatsoever [Sec 2(21)].

12. The Supreme Court in the case of *Kiran Spinning Mills 1999 (113) ELT 753* has held that the taxable event occurs when the customs barrier is crossed and not on the date when the goods had landed in India or had entered the territorial waters of India. For the goods stored in a warehouse the customs barrier would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country. As per section 15(1)(b) of the Customs Act 1962, the relevant date for determination of rate of duty and tariff valuation in case of warehoused goods is the date when a bill of entry for home consumption (bill of entry for ex-bond clearance) in respect of such goods has been presented under section 68 of the Customs Act, 1962. Therefore, in view of section 15(1)(b) the taxable event gets completed when the bill of entry for home consumption in case of warehoused goods is filed.

Thus, in the given problem, the taxable event gets completed on 01.07.2005, the date on which the bill of entry for ex-bond clearance is submitted and not on the 05.07.2005 when the goods are removed from the warehouse. The safeguard duty is imposed on 03.07.2005 and the bill of entry for ex-bond clearance is submitted on 01.07.2005, thus, no safeguard duty can be imposed in such a case, as at the time when taxable event got completed there was no levy of safeguard duty. Further, as per section 15(1)(b) the relevant date for determining the rate of duty is the date of presentation of bill of entry for ex-bond clearance, and on that date there was no safeguard duty.

However, if the bill of entry for ex-bond clearance is filed on 04.07.2005, the date after the levy of safeguard duty, such duty will be levied on the goods.

13. Due to non-availability of deep draught all ports are not navigable up to the jetty and therefore the goods have to be discharged/transhipped at the outer anchorage. Further, in many busy ports, goods are off-loaded at the anchorage on barges in order to ease the congestion in the docks. Odd dimensional cargo/heavy lifts/hazardous cargo often has to be off-loaded at anchorage for technical/safety reasons. Such charges associated with the delivery of cargo at outer anchorage are known as barging/lighterage charges.

The Supreme Court has held in the case of *M/s. Garden Silk Mills Limited v. Union of India* reported in 1999 (113) E.L.T. 358 (S.C.) that the value of goods is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade. The importation is complete when the goods reach the landmass of the Country and not at the outer anchorage point.

Recently, CBE&C in its *M.F. (D.R.) Circular No. 29/2004 – Cus., dated 13.04.2004* has clarified that all the expenses incurred by the importer in bringing the goods to the landmass of the country will be includible in the assessable value. *The freight charges to be added to the assessable value should include all elements of cost incurred in the transportation of the goods from the point of exportation to the place of importation, i.e., the final jetty at which the goods are unloaded.* The charges borne by the importer in bringing the goods from the outer anchorage to the landmass has to be included in the assessable value as “extended cost of transportation” under Rule 9(2)(a) of Customs Valuation Rules, 1988. It is to be noted that the 1% landing charges collected by the

department under Rule 9(2)(b) of Customs Valuation Rules, 1988, are towards the loading, unloading and handling charges at the **place of importation, which is the landmass of the Country**. Therefore, 'A's' claim is not tenable in law.

14. (a) Sometimes it happen that a passenger brings with him an article, which is prohibited or dutiable. The passenger may not insist on taking it into the Indian Territory. On the contrary, he may opt to re-export it or take it with him when he leaves the country so that he may avoid the duty on such articles. However, he has to make a true declaration under section 77 in respect of such articles brought with him. The proper officer on the request of such passenger may detain those articles so that these can be returned to him on his leaving India. If for any reason, the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name [Section 80].

- (b) The rate of duty and tariff value, if any, applicable to any goods **imported** by post shall be the rate and valuation in force on the date on which postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon. However, where the postal goods arrive on a vessel, and the list containing the particulars is available and is filed by the Post Master, before the arrival of the vessel, the list shall be deemed to have been filed on the date of arrival of the vessel.

In other words, the relevant date for imports by post (in case of import by vessel) is the date of submission of the list containing the particulars of the goods or the date of arrival of the vessel, whichever is later.

The rate of duty and tariff value applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation.

15. If there are any goods imported from a place outside India, which are not cleared within 30 days from the date of unloading, the custodian of the cargo is unnecessarily burdened with the custody of the goods. It also deprives the customs department of its legitimate revenue in the form of customs duty. The 30 days have been considered to be sufficient time for any importer to make up his mind whether the goods should be cleared into town on payment of duty or whether they should be transhipped or whether they should be deposited in a warehouse. If such imported goods are not cleared either for home consumption or for warehouse within 30 days or within such further time as the proper officer may allow, or if the title to any imported goods is relinquished, the custodian of the goods with the approval of the proper officer and after giving notice to the importer can sell the goods by auction.

In the case of sensitive goods like animals, foodstuffs and hazardous goods etc., the custodian with the approval of the proper officer can sell the goods even before the expiry of the 30 days limit. Similarly in the case of arms or ammunition, which cannot be sold in public auction, the disposal is regulated by the rules made in this regard.

16. It has been prescribed under proviso to section 75(1) of the Customs Act that no drawback of duty shall be allowed under this section, if:

- (a) the export value of the finished goods or the class of goods is less than the value of the imported material used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods; or
- (b) the export value is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as may be notified by the Central Government.
- (c) any drawback has been allowed on any goods and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, such drawback shall be deemed never to have been allowed and the Central Government, may, by rules specify the procedure for the recovery or adjustment of the amount of such drawback.

17. The facts of the case are similar to those of *Biplab Rakhsit v. CC 2002 (143) E.L.T. 108 (Tri.)*. In this case the Tribunal held that in case of non-notified goods, it is for the Revenue to prove that the goods are smuggled. Merely because the appellant could not produce the documentary evidence showing legal importation of the goods in question, the said fact will not lead ipso facto to the conclusion that the goods are smuggled. If the possessor of the non-notified goods is required to produce the documents, the very purpose of section 123 gets defeated.

According to section 123, in case of non-notified goods the burden to prove that the goods are smuggled goods vests on the customs authorities and in absence of such proof the goods are not liable to confiscation.

Therefore, the confiscation of goods of Mr. 'A' is not correct.

18. (i) 92C
 (ii) Finance Act, 1994 through the provisions of section 64 to 96 of the Act.
 (iii) Telephone services, stock broking and general insurance services
 (iv) 13
 (v) 5th of March and 31st of March respectively [*Notification No.7/2005 ST, dated 01.03.2005* has pre-poned the date of payment of service tax from 25th of the month/quarter to 5th of the month/quarter and for the month/quarter ending March the date of payment of service tax has been pre-poned to 31st of March itself].
19. *Notification No. 59/98 –S.T., dated 16.10.1998* as amended by *Notification No. 15/2002 –S.T., dated 1.8.2002* and *Notification No. 6/2003 – S.T., dated 14.5.2003* exempts the taxable services provided by a practicing chartered accountant, a practicing company secretary or a practicing cost accountant, in his professional capacity to a client, other than the taxable services relating to –
- (i) accounting and auditing; or
 - (ii) cost accounting and cost auditing; or
 - (iii) secretarial auditing; or
 - (iv) verification of declarations in prescribed forms of compliance's for obtaining a certificate of commencement of business or commencement of other business under section 149 of the Companies Act, 1956 (1 of 1956); or
 - (v) signing of the annual return of listed companies under section 161 of the Companies Act, 1956 (1 of 1956); or
 - (vi) certification that requirements of Schedule XIII to the Companies Act, 1956 (1 of 1956) have been complied with as regards statutory guidelines for appointment of managerial personnel and payment of managerial remuneration to them without the approval of the Central Government under section 269 and Schedule XIII, of the Companies Act, 1956 (1 of 1956); or
 - (vii) certification of documents to be filed by companies with the Registrar of Companies under the Companies Act, 1956 (1 of 1956); or
 - (viii) certification in Form 1 that the whole of the amount remaining unpaid or unclaimed for a period of three years from the date of transfer to the special account under sub-section (1) and sub-section (2) of section 205A of the Companies Act, 1956 (1 of 1956) has been transferred to the General Revenue Account of the Central Government under the Companies Unpaid Dividend (Transfer to General Revenue Account of the Central Government) Rules, 1978; or
 - (ix) certification of documents under the Exports and Imports Policy (1997-2002) of the Government of India; or
 - (x) certification for exchange control purposes which a practicing chartered accountant can issue as documentary evidence in support of certain applications under the Foreign Exchange Regular Act, 1973 (46 of 1973); or

- (xi) certification in respect of valuation of instruments or assets as per rule 8A(7) of the Wealth Tax Rules, 1957, from whole of service tax leviable thereon.

It has been clarified that the provisions of the notification shall not apply to the services provided by a practising chartered accountant, a practising company secretary or a practising cost accountant which may fall in any other taxable services as defined in clause (105) of section 65 of the said Act.

Therefore, the taxability of various services rendered by Chartered Accountants as stated in the question has been dealt as follows:

- (a) Taxable service vide clause (i) of such Notification
 - (b) Taxable service vide clause (i) of such Notification
 - (c) Taxable service vide clause (i) of such Notification
 - (d) Under the Income tax Act, a clear distinction has been made between tax audit and certification work. The Institute of Chartered Accountants of India has made this clear in its various Guidance Notes. Therefore, it is possible to take a view that certification work under the Income tax Act cannot be considered as accounting or auditing work and hence may be exempted from payment of service tax.
 - (e) Not covered by accounting or auditing services. It may be considered as business auxiliary services and thus be exigible to service tax by virtue of Explanation to the Notification no. 59/98 as amended.
 - (f) Vide M.F. (D.R.) section 37-B Order No. 1/1/2001 – S.T., dated 26.6.2001 services rendered in respect of merger and acquisition are services falling under the category of management consultancy. By virtue of explanation to Notification No.59/98 as amended, such a service may be liable to service tax.
- 20. (i)** Section 65A provides that classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65.
- When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, 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 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.
- (ii)** As per section 64(1) of the Finance Act, 1994, the provisions of service tax extend to the whole of India except the State of Jammu and Kashmir. Levy of service tax has been extended to services rendered in designated areas in the continental shelf and exclusive economic zone vide *Notification No. 1/2002 – S.T., dated 1.3.2002*.
- 21. (i)** Yes. With effect from 01.04.2004, an exemption scheme for small service providers has been prescribed vide *Notification No. 6/2005–ST, dated 1.3.2005*. Service providers, whose aggregate value of taxable services provided during the preceding financial year was up to Rs.4 lakhs, have been exempted from payment of service tax up to an aggregate value of taxable services of Rs.4 lakhs in a financial year.
- (ii)** As per Rule 4A of the Service Tax Rules, 1994, an invoice has to be issued within fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier [*Notification No.7/2005-ST, dated 01.03.2005*].

(iii) *Notification No. 35/2004-ST, dated 03.12.2004* prescribes that the person making payment towards freight would be liable to pay the service tax, in case the consignor or the consignee of the goods transported is one of the following, -

- (i) Factory registered under or governed by the Factories Act;
- (ii) Company established by or under the Companies Act;
- (iii) Corporation established by or under any law;
- (iv) Society registered under Societies Registration Act or similar law;
- (v) Co-operative society established by or under any law;
- (vi) Dealer of excisable goods, registered under the Central Excise law; or
- (vii) Any body corporate established, or a partnership firm registered, by or under any law.

In cases other than those mentioned above, the service tax is to be paid by the goods transport agency.

RECENT AMENDMENTS IN DIRECT TAXES AND INDIRECT TAXES

Students are advised to study thoroughly the Supplementary Study Paper on Direct taxes and Indirect taxes for the Final Course. This contains the amendments made by the Finance (No.2) Act, 2004 as well as the relevant notifications. This Supplementary Study Paper is available at various branch and regional Sales Counters of the Institute. This is very important since considerable weightage is being given to the latest amendments in the examinations.

Students should also regularly read the monthly publication of the Board of Studies – ‘The Chartered Accountant Student’ - for legal decisions and relevant notifications and circulars.

Students may note that the Board of Studies has come out with a publication “Select Cases in Direct and Indirect Taxes [2004] – An Essential Reading for Final Course”. This contains important recent judgements of Supreme Court, High Court and Appellate Tribunal in both Direct Taxes and Indirect Taxes. However, only relevant cases should be selected and studied keeping in mind that the assessment year applicable for November 2005 examinations is A.Y. 2005-2006.

PAPER – 8 : INDIRECT TAXES

QUESTIONS

MAY 2006

1. MTZ Ltd. purchases edible vegetable oil from the open market and refines it. Refined edible vegetable oil falls in Chapter 15 of the First Schedule to the Central Excise Tariff. MTZ Ltd. claims that the process undertaken by it does not amount to manufacture as there is no Chapter Note or Section Note which specifies that refining of edible vegetable oil amounts to manufacture.

You are required to advise with reference to the present position of law in this regard.

2. XYZ Ltd. manufacturing excisable goods files a classification list classifying its products under Tariff Item, say '1'. However, the Central Excise Officer insists that the classification of its goods must be under Tariff Item, say '2' and that the same cannot be cleared until they are so classified. XYZ Ltd., therefore, agrees to classify the goods under Tariff Item '2' under protest. Subsequently, a Circular is issued by the Board clarifying that the said goods are classifiable under Tariff Item '1'. Thus, XYZ Ltd. starts clearing their goods under Tariff Item '1' without filing a fresh classification list. However, a show cause notice is issued to them demanding duty on the ground that they cleared the goods without filing a fresh classification list.

You are required to examine the situation with the help of case law, if any.

3. Infotech systems manufactured mini computer processing systems with floppy drive, keyboard, and CPU. In around 30% of cases, Infotech Systems bought duty paid monitors and printers from the market and supplied to customers on their request. A classification list which did not include monitors and printers was filed by Infotech systems and was approved.

Chapter Note 5 to Chapter 84 specifies that a monitor or printer has to be classified along with the computer. Therefore, by virtue of this Chapter Note the Central Excise Officer took a view that the value of monitors and printers should be included in the value of the computers.

Give your opinion on the issue with the help of decided case laws, if any.

4. The refund of an encashed bank guarantee for all or part of the disputed excise duty, pursuant to an order of the Court, is governed by the provisions of section 11B. Discuss the correctness or otherwise of the statement with the help of decided case law, if any.
5. With reference to CENVAT Credit Rules, 2004, discuss giving reasons whether the following statements are true or false:
 - (a) Motor vehicles are eligible capital goods both for manufacturers and all output service providers.
 - (b) An input service distributor has to furnish a half yearly statement in the form specified by the Board to the jurisdictional Superintendent of Central Excise.
 - (c) Cenvat credit shall be allowed on inputs which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products, if they are received back in the factory within 180 days of their being sent to the job worker.
 - (d) Where the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to the duty leviable on transaction value. Such amount paid can be availed as CENVAT credit.
 - (e) Credit of basic excise duty can be utilized for payment of education cess whereas the *vice versa* is not possible.

6. Tasty Biscuits Ltd. manufactures biscuits under the brand name of "Tasty" on its own account and under the brand name of "Chocopie" on job work basis, on behalf of M/s. Excellent Confectioners. Tasty Biscuits Ltd. has been availing the benefit of SSI exemption for the goods cleared under its own brand name. Tasty Biscuits Ltd. now files an application for availing the Cenvat benefit in respect of "Chocopie" brand biscuits manufactured by it on job work basis. However, the Central Excise Officer rejects the application. Is the stand taken by the Central Excise Officer correct?

Examine the case with the help of decided case laws, if any.

7. Answer the following questions relating to export of excisable goods under Rule 18 of the Central Excise Rules, 2002 to countries other than Nepal or Bhutan?
 - (i) Should a bond be executed in such export? Support your answer with proper reason.
 - (ii) What is the form for clearance of excisable goods in such export?
 - (iii) How can the rebate of duty on the exports be claimed? Is there any time limit for the same?
 - (iv) Is there any duty limit below which the rebate of duty cannot be granted? If yes, then, what is the limit? Is there any other restriction on the grant of rebate?
 - (v) Which duties of excise are eligible for rebate under Rule 18?
 - (vi) Is it necessary that in order to claim rebate, excise duty should be paid in cash?
8. Write short notes on the following:
 - (a) Powers of a Central Excise Officer in respect of access to a registered premises
 - (b) Audit under section 14AA of the Central Excise Act, 1944
9. What do you mean by payment of excise duty under protest? Explain the procedure that has to be followed by an assessee who opts to pay duty under protest.
10. Can all cases of disputed excise duty be settled in a Settlement Commission? If no, then enlist the exceptions?
11. With reference to the provisions of the Customs Act, 1962, explain the following briefly:
 - (i) Ad hoc exemptions
 - (ii) Entry outward
 - (iii) Warehousing stations
12. ASC Ltd. entered in to technical collaboration with MSC Ltd. of Netherlands and imported drawings and designs in paper form through professional courier and post parcels. ASC Ltd. declared the value of these drawings and designs at a very nominal value. However, the Assistant Commissioner of Customs valued these drawings and designs at a high value and levied duty on them. ASC Ltd. contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.
Do you feel the stand taken by the ASC Ltd. is tenable in law? Support your answer with a decided case law, if any.
13. How will you determine the customs duty where imported goods consist of articles liable to different rates of duty?
14. Write short notes on:
 - (a) Export General Manifest
 - (b) Boat Note (or restriction on goods being water borne)
15. 'M' imported second-hand machinery from Singapore and filed the classification list. 'M' claimed that the machinery was fully exempt from payment of customs duty under a Notification. However, the Assistant Commissioner of Customs, the authority in original, passed an order-in-original holding that the machinery imported by 'M' was classifiable under a different heading and chargeable to customs duty. Consequently, 'M' had to furnish the bank guarantee for the duty payable under that heading in order to release the machinery.
Subsequently, the Assistant Commissioner of Customs ordered to encash the bank guarantee executed by 'M' to realise the customs duty. No sooner the aforesaid order-in-original was issued to 'M', the Customs Department invoked the bank guarantee by sending an intimation-cum-request to the Bank to pay to them the amount of bank guarantee. 'M' contended that the order of the Assistant Commissioner was an appealable order and since the statutory period of filing an appeal was yet to expire, the Department's action was not correct.
Do you think the stand taken by the Customs Department is tenable in law? Discuss.

16. ABC Ltd. imported certain products and filed a bill of entry. The amount of duty payable was assessed but was not acceptable to ABC Ltd. and hence the same was paid by it under protest. Subsequently, a refund claim was filed by ABC Ltd. on the ground that the duty had been wrongly levied. However, the claim was rejected by the Department on the ground that since no appeal had been filed against the assessment order, the refund claim was not maintainable.

ABC Ltd. contended that according to section 27 of the Customs Act, 1962 a claim for refund could be made by any person who had paid duty in pursuance of an order of assessment or a person who had borne the duty. It was submitted that the words "in pursuance of assessment" necessarily implied that a claim for refund could be made without challenging the assessment in an appeal. Further, if the assessment was not correct, a party could file a claim for refund and the correctness of the assessment order could be examined whilst considering the claim for refund.

Give your opinion on the issue with the help of decided case laws, if any.

17. Two trucks are intercepted by the Customs Department. The officers of the Customs Department conduct search of the vehicle in the presence of witnesses and it is found that one of the trucks has a secret compartment and 175 Kgs. of heroine and 39 Kgs. of opium of foreign origin are concealed in that chamber. During the course of investigation, the statement of 'P', the registered owner of the vehicle, is taken under section 108 of the Customs Act and 15 witnesses are examined. However, 'P' completely denies his culpability in the crime. He contends that though the vehicle is registered in his name but he has sold the truck much before the contraband goods are recovered therefrom.

You are required to examine the situation with the help of case law, if any.

18. Answer the following questions:
- (i) Does service tax law provide for any exemption to small service providers? If yes, then what is the quantum of such exemption?
 - (ii) Discuss the provisions governing the registration of premises of service providers who have centralized billing or centralized accounting system.
 - (iii) 'A Ltd.' enters in to an advertising contract with 'B Ltd.' for a sum of Rs.15,000.00 on 05.11.2005. A Ltd. receives an advance of Rs.10,000.00 on 06.11.2005 and the balance amount on the completion of services on 12.12.2005. Compute the service tax payable by A Ltd. in the month of December and January.
 - (iv) State the conditions for availing the exemption from payment of service tax in respect of production or processing of goods for or on behalf of the client.
19. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
- (i) Maintenance services provided in respect of shopping malls.
 - (ii) Service provided by goods transport agency in respect of transport of fruits, vegetables, eggs or milk.
 - (iii) Service provided by individual videographer.
 - (iv) Bottling services provided by a commercial concern.
 - (v) Disinfecting services provided in relation to agriculture.
20. (i) Discuss the provisions governing levy of service tax on import of services.
- (ii) Who can apply for an advance ruling for service tax matters?

SUGGESTED ANSWERS/HINTS

1. The definition of manufacture inter alia provides that “manufacture includes any process, which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture.”

Finance Act, 2005 has inserted a Note in Chapter 15 of Central Excise Tariff to provide that in relation to refined edible vegetable oils falling under Headings 1507 to 1515, the process of refining shall amount to manufacture. In this context, the process of refining shall include treatment of crude oil with alkali, bleaching and deodorisation. This Chapter note has been given retrospective effect from 1.03.1986.

Therefore, in the current position of law the process of refining of edible vegetable oil undertaken by MTZ Ltd. shall amount to manufacture.

Note: *This matter had come up before the Supreme Court in the case of Shyam Oil Cake Ltd. v. CCEx., Jaipur, 2004 (174) E.L.T. 145 (S.C.). The Apex Court stated that merely setting out a process in tariff entry would not be sufficient to hold that the particular process resulted in manufacture. If the process was indicated in the Tariff Entry, without specifying that the same would amount to manufacture, then the indication of the process was merely for the purpose of identifying the product and the rate which was applicable to that product. The Apex Court emphasised that for a deeming provision to come in to play it must be specifically stated that a particular process would amount to manufacture. In the absence of it being so specified, the commodity would not become excisable merely because a separate Tariff Item existed in respect of that commodity.*

It was observed by the Supreme Court that neither the Section Note nor the Chapter Note nor the Tariff Item gave any indication that the process indicated would amount to manufacture. The product remained edible vegetable oil even after the processing/refining. It was held by the Apex Court that as actual manufacture had not taken place, deeming provision could not be invoked in the absence of a specific statement that the process would amount to manufacture.

However, in view of the above-mentioned amendment made by Finance Act, 2005 this judgment does not hold good anymore.

2. The facts of the case are similar to that of the *General Rubber Company Pvt. Ltd. v. Commissioner of Central Excise, Delhi-II* 2005 (181) E.L.T. 366 (S.C). In this case, the Apex Court observed that the classification list had been revised under protest. It was stated by the Supreme Court that once the Board clarified that those goods were classifiable under a particular Tariff Item, the assessee became entitled to clear the goods under that Tariff Item. The Supreme Court held that at the most, penalty could be imposed for not filing a fresh classification list. However, the demand was not sustainable.

Same analogy can be applied in the present case also. Thus, demand of duty from XYZ Ltd. does not hold good in law.

3. This issue was taken up by the Supreme Court in the case of *CCEx., Mumbai v. C.M.S. Computers P. Ltd.* 2005 (182) E.L.T. 20 (S.C). The facts of the given situation are similar to that of the above-mentioned case.

In this case, the Apex Court opined that a monitor or a printer is not an essential part of the computer. It is a peripheral item which may be required along with a computer. Merely because a Tariff Entry may also include a monitor or printer, it would not lead to the conclusion that a monitor or printer is an essential part of a computer. All that the Chapter Note indicates is that not only the computer but a monitor and a printer are also excisable products. However, the monitor and/or printer would be excisable only in the hands of their manufacturer. The assessee did not manufacture the monitor or the printer. The Supreme Court observed that in approximately 70% of the cases monitors and printers were not supplied along with the computer sold by the assessee. Thus, it could be concluded that the assessee did not sell their computer as a unit including a monitor and a printer. Therefore, Apex Court held that as monitor and printer were not essential parts of the computer their value could not be included in the value of computer.

However, it was clarified by the Supreme Court that the situation may be different where a manufacturer sells a computer with a monitor and a printer as a unit.

Therefore, in view of the above-mentioned case law the stand taken by the Central Excise Officer is not correct.

4. Supreme Court in the case of *Oswal Agro Mills Ltd. v. Assistant Collector of C.Ex., Ludhiana 1994 (70) ELT 48 (SC)* has held that refund of an encashed bank guarantee for all or part of the disputed excise duty pursuant to an order of the Court is not governed by the provisions of section 11B, since furnishing of a bank guarantee is not equivalent to payment of excise duty.

The Supreme Court stated that section 11B applies when an assessee claims refund of excise duty. A claim for refund is a claim for repayment. It presupposes that the amount of the excise duty has been paid over to the excise authorities. It is then that the excise authorities would be required to repay or refund the excise duty.

The Apex Court explained that a bank guarantee is a security for the Revenue for recovering the dues in the event the Revenue succeeds in the dispute concerning the duty. However, if the bank refuses to honour its guarantee the revenue or the principal administrative officer of the Court (where the bank guarantee is in his favour) has to file a suit against the bank for the amount due upon the bank guarantee. Therefore, the amount of the disputed tax or duty that is secured by a bank guarantee cannot be considered as having been paid to the Revenue. Thus, there arises no question of its refund and hence provisions of section 11B would not be attracted.

5. (a) *False.* Rule 2(a) defines capital goods to mean

(A) the following goods, namely:-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Central Excise Tariff Act;
 - (ii) pollution control equipment;
 - (iii) components, spares and accessories of the goods specified at (i) and (ii);
 - (iv) moulds and dies, jigs and fixtures;
 - (v) refractories and refractory materials;
 - (vi) tubes and pipes and fittings thereof; and
 - (vii) storage tank,
- used-

- (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
- (2) for providing output service;

- (B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act.

Motor Vehicles fall under Chapter 87. Thus, the manufacturers cannot avail credit on motor vehicles. However, in case of taxable services credit on motor vehicles can be availed in case of abovementioned specific output services. These services are:

- (1) Courier services
- (2) Tour operator's services
- (3) Rent-a-cab scheme operator's services
- (4) Cargo handling agency's services
- (5) Goods transport agency's services
- (6) Outdoor caterer's services

(7) Pandal or shamiana contractor's services

- (b) *False.* With effect from 16.06.2005, rule 9(10) has been substituted by a new sub-rule vide *Notification No. 28/2005 CE (N.T.), dated 07.06.2005*. The new sub-rule 10 provides that the input service distributor shall furnish a half yearly **return** in the form specified by the Board to the jurisdictional Superintendent of Central Excise.
 - (c) *True.* Rule 4(5) lays down that Cenvat credit shall be allowed on goods (being inputs or capital goods) sent to the job worker for further processing, testing, repair, reconditioning or any other purpose, if they are received back in the factory within 180 days of their being sent to the job worker. In case they are not returned within 180 days the credit on such goods has to be reversed. However, credit can be retaken once the goods come back. This sub-rule has been amended vide *Notification No. 27/2005 CE (N.T.) 16.05.2005* to provide that credit shall also be allowed on goods which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products. The condition that the goods should be returned to the factory within 180 days shall apply to such goods as well.
 - (d) *True.* After rule 3(5), a new sub-rule (5A) has been inserted in rule 3 vide *Notification No. 27/2005 CE (N.T.) 16.05.2005*. The new sub-rule (5A) provides that if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. Rule 3(6) has also been amended to provide that the amount paid under sub-rule (5A) shall also be eligible as Cenvat credit [just like amount paid under sub-rule (5)] as if it was duty paid by the person who removed such goods under sub-rule (5A).
 - (e) *True.* As per rule 3(4) read with rule 3(1) and rule 3(7)(b), the Cenvat credit of basic excise duty, special excise duty, service tax and AED(GSI) can be utilised for payment of **any** duty or service tax as credit of all duties together is known as 'Cenvat credit'. Hence, credit of basic excise duty can be utilised for payment of education cess on excisable goods. However, as per rule 3(7)(b), credit of education cess paid on excisable goods can be utilised only for payment of education cess on excisable goods or taxable services.
6. The facts of the given case are similar to those of *CCEx. Ahmedabad v. Ramesh Food Products 2004 (174) ELT 310 (SC)*. In this case, the Supreme Court observed that the *Notification No.175/86-C.E.*, clearly demarcated the two categories of manufacturers. A clear-cut distinction was explicit between a manufacturer availing Modvat credit under Rule 57A (new Rule 3 of Cenvat Credit Rules, 2004) and another not opting for the Modvat scheme. Input duty relief was given under the scheme to the manufacturers who had opted to operate under the scheme by applying for it in the prescribed manner. Ultimately, the manufacturers had the choice of choosing one of the two concessions, i.e. either the Modvat scheme or *Notification 175/86-C.E.* It was held by the Apex Court that since there was no one to one correlation between the inputs and final products under Modvat Scheme, it would not be possible to allow the manufacturer to simultaneously avail Modvat for some products and avail full exemption for others under small-scale exemption scheme.
- The same analogy can be applied in the present case too. *Notification No.8/2003* also differentiates between manufacturer availing Cenvat credit under Rule 3 of Cenvat Credit Rules, 2004 and the one not opting for the Cenvat scheme. Thus, here also simultaneous availment of Cenvat for some products and full exemption for others under the scheme of small-scale exemption shall not be permissible. Thus, the stand taken by the Central Excise Officer is correct.
7. Under Rule 18 of Central Excise Rules, 2002, the rebate of excise duty paid on exported goods is granted. Procedures and conditions for export of excisable goods under claim of rebate to countries other than Nepal or Bhutan are specified in *Notification No.19/2004 C.E. (N.T.) dated 06.09.2004*. Answers to each part of the question are as follows:
- (i) There is no need to execute a bond in such a case as the goods are exported under claim of rebate after full payment of duty under an invoice.
 - (ii) Export under claim for rebate should be made under ARE-1 form.
 - (iii) A claim of rebate of duty paid, along with the original copy of the ARE-1, shall be lodged with

the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case maybe, the Maritime Commissioner. As per section 11B of the Central Excise Act, 1944, the claim must be filed within one year from the date of export.

- (iv) The rebate will not be granted if amount of rebate of duty is less than Rs.500. Further, the rebate will also not be granted if the market price of the excisable goods at the time of exportation is less than the amount of rebate.
 - (v) Following duties are eligible for rebate:
 - (a) duties of excise collected under the Central Excise Act, 1944;
 - (b) duties of excise collected under the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
 - (c) duties of excise collected under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;
 - (d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001, as amended from time to time;
 - (e) special excise duty collected under a Finance Act;
 - (f) additional duty of excise as levied under section 157 of the Finance Act, 2003;
 - (g) education cess on excisable goods levied under Finance (No.2) Act, 2004;
 - (h) additional duty of excise leviable on pan masala and specified tobacco products under Finance Act, 2005.
 - (vi) No. It is not necessary that rebate can be obtained only if duty is paid in cash. Duty on final products can be paid either through cash or PLA or Cenvat credit [CBE&C Circular No. 262/96/96-CX 6 dated 06.11.96].
8. (a) Rule 22 of Central Excise Rules, 2002 governs the provisions in respect of powers of a Central Excise Officer regarding access to a registered premises in the following manner:
- (1) An officer empowered by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
 - (2) Every assessee, and first stage and second stage dealer shall furnish to the officer empowered under sub-rule (1), a list in duplicate, of-
 - (i) all the records prepared and maintained for accounting of transaction in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods, as the case may be;
 - (ii) all the records prepared and maintained for accounting of transaction in regard to payment for input services and their receipt or procurement; and
 - (iii) all the financial records and statements including trial balance or its equivalent.
 - (3) Every assessee, and first stage and second stage dealer shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, -
 - (i) the records maintained or prepared by him in terms of sub-rule (2);
 - (ii) the cost audit reports, if any, under section 233B of the Companies Act, 1956 ; and
 - (iii) the Income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961;

for the scrutiny of the officer or audit party, as the case may be.

It has been clarified that for the purposes of this rule, “first stage dealer” and “second stage

dealer” shall have the meanings assigned to them in CENVAT Credit Rules, 2004.

- (b) Section 14AA of the Central Excise Act, 1944 prescribes a special audit in cases where credit of duty availed or utilized is not within the normal limits etc. The Commissioner of Central Excise may call for an audit if he has reason to believe that the credit of duty availed of or utilized by a manufacturer of any excisable goods –

- (a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;
- (b) has been availed of or utilized by reason of fraud, collusion or any willful mis-statement or suppression of facts.

The Commissioner shall direct such manufacturer to get the accounts of his factory, office, depot, distributor or any other place, as may be specified by him, audited by a Cost Accountant nominated by him. Cost Accountant shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959.

The Cost Accountant so nominated shall submit the duly signed and certified audit report within the period specified by the Commissioner of Central Excise. He shall also mention in the report such other particulars as may be prescribed by the Commissioner. This audit shall be in addition to any other audit under any other law for the time being in force or otherwise.

The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit and proposed to be utilized in any proceeding under the Central Excise Act or rules made thereunder.

9. Sometimes it happens that the classification and assessable value of goods determined by the excise authorities are not agreeable to or acceptable to the assessee. In such cases, the assessee can file an appeal and in the meanwhile he can pay duty under protest if no stay is obtained from Appellate Authorities.

Section 11B of the Central Excise Act, 1944 provides that the time limit of one year for claiming refund of excise duty shall not apply where the duty has been paid under protest.

As per the Supplementary Instructions issued by Central Board of Excise and Customs, any assessee who desires to pay duty under protest, may do so by following the procedure mentioned below:

- (a) The assessee shall inform the Superintendent or Inspector of Central Excise in writing giving reasons for paying duty under protest and dated acknowledgement will be given to him.
- (b) The assessee shall mark invoices or monthly/quarterly returns indicating the goods on which duty is paid ‘under protest’. If it is a lump-sum duty payment in respect of past demand, he may record the fact of duty payment under protest in the Personal Ledger Account, CENVAT Account and the Daily Stock Account.
- (c) If a case is appealed against by the assessee or where the appeal period for further appeal is available, he may continue to pay duty under protest. However, if decision is not in his favour and he exhausts the appellate remedy or does not appeal within stipulated period, he shall not have any right to pay duty under protest.

10. No, all cases of disputed excise duty cannot be settled in Settlement Commission. As per proviso to section 32E of the Central Excise Act, 1944, the following cases cannot be settled in Settlement Commission:

- a. where the applicant has not filed returns showing production, clearance and central excise duty paid;
- b. where the applicant has not received a show cause notice;
- c. where the case is pending before the Appellate Tribunal or any Court;

- d. where the dispute relates to interpretation of classification of excisable goods;
- e. in case of seizure of excisable goods/books/documents, if the application for settlement has been made before the expiry of 180 days from the date of such seizure;
- f. where the additional amount of duty accepted in the application does not exceed Rs.2,00,000.

11. (i) Ad hoc exemptions -

Ad hoc exemption is granted by issue of a special order in exceptional circumstances by the Central Government under section 25(2) of the Customs Act, 1962. The Central Government grants such exemption only when it is satisfied that such exemption is necessary for the public interest. The order should specify the exceptional circumstances for granting such ad hoc exemption.

(ii) Entry Outward -

Entry outward is a general permission granted by Customs Department to the master of the vessel to load export cargo. The master of the vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry outwards to such vessel. Further, the export goods can be loaded only after the exporter hands over a shipping bill or bill of export, duly passed by the Customs officer to the person-in-charge of the conveyance.

(iii) Warehousing Stations -

As per section 2(45) of the Customs Act, 1962, a warehousing station means a place declared as a warehousing station under section 9. As per section 9 of the Customs Act, Central Board of Excise and Customs (CBE&C) may by notification in the Official Gazette declare places to be warehousing stations at which alone public warehouse may be appointed or private warehouse may be licensed.

The law makes a clear distinction between public warehouses and private warehouses. The public warehouse is owned and managed by a government body. In most of the cases it is Central Warehousing Corporation. A private warehouse is licensed in places where there is no public bonded warehouse. An important point to be remembered is the liability of the warehouse keeper. Normally such warehouses are kept under double lock one that of the warehouse keeper, and the other of the customs department. Further, in the case of the private bonded warehouse the licensee has to pay for and acquire the services of a customs officer (on cost recovery basis) to be posted and stationed in the private warehouse.

12. This issue has been settled by the Supreme Court in the case of *Associated Cement Companies Ltd. v. CC 2001 (128) ELT 21 (SC)*. The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the ASC Ltd. is not correct in law.

13. Section 19 of the Customs Act, 1962 prescribes the method for determination of duty where goods consist of articles liable to different rates of duty. It lays down that where goods consist of a set of articles, duty shall be calculated as follows :-

- (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) :

However:

- (a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- (b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

These provisions are subject to anything provided otherwise in any law for the time being in force.

14. (a) Export General Manifest contains a complete list of the cargo exported in a conveyance under the control of person-in charge of such conveyance. As per section 41 of the Customs Act, 1962, the person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form.

The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

- (b) In case the vessel arriving at the port does not get a berth, the import cargo is taken from the ship to the shore and the export cargo from shore to the ship, in boats. Section 35 of the Customs Act stipulates that no imported goods shall be water borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form.

However, the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

The form and content of the boat note is prescribed under the Boat Note Regulations, 1976. These regulations specify that normally the boat note should be issued by the proper officer. However, in a special case, the Commissioner of Customs, may authorize an exporter or his authorized agent to issue a boat note. Every person, who is so authorised by the Commissioner shall maintain proper account of boat notes issued by him and furnish to the proper officer such information as may be specified by the Commissioner. The boat note should be of such dimension and colour as is indicated in the prescribed forms. They should be maintained in duplicate and machine numbered. Separate forms have been prescribed for export cargo, import cargo, and transshipment cargo.

15. Similar situation was addressed to by the High Court in the case of the *Ocean Driving Centre Ltd. v. Union of India 2005 (180) E.L.T. 313 (Bom.)*. In this case, the petitioner contended that he had a statutory right of appeal before the Appellate Authority and at the same time, he also had a right to move an application to get the pre-deposit waived in terms of section 129E of the Customs Act, 1962. He further submitted that he had an arguable case on classification. The debatable question had resulted in the release of goods subject to the furnishing of the bank guarantee at the stage of the provisional assessment. Had it not been a debatable issue, he would not have been allowed to claim release of the goods on furnishing the bank guarantee. The bank guarantee was furnished to secure dues of Department. The same was valid and should have been kept alive till the dispute was finally resolved. According to him, order of assessment as on date was not final and conclusive.

The High Court observed that it was not in dispute that the appeal period was yet to expire and that the order was an appealable order. Further, as per the policy engrafted in the Circular No. 396/29/98-CX., dated 2nd June 1998 the Department was expected not to resort to coercive

action so long as the appeal period was not over. Hence, the action of Department was contrary to their own policy. The High Court held that it was not proper on the part of the Department to encash the bank guarantee before the expiry of the statutory period provided for filing appeal.

In the given case also 'M' had a statutory right to file an appeal and get the pre-deposit waived. Thus, extending the ratio of the above decision, it can be inferred that the stand taken by the Department is not tenable in law.

16. The Supreme Court in the case of *Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) 2004 (172) E.L.T 145 (S.C.)* has stated that once an order of assessment has been passed, the duty would be payable as per that order. Unless that order of assessment has been reviewed under section 28 and/or modified in an appeal, that order would be enforceable. So long as the order of assessment is effective, the duty would be payable as per that order of assessment. A refund claim is not an appeal proceeding. The officer considering a refund claim cannot sit in appeal over an assessment made by a competent officer. The officer considering the refund claim can also not review an assessment order.

The Apex Court clarified that as the words "in pursuance of assessment order" come after the words "Any person claiming refund of any duty and interest, if any, paid on such duty paid by him", they only indicate the party/person who can make a claim for refund. Thus, these words must be understood in the limited context only. They enable a person who has paid duty in pursuance of an order of assessment to claim refund. These words does not lead to the conclusion that a claim for refund can be maintained without modifying the order of assessment in an appeal or reviewing the same under section 28. The Supreme Court held that a refund claim cannot be filed against an assessment order, which has not been modified in an appeal or reviewed under section 28.

The ratio of the abovementioned decision can be applied in the present case also. Therefore, the stand taken by the Department is correct.

17. The facts of the case are similar to the facts of the case of *Balwinder Singh v. Asstt. Commissioner, Customs & Central Excise 2005 (181) E.L.T. 203 (S.C.)*. In this case, the Supreme Court stated that the registered owner of the vehicle was convicted solely for the reason that he was the registered owner of the vehicle. There was no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There was also no evidence to prove the conspiracy set up by the prosecution. The Apex Court held that though the articles were recovered from the truck, there was no evidence to show that the appellant had any control over the vehicle nor was he in possession of those drugs. Therefore, the registered owner of the vehicle was acquitted of all charges framed against him.

In the given case also, there is no evidence against 'P', the registered owner of the vehicle, and thus he shall not be prosecuted.

18. (i) An exemption scheme for small service providers has been prescribed by the Central Government vide *Notification No.6/2005 ST, dated 1.3.2005*. The exemption scheme has been made applicable from 1st April 2005.

The taxable services of "aggregate value not exceeding Rs.4,00,000" in any financial year have been exempted from the whole of service tax leviable thereon. The exemption is however, subject to certain conditions.

- (ii) An assessee having a centralized billing system or centralized accounting system in respect of a taxable service may provide such service from more than one premises or office. If such centralized billing or centralized accounting systems are located in one or more offices or premises, the assessee may at his option register such premises or offices from where such centralized billing or centralized accounting systems are located.

Such registration shall be granted, -

- (a) by the Chief Commissioner/Commissioner of Central Excise, as the case may be, in whose jurisdiction all the premises or offices providing taxable service and the premise or office from where centralized billing or centralized accounting is done, are located;

and

(b) in cases other than (a) above, by such authority, as may be specified by the Board.

However, such provisions shall not be applicable for the registrations granted to the premises or offices having such centralized billing or centralized accounting systems, prior to 1st day of April, 2005.

(iii) Service tax for the month of November payable on 5th of December:

10.2% (service tax + education cess) on Rs.10,000 = Rs.1,020.00

Service tax for the month of December payable on 5th of January:

10.2% (service tax + education cess) on Rs.5,000 = Rs.510.00

(iv) *Notification No. 8/2005 S.T., dated 1.03.2005* has exempted the taxable service of production or processing of goods for or on behalf of the client from service tax subject to the following conditions:

- (i) goods are produced or processed using raw material or semi-finished goods supplied by the client;
- (ii) the goods so produced or processed are returned back to the said client for use in or in relation to the manufacture of any other goods (goods falling under the First Schedule of the Central Excise Tariff Act, 1985) on which "appropriate excise duty is payable" i.e., the final product should not be wholly exempt or subject to 'Nil' rate of duty.

In this context, the expression "production or processing of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production or processing, subject to the condition that such production or processing does not amount to manufacture within the meaning of clause (f) of section 2 of the Central Excise Act, 1944.

19. (i) With effect from 16.06.2005 scope of maintenance or repair services has been expanded by the Finance Act, 2005 to include maintenance or management of immovable properties. Thus, maintenance services provided in respect of shopping malls shall be liable to service tax under the category of maintenance or repair services.
 - (ii) With effect from 01.01.2005 *Notification No. 33/2004, ST, dated 03.12.2004* has exempted the taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon.
 - (iii) *Notification No. 7/2001-S.T., dated 09.07.2001* exempted the taxable service provided to a client by an individual professional videographer in relation to video tape production from the whole of the service tax leviable thereon. However, the said notification has been rescinded vide *Notification No.20/2005 ST, dated 07.06.2005* with effect from 16.06.2005 thereby withdrawing the exemption granted to an individual professional videographer.
 - (iv) Packaging services have been brought under the service tax net with effect from 16.06.2005 by Finance Act, 2005. Bottling services fall under the category of packaging services and thus, will be liable to service tax.
 - (v) Cleaning services other than in relation to agriculture, horticulture, animal husbandry or dairying has been brought under the service tax net with effect from 16.06.2005 by Finance Act, 2005. Disinfecting service, though a cleaning service, shall not be liable to service tax in this case as the service is rendered in relation to agriculture.
20. (i) Finance Act, 2005 has inserted an explanation in section 65(105) defining taxable service so as to bring import of services within the tax net. As per the Explanation, any service provided or to be provided from outside India by a person who has established a business, or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence in a country other than India and received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India shall be deemed to be

taxable service. In other words, service provided from outside India to a person in India shall be taxable if such service is received in India.

- (ii) As per section 96A(b) the following applicants can apply for an advance ruling:
- (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
 - (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
 - (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,
- who or which, as the case may be, proposes to undertake any business activity in India;
- (ii) a joint venture in India; or
 - (iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf,
- and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 96C.

IMPORTANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2005 TO 31.10.2005

Students may note that the Study Material for Indirect taxes contains all the relevant amendments made by Finance Act, 2005. Further, Circulars/Notifications issued up to 30.04.2005 have also been incorporated therein. The following are the amendments which have been made till 31.10.2005. It may carefully be noted that for the students appearing in May 2006 the amendments made by Notifications, Circulars etc. up to 31.10.2005, as detailed hereunder, are relevant.

CENTRAL EXCISE

Following changes have been made in **Cenvat Credit Rules, 2004**:

- (i) An additional duty of excise was levied on pan masala and tobacco products vide clause 85 of the Finance Bill, 2005. Rule 3(1) of Cenvat Credit Rules, 2004 was accordingly amended so as to allow Cenvat credit on such duty. The Finance Bill, 2005 became the Finance Act, 2005 on 13.05.2005 when it got the assent of the President of India. Thus, consequential amendment has been made in Rule 3(1) vide **Notification No. 22/2005 CE (N.T.) dated 13.05.2005** with effect that now the Cenvat credit can be availed on additional duty of excise leviable on pan masala and tobacco products under section 85 of the Finance Act, 2005. Similar amendment has been made in rule 3(4) and 3(7)(b).
- (ii) After sub-rule (5) in rule 3, a new sub-rule (5A) has been inserted vide **Notification No. 27/2005 CE (N.T.) 16.05.2005**. The new sub-rule (5A) provides that if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. Rule 3(6) has also been amended to provide that the amount paid under sub-rule (5A) shall also be eligible as Cenvat credit [just like amount paid under sub-rule (5)] as if it was duty paid by the person who removed such goods under sub-rule (5A).
- (iii) Rule 4(5)(a) lays down that Cenvat credit can be availed even if any inputs or capital goods as such or after being partially processed are sent to the job worker for further processing, testing, repair, reconditioning or any other purpose. However, such goods must be received back in the factory within 180 days of their being sent to the job worker. In case the goods are not returned within 180 days the credit on such goods has to be reversed. However, credit can be retaken once the goods come back. This sub-rule has been amended vide **Notification No. 27/2005 CE (N.T.) 16.05.2005** to provide that credit can also be availed on goods which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products. The condition of return of the goods back to the factory within 180 days shall apply to such goods as well.
- (iv) Rule 4(6) allows direct despatch or clearance of final products from job worker's premises subject

QUESTIONS

1. Explain briefly whether "assembly" would tantamount to "manufacture" under the Central Excise Act, 1944.
2. Alpha Ltd. is engaged in the activity of cutting/slitting of jumbo rolls of toilet paper of a width exceeding 36 cms. The jumbo rolls are purchased on payment of excise duty from various suppliers. The process undertaken by Alps Ltd. reduces the width of the jumbo rolls to less than 36 cms. The rolls with width exceeding 36 cms and with width less than 36 cms fall under different tariff headings. The excise department contends that such reduction of width amounts to manufacture. The excise department has assessed and demanded duty from Alps Ltd. on the basis of the heading covering jumbo rolls of width less than 36 cms.

You are required to examine the situation with the help of a decided case law.

3. Discuss whether classification of goods can be altered by the central excise department.
4. Beta Ltd. has sold refractories to Omega Steel Plant under a contract at a particular price. For the supply of refractories, Beta Ltd. has availed the duty exemption scheme contained in the Export and Import Policy. In order to enable Beta Ltd. to avail the duty exemption scheme, Omega Steel Plant has surrendered the advance licences held by them for import of refractories.

Against such surrender, advance intermediate licences for import of inputs have been issued to Beta Ltd. Consequently, Beta Ltd. has imported the inputs without payment of customs duty as well as got them at a lower price than what they would have paid had they purchased the same in India. The excise department has claimed that the benefit derived by Beta Ltd. under the advance intermediate licence, issued to them as a result of surrender of licence by Omega Steel Plant, is additional consideration towards the value of the refractories and that this additional consideration forms part of the price of the refractories for purposes of excise duty.

Do you think that the stand taken by the excise department is correct in law? Discuss.

5. Discuss the provisions relating to information on principal inputs in context of CENVAT Credit Rules, 2004.
6. Does the central excise law has any mechanism for removal of goods at concessional rate of duty for manufacture of excisable goods? If yes, elucidate the provisions thereof.
7. Explain the manner of payment of duty under Central Excise Rules, 2002.
8. Discuss the provisions regarding issue of demand notice under section 11A of the Central Excise Act, 1944. Is it possible to obtain waiver of such notice? If yes, explain the procedure.
9. Answer the following questions with reference to *Notification No. 8/2003-CE dated 01.03.2003* relating to small scale units:
 - (i) What is the eligible turnover for claiming exemption under the said notification?
 - (ii) How will the turnover be computed when the manufacturer has more than one factory?
 - (iii) What does 'value' mean for the purposes of the said notification?
 - (iv) Comment on the availability of CENVAT credit on capital goods under the said notification.
 - (v) What is the treatment in respect of 'clearances of excisable goods without payment of duty' as specified in the said notification?
10. Describe the criteria required to be satisfied for grant of stay/waiver of pre-deposit and admission of appeal under section 35F of the Central Excise Act, 1944.
11. X, an importer (other than 100% EOU) imported some goods and deposited them in the warehouse on 12.04.2006. These goods were re-exported on 15.08.2006 without payment of duty. With reference to the Customs Act, 1962, discuss whether any interest is payable by 'X'?

12. Explain briefly the meaning of the following with reference to the Customs Act, 1962:
 - (i) Rules and Regulations
 - (ii) Dutiable goods and Imported goods
13. State the provisions of transshipment of goods without payment of duty under section 54 of the Customs Act, 1962.
14. Vaikunth, a non-resident intends to import certain goods, but has entertained some doubts about their classification. Vaidehi, Vaikunth's friend, has obtained an 'Advance Ruling' under Chapter VB of the Customs Act, 1962 from the Authority for Advance Rulings on an identical point. Vaikunth proposes to adopt the same ruling in his case. Vaikunth has sought your advice as his consultant whether he could adopt the ruling given in the case of Vaidehi.
Explain with reasons.
15. What do you understand by first appraisement and second appraisement systems under the Customs Act 1962?
16. What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988.
17. With reference to the Customs Act, 1962, explain the circumstances under which refunds will not be credited to the Consumer Welfare Fund.
18. With reference to service tax return answer the following questions:
 - (i) Which documents are to be submitted along with the first return?
 - (ii) When should the return be filed if the due date happens to be a public holiday?
 - (iii) 'X', an individual, has not provided any services in the half year period April to September. Should he file any return for this period? Give your opinion.
19. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Survey and map-making services provided by 'Survey of India'.
 - (ii) Construction services provided in respect of a residential complex having 12 residential units.
 - (iii) Membership fee paid by chartered accountants to the Institute of Chartered Accountants of India.
 - (iv) 'XY' Ltd. provides service of sending documents and materials by addressing, sealing and mailing the envelope for or on behalf of 'AB' Ltd., its client.
 - (v) Floor and wall cleaning performed on the premises of non-commercial buildings.
20. What percentage of abatement is available from the gross amount charged in respect of the following services? State the necessary conditions for availing such abatements.
 - (i) Commercial or industrial construction service
 - (ii) Services in relation to pandal or shamiana in any manner, including services rendered as a caterer
 - (iii) Catering services
 - (iv) Services provided by a tour operator providing services solely of arranging or booking accommodation in relation to a tour
 - (v) Erection, commissioning or installation under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment.

SUGGESTED ANSWERS/HINTS

1. Assembly is a process of putting together a number of items or parts of an item to make a product or item. From a general point of view, not all cases of assembly would amount to manufacture in as much as an already manufactured item may be assembled to be put in a readily usable form. The assembly may take place before the sale or after the sale of manufactured goods and again at the factory gate of the manufacturer or at the customer's site. It may be done by the manufacturer/buyer/intermediary/technician. In all such cases, the questions that arise are -

1. Whether such assembly is manufacture?
2. Do new goods emerge as a result of assembly?

In *Narne Tulaman manufacturers Pvt. Ltd. v. CCE 1988 (38) ELT 566 (SC)*, it was held that as the Tribunal had found that the appellant had fitted a platform, loaded cells and indicator system which in the assembled form became a weigh bridge, there was a commercial commodity, having a distinct name, character and use resulting in manufacture. The aspect whether the resultant product would become an immovable property was not argued or considered.

In *BPL India Ltd. v. CCE 2002 (143) ELT 3*, the Supreme Court held that assembly of imported kits of VTR with colour monitor, imported in disassembled condition, amounted to manufacture since the end product had a distinct character and use and the process of assembly was done by technical experts or skilled persons.

Therefore, the general proposition would be that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture.

2. The facts of the problem are similar to that of the case of *CCEx. New Delhi – I v. S.R. Tissues Pvt. Ltd. 2005 (186) ELT 385 (SC)*. In this case, the Supreme Court has held that slitting/cutting of jumbo rolls of plain tissue paper into smaller size does not amount to manufacture as its character and end-use viz., household purposes, do not undergo any change on account of winding, cutting/slitting and packing. Further, slitting and cutting of toilet paper cannot be termed as deemed manufacture as the said process is not treated as manufacture by legislature under any of the Section/Chapter Notes of the Central Excise Tariff.

The Apex Court has elaborated that mere mention of a product in a tariff heading does not necessarily imply that said product is obtained by process of manufacture. Just because raw material and finished product come under two different headings, it cannot be presumed that process of obtaining finished product from such raw material automatically constitute manufacture. Therefore, slitting/cutting of jumbo rolls of toilet tissue paper into various shapes and sizes shall not amount to manufacture merely because tissue paper in jumbo roll of size exceeding 36 cms. fall in one entry and toilet roll of a width not exceeding 36 cms. fall in a different entry. The Supreme Court further explained that value addition on account of transport charges, sales tax, distribution and selling expenses and trading margin without any change in name, character or end-use by mere cutting/slitting of jumbo rolls cannot constitute the criteria to decide what is "manufacture".

In view of the abovementioned decision, the contention of the excise department does not hold good.

3. While it is open to the department to review classification matters, it is not open to the department to arbitrarily change the classification of goods if they had been classified under a particular heading for a long time. Though there is no estoppel in taxation matters, changes in classification can be made only if there are cogent reasons.

In *J.K Synthetics Ltd. v. U.O.I. 1981 (8) ELT 328*, the Delhi High Court has held that an authority can depart from his earlier stand only for cogent reasons, such as fresh facts are brought on record or the process of manufacture has changed or the relevant Tariff Entry has undergone modification or, subsequent to earlier decision, there has been pronouncement of a High Court or the Supreme Court which necessitates the reconsideration of the issue. Thus, review/reopening of a classification list may only be done for cogent reasons.

Abrupt changes in classification, without any cogent reasons, are not justified, if the construction of a Tariff entry has continued unchallenged for a considerable length of time, it should not be disturbed.

However, a classification list can be changed or modified by the department, when material facts were not disclosed in the classification list and they came to the notice or knowledge of the department subsequently. In *Sanatha Engg. Industrials v. Superintendent of CEx. 1991 (52) ELT 376* it was held that once the classification list filed by the assessee had been accepted by the adjudicating authority, he cannot direct the assessee to file a revised classification list in the absence of initiation of proceedings for cancellation of the earlier sanction.

When out of two possible headings, goods are classified by the department under one of them, such a classification cannot be subsequently changed without notice to party. An approved classification list can only be reopened when fresh facts are brought on record or when there is a change in the statute. Approved classification lists cannot be changed arbitrarily or capriciously or without sufficient cause.

4. The facts of the problem are similar to that of the case of *CCEx. Bhubaneshwar-II v IFGL Refractories Ltd. 2005 (186) ELT 529 (SC)*. In this case, the Supreme Court has held that surrendering of licences by buyer and as a result thereof, assessee getting licences has nothing to do with any Import and Export policy. This is directly a matter of contract between two parties which has resulted in additional consideration by way of "advance intermediate licence" flowing from buyer to the assessee. The Apex Court stated that had the seller procured the advance intermediate licence on its own i.e. without buyer having to surrender its licence for the purposes of the contract, then there would have been no additional consideration. However, since the licence is obtained in pursuance of the contract of sale, there is directly a flow of additional consideration from the buyer to seller. Thus, the Supreme Court held that the value thereof has to be added to the price of the refractories.

The Apex Court further clarified that where parties take advantage of policies of Government and benefits flow therefrom, then such benefit can be said to be an additional consideration.

In view of the abovementioned decision, the stand taken by the excise department holds good.

5. Rule 9A of the CENVAT Credit Rules, 2004 contains the provisions relating to information on principal inputs. The provisions of Rule 9A are discussed below:
 - (1) A manufacturer of final products has to furnish to the Superintendent of Central Excise a declaration in the prescribed Form (ER 5) in respect of the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of each of the excisable goods manufactured or to be manufactured by him. Such declaration has to be filed annually by 30th April of each Financial Year.
 - (2) If a manufacturer of final products intends to make any alteration in the information so furnished he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the prescribed Form.
 - (3) Further, a manufacturer of final products has to submit, a monthly return in the prescribed Form (ER 6), in respect of information regarding the receipt and consumption of each principal input with reference to the quantity of final products manufactured by him. Such return shall be furnished within ten days from the close of each month, to the Superintendent of Central Excise.
 - (4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who may not be required to furnish such declaration or monthly return.
 - (5) Here, principal inputs means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final product.

6. Yes, central excise law has a separate set of rules for removal of goods at concessional rate of duty for manufacture of excisable goods known as Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The provisions of these rules are discussed below:

Under Rule 3 of the said Rules, a manufacturer who intends to receive the specified goods at concessional rate of duty, is required to make an application in quadruplicate in the specified form to the jurisdictional central excise authorities. However, he is required to make separate application in respect of each supplier of subject goods.

Further, the manufacturer is required to execute a general bond with surety or security to cover the recovery of duty liability estimated to be involved at any given point of time.

The application shall be countersigned by the jurisdictional authorities certifying that the manufacturer has executed the required bond.

Of the four copies of application, one copy shall be forwarded to the jurisdictional range superintendent of the manufacturer of the subject goods, two copies shall be handed over to the applicant manufacturer and one copy shall be retained by the Assistant/Deputy Commissioner of Central Excise. Out of the two copies handed over to the applicant manufacturer, one copy shall be forwarded by the applicant manufacturer to the manufacturer of the subject goods.

Under Rule 4, the manufacturer of the goods can avail the exemption from duty based on the above referred application. The manufacturer of the subject goods shall record on the application the removal details such as number and date of invoice, description, quantity and value of subject goods and amount of excise duty paid at concessional rate.

The manufacturer receiving the above goods is required to maintain the simple account indicating the quantity and value of subject goods received, consumed and quantity remaining in stock. Further, he is also required to submit a monthly return in the specified form by the 10th of the following month.

If the material received at concessional rate of duty is not used for intended purpose, manufacturer is liable to pay differential duty along with interest. Provisions of section 11A and section 11AB shall apply mutatis mutandis for effecting such recoveries.

If the manufacturer on receiving the subject goods finds them to be defective or damaged or unsuitable or surplus to his needs, he may return the subject goods to the original manufacturer of the goods. Such returned goods shall be added to the non duty paid stock of the manufacturer of the subject goods and dealt with accordingly.

If the goods are lost or destroyed by natural causes or by unavoidable accident during transport from place of procurement to the manufacturer's premises or from manufacturer's premises to the place of procurement (if goods are returned) or during handling or storage in the manufacturer's premises, it will not be treated as used for intended purpose. Consequently, differential duty and interest will become payable.

7. Rule 8 of the Central Excise Rules, 2002 prescribes the manner of payment of duty as under:
- (i) The duty on the goods shall be paid by the 5th day of the month following the month of removal except for the month of March.
 - (ii) In case of removal of goods during the month of March, the duty shall be paid by the 31st day of March.
 - (iii) If an assessee is availing the exemption under a notification based on the value of clearances in a financial year, the duty shall be paid by the 15th day of the following month except in case of removal of goods in March for which the duty shall be paid by the 31st day of March.
 - (iv) The duty liability shall be deemed to have been discharged, only if the amount payable is credited to the account of the Central Government by the specified date.

(v) If the assessee deposits the duty by cheque, the date of presentation of the cheque, in the bank designated by the Central Board of Excise & Customs for this purpose, shall be deemed to be the date on which the duty has been paid subject to the realisation of that cheque.

8. Section 11A of the Central Excise Act, 1944 provides that when any duty of excise:

- ◆ has not been levied or paid, or
- ◆ has been short-levied or short-paid, or
- ◆ erroneously refunded,

a Central Excise Officer may, within 1 year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

However, where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of

- ◆ fraud, collusion or
- ◆ any willful mis-statement or
- ◆ suppression of facts, or
- ◆ contravention of any of the provisions of the Central Excise Act, 1944 or of the rules made thereunder

with intent to evade payment of duty, by such person or his agent, the show cause notice can be served within five years from the relevant date.

Here, "relevant date" means,—

- (a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid—
 - (A) where under the rules a periodical return, showing particulars of the duty paid on excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;
 - (B) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
 - (C) in any other case, the date on which the duty is to be paid;
- (b) in a case where duty of excise is provisionally assessed, the date of adjustment of duty after the final assessment thereof;
- (c) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

Yes, an assessee can obtain waiver of such notice. Section 11A provides a mechanism for the same in order to facilitate early dispute resolution. Section 11A *inter alia* lays down that issue of show cause notice can be waived if the assessee deposits the duty on the basis of his own ascertainment of such duty or on the basis of duty ascertained by a Central Excise Officer, along with interest, before service of notice and informs the Central Excise Officer in writing. However, this waiver is possible only in respect of such cases where such non-levy/short levy or non-payment/short payment or erroneous refund of duty is by reason other than suppression of facts, fraud, collusion or willful misstatement with intent to evade payment of duty.

Normally, a proceeding starts with the issue of a show cause notice to the assessee and giving him an opportunity of representing his case.

9. (i) The eligible turnover for claiming exemption under the said notification is Rs.400 lakhs. The units whose value of clearances computed in accordance with *Notification No.8/2003* is less than or equal to 400 lakhs (4 crores) in the previous financial year are eligible for the benefit of exemption in the current financial year.
- (ii) When a manufacturer clears the goods from one or more factories, the turnover of all the factories have to be aggregated for the purpose of claiming exemption under the said notification.
- (iii) The value for the purposes of the said notification would mean the value fixed under section 4 or section 4A or the tariff value fixed under section 3(2).
- (iv) The units availing the benefit of said notification cannot avail CENVAT credit on inputs. However, they can avail CENVAT credit on capital goods but the same can be utilized for payment of duty on final products only after the turnover reaches Rs. 100 lakhs.
- (v) Paragraph 3A of the said notification lays down that for computing the value of clearances of all excisable goods for home consumption (Rs.400 lakhs), the following 'clearances of excisable goods without payment of duty' shall not be taken into account, namely-
 - (a) to a unit in the Free Trade Zone
 - (b) to a unit in the Special Economic Zone
 - (c) to a 100% Export Oriented Undertaking
 - (d) to a unit in the Electronic Hardware or Software Park
 - (e) supplies to United Nations or an international organization for their official use or supplied to projects funded by them on which exemption of duty is available in terms of *Notification No.108/95-CE dated August, 28, 1995*.

10. Section 35F of Central Excise Act provides that person desirous of appealing against the order shall, pending the appeal deposit the duty demanded or penalty levied. However, the appellate authority is empowered to waive such deposit if it is of the opinion that the deposit of duty or penalty will cause undue hardship to the person.

The hardship can be any hardship and not only financial hardship. The Apex Court in *ITO Cannanore v. M.K. Mohammed Kunhi (1969) 71 ITR 815 (SC)* has held that power of stay should be exercised when a strong prima facie case is made out. The principles for waiver of condition of pre-deposit, well settled by a catena of decisions of Supreme Court and High Courts are:

- (i) whether there is a prima facie case in favour of assessee
- (ii) the balance of convenience qua the deposit or otherwise
- (iii) irreparable loss, if any, to be caused in case stay is not granted
- (iv) safeguarding public interest

Even if a company is declared as sick company under BIFR, it has to obtain stay order as per requirements of section 35F – *Uptron India Ltd. v. CCE 1995 (76) ELT 77(T)*.

If goods are in the custody of revenue and have not been released, there is no justification for pre-deposit of duty and interest demanded – *Banwari Lal v. CC 2000 (122) ELT 383(T)*.

In *Asstt. CCE v. Dunlop India Ltd. 1985 (19) ELT 22 (SC)*, it was observed: 'Grant of stay should be an exception and not a rule'.

11. As per section 61(2)(ii) of the Customs Act, 1962, if goods (belonging to importer other than 100% EOU) are kept in the warehouse beyond a period of 90 days, interest shall be payable @15% p.a. on the amount of duty payable at the time of clearance of the goods. The interest shall be payable after the expiry of the said 90 days till the date of payment of duty.

In *Pratibha Processors v. UOI 1996 (88) ELT 12 (SC)*, the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section

61(2) of the Customs Act is solely dependant upon the exigibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil.

Further, *Circular No. 38/2005-Customs dated 28.09.2005* clarifies that if no duty is payable on clearances from the warehouses, then no interest is payable thereon.

Therefore, since in this case the goods have been re-exported without payment of duty, no interest is payable by 'X'.

12. (i) Rules and Regulations

Under section 156 of Customs Act, 1962, Central Government has been empowered to make rules and under section 157 Board (CBE&C) has been empowered to make regulations consistent with the provisions of the Act, to carry out the purposes of the Act. Various rules and regulations have been framed under these powers.

Rules have to be placed before the Parliament, while regulations framed by CBE&C are not required to be placed before the Parliament. However, it may be noted that both rules and regulations have statutory force. Both are 'subordinate legislations' and are legally valid and enforceable.

(ii) Dutiable goods and Imported goods

'Dutiable goods' means any goods which are chargeable to duty and on which duty has not been paid [Section 2(14) of the Customs Act, 1962]. Goods continue to be 'dutiable' till they are not cleared from the port. If duty rate specified in the Customs Tariff Act is 'Free', no duty is payable on such goods and hence these are not dutiable goods.

'Imported goods' means any goods brought into India from a place outside India but does not include goods that have been cleared for home consumption [Section 2(25) of the Customs Act, 1962]. Once goods are cleared by Customs authorities from customs area, they are no longer 'imported goods'.

13. Section 54 provides that:

- (1) where any goods imported into a customs station are intended for transshipment, the person-in-charge of conveyance will have to present a bill of transshipment to the proper officer in the prescribed form;
- (2) where any goods imported in to a customs station are mentioned in the import manifest or import report, as for transshipment to any place outside India, such goods will be allowed to be so transhipped without payment of duty. However, the goods should not have been prohibited under section 11 of the Customs Act.
- (3) where any goods imported into a customs station are mentioned in the import manifest or import report for transshipment to any major port (as defined in the Indian Ports Act, 1908) or to customs airport or to any other customs port or customs airport (as notified by the Board) or to any other customs station and the proper officer is satisfied about the bona-fide intention for transshipment of the goods to such customs station, the proper officer may allow the goods to be transhipped, without payment of duty.

14. According to section 28J of the Customs Act, 1962 the advance ruling shall be binding only on the applicant who has sought it.

In the given problem, in view of the aforesaid provision, Vaikunth cannot make use of the advance ruling pronounced in the identical case of his friend, Vaidehi. Vaikunth should obtain a ruling from the Authority of Advance Ruling by making an application under section 28(H)(3) along with a fee of Rs.2,500.

15. Section 17 of the Customs Act, 1962 stipulates that after Bill of Entry or Shipping Bill has been presented the proper officer may examine and test the goods. After such examination and testing, the proper officer will assess the duty leviable on such goods.

Under the first appraisalment system, the goods are examined first and then they are assessed. The appraiser normally resorts to this method if he is not able to make assessment on the basis

of declaration made in the Bill of Entry or Shipping Bill and the documents submitted along with them and deems that inspection is necessary. The importer himself may also request 'first check procedure', if he cannot give all required details regarding description/value of goods. He has to make request for first check examination at the time of filing of Bill of Entry

Under the second appraisal system, the information and documents furnished by the importer are adequate to determine the correct tariff nomenclature, tariff classification and valuation of the goods for purposes of assessment. In such a situation, physical examination of the goods or their weightment or testing is only a confirmatory check. Under this system, such an examination is carried out after assessment and collection of duty.

16. Rule 8 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 prescribes residual method of valuation. This rule is used when the value of imported goods cannot be determined under the provisions of any other rule. According to this rule, the value of imported goods should be determined using reasonable means consistent with the principles and general provisions of these rules and section 14(1) of the Customs Act and on the basis of the data available in India.

While determining the value under this method, the following should not be considered -

- (i) the selling price in India of the goods produced in India
- (ii) a system of accepting the highest of the two alternative values
- (iii) price of goods in the domestic market in the country of export
- (iv) the cost of production other than the computed value of identical goods or similar goods as determined in rule 7A
- (v) the price of the goods for export to a country other than India
- (vi) minimum customs values
- (vii) arbitrary or fictitious values

Thus, the value of imported goods determined in accordance with the provisions of Rule 8 should to the greatest extent possible, be based on previously determined customs values.

17. The refund of duty is paid to the applicant only when he has not passed on the burden of duty. In a case where the burden of duty is passed on, the refund amount is credited to the Consumer Welfare Fund. In the following circumstances the amount of duty and interest, if any, paid on such duty shall not be credited to the Consumer Welfare Fund, but shall be paid to the applicant:
 - (i) the amount of duty and interest, if any, paid on such duty (hereinafter referred to as amount) has been paid by the importer, but not passed on to the customer.
 - (ii) the amount has been paid on import by individuals for personal use. (The importer is not a trader. The goods are meant for his personal use.)
 - (iii) the amount has been borne by the buyers, but not passed on. (The applicant is not the importer. He bought the goods from the importer. The duty passed on by the importer has been borne by the buyer; but the latter has not passed it on to his customer).
 - (iv) the amount pertains to export duty refundable under section 26 to the exporter who has paid the duty. (Import duty paid by the importer is passed on to the Indian consumer whereas question of passing the burden of 'export duty' on to Indian consumer does not arise.)
 - (v) the amount pertains to drawback under section 74 and 75. (Drawback is an export incentive where the duty paid on import is paid back. Here also, by very nature, the question of passing on drawback to Indian consumer does not arise.)
 - (vi) the amount pertains to import duty borne by notified classes of buyers.
18. (i) Along with the first return following documents should be attached:
 - (i) copies of TR-6 challans which indicate the payment of service tax for the months/quarter covered in the half-yearly return;

- (ii) a memorandum in form ST-3A giving full details of the difference between the amount of provisional amount of tax deposited and the actual amount payable for each month. Form-ST-3A is to be attached only when the assessee opts for provisional payment of service tax.

Further, in case of first return, every assessee should furnish to the Superintendent of Central Excise, at the time of filing first half yearly return i.e. ST-3, a list of all accounts maintained by him in relation to service tax including memoranda received from his branch office.

- (ii) In case the due date of the filing of return i.e., either 25th October or 25th April falls on a public holiday, the assessee can file the return on the immediately succeeding working day.
 - (iii) Even if no services have been provided during a half year and no service tax is payable, the assessee has to file a Nil return within the prescribed time limit. Thus, 'X' should file a 'Nil' return for the half year April-September by 25th of October.
19. (i) Scope of survey and map-making service includes any service provided or to be provided to any person, by any other person, other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making. Thus, survey and map-making services provided by 'Survey of India', a government body shall not be liable to service tax.
- (ii) Residential complex for the purpose of taxable construction services *inter alia* means any complex comprising of a building or buildings, having more than twelve residential units. Therefore, construction services provided in respect of a residential complex having 12 residential units shall not be liable to service tax.
 - (iii) As per *M.F. (D.R.) Letter F.No.B1/6/2005-TRU dated 27.07.2005*, in certain professions, persons cannot practice unless they are registered with a statutory body and have paid fees which are prescribed by law. In such cases, the organization is not providing any service in the course of its business and it is merely carrying statutory functions. Since no service is provided, the question of levy of service tax does not arise. However, if there is no statutory requirement, service tax is liable to be paid. Thus, membership fee paid by chartered accountants to the Institute of Chartered Accountants of India shall not be liable to service tax.
 - (iv) Services provided by agencies of sending documents, materials, information or any other goods by addressing, stuffing, sealing, metering or mailing the envelope or packet for or on behalf of the client are within the scope of taxable mailing list compilation and mailing service. Thus, services provided by 'XY' Ltd. to 'AB' Ltd. shall be liable to service tax.
 - (v) The taxable cleaning service does not include cleaning services in respect of non-commercial buildings and premises thereof. Thus, floor and wall cleaning performed on the premises of non-commercial buildings shall not be liable to service tax.
20. (i) 67%
- (ii) 30%
 - (iii) 50%
 - (iv) 90%
 - (v) 67%

The exemption in all the above five cases shall be available only if:

- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of CENVAT Credit Rules, 2004; and
- (ii) the service provider has not availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003*.

PAPER – 8 : INDIRECT TAXES

QUESTIONS

MAY 2007

1. M/s. Alpha Pipes Ltd. is engaged in the manufacture of m.s. galvanized pipes. The Excise Department has asked M/s. Alpha Pipes Ltd. to include the cost of galvanization in the assessable value of the m.s. galvanized pipes for the purposes of determination of excise duty. M/s. Alpha Pipes Ltd. claims that as the process of galvanization does not amount to manufacture, the cost of galvanization is not includible in the assessable value of the said pipes made from H.R. coils.

Briefly discuss whether the stand taken by M/s. Alpha Ltd. is correct with reference to the provisions of the Central Excise, 1944.

2. On account of a prolonged strike in the factory of the ABC Ltd., it is decided to cut down the expenditure incurred on labour, packing, inventory advertising etc. One of the bulk buyers of the ABC Ltd.'s products starts advertising the products purchased from ABC Ltd. in order to boost its sales. The Assistant Commissioner of Excise contends that ABC Ltd. has gradually transferred the expenditure on sales promotion/advertisement of its products to the said buyer and thus, such expenditure should be treated as additional consideration and should be included in the assessable value of the ABC Ltd.'s products.

Examine the situation with the help of any decided case law.

3. M/s. Pure Prints processes grey fabric on its own account as well as the grey fabrics that are received from others (the merchant manufacturers) on job charge basis. For paying excise duty on the grey fabrics received from the merchant manufacturers, M/s. Pure Prints values the processed goods on the basis of the cost of grey fabrics plus the processing charges as well as its manufacturing expenses and profits relying upon the Supreme Court's decision in *Ujagar Prints 1989 (39) ELT 493 (S.C.)*.

A duty demand is raised against M/s. Pure Prints on the ground that M/s. Pure Prints and the merchant manufacturers are all firms and companies having a common management and control. Some of these group firms or companies sell grey fabric to M/s. Pure Prints who, after processing the fabrics, sells the same to some of the other group firms or companies. The latter ultimately sell the processed fabrics to independent dealers. The Assistant Commissioner of Excise claims that the price charged by the trader firms or companies from the independent dealers should be the assessable value of the processed fabrics.

Give your opinion on the issue.

4. Write a brief note on "submission of list of records" under rule 22(2) of the Central Excise Rules, 2002.
5. In what circumstances additional evidence can be produced by an appellant before the Commissioner (Appeals) of Central Excise?
6. Explain the procedure for valuing excisable goods that are to be sold from depot/branch or premises of a consignment agent under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
7. With reference to the Central Excise Act, 1944 and the rules made thereunder, comment on the following:
 - (i) P, a non-resident has sought an advance ruling as to whether the process intended to be undertaken by him would attract excise duty.
 - (ii) Indian Ordnance Factories are exempt from filing Annual Information Return.
 - (iii) CENVAT credit cannot be denied on explosives used for blasting the mines in order to excavate limestone which in turn is used in the manufacture of cement in the factory situated at some distance away from the mines.

8. Discuss the procedures and facilities for large tax payer as provided vide Rule 12BB of the Central Excise Rules, 2002.
9. Discuss whether adjudication proceedings shall conclude in respect of a person who voluntarily deposits the full excise duty demanded along with interest and penalty equal to 25% of the excise duty.
10. With reference to the Central Excise Act, 1944, briefly explain the provisions in respect of provisional attachment of property.
11. 'A' imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by 'A' in the present case.

Discuss whether 'A' could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

12. Write a brief note on the speaking order issued under section 17 of the Customs Act, 1962.
13. Mention the orders against which appeal lies to the Supreme Court under section 130E of the Customs Act.
14. Write a brief note on "remission of duty in case of volatile goods" under section 70 of the Customs Act, 1962.
15. With reference to the Customs Act, 1962, briefly discuss the provisions in respect of appointment of customs ports, airports, etc.
16. With reference to the Customs Act, 1962, discuss giving reasons whether the following statements are true or false:
 - (i) Interest is payable by the importer/exporter on the duty difference when the duty paid during the provisional assessment is less than the duty determined in the final assessment.
 - (ii) If an officer of customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has furnished false declaration/documents, he may arrest such person.
 - (iii) Penalty is leviable on a person who knowingly or intentionally signs any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act.
 - (iv) The title to imported goods in respect of which an offence appears to have been committed can be relinquished.
17. With reference to the Customs Act, 1962, discuss whether the applications involving evasion of duty by fraudulent means and misdeclaration can be entertained by the Settlement Commission?
18. Explain the reverse charge mechanism prescribed for levying service tax on import of services vide new section 66A introduced by the Finance Act, 2006.
19. The Finance Act, 2006 has substituted section 67 which provides for the valuation of taxable services with a new section. Briefly explain the new provisions.
20. With reference to the Finance Act, 1994 write short notes on:
 - (a) Sponsorship services provided to any body corporate or firm, other than sponsorship of sports events
 - (b) Sale of space or time for advertisement, other than in print media
 - (c) Transport of persons by cruise ship

SUGGESTED ANSWERS/HINTS

1. The facts of the case are similar to the case of *Siddhartha Tubes Ltd. v. CCE, Indore – 2006 (193) ELT 6 (SC)* wherein the Apex Court has held that galvanization cost is includible in assessable value of m.s. galvanized pipes even though 'galvanization' does not amount to manufacture. The Apex Court explained that the concepts of 'manufacture' and 'valuation' were two different and distinct concepts and the present case related to valuation. The Supreme Court stated that m.s. galvanized pipes were manufactured out of H.R. coils after passing through various processes (including galvanization). Such a process added to the quality of the product and increased the value of pipes. Process of galvanization was incidental to the manufacture of pipes and, therefore, cost of that process was rightly included in the assessable value.

Therefore, the stand taken by M/s. Alpha Pipes Ltd. is not correct in law.

2. The facts of the case are similar to the case of *Alembic Glass Industries Ltd. v. CCEx. 2006 (201) ELT 161 (SC)* wherein the Supreme Court has observed that where advertisement cost is incurred by the manufacturers/customers compulsorily or mandatorily and where manufacturer has enforceable right against the customers to insist on incurring of such advertisement expenditure by the customers, the advertisement cost would be includible in the assessable value.

The Apex Court stated that there was no finding that the appellant had any enforceable legal right. However, circumstances under which the buyer gave an assurance of bulk purchase and commenced advertising the appellant's product indicated that it was a package outlay for the revival of the appellant's factory arrived at between them as a part of cost reduction exercise of the appellant. There was no material to conclude that there was any tacit understanding between the appellant and the buyer. The factual position showed that the transaction was on principal to principal basis. Hence, the Supreme Court held that there was no scope for making any addition in the assessable value.

Therefore, the contention of the Assistant Commissioner of Excise is not correct.

3. The issue under consideration in this case is whether the principle of valuation enunciated in the case of *Ujagar Prints* can be applied in the case of related job worker too. The facts of the case are similar to the case of *CCEx., Indore v. S. Kumars Ltd. 2005 (190) ELT 145 (SC)* wherein the Supreme Court has observed that 'deemed price' principle of *Ujagar Prints 1989 (39) ELT 493 (S.C.)* does not apply to processor who is not independent. In other words, it applies only in cases where job work is done for an unrelated raw material supplier. In this case, the merchant manufacturers and the purchasing traders were merely extensions of the processor (assessee). The processor was not a mere processor but also a merchant manufacturer who purchased/manufactured the raw material, processed it and sold it himself in the wholesale market. In such a situation, the profit was not that of a processor but of a merchant manufacturer and a trader.

Thus, where the raw material supplier and the job worker are 'related persons' as defined in section 4, then valuation of the processed goods would be made on the basis of the price at which the raw material supplier sells the processed goods (after receiving them from the job-worker) to the unrelated buyer.

4. As per rule 22(2) of the Central Excise Rules, 2002, every assessee and first stage dealer and second stage dealer should submit to the officer empowered to visit and inspect under rule 22(1) a list in duplicate, of:
 - (i) all the records prepared and maintained for accounting of transaction in regard to receipt, purchase, manufacture, storage, sale or delivery of goods including inputs and capital goods;
 - (ii) all the records prepared and maintained for accounting of transaction in regard to payment for input services and their receipt or procurement; and
 - (iii) all the financial records and statements including trial balance or its equivalent.

5. Rule 5 of the Central Excise (Appeals) Rules, 2001 provides that the appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, in addition to evidence produced by him during the course of the proceedings before the adjudicating authority. However, additional evidence can be produced in the following circumstances –

- (a) where the adjudicating authority has refused to admit evidence which ought to have been admitted, or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by adjudicating authority, or
- (c) where the appellant was prevented by sufficient cause from producing, before the adjudicating authority any evidence which is relevant to any ground of appeal, or
- (d) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

The Commissioner (Appeals) has to record the reasons for admitting the additional evidence in writing. Further, the adjudicating authority or an officer authorized by the said authority has to be allowed a reasonable opportunity:

- (a) to examine the evidence or document or to cross examine any witness produced by the appellant; or
- (b) to produce any evidence or any witness in rebuttal of the additional evidence.

The power of the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal is independent of the above provisions relating to additional evidence and his powers will not be affected by the said provisions.

6. As per rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 where the excisable goods are

- not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as 'such other place') from where they are to be sold after their clearance from the place of removal and
- where the assessee and the buyer of the said goods are not related and
- the price is the sole consideration for the sale,

the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

7. (i) P can obtain the advance ruling. The Finance Act, 2006 has expanded the scope of the advance ruling by adding a new clause (f) in section 23C of the Central Excise Act, 1944 to provide that the advance ruling can be obtained in respect of determination of the liability to pay duties of excise on any goods under this Act.
- (ii) The assesses who pay less than Rs.100 lakhs as excise duty from account current during the financial year to which the Annual Financial Information Statement relates were exempt from filing of such annual information return vide *Notification No. 35/2004-CE (N.T.) dated 01.11.2004*. *Notification No.17/2006-CE (N.T.) dated 01.08.2006* has rescinded the above-mentioned notification and has extended the benefit of exemption of not filing Annual Information Return to Indian Ordnance Factories, Department of Defence Production and Ministry of Defence while keeping intact the exemption in case of assessee who pay duty of excise less than 100 lakh rupees from account current during the financial year to which Annual Financial Information Statement relates.
- (iii) The Supreme Court has held in the case of *Vikram Cement v. CCEx., Indore 2006 (194) ELT 3 (SC)* that CENVAT credit on inputs being explosives used for blasting mines to produce

limestone for use in manufacture of cement/clinkers in factory situated at some distance away from mines could not be denied on the ground that they were not used as inputs within the factory.

The above-mentioned decision has overruled the contrary opinion of the Supreme Court in the case of *J.K. Udaipur Udyog Ltd. 2004 (171) E.L.T. 289 (SC)*. In this case, the credit on explosives used for blasting mines was disallowed on the ground that the same were not used within the factory but in a mine which could not qualify to be a factory.

Further, it may be noted that in *Vikram Cement v. CCE 2006 (197) ELT 145 (SC)*, it has been held that CENVAT credit is available only when mines are captive mines i.e. they constitute one integrated unit with the main cement factory. Credit would not be available if the supplies from the mine are made to various cement factories of different assessees.

8. The provisions of rule 12BB of the Central Excise Rules, 2002 providing for procedures and facilities for the large taxpayer are:

(1) A large taxpayer may remove excisable goods (intermediate goods), except motor spirit, commonly known as petrol, high speed diesel and light diesel oil without payment of duties of excise under the cover of a transfer challan or invoice from any of his registered premises (sender premises) where such goods are produced, manufactured or warehoused to his other registered premises (recipient premises) for further use in the manufacture or production of such other excisable goods (subject goods). However, the large taxpayer cannot remove the intermediate goods without payment of duty to the premises of a first or second stage dealer. Such removal of intermediate goods without payment of duty from the sender premises to recipient premises shall be subject to the conditions that-

(a) the subject goods are manufactured or produced using the said intermediate goods and cleared on payment of appropriate duties of excise leviable thereon within a period of 6 months, from the date of receipt of the intermediate goods in the recipient premises; or

(b) the subject goods are manufactured or produced using the said intermediate goods and exported out of India, under bond or letter of undertaking within a period of 6 months, from the date of receipt of the intermediate goods in the recipient premises,

and that any other conditions prescribed by the Commissioner of Central Excise, Large Taxpayer Unit in this regard are satisfied.

The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large taxpayer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee.

However, if the subject goods manufactured or produced using the said intermediate goods are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of 6 months, duties of excise payable on such intermediate goods shall be paid by the recipient premises with interest in the manner and rate specified under section 11AB of the Act. The duty payable shall be the duty payable on the date and time of removal of the intermediate goods from the sender's premises. If the large taxpayer fails to pay such amount, it shall be recovered along with interest in the same manner as provided under section 11A and section 11AB respectively of the Act.

Further, if any duty of excise is payable on such intermediate goods and if the said duty is not payable on such subject goods, the said duty of excise as equivalent to the total amount payable on such intermediate goods along with interest under section 11AB of the Act shall be paid by the recipient premises. The duty payable shall be the duty payable on the date and time of removal of the intermediate goods from the sender's premises. If the large taxpayer fails to pay such amount, it shall be recovered along with interest in the same manner as provided under section 11A and section 11AB respectively of the Act.

It may be noted that the provisions of this sub-rule shall not be applicable if the recipient premises is availing following notifications:

- (i) No. 32/99-CE, dated 08.07.1999;
- (ii) No. 33/99-CE, dated 08.07.1999;
- (iii) No. 39/2001-CE, dated 31.07.2001;
- (iv) No. 56/2002-CE, dated 14.11.2002;
- (v) No. 57/2002-CE, dated 14.11.2002;
- (vi) No. 56/2003-CE, dated 25.06.2003; and
- (vii) No. 71/2003-CE, dated 09.09.2003

Also, the provisions of this sub-rule shall not apply in respect of a EOU or a unit located in a EHTP or STP.

(2) Where a registered premises of a large taxpayer manufacturing excisable goods has paid to the credit of Central Government any duty of excise in excess of duty of excise payable on account of arithmetical error, the said large taxpayer may adjust the excess duty so paid by him, against his duty liability for the subsequent period subject to the limitations prescribed under rule 3(7)(b) of the CENVAT Credit Rules, 2004.

However, such adjustment shall be admissible only if the said registered premises has not passed on the incidence of such excess duty so paid to any other person, and the consignee does not avail credit of such duty under the CENVAT Credit Rules, 2004.

(3) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said Unit.

(4) A large taxpayer shall submit the monthly returns, as prescribed under these rules, for each of the registered premises.

(5) A large taxpayer, on demand, may be required to make available the financial, production, stores and CENVAT credit records in electronic media, such as, compact disc for the purposes of carrying out any scrutiny and verification as may be necessary.

(6) A large taxpayer may, with intimation of at least 30 days in advance, opt out to be a large taxpayer from the first day of the following financial year.

(7) The provisions of other rules of Central Excise Rules, 2002 in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer.

9. The Taxation Laws Amendment Act, 2006 has inserted a new sub-section (1A) in section 11A of the Central Excise Act, 1944. The new sub-section provides an option to the person or his agent to whom a notice has been served by the Central Excise Officer for short/non levy or short/non payment or erroneous refund of excise duty by reason of fraud, collusion, or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Central Excise Act or the rules made thereunder with an intent to evade payment of excise duty.

Such person or his agent may pay the excise duty in full or in part as may be accepted by him, including the interest payable thereon under section 11AB and penalty equal to 25% of the excise duty specified in the notice or the excise duty so accepted by such person within 30 days of the receipt of the notice.

Further, a proviso has been inserted in sub-section (2) of section 11A which lays down that where such person has paid the excise duty in full together with interest and penalty, the proceedings in respect of such person and other persons to whom notices have been served shall be deemed to have been concluded in respect of the matters stated therein. The proceedings shall conclude notwithstanding anything contained in sections 9, 9A and 9AA.

10. A new section 11DDA has been inserted by the Taxation Laws Amendment Act, 2006 in the Central Excise Act, 1944 which provides for provisional attachment of the property. The provisions of this section are:

- (1) During the pendency of any proceeding under section 11A or section 11D, the Central Excise Officer may provisionally attach any property belonging to the person on whom notice is served under sub-section (1) of section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.
- (2) Such an attachment shall be done only when the Central Excise Officer is of the opinion that the attachment is necessary for the purpose of protecting the interests of revenue. However, a previous approval of the Commissioner of Central Excise, by order in writing, is a prerequisite for such provisional attachment.
- (3) Such an attachment can be done for a period of 6 months. This period will commence from the date of the order of the Commissioner of Central Excise permitting such provisional attachment.
- (4) However, this period may be extended by the Chief Commissioner of Central Excise by such further period or periods as he thinks fit. The reasons for such an extension shall be recorded in writing. It is to be noted that the total period of extension in any case shall not exceed 2 years.
- (5) If an application for settlement of a case under section 32E is made to the Settlement Commission, the period commencing from the date on which such an application is made and ending with the date on which an order under section 32F(1) is made shall be excluded from the extended period mentioned in point (4).

11. The facts of the case are similar to the case of *BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004) 174 ELT 5 (SC)* wherein the Supreme Court has held that the benefit of the notifications can not be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were 'intended for use' in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".

Therefore, 'A' can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

12. Section 17 of the Customs Act, 1962 governs the provisions in respect of assessment. A new sub-section (5) has been inserted after sub-section (4) in section 17 vide the Taxation Laws Amendment Act, 2006. The new sub-section (5) lays down that where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within 15 days from the date of assessment of the bill of entry or the shipping bill, as the case may be.

13. As per section 130E of the Customs Act, an appeal shall lie to the Supreme Court from-

- (a) any judgment of High Court delivered
 - (i) in an appeal made under section 130, or
 - (ii) on a reference made under section 130 by the Appellate Tribunal before 01.07.2003, or
 - (iii) on a reference made u/s 130 A,

if the High Court certifies the case to be fit for appeal to the Supreme Court. Such certification can be done by the High Court on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the judgement.

(b) any order of the Appellate Tribunal having relation to the determination of rate of customs duty or value of goods, among other things.

14. Section 70 of the Customs Act, 1962 provides for the remission of duty in case of shortage of volatile goods, which are warehoused. The Assistant/Deputy Commissioner of Customs is empowered to remit the import duty leviable on such deficiency, if following conditions are satisfied:

- (i) the goods should be found deficient in quantity at the time of removal from the warehouse;
- (ii) the deficiency should be on account of natural loss, i.e. evaporation etc.
- (iii) these provisions under section 70(1) are applicable only to such specified warehoused goods as notified under section 70(2) e.g. aviation fuel, motor spirit etc. petroleum products kept in tanks, liquid helium gas kept in containers, wine etc. kept in casks.

15. Section 7 of the Customs Act, 1962 contains the provisions in respect of appointment of customs ports, airports, etc. Section 7 lays down that the Board may, by notification in the Official Gazette, appoint -

- (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
- (b) the places which alone shall be inland container depots for the unloading of imported goods and the loading of export goods or any class of such goods;
- (c) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- (d) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- (e) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

16. (i) True. Section 18 of the Customs Act has been amended by the Taxation Laws Amendment Act, 2006. A new sub-section (3) has been inserted in section 18 to levy interest on the duty difference between the provisional and final assessment of duty. Sub-section (3) provides that the importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order. The interest shall be payable at the rate fixed by the Central Government under section 28AB. This interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(ii) True. Section 104 of the Customs Act grants the power of arrest to officer of customs. Sub-section (1) of section 104 has been substituted by a new sub-section vide the Taxation Laws Amendment Act, 2006. The new sub-section lays down that if an officer of customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. Thus, arrest can also be made in the cases of furnishing false declaration/documents, obstructing customs officers in exercising their powers and making preparation to export any goods in contravention of the provisions of the Customs Act. Further, any officer of customs permitting or doing or abstaining from doing or concealing or conniving at any act or thing whereby any fraudulent export is effected or any duty of customs leviable on any goods is or may be evaded can also be arrested.

(iii) True. Section 114AA has been inserted by the Taxation Laws Amendment Act, 2006 which lays down that if a person knowingly or intentionally

- makes,
- signs or uses, or
- causes to be made,
- signed or used,

any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, shall be liable to a penalty.

(iv) False. The Finance Act, 2006 has inserted a proviso in section 23(2) of the Customs Act, 1962 to ensure that the provisions relating to relinquishment of title to imported goods are not available to the owner of such imported goods, regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

17. This issue has been addressed by the High Court in the case of *Tata Teleservices (Maharashtra) Ltd. v. Union of India 2006 (201) ELT 529 (Bom.)* in the following manner:

The assessee had evaded duty and had applied for settlement in the Settlement Commission. The contention of the department was that the companies or the persons, who evaded the customs duty fraudulently, could not avail of the benefit of approaching the Settlement Commission. It was submitted by the department that the Settlement Commission had a limited jurisdiction of accepting only the cases of short levy on account of misclassification or otherwise and not other cases.

The High Court observed that the Settlement Commission had wide jurisdiction to entertain all kinds of settlement claim applications, with liberty to reject the same even at preliminary stage, depending upon the nature, circumstances and complexity of a case. However, a case would be accepted by the Settlement Commission only if the mandatory requirements of:

- (i) filing Bill of Entry/Shipping Bill and issuance of a show cause notice in relation to such a Bill of Entry/Shipping Bill
- (ii) making a full and true disclosure of duty liability which was not disclosed earlier before the proper officer and the manner in which such liability had been incurred and additional amount of customs duty accepted to be payable by the assessee and
- (iii) furnishing such other particulars as may be specified by the rules including the particulars of such dutiable goods in respect of which the assessee admits short levy on account of misclassification or otherwise of goods

have been fulfilled.

The High Court observed that the jurisdiction of the Settlement Commission was not restricted only to cases of short levy on account of misclassification or otherwise. The object of introducing Chapter XIVA to the Customs Act, 1962 was to resolve all disputes so as to collect revenue for the department. The High Court held that if interpretation of section 127B was restricted to mean only bona fide cases, then there would be no scope of unearthing revenue. It was pointed out by the High Court that earlier part of section 127B *ibid* laid down the jurisdiction and only the latter part dealt with the rules whereby certain details were to be provided. Therefore, it was held by the High Court that the argument with regard to short levy due to misclassification or otherwise was purely a procedural one and there was no need to decide the same.

18. A new section 66A has been inserted with effect from 18.04.2006 after section 66 vide the Finance Act, 2006, which provides a separate mechanism for levying service tax on services received from outside India. Consequently, the explanation below clause (105) in section 65, which levied service tax on services received from outside India, has been deleted. New section 66A provides that:

(1) Where any service specified in clause (105) of section 65 is,—

- (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and
- (b) received by a person (recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

such service shall be a taxable service. Such service shall be treated as if the recipient had himself provided the service in India. Accordingly all the provisions of Chapter V of the Finance Act, 1994 shall apply to such services.

- (2) However, a service received by an individual for a purpose other than for use in any business or commerce shall not be a taxable service.
- (3) If the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.
- (4) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section. In other words, permanent establishment in India and the permanent establishment outside India shall be treated as two separate legal persons for taxation purposes.
- (5) A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.
- (6) In relation to a body corporate, the place where it is incorporated or otherwise legally constituted shall be its usual place of residence.

19. The new section 67 (effective from 18.04.2006) provides that:

- (1) If the consideration for a taxable service is in terms of money, the value of such service shall be the gross amount charged by the service provider for such service provided or to be provided by him.
- (2) If the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.
- (3) If the consideration for a taxable service is not ascertainable, the value of such service shall be the amount as may be determined in the prescribed manner.
- (4) Consideration includes any amount that is payable for the taxable services provided or to be provided.
- (5) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.
- (6) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
- (7) Subject to the provisions mentioned in points (1), (2), (3), (5) and (6) above, the value of a taxable service shall be determined in such manner as may be prescribed.
- (8) A consequential amendment has been made in section 94 by inserting clause (aa) after clause (a). Section 94 contains the matters on which the Central Government may, by notification in the Official Gazette, make rules. The clause (aa) empowers Central Government to make rules for the determination of amount and value of taxable service under section 67.

- (9) Money includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value.
- (10) 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.
20. (a) Sponsorship service provided to any body corporate or firm, other than sponsorship of sports events has been introduced by the Finance Act, 2006 with effect from 01.05.2006. Sponsorship includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors [Section 65(99a)].

The scope of this taxable service includes any service provided or to be provided to any body corporate or firm, by any person receiving sponsorship, in relation to such sponsorship, in any manner, but does not include services in relation to sponsorship of sports events [Section 65(105)(zzzn)].

- (b) The service of sale of space or time for advertisement, other than in print media has been introduced by the Finance Act, 2006 with effect from 01.05.2006. The scope of this taxable service includes any service provided or to be provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organisation.

Explanation 1.—For the purposes of this sub-clause, “sale of space or time for advertisement” includes,—

- (i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;
- (ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation; and
- (iii) aerial advertising

Explanation 2.—For the purposes of this sub-clause, “print media” means “book” and “newspaper” as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 [Section 65(105)(zzzm)].

- (c) The service of transport of persons by cruise ship has been introduced by the Finance Act, 2006 with effect from 01.05.2006. The scope of this taxable service includes any service provided or to be provided to any person, by any other person, in relation to transport of such person embarking from any port or other port in India, by a cruise ship.

Explanation.—For the purposes of this sub-clause, “cruise ship” means a ship or vessel used for providing recreational or pleasure trips, but does not include a ship or vessel used for private purposes or a ship or vessel of, or less than, 15 net tonnage [Section 65(105)(zzzv)].

IMPORTANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2006 TO 31.10.2006

Students may note that the Study Material for Indirect taxes contains all the relevant amendments made by Finance Act, 2006. Further, Circulars/Notifications issued up to 30.04.2006 have also been incorporated therein. The following are the amendments which have been made till 31.10.2006. It may carefully be noted that for the students appearing in May 2007 the amendments made by Notifications, Circulars etc. up to 31.10.2006, as detailed hereunder, are relevant.

PAPER – 8 : INDIRECT TAXES

QUESTIONS

Nov 2007

1. With reference to the Central Excise Act, 1944, briefly explain the following:
 - (a) Adjudicating Authority
 - (b) Wholesale dealer
2. Discuss the provisions of the Central Excise Act, 1944 relating to publication of names of persons in certain cases.
3. 'A' manufactures "Pulsator". It received item "Bush" from M/s. Electrolux Voltas Limited. While determining assessable value of the product "Pulsator", 'A' did not include value of "Bush". A show-cause notice is issued to 'A' by the Assistant Commissioner of Excise demanding duty of Rs.75,000 and equivalent amount of penalty under section 11AC of the Central Excise Act, 1944. The Tribunal confirmed the demand. However, it reduced the penalty to Rs.10,000 on the ground that what is laid down in section 11AC is only the maximum amount of penalty and not the minimum.

Do you think the CESTAT is right in reducing the amount of penalty leviable under section 11AC of the Central Excise Act, 1944 without reducing the duty amount? Discuss.
4. Discuss the provisions relating to valuation in case of job-work as provided under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
5. The Commissioner (Appeals) or the Appellate Tribunal may dispense with the pre-deposit demanded under section 35F of the Central Excise Act, 1944 if such deposit would cause undue hardship to the assessee. Discuss with respect to recent decided case laws.
6. With reference to the Central Excise Rules, 2002, comment on the following taking into account the position as on 15.04.2007:
 - (i) E-payment of excise duty is mandatory for the assessee who has deposited Rs.50 lakh or more as excise duty in cash for the financial year 2006-07.
 - (ii) The Deputy or Assistant Commissioner of Central Excise can remit the duty payable between Rs.1,000 to Rs.2,500.
 - (iii) Mr. A issues an excise duty invoice without delivery of goods mentioned therein. Mr. A shall not be liable to any penalty.
 - (iv) For the purposes of payment of duty, the expressions 'duty' or 'duty of excise' also include the amount payable in terms of the CENVAT Credit Rules, 2004.
7. With reference to the CENVAT Credit Rules, 2004, discuss whether the following are true or false taking into account the position as on 15.04.2007:
 - (i) It is compulsory for all kind of service providers providing taxable as well as exempted services and not maintaining separate input/input services credit accounts to utilize CENVAT credit only to the extent of 20% of service tax payable on taxable output service.
 - (ii) CENVAT credit can be taken only if all the particulars required under the Central Excise Rules, 2002 or Service Tax Rules, 1994 are contained in the duty paying document.
 - (iii) It is necessary for the manufacturer of excisable goods to take all reasonable steps to ensure that the input or capital goods in respect of which he has taken the CENVAT credit are goods on which the appropriate excise duty as indicated in the accompanying documents has been paid by the manufacturer of such input or capital goods.
 - (iv) Mr.B takes CENVAT credit on inputs received for use in the production of final products manufactured by him. However, the said final product gets exempted absolutely under section 5A of the Central Excise Act, 1944. Accordingly, Mr.B has to pay an amount equivalent to the CENVAT credit in respect of the inputs lying in stock or in process or contained in the final product lying in stock.

8. With reference to rule 12CC of the Central Excise Rules, 2002, explain the provisions relating to imposition of restrictions on a manufacturer, first stage and second stage dealer or an exporter.
9. Can a manufacturer remove excisable goods manufactured by him for carrying out a process not amounting to manufacture to any other premises, without payment of duty? Discuss.
10. Write a brief note on effect of amendments etc. of rules, notifications or orders under section 38A of the Central Excise Act, 1944.
11. Briefly explain the following with reference to the Customs Act, 1962:

- (i) Goods
- (ii) Conveyance

12. A product is liable to 16% basic excise duty. However, a notification has granted exemption to the said product whereby the rate of basic excise duty has been reduced from 16% to 8%. Further, a special excise duty @ 5% is also leviable on such product by virtue of a Finance Act. This product has been imported by 'Y' from Brazil. Basic customs duty is leviable @ 8%.

You have to determine the rate of additional duty of customs (CVD) leviable, if any, on such product.

13. 'X' imported capital goods during the period April-May 2005 under the Project Import scheme and deposited Rs.50,00,000 as security deposit. The goods were cleared after provisional assessment. However, as per the final assessment order dated 13.08.2005, the duty worked out to be only Rs.10,00,000. Accordingly, 'X' became entitled to refund and a refund order of Rs.40,00,000 was issued on 31.01.2006. The cheque of the said amount was issued to 'X' on 06.02.2006. As regards, the amount of Rs.10,00,000 retained by the department, a challan was prepared on 09.02.2006, but the said amount was actually credited to the Government Treasury only on 12.02.2006.

Subsequently, on 09.08.2006, a show cause notice was issued to 'X' on the ground that the audit party has observed that the capital goods imported by 'X' were not the capital goods eligible for Project Import Scheme.

'X' contends that the show cause notice is time barred as the limitation period of 6 months under section 28 of the Customs Act commenced from 07.02.2006 i.e., after the cheque was issued and there was nothing further to be adjusted. However, the Customs Department claims that the relevant date of adjustment of duty for the purpose of computing the limitation period under section 28 of the Customs Act would be the date on which the duty amount of Rs.10,00,000 was actually credited to the Government Treasury. Therefore, period of 6 months would commence from 13.02.2006.

Give your views on the situation with the help of a decided case law, if any.

14. When can the transaction value be accepted under rule 4(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988? Discuss.
15. Write a note on power of the Central Board of Excise and Customs to make regulations under section 84 of the Customs Act, 1962.
16. State the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act, 1962.
17. Explain briefly the provisions regarding drawback allowable on re-export of duty paid goods as such.
18. (i) Explain whether the infrastructural support services provided by ABX Ltd. shall be liable to service tax.
(ii) Discuss whether service provided by a money changer in relation to exchange of foreign currency is a forex broking service chargeable to service tax under 'banking and other financial services'.

- (iii) Mr. Ajay, a chartered accountant represents his client Mr. Vijay in a case relating to evasion of income-tax before the Income-tax Appellate Tribunal. Mr. Ajay charges Rs.25,000 as consideration for this service. Discuss whether Mr. Ajay is liable to pay service tax on such service.
- 19. With reference to the Service Tax Rules, 1994, discuss the procedures and facilities for a large tax payer.
- 20. Write short notes on:
 - (a) Registrar to an issue's services
 - (b) Public relations services

SUGGESTED ANSWERS/HINTS

1. (a) According to section 2(a) of the Central Excise Act, 1944, adjudicating authority means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, Commissioner of Central Excise (Appeals) or Appellate Tribunal.
 - (b) According to section 2(k) of the Central Excise Act, 1944, wholesale dealer means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.
 2. Section 37E (w.e.f. 13.07.2006) inserted by the Taxation Laws (Amendment) Act, 2006 provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest. The provisions are:
 - (1) The Central Government may publish name of any person and any other particulars relating to any proceedings or prosecution in respect of such person if it is of the opinion that it is necessary or expedient in the public interest to do so. The Government can do the publication in such manner as it thinks fit.
 - (2) The publication shall be made in relation to any penalty only after the time for presenting an appeal to the Commissioner (Appeals) or to the Appellate Tribunal expires without an appeal being presented or the appeal, if presented, gets disposed of.
 - (3) In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.
 3. The facts of the case are similar to the case of *CCEx. v. Illpea Paramount Pvt. Ltd. 2006 (204) ELT 22 (P & H)*. In this case, the High Court observed that section 11AC leaves no room for discretion in the quantum of penalty to be imposed. Section 11AC *inter alia* provides that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined.
- The High Court observed that if the situation demanded penalty, the same had to be equal to the amount of duty. The High Court categorically stated that penalty was not to be levied mechanically. The statute itself laid down that penalty was to be levied only where duty was short-levied or short-paid or erroneously refunded by reason of "fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules." The High Court explained that the element of *mens rea* has been statutorily insisted upon.

Therefore, the High Court held that once *mens rea* has been established, the quantum is not left to the discretion of the authority.

Thus, CESTAT is not right in reducing the amount of penalty.

4. With effect from 01.04.2007, a new rule 10A has been inserted in the Central Excise Valuation (Determination of Excisable Goods) Rules, 2000 vide *Notification No. 9/2007 CE (NT) dated 01.03.2007* to provide for valuation in case of job-work. The rule provides that where goods are manufactured by a job-worker on behalf of a person (commonly known as principal manufacturer), the value for payment of excise duty would be based on the sale value at which the principal manufacturer sells the goods, as against the present provision where the value is taken as cost of raw material plus the job charges.

The rule lays down that where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then,-

- (i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer.
- (ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker.
- (iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall *mutatis mutandis* apply for determination of the value of the excisable goods.

The cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Here, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.

5. Section 35F of the Central Excise Act provides that person desirous of appealing against an order shall, pending the appeal, deposit the duty demanded or penalty levied. However, the appellate authority is empowered to grant stay/waiver of such pre-deposit if it is of the opinion that the deposit of duty or penalty will cause undue hardship to such person.

The Supreme Court in the case of *Benara Valves Ltd. v. CCEX. 2006 (204) ELT 513 (SC)* has observed that *prima facie* case alone is not enough for passing an interim order granting stay/waiver of pre-deposit. However, if the sustainability of the demand itself is in doubt, stay could be granted. The Supreme Court stated that the petition for stay should not be disposed of in routine manner without thinking of the consequences flowing from the order requiring deposit of full or part of demand. The Apex Court elaborated that there could be no rule of universal application in such matters and order should be passed keeping in view the factual scenario involved.

The Supreme Court explained that merely because it has indicated some principles to grant stay/waiver of pre-deposit through its decisions in various case laws, orders which are not sustainable on grounds of fairness, legality and public interest cannot be passed. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake citizen's faith in the impartiality of public administration, interim relief can be given.

Further, the Apex Court stated that mere *assertion* of the undue hardship is not sufficient; it has to be *established* by the applicant for obtaining stay of pre-deposit. Undue hardship is related to economic hardship. The Supreme Court explained that word undue adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant.

6. (i) With effect from 01.04.2007, *Notification No. 8/2007 CE (NT) dated 01.03.2007* has made e-payment mandatory for payment of duty by all assessees who have paid excise duty of Rs.50 lakh or more in cash during the preceding financial year. This has been done by adding a third proviso in rule 8(1).
 - (ii) Rule 21 has been amended vide *Notification No. 8/2007 CE (NT) dated 01.03.2007* so as to increase the power of remission given to various officers of central excise. The Deputy/Assistant Commissioner of Central Excise is now empowered to remit the duty payable between Rs.10,000 to Rs.1,00,000. Earlier this range was Rs.1,000 to Rs.2,500.
 - (iii) A new sub-rule (2) has been inserted in rule 26 vide *Notification No. 8/2007 CE (NT) dated 01.03.2007* to provide for penal action against the person who issues:
 - (i) excise duty invoice without delivery of goods mentioned therein or abets in making such invoice; or
 - (ii) any other document or abets in making such document,

on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefits like CENVAT credit or refund.

Such person shall be liable to a penalty not exceeding the amount of such benefit or Rs.5,000 whichever is greater.

Hence, Mr. A shall be liable to penalty.
 - (iv) An explanation has been inserted after rule 8(4) vide *Notification No. 8/2007 CE (NT) dated 01.03.2007* to provide that for the purposes of payment of duty, the expressions 'duty' or 'duty of excise' shall also include the 'amount' payable in terms of the CENVAT Credit Rules, 2004. Therefore, all 'amounts' payable (like payment under rule 6(3) of the CENVAT Credit Rules, 2004 etc.) should be paid along with duty payable by 5th or 15th of the next month.
7. (i) *False*. Clause (d) has been inserted in rule 6(3) vide *Notification No. 10/2007 CE (NT) dated 01.03.2007* so as to provide an option to general insurance service providers providing taxable as well as exempted insurance services and not maintaining separate input/input services credit accounts to utilise CENVAT credit proportionate to the inputs and input services used in providing taxable services. Earlier such service provider could utilise the credit only to the extent of 20% of service tax payable on taxable output service.

The scheme is optional and is subject to fulfillment of certain conditions. The scheme has come into effect from 1st April, 2007. It may be noted that the scheme is applicable only to general insurance services referred to in section 65(105)(d) of the Finance Act, 1994.

 - (ii) *True*. Sub-rule (2) of rule 9 has been amended vide *Notification No. 10/2007 CE (NT) dated 01.03.2007* to provide that CENVAT credit can be taken only if *all the particulars* as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994 are available on the invoice or other duty-paying document.

However, the Deputy/Assistant Commissioner of Central Excise may allow the CENVAT credit even if the said document does not contain all the particulars but contains certain specified information and the Deputy/Assistant Commissioner is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the accounts of the receiver.

 - (iii) *False*. Sub-rule (3) of rule 9 which prescribed the above-mentioned treatment has been omitted vide *Notification No. 10/2007 CE (NT) dated 01.03.2007*. With the deletion of the above said rule, it implies that, now, the person availing CENVAT credit is not responsible to

ensure that duty paid to manufacturer of inputs or capital goods has been deposited by such manufacturer.

(iv) *True. Notification No. 10/2007 CE (NT) dated 01.03.2007* has inserted new sub-rule (3) in rule 11 to provide that a manufacturer shall be required to pay an amount equivalent to the CENVAT credit in respect of inputs received for use in the manufacture of the final product which is lying in stock or in process or is contained in the final product lying in stock, if,-

- (i) he opts for exemption from the whole of the excise duty leviable on the said final product under a notification issued under section 5A of the Central Excise Act; or
- (ii) the said final product has been exempted absolutely under section 5A of the Act.

If after deducting the said amount from the balance of CENVAT credit (if any lying in his credit) there still remains a balance, it shall lapse. Such balance shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

8. Rule 12CC provides for power to impose restrictions in certain types of cases. It empowers the Central Government to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter. The Central Government can exercise such powers where having regard to the extent of evasion of duty, nature and type of offences or any other relevant factors, it is of the opinion that in order to prevent evasion and default in payment of excise duty, it is necessary in the public interest to impose restrictions. The nature of restrictions, (e.g. suspension of registration in case of a dealer) types of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board may be specified by a notification in the Official Gazette. The provisions of this rule shall not be subject to anything contained in the Central Excise Rules, 2002.

9. Rule 16C of the Central Excise Rules, 2002 provides that the Commissioner may allow a manufacturer to remove excisable goods manufactured by him for carrying out test or any process not amounting to manufacture to any other premises without payment of duty. The said other premises may be registered or unregistered. After such tests or any such other process are carried out, the Commissioner may allow,-

- (a) bringing back of such goods to the said factory without payment of duty, for subsequent clearance for home consumption or export, as the case may be, or
- (b) removal of such goods from the said other premises, for home consumption on payment of duty leviable thereon or without payment of duty for export, as the case may be.

However, this rule shall not apply to the goods known as "prototypes" which are sent out for trial or development test.

10. Where any rule, notification or order made or issued under the Central Excise Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not:

- (a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or
- (b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or

- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,
and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

11. (i) As per section 2(22) of the Customs Act, 1962 'goods' includes-

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments;
- (e) any other kind of movable property.

- (ii) As per section 2(9) of the Customs Act, 1962 conveyance is defined to include a vessel, an aircraft and a vehicle. As the Customs Act seeks to consolidate the laws relating to levy of duties on import and export of goods, it is necessary to cover all the modes of transport. Therefore, the Act uses the term conveyance with an inclusive definition covering all the 3 modes of transport i.e., water, air and land. The specific terms are: vessel (by sea), aircraft (by air) and vehicle (by land).

12. Section 3(1) of the Customs Tariff Act, 1975 provides that any article which is imported into India shall, in addition, be liable to a duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. This duty shall be called as additional duty (CVD). If such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Since, the CVD should be equal to the excise duty for the time being leviable on a like article if produced or manufactured in India, therefore, the rate of CVD will be 8% basic excise duty (effective rate after exemption) and 5% special excise duty.

Special excise duty levied by the Finance Act would also be considered for computing the rate of CVD as the Supreme Court in the case of *J.K. Synthetics Ltd. v. Union of India* 2006 (204) ELT 369 (Del.) has held that the purpose of levying CVD would be defeated if the rate had to be restricted to basic excise duty when the local manufacturers have to compulsorily pay the special excise duty as well. If special excise duty is not considered while levying CVD, the CVD so levied would not counterbalance the excise duty payable by the local manufacturers on a like product in order to ensure a level playing field.

The Supreme Court elaborated that the expression "excise duty for the time being leviable" is not qualified by any word which limits the excise duty to be payable only under the Central Excise Act, 1944. In other words, it can also include a special duty of excise payable in terms of the Finance Act.

13. Section 28(3)(b) *inter alia* provides that the relevant date for issuing show cause notice in a case where duty is provisionally assessed under section 18 is the date of adjustment of duty after the final assessment thereof. The facts of the given case are similar to the case of *Gujarat Alkalies & Chemicals Ltd. v. CCus. (Import)* 2006 (204) ELT 237 (Bom.) wherein the High Court has observed that as per section 18(2)(a) of the Customs Act, 1962, the excess or shortfall in duty is determined only after the finally assessed duty is adjusted from the provisionally paid duty. It is only after such adjustment, the obligation to make good the deficiency or entitlement for refund arises.

The High Court explained that issuing the refund cheque and crediting the duty amount equivalent to the duty finally assessed into the Government Treasury are the two steps to be taken after the adjustment of duty. It was held by the High Court that the relevant date of adjustment of duty would be the date on which the refund cheque is issued or the date on which the amount is

credited into the Government Treasury, whichever is earlier. Thus, where the proper officer in implementation of the refund order issues the refund cheque first and then credits the duty amount into the Government Treasury, then, the relevant date of adjustment of duty would be the date on which the refund cheque is issued. Similarly, if the amount of duty is credited into the Government Treasury first and thereafter the refund cheque is issued, then, the relevant date of adjustment of duty would be the date on which the amount is credited into the Government Treasury.

Therefore, in the given case since the refund cheque is issued before (06.02.2006) the duty amount is credited into the Government treasury (12.02.2006), the date of issue of refund cheque i.e. 06.02.2006 would be the relevant date of adjustment of duty thus making the show cause notice time barred.

14. The transaction value can be accepted under rule 4(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 if:
 - (a) the sale is in the ordinary course of trade under fully competitive conditions;
 - (b) the sale does not involve any abnormal discount or reduction from the ordinary competitive price;
 - (c) the sale does not involve special discounts limited to exclusive agents;
 - (d) objective and quantifiable data exist with regard to the adjustments required to be made, under the provisions of rule 9, to the transaction value;
 - (e) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which —
 - (i) are imposed or required by law or by the public authorities in India; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
 - (f) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
 - (g) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and
 - (h) the buyer and seller are not related.
15. Section 84 empowers the Board to make regulations providing for
 - (a) the form and manner in which an entry may be made in respect of any specified class of goods imported or to be exported by post, other than goods which are accompanied by a label or declaration containing the description, quantity and value thereof;
 - (b) the examination, assessment to duty, and clearance of goods imported or to be exported by post;
 - (c) the transshipment or transit of goods imported by post from one Customs station to another or to a place outside India.
16. Section 72 of the Customs Act provides that in any of the following circumstances the goods shall be considered to have been removed improperly from a warehouse –
 - (a) where any warehoused goods are removed from a warehouse in contravention of section 71 of the Customs Act;
 - (b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;
 - (c) where any warehoused good have been taken under section 64 as samples without payment of duty;

- (d) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer.
17. For allowing duty drawback on re-export of duty paid goods, sub-section (1) of section 74 of the Customs Act, 1962 provides that:
- (i) the goods should have been imported into India;
 - (ii) the import duty should have been paid thereon;
 - (iii) the goods should be capable of being easily identified as the goods, which were originally imported;
 - (iv) the goods should have been entered for export either on a shipping bill through sea or air or on a bill of export through land, or as baggage, or through post and the proper officer, after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export, should have permitted clearance of such goods for export;
 - (v) the goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
 - (vi) the goods should have been entered for export within two years from the date of payment of duty on the importation thereof.

However, in any particular case, the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period, as it may deem fit. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback.

18. (i) With effect from 01.05.2006, business support services have been made chargeable to service tax vide Finance Act, 2006 under sub-clause (zzzq) of clause (105) of section 65 of the Finance Act, 1994. Business support services *inter alia* include infrastructural support services. Thus, with effect from 01.05.2006 infrastructural support services provided by ABX Ltd. shall be liable to service tax.
- (ii) Service tax is leviable on foreign exchange (forex) broking service under the category of 'banking and other financial service'. In terms of the provisions of the Finance Act, 1994, foreign exchange broker includes a money changer (authorized dealer of foreign exchange). *Circular No. 92/3/2007 ST dated 12.03.2007* has clarified that 'money changing' and 'foreign exchange broking' are two distinct activities. Money changing is an activity of sale and purchase of foreign exchange at the prevalent market rates. On the other hand, foreign exchange broking is the activity performed as an intermediary, on a commission/brokerage basis, for facilitating the clients who wish to buy or sell foreign exchange. The foreign exchange broker providing foreign exchange broking service does not hold title to the foreign exchange. Accordingly, service tax is not leviable on money changing *per se*, as such activity does not fall under the category of foreign exchange broking.
- (iii) Any service provided to a client by a chartered accountant in his professional capacity is liable to service tax under section 65(105)(s) of the Finance Act, 1994. However, *Notification No. 25/2006 ST dated 13.07.2006* has exempted the taxable services provided or to be provided *inter alia* by a practising chartered accountant in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, from the whole of service tax leviable thereon.

In the given case, Mr. Ajay is representing his client Mr. Vijay before the Income-tax Appellate Tribunal, a statutory authority. Thus, in view of the above-mentioned exemption notification Mr. Ajay shall not be liable to pay service tax on the services rendered by him.

19. Notification No. 28/2006 ST dated 30.09.2006 has inserted rule 10 after Rule 9 in the Service Tax Rules, 1994. Rule 10 lays down the procedure and facilities for the large taxpayer. This has been done to incorporate the concept of large taxpayer in the service tax provisions.

The provisions of this rule are discussed below:

Notwithstanding anything contained in these rules, the following shall apply to a large taxpayer, -

- (1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises. A large taxpayer who has obtained a centralized registration under rule 4(2) shall submit a consolidated return for all such premises.
 - (2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.
 - (3) A large taxpayer may, with intimation of at least 30 days in advance, opt out to be a large taxpayer from the first day of the following financial year.
 - (4) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said unit.
 - (5) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer.
20. (a) With effect from 01.05.2006, services provided by a registrar to an issue have been made liable to service tax by the Finance Act, 2006.

Section 65(105)(zzzi) of the Finance Act, 1994 defines the taxable service of registrar to an issue as any service provided or to be provided to any person, by a registrar to an issue, in relation to sale or purchase of securities.

Section 65(89c) of the Finance Act, 1994 provides that registrar to an issue means any person carrying on the activities in relation to an issue including collecting application forms from investors, keeping a record of applications and money received from investors or paid to the seller of securities, assisting in determining the basis of allotment of securities, finalising the list of persons entitled to allotment of securities and processing and despatching allotment letters, refund orders or certificates and other related documents.

As per section 65(59a) of the Finance Act, 1994 issue means an offer of sale or purchase of securities to, or from, the public or the holder of securities.

- (b) With effect from 01.05.2006, public relations services have been made liable to service tax by the Finance Act, 2006.

Section 65(105)(zzzs) of the Finance Act, 1994 defines the taxable public relations service as any service provided or to be provided to any person, by any other person, in relation to managing the public relations of such person, in any manner.

Section 65(86c) of the Finance Act, 1994 provides that public relations includes strategic counselling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotions, events and communications and crisis communications.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2006 TO 30.04.2007

Students may note that the Study Material for Indirect taxes contains all the relevant amendments made by the Finance Act, 2006. Further, Circulars/Notifications issued up to 30.04.2006 have also been incorporated therein. The following are the amendments which have been made till 30.04.2007.

1. Blending of tea amounts to manufacture. Discuss the correctness or otherwise of this statement with the help of a decided case law.
2. How will the excisable goods be classified when they are prima facie classifiable under two or more headings?
3. Pretty Prints Ltd., a trading company, supplies fabrics to Vijay Works, an independent processor. The cost of fabrics supplied is Rs.10,150. Vijay Works charges Rs.4,500 which includes Rs.3,500 as processing charges and Rs.1,000 as its profit. Pretty Prints sells the goods from the factory of Vijay Works at Rs.18,000. The rate of excise duty is 16% plus education cess as applicable.

Determine the assessable value of the goods.

4. ABC Ltd. is engaged in a particular kind of processing and pays excise duty on the final goods so produced. Excise duty paid on the inputs is availed as CENVAT credit. However, such processing is held as not chargeable to excise duty by the High Court. With reference to the Central Excise Act, 1944, briefly explain the provisions introduced vide the Finance Act, 2007 in this regard.
5. What is the 'relevant date' for the purpose of reckoning the period of one year for filing a refund claim of excise duty in the following cases?
 - (i) in the case of exports where goods are exported by land;
 - (ii) in the case of provisional assessment;
 - (iii) where duty becomes refundable as a consequence of order of the CESTAT.
6. Omission to give correct information cannot be construed as 'suppression of facts' for the purpose of the proviso to section 11A(1) of the Central Excise Act, 1944. Discuss the correctness or otherwise of this statement with the aid of a decided case law.
7. Briefly explain the provisions of section 37E of the Central Excise Act, 1944 introduced by the Taxation Laws (Amendment) Act, 2006.
8. Food India Ltd. manufactured biscuits and sold them under the brand name "Crunchy and Creamy". Food India Ltd. claimed the benefit of small scale exemption. However, the Assistant Commissioner of Central Excise denied such benefit to Food India Ltd. on the ground that the brand name "Crunchy and Creamy" was a registered trade mark of PQ Biscuits and that PQ biscuits were using the said brand name on manufacture of biscuits themselves.

Food India Ltd. contended that PQ Biscuits were not the owner of the said brand name as it was not registered in their name. It was further submitted that PQ Biscuits had discontinued their business after which they (Food India Ltd.) had applied for the ownership of the brand name "Crunchy and Creamy" to the Registrar, Trade Marks under the Trade Marks Act. The Registration certificate registering the trade mark "Crunchy and Creamy" in favour of Food India Ltd. was issued by the Registrar, Trade Marks with retrospective effect (covering the impugned period).

You are required to examine whether Food India Ltd. is entitled for the benefit of small scale exemption or not with the aid of a decided case law.

9. DEF Ltd. is a manufacturer and has paid excise duty on provisional basis. The Assistant Commissioner of Central Excise issues a show cause notice before the finalization of provisional assessment on the ground that DEF Ltd. has undervalued its goods. Do you think that such a show cause notice is valid? Discuss with the help of a decided case law.
10. With reference to Chapter V of the Central Excise Act, 1944 containing provisions relating to the Settlement Commission, state whether the following statements are true or false giving proper reasons:

- (i) Application for settlement can be made when a proceeding pending before the Appellate Tribunal is referred back to the adjudicating authority for fresh adjudication.
- (ii) Application for settlement can be made in respect of a matter involving clandestine removal of goods.
- (iii) An assessee may make total four applications for settlement during his lifetime.
- (iv) Settlement Commission cannot grant immunity in respect of prosecution for any offence under the Indian Penal Code.
- (v) Settlement Commission does not have the power to reopen completed proceedings.

You are required to answer taking into account the position after 01.06.2007.

11. Briefly explain the following with reference to the Customs Act, 1962:
 - (i) Foreign going vessel or aircraft
 - (ii) Stores
12. Section 22 of the Customs Act, 1962 provides for abatement of duty on damaged or deteriorated goods. Explain the circumstances under which such abatement can be granted.
13. Write a brief note on protective duties levied under the Customs Tariff Act, 1975.
14. Alpha Ltd. imported laptops containing preloaded Hard Disc Drives (HDD). The said drives were preloaded with operating system (software). The Assistant Commissioner of Customs claimed that the said laptop along with the operating software was classifiable as a machine under Heading 84.71. However, the assessee contended that software loaded hard disc drive should be classified separately from the laptop under Heading 85.24. The assessee classified the software separately and claimed exemption from the duty payable on the software vide an exemption notification.

Do you think the claim of the Assistant Commissioner of Customs is tenable in law? Discuss with the help of a decided case law.
15. The Finance Act, 2007 has substituted the provisions of existing section 14 (dealing with valuation) of the Customs Act, 1962 with new provisions. Explain the new provisions.
16. Explain the provisions of section 5 of the Customs Act, 1962 governing the powers of officers of customs.
17. Briefly discuss the penalties in respect of improper exportation of goods provided under section 114 of the Customs Act, 1962.
18. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Commission charged by the foreman of the chit fund as consideration for providing the services in relation to chit fund.
 - (ii) Service provided by a manpower recruitment agency in relation to verifying the credentials of the candidate.
 - (iii) Consultancy services provided by a consulting engineer in relation to computer hardware.
19. Write a brief note on self-adjustment of excess service tax paid as provided under rule sub-rule (4A) and sub-rule (4B) of rule 6 of the Service tax Rules, 1994.
20. Write short notes on:
 - (a) Renting of immovable property service
 - (b) Service involved in the execution of a works contract

SUGGESTED ANSWERS/HINTS

1. This issue has been addressed by the Supreme Court in the case of *CIT v. Tara Agencies 2007 (214) ELT 491 (SC)*. The Supreme Court has held that blending of different qualities of tea to smoothen its marketability is not manufacture but processing. The production of tea happens in the tea gardens. Manufacture happens when tea leaves are plucked from the tea bushes and by mechanical process, converted to tea. Blending of different qualities of tea is its processing.

The Apex Court explained that the word 'production' when used in juxtaposition with the word 'manufacture' covers bringing into existence new goods by a process which may or may not amount to manufacture. It covers all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. Processing is only an intermediate stage of production and/or manufacture. The Supreme Court elaborated that no hard and fast rule can be applied for determining as to whether a process amounts to manufacture in every case and thus each case must be decided on its own facts.

2. Rule 3 of the General Rules for the Interpretation of Tariff Schedule lays down that when goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:
 - (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
 - (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
 - (c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.
3. With effect from 01.04.2007, a new rule 10A has been inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 vide *Notification No. 9/2007 CE (NT) dated 01.03.2007* to provide for valuation in case of job-work.

The rule *inter alia* lays down that where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (principal manufacturer), then-

in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer.

Therefore, assessable value shall be calculated on the basis of selling price of Pretty Prints which is Rs.18000. This price shall be treated as inclusive of excise duty of 16%, education cess of 2% and secondary and higher education cess of 1% of excise duty. Hence, assessable value shall

$$\text{be } \left[18000 \times \frac{100}{116.48} \right] = 15453.30.$$

Prior to insertion of this rule, the Supreme Court's decision in the case of *Ujagar Prints v. Union of India 1989 (39) E.L.T. 493 (SC)* was the basis for determining the assessable value in case of job work. The assessable value included cost of material, processing charges and profit of processor.

4. Sometimes it happens that a process undertaken by a manufacturer is held as not chargeable to excise duty by the Courts, though the assessee has been availing credit of excise duty/service tax/cess paid on the inputs/capital goods/input services used in manufacturing the final product and paying excise duty on such final products.

A new section 5B has been inserted after section 5A in the Central Excise Act. The new section 5B provides that in such cases the Central Government may order for non-reversal of the credit allowed to the assessee by issuing a notification. The notification may specify the conditions subject to which such non-reversal of credit may be ordered. Further, the Central Government may also order for non-reversal of credit, if any, taken by the buyer of the said product in such notification.

It may be noted that such non-reversal of the credit shall not be ordered if the assessee has preferred a claim for refund of excise duty paid by him.

5. Section 11B deals with the claim for refund of duty. It inter alia provides that claim for refund of duty should be filed before the expiry of one year from the relevant date. Clause (B) of the explanation to section 11B defines the relevant date for filing refund claim in case of different situations.

- (i) The relevant date for filing the refund claim in the case of exports where goods are exported by land is the date on which such goods pass the frontier.
- (ii) The relevant date for filing the refund claim in the case of provisional assessment is the date of adjustment of duty after the final assessment thereof.
- (iii) A new sub-clause (ec) has been inserted vide the Finance Act, 2007 in clause (B) of the explanation to section 11B with a view to define the relevant date for filing a refund claim in consequences of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any Court as the date of such judgement, decree, order or direction. Therefore, the relevant date for filing the refund claim where the duty becomes refundable as a consequence of the order of the CESTAT is the date of such order.

6. This issue was addressed by the Supreme Court in the case of *Continental Foundation Joint Venture v. CCEx. 2007 (216) ELT 177 (SC)*. The Supreme Court observed that since the expression "suppression" used in proviso to section 11A(1) of the Central Excise Act, 1944 is accompanied by very strong words as fraud or collusion, it should be construed strictly. Suppression means failure to disclose full information with intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. The Apex Court held that mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. The Apex Court explained that an incorrect statement cannot be equated with a wilful mis-statement.

The Supreme Court elaborated further that as far as words 'fraud and collusion' used in the proviso to section 11A(1) are concerned, it is evident that the intent to evade duty is built into these very words. Similarly, the words 'mis-statement or suppression of facts' are clearly qualified by the immediately preceding word 'wilful' which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be a suppression or mis-statement of a fact which is not wilful and yet constitute a permissible ground for the purpose of the proviso to section 11A(1). Mis-statement of fact must be wilful.

Thus, in view of the above-mentioned judgement, the statement is correct.

7. Section 37E introduced by the Taxation Laws (Amendment) Act, 2006 provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest. The provisions are discussed below:

- (1) The Central Government may publish name of any person and any other particulars relating to any proceedings or prosecutions in respect of such person if it is of the opinion that it is necessary or expedient in the public interest to do so. The Government can do the publication in such manner as it thinks fit.
 - (2) The publication shall be made in relation to any penalty only after the time for presenting an appeal to the Commissioner (Appeals) or the Appellate Tribunal expires without an appeal being presented or the appeal, if presented, gets disposed of.
 - (3) In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.
8. The facts of the case are similar to the case of *Meghraj Biscuits Industries Ltd. v. CCEX*. 2007 (210) ELT 161 (SC). The Supreme Court has held in this case that grant of registration certificate under the Trade Marks Act will not automatically provide benefit of exemption to the SSI Unit. The Apex Court explained that the effect of making the registration certificate applicable from retrospective date is based on the principle of deemed equivalence to public user of such mark. However, if a SSI unit wrongly affixes a trade mark of another person, be it registered or not, or if it uses the trade mark of an ineligible person then such default would not be eliminated by the principle of deemed equivalence embodied in section 8 of the Trade Marks Act, 1999 as that principle is based on a deeming fiction which is confined only to the provisions of the Trade Marks Act. Deeming fiction can not be extended to the excise law.

Further, the Supreme Court observed that discontinuation of business in respect of a product does not necessarily amount to abandonment. The abandonment of the trade mark by the other company has to be proved by the appellants. The burden to satisfy the adjudicating authority that there was no intention of indicating a connection with the goods of the assessee and such other person was on the assessee. Thus, the Supreme Court held that issuance of registration certificate with retrospective effect will not tantamount to conferment of exemption benefit under the Excise Law once it is found that the appellants had wrongly used the trade mark.

In view of the above-mentioned decision, Food India Ltd. shall not be eligible for the small scale exemption.

9. This issue was addressed by the Supreme Court in the case of *CCEX. & Cus. v. I.T.C. Ltd.* (2006) 203 ELT 532 (SC). The Supreme Court observed that the power to issue a show cause notice under section 11A of the Central Excise Act, 1944 can be invoked only when duty is not levied or not paid or short-levied or short-paid. Such a proceeding can be initiated within six months (now one year) from the relevant date. As per section 11A(3)(ii)(b), in case of provisional assessment the relevant date is the date of adjustment of duty after final assessment. Therefore, a proceeding under section 11A cannot be initiated without completing the assessment proceedings. The question as to non-levy or short-levy of an excise duty would arise only when the levy had been laid in accordance with law. When a duty is levied, it becomes payable which in turn would mean legally recoverable.

The Apex Court elaborated that after the final assessment, the provisionally assessed duty is adjusted against the finally assessed duty and if the provisionally assessed duty falls short of or is in excess of the finally assessed duty, the assessee has to pay the deficiency or is entitled to a refund, as the case may be. Thus, the liability of the assessee ultimately depends upon the undertaking of exercise by the assessing officer to complete the assessment proceeding.

Thus, the Supreme Court held that a show cause notice issued before the finalization of provisional assessment is not valid in law. The same principle is also clearly evident on a plain reading of the provisions of the Act and the Rules framed thereunder.

In view of the above-mentioned judgement, the show cause notice issued on DEF Ltd. is not valid.

10. (i) False. With effect from 01.06.07, section 31(c) defining case has been amended vide the Finance Act, 2007. The new definition provides that:
- “Case means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made.
- Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause”.
- Thus, with effect from 01.06.07, Settlement Commission cannot be approached when a proceeding pending before the Appellate Tribunal is referred back to the adjudicating authority for fresh adjudication. It can only be approached when original adjudication is pending.
- (ii) False. With effect from 01.06.2007, Finance Act, 2007 has amended section 32E to provide *inter alia* that an assessee shall be eligible to file an application only in respect of the goods for which he admits short levy on account of misclassification, undervaluation, inapplicability of exemption notification or CENVAT credit but not in respect of the goods for which no proper record has been maintained by the assessee in his daily stock register.
- Thus, Settlement Commission cannot be approached in respect of clandestine removal of goods.
- (iii) False. With effect from 11.05.2007, section 32O which specifies the grounds under which an assessee is barred from making any subsequent application for settlement under section 32E has been amended vide the Finance Act, 2007.
- The amended section provides that where an assessee has made an application under sub-section (1) of section 32E, on or after 01.06.2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 32F, such assessee shall not be entitled to apply for settlement under section 32E in relation to any other matter. Thus, with effect from 01.06.07, an assessee can apply for settlement only once during his lifetime. However, in respect of cases involving identical recurring issue, the assessee can file application for settlement provided his earlier application is pending before the Settlement Commission.
- (iv) True. Section 32K empowers Settlement Commission to grant immunity from prosecution and penalty. With effect from 01.06.2007, the Finance Act, 2007 has restricted the scope of such power of the Settlement Commission by withdrawing its power to grant immunity from prosecution for any offence under Indian Penal Code or any Central Act for the time being in force other than Central Excise Act.
- (v) True. Section 32H empowers the Settlement Commission to reopen completed proceedings. However, with effect from 01.06.2007, the Finance Act, 2007 has disempowered the Settlement Commission to reopen the proceedings in cases where applications under section 32E are made on or after the 1st day of June, 2007.
11. (i) As per section 2(21) of the Customs Act, 1962, foreign going vessel or aircraft means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-
- (i) any naval vessel of any foreign Government taking part in any naval exercises;
 - (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
 - (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

- (ii) As per section 2(38) of the Customs Act, 1962, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. Stores are also goods but are covered by special provisions in sections 85 to 90. The definition does not cover goods for use in a vehicle.

12. The abatement is available under the following circumstances:

- (a) When the imported goods are damaged or deteriorated before or during the course of their unloading. At this stage, no distinction is made between warehoused goods and goods meant for home consumption.
- (b) In the case of imported goods cleared for home consumption, when the goods are damaged after unloading but before examination by the customs authorities. Such damage should not have been caused by any willful act, negligence or default of the importer, his employee or agent.
- (c) In the case of warehoused goods, when the goods are damaged before clearance for home consumption. Such damage should not have been caused by any willful act, negligence or default of the owner, his employee or agent.

All the above have to be proved to the satisfaction of the Assistant or Deputy Commissioner of Customs in order to claim abatement. The term 'damage' denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant. Deterioration is reduction in quality of goods due to natural causes.

13. Customs duties are of two types: revenue duties and protective duties. Revenue duties are those which are levied for the purpose of raising customs revenue, whereas protective duties are intended to give protection to indigenous industries. If resort to protective duties is not made there could be a glut of cheap imported articles in the market making the indigenous goods unattractive. The protection through protective duties is given considering the following factors:

- (a) The protective duties should not be very stiff so as to discourage imports.
- (b) It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.

The protective duties are levied by the Central Government on the recommendation made by the Tariff Commission and when it is satisfied that the circumstances make it necessary to take immediate action to provide protection to any industry established in India.

Section 7 of the Customs Tariff Act provides as follows:

- (a) The protective duty shall be effective only upto and inclusive of the date if any, specified in the First Schedule.
- (b) The Central Government may reduce or increase the duty by notification in the Official Gazette.
- (c) If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval. If the Parliament recommends any change in the notification, then the notification shall have effect subject to such changes.

14. The facts of the case are similar to the case of *CCus. v. Hewlett Packard India Sales (P) Ltd. 2007 (215) ELT 484 (SC)*. In this case, the Supreme Court observed that the pre-loaded operating systems recorded in Hard Disc Drive in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. The computer cannot even open without the operating system. A laptop without an operating system is like an empty building.

The Apex Court held that when a laptop is imported with in-built pre-loaded operating system recorded on HDD, the said item forms an integral part of laptop (Computer system). Hence,

laptop should be treated as one single unit classifiable under Heading 84.71. However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24.

Thus, in view of the above-mentioned judgement, the Assistant Commissioner's claim is tenable in law.

15. Sub-section (1) of section 14 of the Customs Act, 1962 provided that valuation of goods shall be based on the concept of 'deemed value'. However, the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provide that the value of the imported goods shall be based on the concept of transaction value.

The Finance Act, 2007 has substituted a new section 14 for existing section 14 with an aim to rectify this anomaly. The new section 14 is based on transaction value and has become effective from 10.10.2007.

The provisions of the new section are:

- (i) Sub-section (1) lays down that for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods.
- (ii) In case of export goods, the transaction value shall be
 - the price actually paid or payable for the goods
 - when sold for export from India
 - for delivery at the time and place of exportation
 - where the buyer and seller of the goods are not related and
 - price is the sole consideration for the sale.

However further conditions may be specified in the rules made in this behalf.

- (iii) In case of imported goods, the transaction value shall be
 - the price actually paid or payable for the goods when sold for export to India
 - for delivery at the time and place of importation
 - where the buyer and seller of the goods are not related and
 - price is the sole consideration for the sale.

However, further conditions may be specified in the rules made in this behalf.

Such transaction value shall also include in addition to the price as aforesaid, any amount paid or payable for costs and services, including:

- commissions and brokerage,
- engineering,
- design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance
- loading,
- unloading and
- handling charges

to the extent and in manner specified in the rules made in this behalf.

- (iv) Such rules may provide for:
 - (a) the circumstances in which the buyer and the seller shall be deemed to be related;
 - (b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
 - (c) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
 - (v) For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under section 46.
 - (vi) For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.
 - (vii) The rate of exchange is notified by three agencies- the Central Board of Excise and Customs (Board), the Reserve Bank of India and the Foreign Exchange Dealers' Association of India. For the purpose of customs valuation, "rate of exchange" means the rate of exchange-
 - (i) determined by the Board, or
 - (ii) ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency. Thus, for the purpose of valuation under customs laws, rate notified by CBEC (Board) shall be taken into account.

The CBEC notifies the rates on a monthly basis applicable from the first day of the month. There are separate rates for imported goods (selling rate) and export goods (buying rate).
 - (viii) "Foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.
 - (ix) Sub-section (2) provides that the Board may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods by notification in the Official Gazette if it is satisfied that it is necessary to do so.
 - (x) Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Provisions of sub-section (2) have an overriding effect on the provisions of sub-section (1).
16. The provisions of section 5 of the Customs Act, 1962 are discussed below:
- (1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.
 - (2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.
 - (3) However, the Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV (Appeals and Revision) and section 108 (power to summon persons for giving evidence).
17. Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable:-
- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

- (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;
 - (iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.
18. (i) With effect from 01.06.2007, the Finance Act, 2007 has amended the scope of banking and financial services with a view to include cash management services within its purview. CBEC has clarified vide its *Circular No. 96/7/2007 ST dated 23.08.2007* that business of a chit fund is to mobilize cash from the subscribers and effectively cause movement of such cash to keep it working and, therefore, the activity of chit funds is in the nature of cash management.

Thus, commission charged by the foreman of the chit fund as consideration for providing the services in relation to chit fund shall be leviable to service tax under "banking and other financial services".

- (ii) With effect from 01.06.2007, the Finance Act, 2007 has inserted an explanation at the end of sub-clause (k) of clause (105) of section 65 which defines taxable manpower or recruitment service. The explanation clarifies that recruitment or supply of manpower service includes the following services:

- (a) pre-recruitment screening,
- (b) verification of the credentials and antecedents of the candidate, and
- (c) authenticity of documents submitted by the candidate.

Thus, service provided by a manpower recruitment agency in relation to verifying the credentials of the candidate shall be chargeable to service tax.

- (iii) With effect from 01.06.2007, the Finance Act, 2007 has included consultancy in the field of computer hardware engineering within the scope of taxable services provided by a consulting engineer by amending the definition of taxable consulting service provided under sub-clause (g) of clause (105) of section 65.

19. *Notification No. 1/2007 ST dated 01.03.2007* has substituted sub-rule (4A) of rule 6 and inserted sub-rule 4B to provide for self-adjustment of excess service tax paid, subject to specified conditions. Rule 6(4A) provides that where an assessee has paid to the credit of the Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

However, such an adjustment would be subject to the following conditions mentioned in rule 6(4B):

- (i) Self-adjustment of excess amount would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
 - (ii) Excess amount paid and proposed to be adjusted should not exceed Rs.50,000 for the relevant month or quarter. However, in case of assessee's opting for centralized registration excess amount can be adjusted without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices.
 - (iii) Adjustment can be made only in the succeeding month or quarter.
 - (iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment.
20. (a) With effect from 01.06.2007, service of renting of immovable property has been made liable to service tax by the Finance Act, 2007.

Section 65(105)(zzzz) of the Finance Act, 1994 defines the taxable service of renting of immovable property as any service provided or to be provided to any person, by any other

person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

For the purposes of this sub-clause, “immovable property” includes—

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include-

- (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
- (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purposes; and
- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

It may be noted that an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce.

Therefore, in case of a single composite contract of renting of immovable property involving part of property for use in commerce or business and part of it for residential/accommodation purposes, the total value of the contract shall be the taxable value.

Section 65(90a) of the Finance Act, 1994 provides that renting of immovable property includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include-

- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Here, “for use in the course or furtherance of business or commerce” includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

- (b) In a works contract, sales tax /VAT is levied on the transfer of property in goods involved in the execution of such works contract. With effect from 01.06.2007, the Finance Act, 2007 has levied service tax on the service element involved in the execution of a works contract.

Section 65(105)(zzzza) of the Finance Act, 1994 defines works contract service as service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

For the purposes of this sub-clause, “works contract” means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of

fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

- (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
- (c) construction of a new residential complex or a part thereof; or
- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
- (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

A composition scheme is available for the service providers involved in the execution of a works contract. The scheme gives an option to the assessee to pay 2% of the total value of the works contract as service tax. Assessee's opting for the composition scheme are not entitled to avail CENVAT credit of duty or cess paid on inputs required for use in the works contract. The assessee who do not opt for this scheme have to pay service tax on the taxable value of the works contract which is relatable to services provided in the execution of a works contract. Such value has to be determined on actual basis based on the records maintained by the assessee.

IMPORTANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2007 TO 31.10.2007

Students may note that the Study Material for Indirect taxes contains all the relevant amendments made by Finance Act, 2007. Further, Circulars/Notifications issued up to 30.04.2007 have also been incorporated therein. The following are the amendments which have been made till 31.10.2007. It may carefully be noted that for the students appearing in May 2008 the amendments made by Notifications, Circulars etc. up to 31.10.2007, as detailed hereunder, are relevant.

I. CENTRAL EXCISE

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

- (i) Rule 8(1) of the Central Excise Rules, 2002 has been amended to provide that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case.

In case of SSI, duty on the goods removed from the factory or the warehouse during a month shall be paid by the 16th day of the following month, if the duty is paid electronically through internet banking and by the 15th day of the following month, in any other case [Notification No. 34/2007 CE (NT) dated 11.09.2007].

- (ii) Notification No. 36/2007 CE (NT) dated 14.09.2007 has inserted two provisos in rule 11(7) of the Central Excise Rules, 2002.

The first proviso lays down that in case of the first stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale of the said imported goods, indicate on the invoice issued by him that no credit of the additional duty levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

The second proviso lays down that in case of the second stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale of such imported goods, indicate

QUESTIONS

1. Cool Drinks Ltd. manufactured three health drinks viz. A, B and C. A was sold only to M Ltd., a subsidiary company of Cool Drinks Ltd. B was sold to N Ltd., where the Managing Director of Cool Drinks Ltd. was a manager. C was sold to O Ltd. who was the sole distributor of Cool Drinks Ltd. and was coming under the management of Cool Drinks Ltd.

Determine the transaction value of the three products in the hands of Cool Drinks Ltd. on the basis of the following information:

Price of Cool Drinks Ltd. to M Ltd.	Rs. 200
Price of Cool Drinks Ltd. to N Ltd.	Rs. 150
Price of Cool Drinks Ltd. to O Ltd.	Rs. 120
Price of M Ltd. to Consumer	Rs. 220
Price of N Ltd. to Consumer	Rs. 160
Price of O Ltd. to Consumer	Rs. 130

2. Differentiate between rule 3(5) and rule 4(5) of the CENVAT Credit Rules, 2004 in relation to removal of inputs from a factory.
3. KD Ltd. manufactures motor vehicle parts. It has cleared goods as per the purchase order placed with them by one of their customers M/s. Fast Auto Ltd. and paid the excise duty accordingly. Subsequently, KD Ltd. receives an amendment to the said purchase order for enhancement of the rate of the duty with retrospective effect. KD Ltd. has calculated and paid the differential duty by issuing the supplementary invoice to M/s. Fast Auto Ltd.

The Assistant Commissioner of Excise claims that though KD Ltd. has paid the differential duty voluntarily, interest is also payable under section 11AB of the Central Excise Act, 1944 on the differential duty on the ground that since the goods were cleared earlier, the entire duty was payable on the date of clearance of goods.

You are required to examine the situation with the help of a decided case law, if any.

4. Euro Ltd. is a small scale industrial unit which is producing 'Keplin', a tonic for growing children. Under the Annual Report for the year 2007-08, the SSI unit shows a gross sales turnover of Rs. 1,89,20,000. The product 'Keplin' attracts excise duty @ of 14% and sales tax @ 10%. Calculate the duty liability under *Notification No. 8/2003*.
5. What is excise audit 2000? What is the frequency of conducting excise audit?
6. Examine briefly the following with reference to section 9AA of the Central Excise Act, 1944:
 - (i) Whether criminal prosecution would lie against a company before a Court of Law?
 - (ii) To what extent the directors of the company are responsible for offences committed by a company?
7. M/s. Comfort Seats (P) Ltd. is a manufacturer of rail assembly, front seat adjuster/assembly

slider and rear back lock assembly for car seats. With the help of these items, seats can slide back and forth which enables the driver or the passenger to adjust the position of the seat to suit his comfort and convenience. The company is classifying its products under chapter heading 8708.00 as "Parts and accessories of the motor vehicle."

However, the Department contends that the product manufactured by M/s. Comfort Seats (P) Ltd. should be classified under chapter heading 9401.00 as "Seats whether or not convertible into beds and parts thereof."

Briefly discuss whether the stand of the Department is correct or not with the help of a decided case law.

8. Explain the obligations of persons who have collected excise duty from buyers.
9. A interior decorator charges Rs. 5,50,000 from a client for providing professional services. The break up of the bill is as follows:-
 - (a) Value of furniture sold to the client - Rs. 2,50,000
 - (b) Labour and facility charges - Rs. 1,50,000
 - (c) Value of materials consumed in providing the service - Rs.1,50,000
 Compute the amount of service tax to be charged from the client.
10. With reference to the Finance Act, 1994, answer the following questions:
 - (i) Is service tax payable on entry and exit load charged by a mutual fund from the investor?
 - (ii) Whether job work is liable to service tax?
 - (iii) Whether clearing and forwarding service would be liable to service tax only if both clearing and forwarding operations are undertaken?
 - (iv) Whether speed post services provided by Post Office are liable to service tax?
11. (a) An assessee fails to pay service tax of Rs.13,25,000 which is payable by 05.10.2008. He pays the amount on 20.10.2008.
 You are required to calculate the amount of penalty payable by the assessee under section 76 of the Finance Act, 1994.
 - (b) Can the penalty imposed under section 78 be reduced in any way? Discuss.
12. With reference to section 69 of the Finance Act, 1994 and rule 4 of the Service Tax Rules, 1994, answer the following questions:
 - (a) Who should apply for registration?
 - (b) What is the time limit for making the application?
 - (c) What is the position if an assessee provides more than one taxable service or provides taxable services from more than one premises/offices?
 - (d) Who should issue the certificate and in which form?

- (e) What happens if the registered assessee ceases to provide taxable services?
13. Discuss the provisions of the Finance act, 1994, as amended relating to service tax with respect to the following taxable services:
 - (a) Man power recruitment or supply agency's services
 - (b) Mailing list compilation and mailing services
 14. State the divergence between accounting and taxation principles in relation to recognition of revenue in case of service tax.
 15. "VAT records should be preserved for the period specified in respective State laws". List the records to be maintained under VAT system.
 16. State the provisions in respect of the VAT invoice (Tax Invoice) as provided under the White Paper.
 17. Hitech Ltd. imported a machine from Japan by Air at FOB cost of 32000 Yen (Japanese). The other expenses incurred are as follows:-

	Japanese Yen
FOB value of accessory compulsorily supplied with machine (Electric motor)	8000
Air freight	12000
Insurance	400
Local Agents commission to be paid in Indian rupees is Rs. 200	
CBEC had announced exchange rate of 1 Yen = Rs. 0.40.	
Custom duty on machinery - 10% advalorem	
Custom duty on accessory - 20% advalorem	
CVD 14% (effective rate is 8% vide an exemption notification)	

You are required to compute the assessable value from the above data.

18. Discuss the provisions in relation to interest on drawback as provided under section 75A of the Customs, Act 1962.
19. An assessee imported certain goods and stored them in storage tanks in a private warehouse. Subsequently, he filed ex-bond bill of entry (to get them de-bonded) for home consumption and paid full duty. The goods were released by the officer-in-charge of the warehouse.

However, the assessee made an application under section 49 of the Customs Act to permit storage of such goods (which had been cleared for home consumption) in the same warehouse/tank as the goods were highly combustible and could not be taken out of storage tank to store elsewhere. Thus, the goods were stored in the storage tank of the private warehouse under an agreement entered between the assessee and the warehouse owner.

The storage charges were paid by the assessee.

However, the Customs Department again demanded duty when assessee cleared the goods from the storage tank on the ground that goods cleared under section 68 of the Customs Act, 1962 would be considered as warehoused goods if the same are kept in the warehouse under the provisions of section 49 of the Act.

Do you think the stand of the Customs Department is valid in law? Discuss.

20. A fishing trawler operating in high seas, beyond the territorial waters of India, finds a ship wrecked in mid-sea and brings jetsam and flotsam into India, along with fish caught by it. Discuss the liability of duty on the fish, jetsam and flotsam.

SUGGESTED ANSWERS/HINTS

1. The situations are based on rules 9 and 10 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Product A was sold exclusively to M Ltd. which is a subsidiary and hence rule 10(a) will be applicable. Accordingly, value shall be determined as per rule 9 i.e., the transaction value shall be the price at which goods are sold by the related person to the unrelated person (by subsidiary to the consumer). Hence, transaction value will be Rs. 220/- i.e., price at which M Ltd. sells to the consumer.

Product B was sold to N Ltd. where MD of Cool Drinks Ltd. was a manager. Hence, they are inter-connected undertakings. However, as per rule 10 of valuation rules, the transaction value shall be determined as per rule 9 only if the inter-connected undertakings are also related in terms of sub-clause (ii) or (iii) or (iv) of section 4(3)(b) or the buyer is a holding/subsidiary company of the assessee. Since, there is no such relationship, the value shall be determined as if they are not related person. Hence, transaction value shall be Rs.150 only, i.e. the price at which Cool Drinks Ltd. sells to N Ltd.

Product C was sold to O Ltd. Since, Cool Drinks Ltd. and O Ltd. are under the same management, they are interconnected undertakings. However, as per rule 10 of the valuation rules, value shall be determined as per rule 9 only if the interconnected undertakings are also related in terms of section 4(3)(b)(ii), (iii) or (iv) or the buyer is a holding/subsidiary company of the assessee. Since, there is no such relationship, the transaction value shall be determined as if they are not related person. Hence, transaction value will be Rs.120 only i.e., the price at which Cool Drinks Ltd. sells to O Ltd.

2. Difference between rule 3(5) and rule 4(5)

Rule 3(5)

1. It covers removal as such.
2. Goods are removed for any purpose other than for job work e.g. sale.

Rule 4(5)

- It covers removal for job work.
- Good are to be removed specifically for job work.

- | | |
|--|--|
| 3. Good need not return to the factory. | Good must be returned within 180 days. |
| 4. An amount equal to the CENVAT credit availed on the inputs has to be paid at the time of removal. | No duty is payable at the time of removal of goods but if these goods are not returned within 180 days, the credit availed on such goods has to be paid. |

3. The facts of the given situation are similar to the case of *CCEx v. Rucha Engineering Pvt. Ltd. 2008 (223) ELT 161 (Bom.)*. In the instant case, the High Court observed that section 11AB comes into play if the duty paid/levied is short though in this case, both the Commissioner (Appeals) and the CESTAT had observed that the assessee paid the duty on its own accord immediately when the revised rates became known to them from their customers. The High Court stated that though the differential duty was due at that time i.e., when the revised rates applicable with retrospective effect were learnt by the assessee, which was much after the clearance of the goods, still the question of payment of interest would not arise as the duty was paid as soon as it was learnt that it was payable.

The High Court opined that the instant case was not a case where duty of excise has not been paid or short-paid. Therefore, the provisions of section 11A(2) and 11A(2B) were not applicable. Section 11AB(1) was not at all applicable, and therefore, the assessee was not required to pay interest.

Thus, KD Ltd. would not be required to pay interest on the differential duty.

4. Calculation of duty liability under *Notification No. 8/2003*.

Gross sales turnover is Rs. 1,89,20,000 which includes excise duty and sales tax.

For first 150 lakh clearances, excise duty is Nil and sales tax is 10%.

Therefore, sales tax on first Rs. 150 lakh clearances = Rs. 15,00,000.

For Balance sales (including excise duty and sales tax)

= Rs. 1,89,20,000 – (1,50,00,000 + 15,00,000) = Rs. 24,20,000,

Sales tax = $24,20,000 \times \frac{10}{110}$ = Rs. 2,20,000

Therefore, balance sales excluding sales tax but including excise duty

= Rs. 24,20,000 – 2,20,000

= Rs. 22,00,000

Hence, excise duty (including 3% education cess) = Rs. 22,00,000 $\times \frac{14}{114.42}$

= Rs. 2,69,183.70 or Rs. 2,69,184

Add: Education cess of 2% of Rs.2,69,184 = Rs.5383.68

Add: Secondary and higher education cess of 1% of Rs.2,69,184 = Rs. 2691.84

Total duty payable = Rs.2,77,259.52 or Rs.2,77,260

5. Excise audit 2000 is a modern, transparent and interactive method of audit wherein the auditor is fully conversant with the business of the assessee while proceeding the audit. The essential philosophy of EA 2000 is that the audit is based on the scrutiny of business records of the assessee. This is a more systematic form of audit wherein the auditors are required to gather basic information about the assessee and analyze it to find out vulnerable areas before conducting the actual audit. The audit is therefore more focused and in depth as compared to the traditional audit. Further, at every stage of audit, the assessee is consulted. This makes EA 2000 audit user friendly. On his part, the assessee is given full opportunity to explain his stand on any particular matter so that matters are resolved in full appreciation of legal position. EA 2000 is thus a participative audit. The frequency of conducting the excise audit is as follows:

Amount of annual duty (in cash + CENVAT credit) paid by assessee -	Frequency of audit
Above Rs. 3 crore	Once in every year
Between Rs.1 crore and Rs.3 crore	Once in two years
Between Rs.50 lakh and Rs.1 crore	Once in five years
Less than Rs.50 lakh	10% of units every year

6. (i) As per section 9AA(1), if any offence has been committed by a company, then every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- However, if any such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he shall not be punished.
- (ii) As per section 9AA(2), if it is proved that the offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
7. The facts of the given situation are similar to the facts of the case of *CCEx. vs. Insulation Electrical (P) Ltd.* 2008 (224) ELT 512 (SC). In this case, the Apex Court observed that the items manufactured by the assessee were only adjuncts affixed on the floor of motor vehicles to improve efficiency and convenience as the seats were complete in themselves without rail assembly or other impugned goods. Thus, the impugned goods were not essential parts of the seats but accessories to motor vehicles provided for better convenience of passengers/drivers traveling in a car.

Therefore, the Apex Court opined that the impugned goods would not be classified under sub-heading 9401.00 as it only covered parts of seats and not accessories thereof. The Supreme Court held that the impugned would rightly be classified under sub-heading 8408.00 as it covered both parts and accessories.

In the instant case, the Supreme Court has explained the difference between parts and accessories. A part is an essential component of the whole without which the whole cannot function whereas accessory is supplementary or subordinate in nature and need not be essential for actual functioning of the product.

Thus, in view of the above-mentioned decision, the stand taken by the Department is not correct in law.

8. The obligations of persons who have collected excise duty from buyers are as follows:-
 - (1) Section 11D(1) makes it obligatory on every person who is liable to pay duty and has collected any amount from the buyer of any goods in any manner as representing duty of excise to pay the amount so collected to the credit of Central Government.
 - (2) Where any amount is required to be paid to the credit of Central Government under sub section (1) and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount as specified in the notice, should not be paid by him to the credit of Central Government.
 - (3) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amounts so determined.
 - (4) The amount paid to the credit of Central Government under sub-section (1) or sub section (3) shall be adjusted against the duty of excise payable by the person on finalization of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in sub-section (1).
 - (5) Where any surplus is left after adjustment under sub section (4), the amount of such surplus shall either be credited to the fund or as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B and such person may make an application under that section in such cases within 6 months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.
9. (a) The value of furniture sold to client will be exempt under *Notification No. 12/2003 ST dated 20.06.2003 as amended* on the fulfillment of following conditions:
 - (1) There is a documentary proof specifically indicating the value of the goods and material sold.
 - (2) Credit of duty paid on such goods and materials sold has not been taken under the provisions of Cenvat Credit Rules, 2004; or if such credit has been taken by the service provider on such goods and materials, such service provider has paid the

amount equal to such credit availed before the sale of such goods and materials.

- (b) The labour and facility charges are liable to service tax.
- (c) The value of materials consumed in providing the service forms intrinsic part of the value of service. Hence, the value of consumed materials will be included in the value of service.

Hence, the value of taxable service will be Rs. 1,50,000 + 1,50,000 = Rs. 3,00,000 and service tax will be Rs.37,080 (12.36% of Rs.3,00,000)

10. (i) CBE&C, vide its circular No. 94/5/2007-ST dated 15-5-2007, has clarified that the entry and exit load is charged by mutual fund to amortize the initial issue expenses incurred by the mutual fund on the scheme. Thus, entry and exit load charges are not towards fund management service provided by the asset management company but to meet the initial issue expense and other specified expenses. Hence, "entry and exit load" charged by a mutual fund would not attract service tax levy under the category of fund management service under 'Banking and other Financial Service'.
 - (ii) Clause (v) of sub-section 19 of section 65, defining business auxiliary service, covers job work as "production or processing of goods for, or on behalf of the client ". Thus, job work is liable to service tax w.e.f. 16-6-2005. However, if the job work amounts to 'manufacture', it is not liable to service tax since activity amounting to 'manufacture' has been specifically excluded from the definition of 'business auxiliary service'. There is no condition that excise duty should be paid or payable on such goods. As long as the process involved in job work is 'manufacture', the job work is out of service tax net.
 - (iii) In *Medpro Pharma v. CCE (2006) 4 STT 341 (CESTAT) 3 member bench*, it has been held that a person providing mere clearing or mere forwarding services will also get covered. It is not necessary that both clearing and forwarding services must be provided in order to be liable to service tax under clearing and forwarding agent's services.
 - (iv) This service is taxable w.e.f. 1-5-2006, since service provided by 'any person' is taxable from 1-5-2006. Earlier, such service was taxable under courier services only when it was provided by a 'commercial concern'. Hence, it was clarified that service of speed post is not taxable. However, that clarification is not valid now.
11. (a) The default of failure to pay service tax has continued for 15 days. Hence, the penalty under section 76 of the Finance Act, 1994 payable by the assessee shall be higher of:
 - (i) Rs. 200 per day of failure = Rs. 200 per day for 15 days = Rs. 3000, or
 - (ii) $2\% \text{ of the tax per month} = 2\% \times 13,25,000 \times 15 / 31$
 = Rs. 12,822.58
 So, penalty payable will be Rs. 12,823.
 - (b) Section 78 provides that a mandatory penalty at least equal to the tax short paid or not paid or erroneously refunded is leviable, if such non payment or short payment or erroneous refund was due to fraud, collusion, willful misstatement or suppression of

facts etc. However, if the tax, interest and penalty are paid within 30 days from the date of communication of order, penalty payable will be only 25%. If the tax payable is increased by Commissioner (Appeals) or CESTAT (Tribunal), or court then the benefit of reduced penalty will be available if the difference of tax, interest and penalty is paid within 30 days from date of receipt of order by which such increase in service tax takes effect.

12. (a) As per section 69(1), every person liable to pay service tax must mandatorily make an application in form ST-1 for registration to the Superintendent of Central Excise.

As per section 69(2), the Central Government may, by notification in the Official Gazette, specify such other person or class persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

- (b) As per rule 4(1) of Service Tax Rules, 1994 the application has to be made within 30 days from the date on which the levy of service tax is brought into force in respect of the relevant service or within 30 days of the commencement of business, whichever is later.
- (c) In case, if the assessee provides more than one taxable services, he may make a single application mentioning therein all the taxable services provided by him [Rule 4(4).]

In case, if the assessee provides taxable service from more than one premises/offices then:

- (i) If centralized billing/accounting system exists then he may opt to register such premises or offices from where such centralized billing/accounting systems are located. Centralised registration shall be granted by the jurisdictional Commissioner of Central Excise & Service tax [Rule 4(3)].
- (ii) If centralized billing/accounting system does not exist, then he shall make separate applications for registration in respect of each of such premises or offices to jurisdictional Superintendent of Central Excise [Rule 4(3A)].
- (d) The Superintendent of Central Excise shall after due verification of the application form or an intimation under sub-rule (5A), as the case may be, issue a certificate in form ST-2 within 7 days of the receipt of the application or the intimation. In case Superintendent fails to grant the certificate of registration, the registration applied for shall be deemed to have been granted. [Rule 4(5)]
- (e) If the registered assessee ceases to provide the taxable services for which he is registered, he must surrender the registration certificate immediately to the Superintendent of Central Excise [Rule 4(7)]. The Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act/Rules and the Notifications issued thereunder and thereupon cancel the registration certificate [Rule 4(8)].

13. (a) Man Power Recruitment or supply agency's services:-

With effect from 07.07.1997, man power recruitment or supply agency's services have been made liable to service tax vide the Finance Act, 1997.

Section 65(105)(k) of the Finance Act, 1994 defines the taxable manpower recruitment or supply agency service as any service provided or to be provided to a client, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise in any manner.

Here, recruitment or supply of manpower service includes the services in relation to:

- (a) pre-recruitment screening,
- (b) verification of the credentials and antecedents of the candidate, and
- (c) authenticity of documents submitted by the candidate.

Section 65(68) of the Finance Act, 1994 provides that manpower recruitment or supply agency means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise to a client.

(b) Mailing list compilation and mailing services:-

With effect from 16.06.2005, mailing list compilation and mailing services have been made liable to service tax vide the Finance Act, 2005.

Section 65(105) (zzzg) of the Finance Act, 1994 defines the taxable mailing list compilation and mailing service as any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing.

Section 65(63)(a) of the Finance Act, 1994 provides that mailing list compilation and mailing means any service in relation to –

- (i) compiling and providing list of name, address and any other information from any source; or
- (ii) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing, for, or on behalf of, the client.

14. As per accrual concept of accounting the value of taxable services performed should be recognized during the period in which it has been performed even though the payment for the same has not been received in that period. However, as per rule 6(1) of the Service Tax Rules, 1994 service tax is payable only on the value of taxable services received i.e., the liability to pay service tax arises only after the receipt of the value of the services.

The following entries are suggested in order to avoid any conflicts with the service tax provisions:

(a) At the time of billing to the client:

Client A/c	Dr.
To Service Income A/c	
To Service Tax Deferred Liability	

(b) At the time of realization of the consideration

Service Tax Deferred Liability A/c	Dr.
To Service Tax Payable A/c	

As the service tax for the month of March has to be paid by the 31st March, there will not be any balance at the year end in the service tax payable account. Further, there will not be any need of creating any provision for the service tax payable as there will not be any liability for the same. The balance in the CENVAT Credit Receivable (Input Services) A/c may be set off against the Service Tax Payable A/c and the difference left in the Service Tax Payable A/c should be paid to the Department.

15. The following records should be maintained under VAT system:-
 - (i) Purchase records;
 - (ii) Sales records;
 - (iii) VAT account;
 - (iv) Separate record of any exempt sale. Further, the following records should also be kept and produced to an officer:-
 - 1 Copies of all invoices issued, in serial number;
 - 2 Copies of all credit and debit notes issued in chronological order;
 - 3 All purchase invoices, copies of customs entries, receipt for payment of customs duty or tax and credit and debit notes received to be filed chronologically either by date of receipt or under each supplier's name;
 - 4 Details of the amount of tax charged on each sale or purchase;
 - 5 Total of the output tax and the input tax in each period and a net total of the tax payable or the excess carried forward, as the case may be, at the end of each month;
 - 6 Details of goods manufactured and delivered from the factory of the taxable person;
 - 7 Details of each supply of goods from the business premises, unless such details are available at the time of supply in invoices issued at, or before, that time.
16. Invoice is a document listing goods sold with price, tax charged and other details as may be prescribed and issued by a dealer authorised under the Act.
 The whole structure of the VAT with input tax credit is founded on the documentation of a tax invoice, a cash memo or a bill. The White Paper mainly provides for the following provisions which are mandatory, and failure to comply with these attracts penalty:
 - (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 tax 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 tax invoice duly signed and dated.

17. Computation of Assessable value

	Japanese (Yen)
FOB value of machinery	32000
Add : FOB Value of Accessory supplied compulsorily with machine (Note 1)	<u>8000</u>
	40000
Add : Air freight (Note 2)	8000
Add : Insurance	<u>400</u>
	48400
Conversion into Indian Rupees 48400×0.40	19360
Add : Local Agent's Commission (Note 3)	<u>200</u>
CIF value	19560
Add : Landing charges 1% of CIF Value (Note 4)	<u>195.60</u>
Assessable value in Indian Rupees	19755.60
	or
	19756.00

Calculation of custom duty

Basic custom duty = 10% of Assessable value
 = 10% of Rs. 19756
 = Rs.1975.60 or Rs.1976

CVD @ 8.24% (inclusive of education cess and secondary and higher education cess)

= 8.24% of (AV + BCD)
 = 8.24% of (19756+ 1976) Rs.21732
 = 1790.72 or Rs. 1791

Education cess (including secondary and higher education cess) = 3% of (BCD + CVD) =
 3% of Rs.3767 = Rs.113.01 or Rs.113

Total custom duty = BCD + CVD + Education cess = Rs.1976 + 1791 + 113 = Rs. 3880

Notes

- Accessories and spare parts compulsorily supplied with main implements are chargeable at the same rate as applicable to main machine. Thus, in case of

accessories also, applicable rate of duty shall be 10%.

2. As per second proviso to rule 10(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 in case of goods imported by air, where transportation cost is ascertainable, such cost shall not exceed 20% of the FOB value of the goods.
 3. Local agent's commission is includible in the assessable value as per rule 10(1)(a)(i) Customs Valuation (Determination of Price of Imported Goods) Rules, 2007.
 4. As per clause (ii) of first proviso to rule 10(2) Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 landing charges shall be added @ 1% of CIF value.
18. Section 75 A provides for payment of interest on delayed payment of drawback.
- (a) Accordingly, where any drawback payable to a claimant under section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to the claimant, in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback.
 - (b) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the Rules, the claimant shall within a period of 2 months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AB and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.
19. The facts of the given situation are similar to the case of *CCus vs. Biecco Lawrie Ltd.* 2008 (223) ELT 3 (SC) wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods removed in smaller lots have to be treated as cleared for home consumption and importer would not be required to pay anything more.
- Further, section 49 of the Customs Act, 1962 *inter alia* also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer that the same cannot be cleared within a reasonable time shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.
- Therefore, the stand taken by the Customs Department is not valid.
20. Section 21 of the Customs Act, 1962 provides that all goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act. The concept of 'goods brought into India' is not confined to goods, which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India. This implies that apart from goods which are normally imported in the course of international trade, flotsam and jetsam which are washed ashore

and derelict and wreck brought into India out of compulsion are also treated at par with trade goods.

Thus, fish, jetsam and floatsam brought into India by the fishing trawler would be liable to customs duty.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2007 TO 30.04.2008

Students may note that the Study Material for Indirect taxes contains all the relevant amendments made by the Finance Act, 2007. Further, Circulars/Notifications issued up to 30.04.2007 have also been incorporated therein. The following are the amendments which have been made till 30.04.2008. It may carefully be noted that for the students appearing in November 2008 the amendments made by Notifications, Circulars and other legislations up to 30.04.2008, as detailed hereunder, are relevant.

A. EXCISE

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

- (i) Rule 8(1) of the Central Excise Rules, 2002 has been amended to provide that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case.

In case of SSI, duty on the goods removed from the factory or the warehouse during a month shall be paid by the 16th day of the following month, if the duty is paid electronically through internet banking and by the 15th day of the following month, in any other case [Notification No. 34/2007 CE (NT) dated 11.09.2007].

- (ii) Notification No. 36/2007 CE (NT) dated 14.09.2007 has inserted two provisos in rule 11(7) of the Central Excise Rules, 2002.

The first proviso lays down that in case of the first stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale of the said imported goods, indicate on the invoice issued by him that no credit of the additional duty levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

The second proviso lays down that in case of the second stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale

PAPER – 8 : INDIRECT TAXES

QUESTIONS

NOV 2008 OLD

1. Discuss briefly whether excise duty is attracted on the excisable goods manufactured:
 - (a) in Jammu & Kashmir;
 - (b) in special economic zone;
 - (c) in 100% EOU;
 - (d) beyond Indian territorial waters (within 150 nautical miles from the shore line).
2. M/s. XYZ manufactures fan regulators and sells them in corrugated boxes under their own brand name which is affixed/printed on such boxes. However, after some time M/s. XYZ starts printing hexagonal artistic design of its marketing company 'Super Sales' on such boxes along with its brand name. The said hexagonal shape/design is only printed on the visiting cards of the two executives of the 'Super Sales'. The design printed on the letterheads and sales invoices of the 'Super Sales' is different. 'Super Sales' has not claimed that the hexagonal design belongs to them and that they have permitted M/s. XYZ to use the same on their corrugated boxes.

The Commissioner of Excise contends that the benefit of small scale exemption would not be available to M/s. XYZ as they are using a brand name of another person on their goods.

You are required to examine the veracity of the Commissioner's claim with the help of a decided case law, if any.
3. What is the legal status or otherwise of the Explanatory Notes to Harmonised System of Nomenclature (HSN) for the purposes of classification of goods under the Central Excise Tariff Act, 1985?
4. On 15.05.2008 goods were removed from the factory at Ludhiana for sale from the depot at New Delhi. On that date (at Ludhiana factory) assessable value = Rs.20,000 and tariff rate = 8%. These goods were sold ex New Delhi depot on 13.06.2008. On that date assessable value at New Delhi depot = 21,000 and tariff rate = 14%. The manufacturer has paid duty @ 8% on Rs.20,000, but the department claims duty @ 14% on Rs.21,000. Discuss the correct approach to be adopted in the case.
5. Discuss whether remission of central excise duty will be granted in the following cases under the Central Excise Rules, 2002:
 - (i) Goods were not fully manufactured and lost by natural causes before entry in the "Daily Stock Account".
 - (ii) Goods (fully manufactured) were lost during transportation of the same to the customer's business premises due to unavoidable accident.

- (iii) Goods (fully manufactured) were lost by fire before removal from the factory and the assessee has received a claim from the insurance company.
- 6. LMP Ltd. uses cement in constructing foundation for a machinery and as a building material. LMP Ltd. wants to avail CENVAT credit of duty paid on such cement. Discuss with the help of a decided case law whether LMP Ltd. can avail such credit.
- 7. Explain the scope of duty demanded under explanation to section 35F of the Central Excise Act, 1944.
- 8. Briefly explain the special procedure to be adopted for removal of excisable goods for carrying out certain purposes in terms of the Central Excise Rules, 2002.
- 9. With reference to section 35EE of the Central Excise Act, 1944, enlist the cases in which the Central Government can exercise the power of revising the orders passed by the appellate authorities.
- 10. With reference to the CENVAT Credit Rules, 2004, comment upon the validity of the following statements taking into account the position after 01.03.2008:
 - (i) An amount equal to the credit availed in respect of capital goods has to be paid when such capital goods are removed outside the premises of the output service provider for providing the output service and are not brought back to the premises within 180 days of their removal.
 - (ii) As per rule 6(3), one of the options available to a provider of output service, who opts not to maintain separate accounts is to pay an amount equal to 8% of value of the exempted services.
 - (iii) The CENVAT Credit Rules, 2004 do not provide for any general penalty for contravention of any of the provisions of the said rules.
- 11. With reference to the Customs Act, 1962, differentiate between the following:
 - (i) Rules and Regulations
 - (ii) Clearance for home consumption and Clearance for warehousing
- 12. An importer imported a shampoo. Maximum retail price (MRP) of a shampoo under Customs Tariff Sub-Heading No. 3305 10 is Rs.800. However, its assessable value as per section 14(1) of the Customs Act, 1962 is Rs.500. Shampoo is assessable under central excise on the basis of maximum retail price after allowing an abatement of 40%. Basic excise duty rate is 14% plus education cess of 2% and secondary and higher education cess of 1%. Basic customs duty rate is 10%.
Calculate the total duty payable under the Customs Tariff Act, 1975 on the shampoo.
- 13. Superlite Chemicals obtained a chemical in New Zealand for an exceptionally low price. While the market price was an equivalent of Rs.500 per kg, Superlite Chemicals got it at a low price of Rs.300 per kg. In determining the customs valuation, the Assistant Commissioner of Customs contends that price to be adopted should be Rs.500 per kg

even though the purchase is bona fide and supported by genuine purchase bill. Do you think the stand taken by the Assistant Commissioner of Customs is valid? Discuss.

14. Briefly explain the owner's right to deal with the warehoused goods as provided under section 64 of the Customs Act, 1962.
15. Briefly state the law relating to demand for payment of duty under section 28 of the Customs Act, 1962.
16. An exporter obtained inputs on payment of customs duty and has availed CENVAT credit. Advise whether he could also avail duty drawback under section 75 of the Customs Act, 1962, if imported inputs are used in the manufacture of goods which are then exported.
17. With reference to section 48 of the Customs Act, 1962, explain the procedure for disposal of goods not cleared within the specified period.
18. How is the value of a taxable service, the consideration for which is not wholly or partly consisting of money, determined under Service Tax (Determination of Value) Rules, 2006?
19. With reference to *Notification No. 6/2005 ST dated 01.03.2005*, answer the following questions:
 - (i) What is the threshold limit of service tax exemption for small service providers?
 - (ii) Is the exemption mandatory to service provider in all cases?
 - (iii) Whether credit on the capital goods received during the period of exemption limit can be availed after crossing of exemption limit?
 - (iv) On opting for exemption in the beginning of the financial year, whether the credit of the duty paid on inputs lying in stock has to be reversed?
 - (v) If balance in CENVAT credit is available after the above said reversal, whether the same can be carried forward?
 - (vi) In a case where the service provider provides more than one taxable service, does the exemption limit apply to individual taxable services or all taxable services?
20. Whether the recipient of service deemed as service provider under section 66A can treat the imported taxable service (on which he has paid the service tax) as output service for the purpose of availing credit of service tax paid on any input services? Discuss.

SUGGESTED ANSWERS/HINTS

1. (a) Excise duty is attracted on the excisable goods manufactured in Jammu & Kashmir, since Central Excise Act, 1944 extends to the whole of India [Section 1(2) of Central Excise Act, 1944].

- (b) Goods manufactured in special economic zone are not exigible to excise duty as they are excluded from the scope of charging provisions of section 3 of Central Excise Act, 1944.
 - (c) Excise duty on the goods manufactured in 100% export oriented undertaking will be attracted only when they are brought to any other place in India.
 - (d) Excise duty is attracted on the excisable goods manufactured beyond Indian territorial waters, but within 150 nautical miles from the shore line as Central Excise Act, 1944 has been extended to the designated areas in the Continental Shelf and Exclusive Economic Zone of India vide *Notification No. 166/87-CE dated 11.6.1987*. It may be noted that exclusive economic zone extends upto 200 nautical miles inside the sea from the base line.
2. The facts of the given situation are similar to the case of *Nirlex Spares Pvt. Ltd. v. CCE*, 2008 (222) ELT 3 (SC). In this case, the Supreme Court observed that the printing of the hexagonal design on the visiting cards of the executives of the marketing company could not confer any right or ownership of the marketing company over the said hexagonal shape/design nor would it show that such design had any association with the marketing company.

The Apex Court stated that the hexagonal design affixed on the corrugated boxes of the assessee did not reflect the nexus between the concerned goods and the marketing company. Further, the said hexagonal shape/design was only printed on the visiting cards of the two executives of the marketing company and the same was not even printed on the commercial documents like letter heads and sales invoices of the marketing company. The design printed on the letterheads and sales invoices of the marketing company was totally different. Moreover, the marketing company never came forward to say that the hexagonal design belonged to them and they had permitted the assessee to use the same on their corrugated boxes.

Thus, the Apex Court ruled that the alleged monogram could not be said to be the brand name or trade name of marketing company which itself disowned the said brand name. Therefore, the Supreme Court held that the printing of hexagonal design on packing of the goods of assessee, where such hexagonal design was not owned by the marketing company would not disentitle the assessee from the benefit of small scale exemption.

Thus, in view of the above-mentioned decision, the Commissioner's claim is not valid.

3. The Explanatory Notes to the HSN are the official notes issued by the Customs Co-operation Council, Brussels. They explain and clarify the scope and extent of each and every heading of the HSN, on the basis of which the present Central Excise Tariff has been patterned. However, Tariff nowhere states that notes to HSN will be applicable for interpreting the tariff. Thus, it is to be remembered that the Explanatory Notes to HSN do not have legal backing, unlike the Chapter Notes and Section Notes contained in the Tariff. Consequently, these Explanatory Notes are only of persuasive value and can be used as an aid to classification of goods when there is ambiguity as to the scope of the entry.

In *CCE v. Wood Craft Products Ltd. 1995 (77) ELT 23 (SC)*, it has been held that as per Statement of Objects and Reasons of Central Excise Tariff Bill, 1985, new tariff has been introduced, based on HSN to reduce classification disputes. Thus, in case of doubt, HSN is a safe guide for ascertaining true meaning of any expression used in the Act, unless there is an express different intention indicated in the Tariff itself.

As per Chapter 4 Paras 4 and 10 of CBE&C's Customs Manual, 2001, in case of difficulty in understanding the scope of the headings/sub-headings reference should be made to supplementary texts like the Explanatory Notes to HSN.

4. Rule 7 of Central Excise Valuation Rules, 2000 provides that in case of sale through depot, the assessable value is equal to the ex-depot normal transaction value of the goods at the depot at or about the same time on which such goods are removed from the factory.

In the given case, though Rs.20,000 represents the assessable value on 15.05.2008 (date of removal from the factory) but it is not the value prevalent on the depot. Similarly, though Rs.21,000 represents depot price, but then it is not the price prevalent on 15.05.2008 (date of removal from the factory).

The correct value to be adopted in this case is the depot price of such goods (normal transaction value) on 15.05.2008. This information has to be ascertained and adopted as assessable value.

5. Rule 21 of Central Excise Rules, 2002 provides for remission of duty in certain situations. Remission of duty can be granted in particular cases as under -
 - (i) Goods which are fully manufactured and entered in Daily Stock Account (DSA) are liable for duty. When goods are not fully manufactured and lost by natural causes before entry in Daily Stock Account (DSA), question of remission of duty does not arise at all, as there is no duty liability.
 - (ii) The application for remission has to be made before removal of the goods from the factory. There is no provision for granting remission of duty after goods are cleared from the factory. Hence, remission is not admissible when goods are lost during transportation of final product to the customers' premises by unavoidable accident.
 - (iii) Remission of duty is grantable though the assessee has received insurance claim for fire accident - *Sarda Plywood Industries Ltd. v. CCE 1987 (32) ELT 116 (Tri.)*.
6. This issue has been recently dealt with by the Rajasthan High Court in the case of *Union of India v. Hindustan Zinc Ltd. 2007 (218) ELT 503*. In this case the Revenue claimed that cement was not an eligible input in terms of explanation II to rule 2(g) of the erstwhile CENVAT Credit rules, 2002 (now explanation II to rule 2(k) of the CENVAT Credit Rules, 2004).

The High Court observed that cement used as building material for laying foundation could not be directly or indirectly said to be an integral part in connection with the

manufacture of final product. Further, the High Court opined that foundation made of cement would not fall under the category of capital goods as defined under rule 2(b) of the erstwhile CENVAT Credit Rules, 2002 (now rule 2(a) of CENVAT Credit Rules, 2004). Thus, cement would not qualify to be an input in terms of explanation II of rule 2(g) of erstwhile CENVAT Credit rules, 2002 (now explanation II of rule 2(k) of CENVAT Credit Rules, 2004).

In view of the above-mentioned decision, LMP Ltd. cannot avail CENVAT credit of the duty paid on cement used in constructing foundation for the machinery and used as a building material.

7. As per explanation to section 35F of the Central Excise Act, 1944 the duty demanded shall include:
 - amount determined under section 11D;
 - amount of erroneous CENVAT credit taken;
 - amount payable under rule 6 of CENVAT Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004;
 - amount payable under rule 57CC of Central Excise Rules, 1944;
 - interest payable under the provisions of Central Excise Act, 1944 or the rules made thereunder.
8. Rule 16C of the Central Excise Rules, 2002 provides that Commissioner may allow a manufacturer to remove excisable goods manufactured by him for carrying out test or any process not amounting to manufacture to any other premises without payment of duty. The said other premises may be registered or unregistered. After such tests or any such other process are carried out, the Commissioner may allow-
 - (i) bringing back of such goods to the said factory without payment of duty, for subsequent clearance for home consumption or export, as the case may be, or
 - (ii) removal of such goods from the said other premises, for home consumption on payment of duty leviable thereon or without payment of duty for export, as the case may be.

However this rule shall not apply to the goods known as 'prototypes' which are sent out for trial or development test.
9. In respect of the following orders passed by Commissioner (Appeals), the Central Government can exercise the power of revision granted under section 35EE of the Central Excise Act, 1944:
 - (i) Loss of goods in transit from a factory to a warehouse or to another factory or from one warehouse to another warehouse;
 - (ii) Rebate of duty of excise on goods exported or rebate of duty on excisable materials used in the manufacture of goods which are exported;

- (iii) Goods exported outside India (except Nepal and Bhutan) without payment of duty;
 - (iv) Processing loss;
 - (v) CENVAT credit.
10. (i) The statement is not valid. With effect from 01.04.2008, the first proviso to sub-rule (5) of rule 3 has been amended vide *Notification No. 10/2008 CE (NT) dated 01.03.2008* to allow removal of capital goods outside the premises of the provider of the output service without any time restriction, if the same are used for providing output service. Consequently, second proviso to rule 3(5) has been omitted.
- (ii) The statement is valid. With effect from 01.04.2008, sub-rule (3) of rule 6 has been substituted by the following new sub-rule vide *Notification No. 10/2008 CE (NT) dated 01.03.2008*: -
- Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:-
- (i) the manufacturer of goods shall pay an amount equal to ten percent of value of the exempted goods and the provider of output service shall pay an amount equal to 8% of value of the exempted services; or
 - (ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).
- (iii) The statement is not valid. With effect from 01.03.2008, a new rule 15A has been inserted vide *Notification No. 10/2008 CE (NT) dated 01.03.2008* to provide for general penalty upto Rs.5000/- in case of contravention of any of the provisions of the CENVAT Credit Rules, 2004, for which no specific penal provision exists.
11. (i) The authority to make rules vests with the Central Government under section 156 of the Customs Act, 1962 whereas the authority to make regulations vests with the Board (CBE&C) under section 157 of the Customs Act, 1962. Rules have to be placed before the Parliament, while regulations framed by CBE&C are not required to be placed before the Parliament. However, it may be noted that both rules and regulations have statutory force. Both are 'subordinate legislations' and are legally valid and enforceable.
- (ii) Clearance for home consumption implies that the customs duty on the imported goods has been discharged and goods are cleared for utilization whereas clearance for warehousing implies that the goods may, instead of being cleared for home consumption, be deposited in a warehouse and cleared later. When the goods are deposited in a warehouse the collection of duty is deferred till the time such goods are cleared for home consumption. The importer executes a bond up to a sum equal to twice the amount of duty assessed on the goods at the time of import.

12. Computation of total customs duty payable

Particulars	Amount (Rs.)
Basic customs duty payable @ 10% of Rs.500 [see note (1)]	50.00
Add: Additional customs duty payable u/s 3(1) of the Customs Tariff Act, 1975 [see note (2)]	69.21
Add: Education cess @ 2% of 119.21 (Rs.50 + Rs.69.21)	2.38
Add: Secondary and higher education cess @ 1% of Rs.119.21	1.19
Total customs duty payable	122.78
Total customs duty payable (rounded off)	123.00

Notes:

- (1) Basic customs duty is payable on the assessable value computed under section 14(1) of the Customs Tariff Act, 1962.
 - (2) Since the product is covered under MRP provisions, additional duty of customs is payable on the basis of MRP. The MRP is Rs.800 and abatement is 40%. Hence, assessable value under section 4A of the Central Excise Act, 1944 is Rs.480 (60% of Rs.800). The additional duty of customs will be 14% of Rs.480 i.e. Rs.67.20 plus education cess of Rs.1.34 (2% of Rs.67.20) plus secondary and higher education cess of Re.0.67 (1% of Rs.67.20).
13. According to section 14(1) (w.e.f. 10.10.2007) of the Customs Act, 1962, the price will be acceptable if it is bona fide 'transaction value', buyer and seller are not related and price is the sole consideration even if such sale involves any special discount.
- Thus, the stand taken by the Assistant Commissioner of Customs is not valid.
14. As per section 64 of the Customs Act, 1962, the owner of any warehoused goods, with the sanction of the proper officer and on payment of the prescribed fees may either before or after warehousing the same-
- (i) inspect the goods;
 - (ii) separate damaged or deteriorated goods from the rest;
 - (iii) sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;
 - (iv) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
 - (v) show the goods for sale; or
 - (vi) take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

15. The provisions of section 28 are invoked in the following situations:

- (i) when duty has not been levied;
- (ii) when duty has been short-levied;
- (iii) when duty has been erroneously refunded;
- (iv) when interest payable has not been paid;
- (v) when interest payable has been part paid; or
- (vi) when interest payable has been erroneously refunded.

In any of the above situations, the proper officer is authorised to issue a notice under this section asking the assessee to show cause as to why he should not pay the amount specified in the notice. The show cause notice has to be issued if the department contemplates any action prejudicial to the assessee. The show cause notice would detail the provisions of law allegedly violated and ask the noticee to show cause why action should not be initiated against him. Thus, a show cause notice gives the noticee the opportunity to present his case.

The time limit for issuance of the show cause notice is as follows:

- (a) In the case of any import made by an individual for his personal use or by the Government or by any educational, research or charitable institution or hospital – within one year from the relevant date;
- (b) in any other case – within six months from the relevant date.

Where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the time period shall be extended to 5 years.

Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or six months or five years, as the case may be.

- 16. Yes, he can avail duty drawback under section 75 of Customs Act, even if he has availed CENVAT credit. Cenvat credit can be availed only in respect of excise duty and additional duty of custom (CVD) leviable under section 3 of the Customs Tariff Act, paid on imported inputs. Duty drawback of customs portion, i.e. customs duties other than CVD is allowed even after availing CENVAT credit on inputs used in the manufacture of goods that are exported.
- 17. As per section 48 of the Customs Act, goods brought into India from a place outside India must be cleared within 30 days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow. If such imported goods -
 - (i) are not cleared for home consumption, or

(ii) warehoused or transshipped within 30 days of their unloading or within the permitted extended period, or

(iii) if the title to any imported goods is relinquished,

then, in such cases, the custodian of the goods is permitted, with the approval of the Customs Department to sell the goods by auction after sending notice to the importer.

However, animals, perishable goods and hazardous goods can be sold any time – even before 30 days with the permission of the proper officer. Arms and ammunition can be sold only with the permission of Central Government, under rules made in this regard.

18. Rule 3 of Service Tax (Determination of Value) Rules, 2006 provides the method for determining the value of taxable service, the consideration for which is not wholly or partly consisting of money. Such value shall be determined by the service provider in the manner described below. However, the same is subject to the provisions of section 67.
 - (a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade. The gross amount charged is the sole consideration.
 - (b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration. However, such value shall, in no case be less than the cost of provision of such taxable service.
19. (i) The annual threshold limit of service tax exemption for small service providers has been increased from Rs.8 lakh to Rs.10 lakh with effect from 01.04.2008 by amending *Notification No.6/2005-ST dated 01.03.05* vide *Notification No. 8/2008 ST dated 01.03.08*.
- (ii) No. The above exemption is totally optional to the taxable service provider in as much as he can choose not to claim the exemption and pay service tax on the taxable services provided by him and also claim CENVAT credit on capital goods, inputs and input services under the provisions of CENVAT Credit Rules, 2004. However, once the option of not taking the exemption is exercised, the same cannot be withdrawn during the remaining part of such financial year [Clause (i) of para 2 of the Notification].
- (iii) No. In terms of condition set out in the notification there is a blanket restriction of availment of credit on capital goods received during the period when the exemption is availed [Clause (iii) of para 2 of the Notification].
- (iv) Yes. In terms of clause (v) of para 2 of the said Notification, the same is required. This is also required in terms of rule 11(4) of the CENVAT Credit Rules, 2004.
- (v) No. The balance of CENVAT credit, if any, lying would lapse in terms of clause (vi) of para 2 of the said Notification. This is also required in terms of rule 11(4) of the CENVAT Credit Rules, 2004.

- (vi) Where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services provided from all such premises and not separately for each premises or each service [Clause (vii) of para 2 of the Notification].
- 20. As per rule 5 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, the treatment of the recipient of service, as the deemed service provider under section 66A is only for the purpose of charging service tax on taxable services received from outside the country. The taxable services provided from outside India and received in India, therefore, shall not be treated as output services for the purpose of availing credit of duty of excise paid on any input or service tax paid on any input services under CENVAT Credit Rules, 2004. However, where such service is used as an input service for providing any taxable output service or final products, the service tax paid on such service can be taken as input credit.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2007 TO 30.04.2008

Students may note that the Study Material for Indirect taxes contains all the relevant amendments made by the Finance Act, 2007. Further, Circulars/Notifications issued up to 30.04.2007 have also been incorporated therein. The following are the amendments which have been made till 30.04.2008. It may carefully be noted that for the students appearing in November 2008 the amendments made by Notifications, Circulars and other legislations up to 30.04.2008, as detailed hereunder, are relevant.

A. EXCISE

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

- (i) Rule 8(1) of the Central Excise Rules, 2002 has been amended to provide that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case.

In case of SSI, duty on the goods removed from the factory or the warehouse during a month shall be paid by the 16th day of the following month, if the duty is paid electronically through internet banking and by the 15th day of the following month, in any other case [Notification No. 34/2007 CE (NT) dated 11.09.2007].

- (ii) Notification No. 36/2007 CE (NT) dated 14.09.2007 has inserted two provisos in rule 11(7) of the Central Excise Rules, 2002.

The first proviso lays down that in case of the first stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of

PAPER – 8 : INDIRECT TAX LAWS

QUESTIONS

EXCISE

JUNE 2009 NEW

Excisability

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

CENVAT Credit

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

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

Rs.

Excise duty paid on:-

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

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

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

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

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

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

Classification

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

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

SSI

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

Refund

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

Notifications, Departmental Clarifications and Trade Notices

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

Central Excise Rules, 2002

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

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

Demand, Adjudication & Offences

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

Valuation

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

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

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

Filing of Return

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

SERVICE TAX & VAT

Taxability of Services

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

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

Assessment Procedure

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

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

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

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

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

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

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

Due date for e-payment of Service Tax

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

Refund of service tax to exporters of goods

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

Delay in furnishing service tax return

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

VAT invoice

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

Input Tax Credit

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

VAT and Hire Purchase Transactions

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

Computation of VAT liability

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

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

Applicable tax rates are as follows:-

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

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

CUSTOMS

Valuation

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

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

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

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

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

Make suitable assumptions wherever necessary.

Warehousing

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

Difference between detention and seizure

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

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

Duty Drawback

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

Divergence between accounting and taxation principles

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

SUGGESTED ANSWERS/HINTS

EXCISE

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

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

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

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

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

Note -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Computation of assessable value:-

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

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

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

SERVICE TAX & VAT

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

If any person, liable to pay service tax,—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conditions for claiming refund:-

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

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

Time limit for filing refund claim:-

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

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

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

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

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

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

A VAT invoice:-

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

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

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

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

19. VAT provisions relating to hire purchase transactions:-

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

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

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

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

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

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

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

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

CUSTOMS

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

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

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

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

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

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

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

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

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

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

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

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

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

The proceeds of any such sale shall be applied

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

- (c) *next to the payment of the duty, if any, on the goods sold,*
- (d) *next to the payment of the charges in respect of the goods sold due to the person having custody of the goods,*
- (e) *next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods.*

23. The facts of the given situation are similar to the case of *Pro Musicals v. Joint Commissioner Customs (Prev.)*, Mumbai 2008 (227) ELT 182 (Mad.) wherein after going through the relevant provisions under section 110(2) of the Customs Act, 1962, the Court observed that the show cause notice issued to assessee was not out of time because time limit under section 110(2) reckons from the date of seizure and not from the date of detention. Further, detention could, at no stretch of imagination, be considered to be same as seizure.

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

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

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

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

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

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

1. Outer Packing

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

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

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

(iii) Review of CENVAT credit balances

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

(iv) Recognition of revenue in construction contracts

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

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2008 TO 31.10.2008

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

EXCISE

Excisability

1. Odyssey Machines Limited manufactures C.I. castings which are captively consumed for producing C.I. Chilled Rolls. These Chilled Rolls are exempted from payment of excise duty. Revenue alleges that C.I. castings which are intermediary product, are marketable. Therefore, excise duty is payable on them as the final product is exempt from duty. However, the Revenue fails to prove the marketability of C.I. castings.

Discuss, with reference to a decided case law, if any, whether the allegation made by the Revenue is justifiable.

Classification

2. Some of the products manufactured by the assessee - Rehmaan Research Lab Pvt. Ltd (RRLPL) were under consideration. As per the assessee, the products under consideration were ayurvedic medicines covered under the Central Excise Tariff – Chapter-30 chargeable to duty at the rate of 10% advalorem. However, the Department contended that these products were classifiable under Chapter 33 – Cosmetic or toilet preparations, essential oils etc. - of the Tariff. Therefore, the said products would invite the duty at the rate of 40% advalorem.

Department applying the common parlance test raised the plea that these products were cosmetics such as skin beautification creams, lotions, moisturisers, shampoos, etc., and sold to the hotels, beauty parlours etc. It relied on the literature published by M/s. RRLPL on the Skin Care Naturals thereby suggesting that the use of biotique products would make the skin beautiful and would help the user retain the bloom of youth. It was also submitted by the Revenue that these products were treated as cosmetic products by the customers.

Do you think that Department's plea is valid in law?

CENVAT credit

3. Canarys Water Conservancy Machinery Co. Limited is engaged in manufacturing water pipes. Compute the CENVAT credit admissible to Canarys Water Conservancy Machinery Co. Limited. The excise duty paid at the time of purchase of following goods is:-

	(in Rs.)
Raw steel	12,000
Water pipe making machine	25,000

Lubricating oil	2,000
Equipments used in the office	10,000
Petrol	15,000
Pollution control equipment	22,000
Components, spares and accessories used in machinery	12,000

Notifications, departmental clarifications and trade notices

4. Can circulars issued by CBEC be given primacy over the decisions of the Court?

Duty based on production capacity

5. Explain the provisions relating to levy of excise duty on the basis of capacity of production.

Interest on delayed refund

6. Explain briefly, provisions relating to interest on delayed refund of amount deposited under the proviso to section 35F.

Central Excise Rules, 2002

7. Explain the validity of the following statements with reference to Central Excise Rules, 2002:-
 - (a) Inputs received in the factory may be removed as such for further processing to a job worker without payment of excise duty.
 - (b) The date of removal of any excisable goods being captively consumed within the factory of production is the date on which the final product in the production of which such goods are being used is removed.
 - (c) The assessee can pay duty on the goods, removed from the factory in the month of December 2008, electronically through internet banking till 6.01.2009.
 - (d) Goods removed from a 100% Export Oriented Unit to Domestic Tariff Area are exempt from the duty of excise.

Valuation

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

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

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

SSI

9. The value of clearances from four units of Wago Corporation Limited (WCL) during 2008-09 are as follows:-

<i>Units situated at</i>	<i>Value of clearances (Rs. in lakh)</i>
Guwhati	120
Patna	100
Delhi	130
Chennai	170

WCL sought your advice as a consultant whether benefit under Notification No. 8/2003 shall be available to WCL during 2009-10. You are required to indicate your advice in this context.

Bonds

10. Discuss briefly, the provisions governing the execution of bonds by banks.

Demand

11. Duriyan Corporation Limited (DCL) are engaged in the manufacture of both cold rolled (dutiable) and hot rolled (non-dutiable) steel pattas and patties. As per rule 6 of CENVAT Credit Rules, 2004, the assessee producing non-dutiable final products are not entitled to CENVAT credit in respect of duty paid on inputs. However, the assessee producing both dutiable and non-dutiable final products can avail themselves of CENVAT credit on all inputs, (including the inputs going into the production of non-dutiable goods) subject to the condition that they shall "pay an amount equal to 10% of the value of the exempted goods". Hence, DCL made payment at 10% while selling the non-dutiable goods. Department contended that 10% recovery from the buyer is liable to be deposited with the Central Government in view of the provisions of Section 11D of the Central Excise Act, 1944

Do you think the Department's contention is tenable in law?

Refund

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

Appeals

13. The adjudicating authority passed an order against the assessee – Rainbow Industries. Rainbow Industries carried the matter in appeal before Commissioner (Appeals) and succeeded. Revenue preferred appeal before the Tribunal. At the hearing of the appeal before the Tribunal, the representative of Rainbow Industries raised a preliminary objection as to maintainability of the appeal on the ground that the appeal had been filed by Commissioner of Central Excise himself, instead of by the Central Excise Officer authorized by the Commissioner, as required by Section 35B(2) of the Central Excise Act, 1944.

Do you think the assessee's contention is valid in law?

CUSTOMS

Basic concepts

14. Illustrate the points of differences between pilferage of goods under section 13 and loss/destruction of goods under section 23 of the Customs Act, 1962.

Duty drawback

15. Solaris Experts Limited has exported goods worth Rs. 1,00,000 (FOB Value). Ascertain whether Solaris Experts Limited is entitled to duty drawback given that the rate of duty drawback on such export of goods is 0.9%.

Valuation

16. Sonika International Corporation (SIC) has imported a machine by air from United States. Bill of entry is presented on 18.07.2008. However, entry inwards is granted on 7.08.2008.

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

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

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

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

Make suitable assumptions wherever necessary.

Warehousing

17. Foreguson Steel Industries imported certain goods and kept them in warehouse. However, the goods were not removed from the warehouse at the expiration of the statutory time period during which such goods were permitted under section 61 to remain in a warehouse.

Foreguson Steel Industries sought to relinquish the title to such goods under the proviso to section 68. However, the Department contended that since the goods were deemed to be improperly removed from the warehouse (considering the over stay of such goods in the warehouse) under section 72(1)(b), the case would not fall under section 68 and thus proviso to section 68 could not be invoked. It was submitted that before invoking the proviso to section 68, the conditions of section 68 must be fulfilled which was not done in the instant case.

Do you think that the Department's contention is tenable?

Importation, exportation and transportation of goods

18. Mayoni Export House has exported certain goods to Canada through sea. The person-in-charge of the ship carrying the export goods at the custom station is ready to cause the ship to depart from that custom station. However, he comes to know that he cannot cause or permit the ship to depart from that customs station until a written order to that effect has been given by the proper officer. He has approached you for knowing the conditions to be fulfilled before issue of such an order. What would you advice him?

Power to arrest under section 104 of the Act

19. Rohan Aggarwal, the assessee, was summoned under section 108 of the Customs Act, 1962 to give his statement in the inquiry. He filed the application for anticipatory bail in the sessions court which were disposed of on the ground of being pre-mature. However, he later moved to the High Court which granted him anticipatory bail with a direction to the authorities that he should not be arrested without giving a ten days' prior notice to him.

Revenue contended that the order passed by the High Court was illegal and erroneous. Explain, with the help of a decided case law, if any, whether the stand taken by Revenue is sustainable in law.

Power to take samples

20. Enumerate briefly, the provisions relating to the power of custom authorities to draw samples under section 144 of the Customs Act, 1962.

SERVICE TAX

Taxability of Services

21. Examine the validity of following statements:-

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

Assessment Procedure

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

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

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

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

Service tax paid on input services used in
construction service

Rs. 25,000

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

- (a) The aforesaid contract for construction of residential complex involves the transfer of property in goods and materials involved in the construction of residential complex of worth Rs. 2,50,000. VAT of Rs. 10,000 has been paid on the said goods and materials. RDC has opted to pay service tax under Composition Scheme.
- (b) The aforesaid contract for construction of residential complex does not involve any transfer of property in goods and materials used in the construction of residential complex. It is to be noted that RDC has opted to avail the abatement of service tax equal to 67% under notification no. 1/2003 dated 1.03.2006.

Due date for e-payment of Service Tax

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

Refund of service tax to exporters of goods

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

SUGGESTED ANSWERS/HINTS

1. The facts of the given case are similar to the case of *White Machines v. CCEx., Delhi 2008 (224) ELT 347*, wherein the Apex Court observed that if the intermediary product (C.I. castings) was marketable, then the excise duty would be payable because the final product i.e. C.I. Chilled Rolls was exempted from the payment of excise duty. However, the Tribunal failed to record any finding regarding marketability of the said intermediary product i.e. C.I. castings. Hence, it was held that in the absence of any findings recorded

by the Tribunal regarding the marketability, duty could not be levied on the goods in question.

Hence, it can be concluded that the allegation made by the Revenue is not justifiable.

2. No, the Department's plea is not valid in law. The facts of the given case are similar to the case of *CCEx., Delhi v. Ishaan Research Lab Private Ltd. 2008 (230) ELT 7* wherein the Apex Court held that the said products would invite the duty as "ayurvedic medicines" at the rate of 10% advalorem and not at the rate of 40% advalorem as claimed by the Revenue since all these products were produced under the Drugs License issued under the Drugs and Cosmetics Act, 1940. Further, label of the product specified the medicinal properties of the product and there was a specific claim that this was not a cosmetic product.

The Supreme Court clarified that the common parlance test is not "be all and end all" of the matter. Merely because the product could be put to cosmetic use, that would not by itself make it a cosmetic product provided there was a rightful claim made that it was an ayurvedic product on the factual basis, and it contained the medicinal ayurvedic medicament.

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

3. Computation of CENVAT credit admissible to Canarys Water Conservancy Machinery Co. Ltd.:-

<i>Particulars</i>	<i>Rs.</i>
Raw steel	12,000
Water pipe making machine (Note – 1)	12,500
Lubricating oil	2,000
Pollution control equipment (Note – 1)	11,000
Components, spares and accessories used (Note – 1 & 4)	<u>6,000</u>
Total CENVAT credit admissible	<u>43,500</u>

Notes:-

1. CENVAT credit in respect of capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].
2. Rule 2(a) of the CENVAT Credit Rules, 2004 excludes equipment or appliance used in an office from the definition of capital goods. Therefore, CENVAT credit of duty paid on equipments used in office of worth Rs. 10,000 shall not be admissible.

3. Rule 2(k)(i) of the CENVAT Credit Rules, 2004 specifically excludes petrol from the definition of inputs. Therefore, CENVAT credit of duty paid on petrol of worth Rs. 15,000 shall not be admissible.
4. Circular no. 276/110/96 – TRU has clarified that spares, components and accessories need not necessarily fall in Chapter 82, 84, 85 or 90 of Tariff. The only condition is that they should be the spares, parts or components of machinery specified in clause (i) of rule 2(a) of CENVAT Credit Rules, 2004.
4. The Apex Court, in case of *CCEx., Bolpur v. Ratan Melting and Wire Industries 2008 (12) STR 416*, has decided that circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by executive are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

Therefore, the circulars issued by CBEC cannot be given primacy over the decisions of the Court.

5. Section 3A as introduced by Finance Act, 2008, contains the provisions relating to levy of excise duty on the basis of capacity of production. It provides as follows:-
 1. Notified goods - Central Government, having regard to:
 - (a) the nature of the process of manufacture or production of excisable goods of any specified description,
 - (b) the extent of evasion of duty in regard to such goods or
 - (c) such other factors as may be relevant,
 may specify such goods as notified goods and there shall be levied and collected duty of excise on such goods on the basis of production capacity of the factory.
 2. Determination of annual capacity – The Central Government may prescribe the manner for determination of the annual capacity of production of the factory by an officer not below the rank of Assistant Commissioner of Central Excise.

If the factory is not working for part of the year – annual production will be calculated on proportionate basis of the annual capacity of production.

If the factors determining production capacity are changed during the year – annual capacity will be re-determined on a proportionate basis having regard to such alteration or modification.

3. Procedure for levy and collection of duty - The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on the basis of such factors relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed.

However, if the factory does not work for a continuous period of 15 days or more in a month, the duty calculated shall be proportionately reduced, subject to prescribed conditions.

4. Goods manufactured by 100% EOU - The provisions of this section shall not apply to goods produced or manufactured, by a 100% Export Oriented Undertaking (EOU) and brought to any other place in India.
6. Section 35FF, inserted by Finance Act, 2008, provides for payment of interest on pre-deposit made by an appellant who succeeds in appeal, if the amount of pre-deposit is not refunded within three months from the date of communication of the order of the appellate authority to the adjudicating authority.

Section 35FF provides that where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of the communication of the order of the appellate authority, till the date of refund of such amount.

7. (a) The statement is absolutely valid. Rule 16A of Central Excise Rules, 2002 provides that any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfillment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.
- (b) The statement is not correct. The date of removal of any excisable goods being captively consumed within the factory of production is the date on which these goods are issued for such use and not the date on which the final product in the production of which such goods are being used is removed [Explanation to rule 5(2) of Central Excise Rules, 2002].
- (c) The statement is absolutely justified. Rule 8(1) of the Central Excise Rules, 2002 has been amended to provide that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking.

- (d) The statement is incorrect. Goods removed from a 100% Export Oriented Unit to Domestic Tariff Area are liable to duty of excise. Rule 17 of Central Excise Rules, 2002 provides that goods shall be removed from a 100% Export Oriented Unit to Domestic Tariff Area under an invoice by following the procedure specified in rule 11, and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8 of the said rules.

8. Computation of assessable value:-

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

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

9. In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. dated 01-03-2003 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, the turnover of all the units of a manufacturer shall be clubbed. In the given case, it has been clearly provided that all the four units belong to WCL. Therefore, the aggregate value of clearances of WCL during 2008-09 is:-

= Rs. (120+100+130+170) lakh = Rs. 520 lakh

Since, the aggregate value of clearances of WCL exceeds Rs. 400 lakh during 2008-09, the benefit of exemption under Notification No. 8/2003 shall not be available to Wago Corporation Limited during 2009-10.

10. The provisions governing the execution of bonds by banks are as follows:
 - (i) When the State Bank of India or a scheduled bank gives a guarantee for a registered person with or without deposit of security; the guarantee bond should provide a period of validity and an extra period during which obligations arising during the period of validity to be enforced. The time limit for enforcement of obligation should be at least two years.
 - (ii) Where there is a need for extension of the period of validity of bank guarantee furnished by the bank on behalf of a party in pursuant to an order of an original or appellate authority or any other reasons, it should be done by means of supplementary deed of bank guarantee on a stamp paper.
11. The issue, as to whether the 10% recovery from the buyer under rule 6(3) of CENVAT Credit Rules, 2004 is liable to be deposited with the Central Government in view of the provisions of Section 11D of the Central Excise Act, 1944, was decided by the large bench of the Tribunal in case of *Unison Metals Ltd. v. CCE* 2006 (204) ELT 323.

The Tribunal referred to the case of *Mafatlal Industries Ltd. v. UOI* 1997 (89) E.L.T. 247 wherein the Supreme Court held that section 11D provides that only that amount which has been collected by the manufacturer from the buyer as duty of excise shall be paid over to the State.

Therefore, the larger bench held that the scheme of the Law is that manufacturers should not collect amounts falsely representing them as Central Excise duty and retain them, thus, unjustly benefiting themselves. Since, under rule 6(3) of the said rules, the 10% amount remains already paid to the Revenue, and no amount is retained by the assessee, section 11D has no application.

CBEC, examining the matter in the light of above judgment, accepted the Tribunal's decision in above case and issued clarification under Circular no. 870/8/2008-CX dated 16-5-2008. It stated that as long as the amount of 8% or 10% is paid to the Government in terms of rule 6(3) of the CENVAT Credit Rules, the provisions of section 11D shall not apply even if the amount is recovered from the buyers. The said 10% amount should be shown in the invoice as "10% amount paid under rule 6 of the CENVAT Credit Rules, 2004".

Hence, in the light of above discussion, it could be inferred that Department's contention is not tenable in law.

12. Finance Act 2008 has amended section 11B to extend the benefit of 'refund of duty of excise' to 'refund of duty of excise and interest, if any paid on such duty'. Consequently,

new section provides that any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner/Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed.

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

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

13. The facts of the given case are similar to the case of *Commr. Of C.Ex. & Cus. v. Shree Ganesh Dyeing & Pting. Works 2008 (232) ELT 775 (Guj.)* wherein the Court decided that analyzing sub-section 2 of section 35 of Central Excise Act, 1944, it could be inferred that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise. Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorising another officer to file appeal on behalf of the Commissioner. The language of the latter part of sub-section (2) of Section 35B of the Act itself makes this more than abundantly clear when the provision uses the phrase 'to appeal on his behalf'.

Therefore, if an appeal has been preferred by Commissioner himself, the appeal would be valid and shall be treated to be a valid appeal in eyes of law. Thus, the Tribunal is not entitled to dismiss the appeal thus filed.

Hence, in the instant case, the assessee's contention is not valid.

CUSTOMS

14. Difference between:-

Basis	Pilferage of goods under section 13	Loss or destruction of goods under section 23
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft.	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of goods is possible where the importer is unwilling/unable to take the delivery of the imported goods.
Duty on goods	The importer shall not be	Assistant/Deputy Commissioner of

	liable to pay the duty leviable on such goods.	Customs shall remit the duty paid on such goods.
Subsequent restoration of goods	Where the pilfered goods are restored to the importer after pilferage, the importer become liable to duty.	In case of destruction of goods, the restoration is out of question.
Applicability of provisions to warehoused goods	Provisions of section 13 do not apply to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/destruction or loss of goods	The onus to prove the pilferage does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss/destruction to the satisfaction of the Assistant / Deputy Commissioner of Customs.
Time of occurrence of pilferage or loss/destruction	The imported goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.	The imported goods must have been lost/destroyed at any time before clearance for home consumption under section 47 or in case of warehoused goods, at any time before an order for permitting the deposit of goods in a warehouse under section 60.

15. As per rule 8(1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, no amount or rate of drawback shall be determined in respect of any goods, the amount or rate of drawback of which would be less than one per cent of the F.O.B. value thereof, except where the amount of drawback per shipment exceeds five hundred rupees.

In the given case, rate of duty drawback is less than 1% of FOB value.

However, amount of drawback = 0.9% of FOB value = 0.9% of Rs. 1,00,000 = Rs. 900, which is more than Rs. 500. Hence, Solaris Experts Limited is entitled to duty drawback.

16. Computation of assessable value for Sonika International Corporation:-

	\$
CIF Value of the machine imported	13,000
Less: Air freight paid	2,800
Less: Insurance paid	<u>200</u>

FOB (Free on Board) Value	10,000
Add: Air freight (Note – 1)	2,000
Add: Insurance (actually paid)	<u>200</u>
CIF Value of the machine	12,200
Add: Landing charges (Note – 2)	<u>122</u>
Assessable value (in dollars)	<u>12,322</u>

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

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

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

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

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

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

17. No, the Department's contention is not tenable in law. The similar issue was decided in case of *J.K. Cement Works v. CCEx. & Cus. 2008 (223) ELT 138 (Raj.)*, wherein the Rajasthan High Court observed that it is not necessary to fulfil conditions for clearance of warehoused goods prescribed in main provision for invoking the proviso to section 68. The High Court explained that the only condition for invoking the proviso is that order of clearance of goods for home consumption should not have been passed and goods must still be in the warehouse. The High Court stated that it is immaterial for the purpose of invoking the proviso that the goods remained in warehouse beyond permitted time limit.

The High Court clarified that the relinquishment of title does not absolve the importer from total liability. Only the liability to pay the duty is appropriated towards goods which vest in Revenue or such other specified authority. The other liabilities in respect of such goods including rent, interest etc. remain payable. The High Court added that acceptance of this option is not subject to discretion of proper officer, but only to fulfilment of conditions prescribed in proviso to section 68 of Customs Act, 1962.

The High Court rejected the Revenue's contention that the case must first come within the domain of section 68 to invoke the proviso because if the importer is able to pay full duty, the question of exercise of option for relinquishment would not arise. Therefore, to permit exercise of option of relinquishment only on fulfilment of conditions of section 68(b) would nullify the effect of the proviso which was introduced to mitigate the hardship arising from non - removal of imported goods from warehouse. The High Court explained that even when order for clearance of goods under section 71(2) has been made, proper authorization and payments have to be made, before the goods are removed from warehouse.

18. As per section 42 of the Customs Act, 1962, the person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Subsection (2) of section 42 stipulates the conditions to be fulfilled before such order can be issued. No such order shall be given until:-

- (a) The person-in-charge of a conveyance has answered the questions put to him under Section 38;
 - (b) The provisions of section 41 have been complied with;
 - (c) The shipping bills or bills of export, the bills of transshipment, if any and such other documents, as the proper officer may require, have been delivered to him;
 - (d) All duties leviable on any stores consumed in such conveyance and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;
 - (e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
 - (f) In any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force in relation to export of goods-
 - (i) Such goods have been unloaded, or
 - (ii) Where the Assistant Commissioner/Deputy Commissioner is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.
19. The stand taken by Revenue is valid. A similar issue was decided by Supreme Court in *Union of India v. Padam Narain Aggarwal* 2008 (231) ELT 397 wherein the Apex Court

observed that power to arrest a person by a Custom Officer under section 104 of the Customs Act, 1962 is statutory in character and cannot be interfered with. Supreme Court further noted that the law, on one hand, allows a Custom Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. 'Blanket' order of bail may amount to an invitation to commit an offence or a passport to carry on criminal activities.

Supreme Court pronounced that on the facts and in the circumstances of the present case, above directions could not be said to be legal or in consonance with law. Firstly, the order passed by the High Court was a blanket one and granted protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructed, interfered and curtailed the authority of Custom Officers from exercising statutory power of arresting a person said to have committed a non-bailable offence by imposing a condition of giving ten days' prior notice, a condition not warranted by law. Hence, the order granting the anticipatory bail to the accused was set aside.

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

20. Section 144 of the Customs Act, 1962 provides the necessary power to the customs authorities to draw adequate samples of any goods in the presence of the owner of the goods.

The proper officer of the customs can take the samples for:

- examination or testing, or
- ascertaining the value thereof, or
- any other purpose of this Act.

Samples may be taken on

- the entry; or
- clearance of any goods; or
- at any time while such goods are being passed through the customs area.

After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct [Sub-section (2)].

SERVICE TAX

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

If any person, liable to pay service tax,—

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

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

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

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

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

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

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

Notes –

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

year and balance 50% shall be available in the subsequent financial year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].

5. The value of material supplied by customer, Rs. 1,00,000, is not required to be added, in case of composition scheme under works contract service.
- (b) Since, the contract does not involve the transfer of property in goods and materials used in the construction of residential complex, the contract cannot be termed as a works contract. The services provided by RDC are taxable under the category of 'construction of complex service'.

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

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

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

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

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

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

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

2	In other cases (company or HUF)	by the 6th day of the month immediately following the calendar month in which the payments are received towards the value of taxable services.
---	----------------------------------	--

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

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

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

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

Conditions for claiming refund:-

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

- (a) the exemption shall be claimed by the exporter of the goods for the specified services received and used by the exporter for export of the said goods;
- (b) the exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;

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

Time limit for filing refund claim:-

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

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2008 TO 31.10.2008

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

A. EXCISE

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

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

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

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

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

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

PAPER – 8 : INDIRECT TAX LAWS

QUESTIONS

EXCISE

NOV 2009 NEW

Manufacture

1. Rishabh Dev & Co. is engaged in the manufacture of liquid mosquitoes' destroyer. It obtains concentrated alletherin and converts it into diluted alletherin by adding solvent deodorized kerosene oil, perfume (as a masking agent) and DHT (as a stabilizing agent). Revenue alleges that the addition of stabilizing agent, masking agent etc. amounts to manufacture within the meaning of section 2(f) of the Central Excise Act, 1944.

Do you think that Revenue's allegation is tenable in law?

Payment of excise duty by cheque

2. Briefly enumerate the cases in which the payment of excise duty through cheques is not permitted.

Valuation

3. Robinson Foods is engaged in manufacturing Robinson soft drinks. Valuation of the soft drinks is done as per section 4A of the Central Excise Act, 1944. In order to sustain the tough market competition, the company reduced its prices from Rs. 12 to Rs. 10. Hence, on the existing stock of the soft drink bottle, MRP of Rs. 12 is scored out and MRP of Rs. 10 is printed. However, the crossed out MRP of Rs. 12 is clearly visible. Which MRP shall be considered for valuation purposes?

CENVAT Credit Rules, 2004

4. Tanco Products Ltd. was using plastic crates as a material handling device within their factory premises. Such plastic crates were used for internal transportation of the raw material from stores to the processing machine, semi-finished goods from one machine to other machine and finished goods to their storage area. The appellant contended that the plastic crates were eligible capital goods for the purposes of CENVAT credit and alternatively as input. Department rejected the assessee's claim of CENVAT credit in respect of the duty paid on such plastic crates.

Explain, with the help of a decided case law, if any, whether the stand taken by Department is sustainable in law.

Removal of goods from 100% EOU to Domestic Tariff Area

5. Briefly explain the procedure for removal of goods from a hundred percent export oriented unit to the domestic tariff area.

SSI

6. The small scale units producing the goods bearing the brand name / trade name of others are not eligible for exemption under *Notification No. 8/2003 dated 01.03.2003*.

Briefly discuss, the cases where the units producing the goods bearing the brand name / trade name of others are also eligible for exemption under said notification.

Refund

7. What is a Consumer Welfare Fund? How is this fund utilized?

Classification

8. When entries in Harmonised System of Nomenclature (HSN) and the Excise Tariff are not aligned, can reliance be placed upon HSN for the purpose of classification of goods?

Appeal

9. An appeal filed under section 35(2) of the Central Excise Act, 1944 by the Committee of Commissioners themselves and not by subordinate officer based on authorization is not maintainable. Examine, with the help of a decided case law, if any, the validity of the statement.

Central Excise Rules, 2002

10. Can goods lost by 'theft' or 'dacoity' be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002?

SERVICE TAX & VAT

Taxable Services

11. Explain the validity of the following statements with reference to the service tax provisions:-
 - (a) Saurabh Sinha, an architect, has provided services in the area of landscape designing. The said services are taxable under the category of 'architect's services'.
 - (b) Depository services and Electronic Access to Securities Information (EASI) services provided by Central Depository Services (India) Ltd. (CDSL) is liable to service tax under 'banking and other financial services'.
 - (c) Business auxiliary services provided by a commission agent in relation to sale and purchase of the agricultural produce are exempt from the payment of service tax.
 - (d) The cargo handling services provided in relation to agricultural produce or goods intended to be stored in a cold storage are taxable under the category of 'cargo handling service'.

Credit of input services

12. M/s Ojha Cements Limited (OCL) was engaged in the business of manufacturing and selling of cement and had been duly paying the excise duty in respect of cement produced by it. OCL supplied cement to its customers "FOR destination" and bore the

freight up to the door steps of the customer i.e. the destination point. The assessee had taken the CENVAT credit of the service tax paid on the aforementioned freight by it.

The Department contended that the payment of service tax on the freight incurred by the assessee was not input service as per rule 2(l) of the CENVAT Credit Rules, 2004 and hence the CENVAT credit was not admissible on it under the said rules.

Explain, with the help of a decided case law, if any, whether the stand taken by Department is tenable in law.

Refund of service tax

13. Answer the following questions, with reference to the *Notification No. 41/2007 dated 06.10.2007*:-

- (a) What is the time limit for filing the refund claim?
- (b) Whether the limitation period for filing the refund claim would be counted from the date of exports or from the date of receipt of remittances?
- (c) Whether refund would be admissible on specified taxable service received prior to the date it is notified in the said notification, if such services are used in relation to goods which are exported subsequent to the date on which such taxable services are notified under *Notification No. 41/2007-ST*?

Manpower recruitment or supply agency's services

14. Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether service tax is liable on such services under manpower recruitment or supply agency's service?

Construction services in respect of commercial or industrial buildings or civil structures

15. Briefly discuss, the conditions to be satisfied by a service provider providing taxable service in relation to commercial or industrial construction service to any person in order to exercise the option to avail the abatement up to 67% of the gross amount charged while computing the service tax.

Self-assessment of VAT liability

16. Briefly explain the procedure of self-assessment of VAT liability.

Merits and demerits of VAT system

17. Explain the validity of the following statements:-

- (a) VAT has harmonized the tax structure.
- (b) VAT system is a cost-effective system.

Tax Identification Number

18. Illustrate the salient features of Tax Identification Number (TIN) under VAT.

Computation of purchases eligible for input tax credit

19. Compute the purchases eligible for availing input tax credit from the following particulars:-

<i>Purchases</i>	<i>Rs.</i>
Goods for resale within the State	10,000
Capital goods required for the purpose of the manufacture or resale of taxable goods	14,000
Goods purchased from the unregistered dealer	3,200
Goods which are being utilized in the manufacture of exempted goods	6,600
High seas purchases	2,300

Variants of VAT

20. Briefly explain, the three variants of VAT.

CUSTOMS

Types of Duties

Section 121 of the Customs Act, 1962

21. Whether custom authorities are authorized to auction the confiscated goods during the period of pendency of appeal?

Valuation

22. Gulf Corporation Limited imported some goods from USA. The details of the transaction are as follows:-

Authority	Rate of exchange
CBEC	1 US \$=Rs 45
RBI	1 US \$=Rs 46.10

CIF value of the goods is \$ 20,000

Rate of basic custom duty is 40%

Rate of education cess is 3%

If similar goods were manufactured in India, excise duty payable as per Tariff is 8%.

Calculate assessable value and total duty payable thereon.

Warehousing

23. Briefly explain, the procedure in respect of clearance of goods from the warehouse for home consumption under section 68 of the Customs Act, 1962.

Advance Ruling

24. (a) What is the composition of the Authority for Advance Ruling?
(b) Is the applicant bound to actually undertake the proposed activity in relation to which he has obtained an advance ruling?
(c) At what stage can an application for advance ruling be preferred?
(d) On which questions under customs, can an advance ruling be sought?

Baggage Rules, 1998

25. Answer the following question with reference to the Baggage Rules, 1998:-

Amarnath, an IT professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used microwave oven (costing approximately Rs. 4,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months back and he has been using that oven for his personal use in his kitchen. He is not aware of Indian customs rules. Could you please provide him some help in this regard?

SUGGESTED ANSWERS/HINTS

1. The facts of the given case are similar to the case of *CCE v. Karam Chand 2009 (236) E.L.T. 647 (H.P.)*. The High Court held that mere processing of the goods was not manufacture and in order to fall within the definition of manufacture, a new substance should be formed. In the present case, no new substance was formed and only a diluted form of original substance was packaged under a different brand name. Alletherin in its concentrated form was an insecticide. The final product manufactured by the respondent was a diluted form of insecticide-alletherin which would only kill small insects like mosquitoes. Hence, only the potency of the insecticide was being reduced. Therefore, it could not be termed to be manufacture.
- Therefore, it can be inferred that the Revenue's allegation is not tenable in law
2. The payment of duty/other dues through cheques is not be permitted in the following cases: -
- (i) If there is a strike in or closures of only one nominated bank of the Commissionerate and the assessee still remains in a position to deposit money in the other nominated banks or Departmental Treasury (wherever they exist) – unless the assessee's bank is the only nominated bank in the Commissionerate.

- (ii) In the case of declared bank holidays. The reason is that such holidays are known well in advance.
 - (iii) Where the public has been given advance intimation of a strike, unless the strike is unduly prolonged (say over 3-4 days).
 - (iv) Where bank employees adopt "go-slow" tactics.
3. *Circular no. 673/64/2002-CX dated 28.10.2002* provides that once MRP is scored out, (even if it remains visible) and another MRP is printed on the package, it can not be said that the package has two MRPs printed on it, since the scored out MRP could not be considered as an MRP either by the seller or by the consumer. Hence, the scored out MRP is to be ignored. Therefore, in the instant case, the new MRP of Rs. 10 shall be considered for the purpose of valuation.
 4. The facts of the given case are similar to the case of *Banco Products (India) Ltd. v. CCEx., Vadodara-I 2009 (235) ELT 636 (Tri-LB)*. The Tribunal first analyzed the definition of "accessories" in order to decide whether plastic crates got covered under in the definition of capital goods under erstwhile rule 2(b) of the CENVAT Credit Rules, 2002 [now rule 2(a) of the CENVAT Credit Rules, 2004]. After meticulous consideration of various relevant judgments, the Tribunal observed that the only criteria for an object to be held as an accessory is that that a particular item should be capable of being used with a machine and should advance the effectiveness of working of that machine.

The plastic crates in question were used for transportation of the raw material to the processing machine and all the finished goods from the machine to storage area. If instead of using plastic crates manual transportation of the inputs or semi-finished goods had been opted for, practically, it would have hampered the continuous working of the machine on account of delays in the delivery of the raw material/semi-finished goods etc. Hence, viewed and judged in the light of the interpretation of the term "accessory" by various Courts, the Tribunal concluded that the plastic crates could be held as accessory.

While dealing with the expression "in the manufacture of the goods" in the definition of inputs under erstwhile rule 2(g) of the CENVAT Credit Rules, 2002 [now rule 2(k) of the CENVAT Credit Rules, 2004], the large bench of the Tribunal referred to the case of *Collr. of C.E. v. M/s. Rajasthan State Chemical Works 1991 (55) E.L.T. 444 (SC)* wherein the Apex Court had observed that the said expression encompassed all processes which were directly related to the actual production. The process of handling/lifting/pumping/transfer/transportation of the raw material was also a process in or in relation to manufacture, if integrally connected with further operation leading to manufacture of the goods.

By applying the ratio as enacted by the Supreme Court to the issue in dispute, the Tribunal held that process started with the issuance of the inputs from the stores and their further transportation to the production platform was only a part of the process of manufacture

integrally related to the final production. In absence of the delivery of the raw material to the manufacturing platform, the process could not start. Such delivery of the goods included transportation of the goods by plastic crates. Similarly, finished products were required to be stored in a bonded store room. The plastic crates were again used for such transportation. Hence, the Tribunal opined that the plastic crates would also be eligible for CENVAT credit as input.

In the light of aforesaid discussion, the large bench of the Tribunal held that CENVAT credit was available on the plastic crates used as material handling equipment in the factory premises as capital goods as also as input.

Hence, the stand taken by Department is not sustainable in law.

5. Rule 17 of the Central Excise Rules, 2002 provides that where any goods are removed from a hundred percent export oriented unit to domestic tariff area, such removal shall be made under an invoice in the procedure specified under rule 11 of the said rules. Further, removal shall be made only after payment of appropriate duty by crediting the duty payable to the account of the Central Government in the manner specified in rule 8 or by utilizing the CENVAT credit.

Such unit is required to maintain appropriate accounts related to production in the prescribed form giving the following details :

- (i) description of goods
- (ii) quantity removed
- (iii) duty paid.

Such unit shall submit a monthly return in the specified form (E.R - 2) in respect of the excisable goods manufactured, and receipt of inputs and capital goods, in the unit, to the Superintendent of Central Excise within 10 days from the close of the month to which the return relates.

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

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

6. The units producing the goods bearing the brand/trade name of others are eligible for exemption under *Notification No. 8/2003 dated 01.03.2003* where:-
 - (a) The goods bear the brand name or trade name of:-
 - (i) Khadi and Village Industries Commission
 - (ii) State Khadi and Village Industries Board

- (iii) National Small Industries Corporation (NSIC)
- (iv) Small Scale Industries Corporation
- (b) The goods are manufactured in a factory located in a rural area.
- (c) The goods are account books, registers, writing pads and file folders falling under chapter 4820 or 4821.
- (d) The goods are in the nature of packing materials, namely printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels.
- (e) The goods are in the nature of the components or parts of any machinery, equipment or appliances cleared for use as original equipment in the manufacture of the said machinery, equipment, or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

7. Meaning of Consumer Welfare Fund:-

The Consumer Welfare Fund has been established by the Central Government under the provisions of section 12C of the Central Excise Act, 1944 wherein the following amounts are credited:-

- (i) the refund of duty of excise/customs, which is not to be granted to the applicant,
- (ii) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund, and
- (iii) surplus amount of service tax referred to in section 73A(6) of the Finance Act, 1994 as amended.

Utilization of funds:-

Section 12D of the Central Excise Act, 1944 provides that:-

- (1) any money credited to the fund shall be utilized by the Central Government for the welfare of the consumers in accordance with such rules framed in this behalf.
 - (2) The Central Government shall maintain or, if it thinks fit, specify the authority, which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor General of India.
8. The Supreme Court in case of *Camlin Ltd. v. CCEx., Mumbai 2008 (230) E.L.T. 193 (SC)* has held that when the entries in the Harmonised System of Nomenclature (HSN) and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff. It further added that in the instant case, the Tribunal erred in relying upon the HSN for the purpose of classification of the impugned product. The Tribunal failed to appreciate that since the entries under the HSN and the entries under the said Tariff are completely different, the Tribunal could not base its decision on the entries in the HSN.

9. The statement is not valid. The Gujarat High court, in case of *Commr. Of C.Ex. & Cus. v. Shree Ganesh Dyeing & Ptng. Works* 2008 (232) ELT 775 (Guj.), has decided the issue as to whether the appeal filed by Commissioner himself and not by subordinate officer based on authorization, is maintainable. In the instant case, the assessee raised a preliminary objection as to maintainability of the appeal on the ground that the appeal had been filed by Commissioner himself, instead of by the Central Excise Officer authorised by the Commissioner, as required by section 35B(2) of the Central Excise Act, 1944.

The Court, while analyzing section 35B(2) of the Central Excise Act, 1944, held that section 35B(2) is made up of two parts or two stages. The first stage is formation of an opinion by Commissioner that the order made by the appellate authority is not legal or proper. The second stage is filing of an appeal against order of appellate authority by directing any Central Excise Officer authorised by the Commissioner in this behalf to file an appeal on behalf of the Commissioner. Thus, the Commissioner is vested with a discretion, in the first instance to form an opinion as to whether appellate order is legal or proper and then exercise the discretion to decide whether an appeal should be preferred or not, having come to the conclusion that the order is not proper or legal.

The High Court further clarified that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise. Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorising another officer to file appeal on behalf of the Commissioner. The language of the latter part of sub-section (2) of section 35B of the Act itself makes this more than abundantly clear when the provision uses the phrase 'to appeal on his behalf'.

Therefore, if an appeal has been preferred by Commissioner or the authorised officer, the appeal would be valid and shall be treated to be a valid appeal in eyes of law.

Note : Section 35B(2) was amended vide the Finance Act, 2005 to provide that instead of Commissioner of Central Excise, a Committee of Commissioners of Central Excise shall review the orders of Commissioner of Central Excise (Appeals) and direct any Central Excise Officer authorized by him to appeal on its behalf to the Appellate Tribunal. However, the principle enunciated in this judgment will hold good in respect of amended section 35B (2) as well.

10. The question as to whether goods lost by 'theft' or 'dacoity' can be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002 was decided by the larger bench of the Tribunal in case of *Gupta Metal Sheets v. CCE* 2008 (232) E.L.T. 796 (Tri.-LB). It clarified that the term 'loss' cannot be understood in the limited sense of 'loss to the manufacturer'. In the context of the Central Excise Law, it has to be understood as being unavailable for consumption in the market. In case of theft or dacoity, the goods are not 'lost' or 'destroyed'; they rather enter the market for consumption, albeit stealthily, after being removed from the approved premises or the place of storage. As per rule 49 of the

erstwhile Central Excise Rules, 1944 (now rule 21 of the Central Excise Rules, 2002); loss must be attributable to any natural cause or unavoidable accident.

'Natural cause' refers to some natural phenomenon i.e. vagary of nature or some act of nature like fire, flood or a similar natural calamity. The act of forcibly removing the goods by any means - non-violent or violent - amounting to theft or dacoity under the Indian Penal Code cannot be said to be a natural cause.

Considering the definitions of 'theft' and 'robbery' in the Indian Penal Code, the Tribunal held that 'theft' or 'dacoity' involves forcible removal of goods by non-violent or violent means, as the case may be, and this cannot be said to be a natural cause. The Tribunal opined that theft or dacoity is an incident and not an accident, much less unavoidable. Theft and dacoity are committed by a design and they cannot be said to be accident by any logic. By taking due care and caution, they can be avoided and, therefore, it cannot be said that theft or dacoity is 'unavoidable accident'.

In view of the above, the Tribunal held that 'theft' or 'dacoity' cannot be called unavoidable accident within the meaning of the rule 49 of erstwhile Central Excise Rules, 1944 (now rule 21 of the Central Excise Rules, 2002) and the goods lost in theft or dacoity would not be eligible for remission.

SERVICE TAX & VAT

11. (a) The statement is invalid. The services provided by Saurabh Sinha in relation to the landscape designing shall be taxable under the category of 'interior decorator's services' because the definition of the 'interior decorator' under section 65(59) of the Finance Act, 1994 as amended specifically includes a landscape designer.
- (b) The statement is absolutely valid. *Circular No. 96/7/2007 ST dated 23.08.2007* provides that the definition of 'banking and other financial services' specifically includes "provision and transfer of information and data processing". Services provided by CDSL falls within the scope of "provision and transfer of information and data processing". These services are not in the nature of "on-line information and data base access or retrieval services". Therefore, the depository services provided by CDSL including Electronic Access to Securities Information (EASI) for a fee are liable to service tax under 'banking and other financial services' [Section 65(105)(zm) of the Finance Act, 1994 as amended].
- (c) The statement is absolutely valid. *Notification No. 13/2003-ST dated 20.06.2003* as amended provides that the business auxiliary services provided by a commission agent in relation to sale and purchase of the agricultural produce are exempt from the payment of service tax.
- (d) The statement is invalid. *Notification No. 10/2002-ST dated 01.08.2002* exempts the cargo handling services provided in relation to agricultural produce or goods intended to be stored in a cold storage from whole of the service tax leviable thereon.

12. No, the stand taken by the Department is not tenable in law.

The facts of the given case are similar to the case of *Ambuja Cements Ltd. v. UOI 2009 (14) S.T.R. 3 (P & H)*. In this case, the High Court observed that the 'input service' has been defined under rule 2(l) of the CENVAT Credit Rules, 2004 to mean any service used by the manufacturer whether directly or indirectly and also includes, *inter alia*, services used in relation to inward transportation of inputs or export goods and outward transportation up to the place of removal.

Further, the Board's *Circular No. 97/8/2007-ST dated 23-8-2007* contemplates compliance of certain conditions where the sale has taken place at the destination point. These conditions are as follows:-

- (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;
- (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and
- (iii) the freight charges were an integral part of the price of goods.

The first requirement was fulfilled because:-

- (i) the supply of cement by appellant to its customer was 'FOR destination',
- (ii) the freight up to the door step of the customer was borne by the appellant, and
- (iii) the service tax on the freight charges was paid by the appellant.

Moreover, for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, the second condition also stood fulfilled.

Since, the delivery of the goods is "FOR destination" price, the third condition that the freight charges were integral part of the excisable goods also stood fulfilled.

In view of above discussion, the High Court opined that the questions of law deserved to be answered in favour of the assessee-appellant and against the Revenue. Hence, it held that the assessee was entitled to the credit of the service tax paid on the freight up to the door steps of the customer.

13. (a) *Notification No. 32/2008 ST dated 18.11.2008* has extended the time-limit for filing the refund claim from sixty days to six months from the end of the relevant quarter during which the said goods have been exported.
- (b) *Circular No. 112/06/2009 dated 12.03.2009* clarifies that it is clearly prescribed in the notification that limitation period of six months is to be computed from the date of exports.

- (c) *Circular No. 112/06/2009 dated 12.03.2009* clarifies that being prospective in nature refund is not admissible on such services received prior to the date they are notified in the said notification, even if the goods, in relation to which these services are used, are exported after the date when such services are notified under *Notification No. 41/2007-ST*.
14. *Circular No. 96/7/2007 ST dated 23.08.2007* has clarified that in the case of supply of manpower; individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual.
- Such cases are covered within the scope of the definition of the taxable service [Section 65(105)(k) of the Finance Act, 1994 as amended] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [Section 65(68) of the Finance Act, 1994 as amended] and are liable to service tax.
15. *Notification No. 1/2006-ST dated 01.03.2006* lays down the conditions to be satisfied by a service provider providing taxable service in relation to commercial or industrial construction service to any person in order to exercise the option to avail the abatement up to 67% of the gross amount charged while computing service tax. The conditions are as follows:-
- (a) The service provider has not availed the CENVAT credit of the duty paid on the inputs and capital goods used for providing the service.
 - (b) The service provider has not availed the CENVAT credit of the service tax paid on the input services used for providing the service.
 - (c) The service provider is not exclusively providing completion and finishing services and no other service in respect of building or civil structure.
 - (d) The service provider has not availed the exemption under *Notification No. 12/2003 dated 20.06.2003* in respect of the value of the goods and materials sold during the course of providing the service.
 - (e) The gross amount charged includes the value of goods and materials supplied or provided or used by the service provider for providing the service.
16. According to White Paper on State Level VAT, procedure for self-assessment of VAT liability has been given as under:-
- The VAT liability will be self-assessed by the dealers themselves in terms of submission of returns upon setting the tax credit. Return forms as well as other procedures will be simple in all States. There will no longer be compulsory assessment at the end of each year. If no specific notice is issued proposing department audit of the books of accounts of the dealer within the time limit specified in the Act, the dealer will be deemed to have been self-assessed on the basis of returns submitted by him.

17. (a) The statement is correct. VAT has an in-built advantage of harmonizing the tax structure. It leaves very small room for interpretation. Even the entries prone to varied interpretations, under VAT, do not make any difference to either dealers or the Government. Ideally, under VAT, there should be only one basic rate. In any case, typically, VAT involves lowering the number of tax slabs/rates resulting in reduction of litigation.
- (b) The statement is not valid. VAT system increases the costs in the following manner:-
- (i) Cost of administration to the State:-
VAT introduction may increase the administration cost to the State as the number of dealers to be administered will go up significantly.
- (ii) Compliance cost to dealers:-
For compliance of VAT provisions, the accounting cost may increase. The burden of this increase may not be commensurate with the benefits to traders and small firms.
18. TIN (Tax Payer's Identification Number) is a code to identify a tax payer. It is the registration number of the dealer. The salient features of Tax Identification Number are as follows:-
- (1) The taxpayer's identification number will consist of 11 digit numerals throughout the country.
 - (2) First two characters will represent the State code as used by the Union Ministry of Home Affairs.
 - (3) The set-up of the next nine characters will be, however, different in different States. TIN will facilitate computer applications, such as detecting stop filers and delinquent accounts.
 - (4) TIN will help cross-check information on tax payer compliance, for example, the selective cross-checking of sales and purchases among VAT taxpayers.
19. Computation of purchases eligible for input tax credit:-

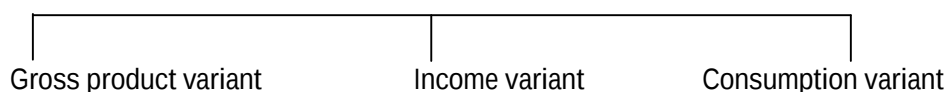
Particulars	Rupees
Goods for resale within the State	10,000
Capital goods required for the purpose of the manufacture or resale of taxable goods	<u>14,000</u>
Purchases eligible for input tax credit	<u>24,000</u>

Note: For the purpose of computation of value of purchases eligible for input tax credit, following are not be included:-

- (1) Goods purchased from the unregistered dealer of worth Rs. 3,200.

- (2) Goods which are being utilized in the manufacture of exempted goods of worth Rs. 6,600.
 - (3) The inputs imported from outside the territory of India commonly known as high seas purchases of worth Rs.2,300.
20. VAT has three variants, viz., (a) gross product variant, (b) income variant, and (c) consumption variant. These variants are presented in a schematic diagram given below:

Different variants of VAT



1. Gross product variant: Tax is levied on all sales and deduction for tax paid on inputs excluding capital inputs is allowed.
 2. Income variant: Tax is levied on all sales with set-off for tax paid on inputs and only depreciation on capital goods.
 3. Consumption variant: Tax is levied on all sales with deduction for tax paid on all business inputs (including capital goods).
21. Bombay High Court, in case of *Shabir Ahmed Abdul Rehman v. UOI 2009 (235) ELT 402 (Bom.)*, decided the similar issue in favour of assessee. In this case, Revenue confiscated the gold carried by the petitioner from Muscat. The petitioner informed the custom authorities that he was filing an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods.

The High Court held that handing over the confiscated gold immediately after serving the order of confiscation itself was improper. In any event, after receiving letter from the petitioner, the custom authorities ought to have stopped the auction sale of the confiscated gold. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified.

Hence, it can be concluded that the custom authorities are not authorized to auction the confiscated goods during the period of pendency of appeal.

22. Computation of assessable value and total custom duty payable:-

Particulars	
CIF Value	\$ 20,000
Add : Landing charges @ 1% of CIF value (Note – 1)	<u>\$ 200</u>
	<u>\$ 20,200</u>
Assessable value (in Rupees) = \$20,200 × Rs. 45 (Note -2)	Rs. 9,09,000

Add : Basic custom duty @ 40% (Rs. 9,09,000 × 40%)	<u>Rs. 3,63,600</u>
	Rs. 12,72,600
Add : Countervailing duty (Rs. 12,72,600 × 8.24%)	<u>Rs. 1,04,862.20</u>
	Rs.13,77,462.24
Education cess [(Rs. 3,63,600 + Rs. 1,04,862.20) × 3%]	<u>Rs. 14,053.87</u>
Total custom duty payable (Rs. 3,63,600 + Rs. 1,04,862.20 + Rs. 14,053.87)	<u>Rs. 4,82,516.11</u>

Notes :-

- (1) Landing charges at the rate of 1% of the CIF value of the imported goods, shall be added, whether ascertainable or not [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (2) Applicable exchange rate is Rs. 45/- per \$ as notified by CBEC because explanation to section 14(1) provides that rate of exchange shall be the rate as notified by CBEC.
23. Clearance of warehoused goods for home consumption (Section 68 of the Customs Act, 1962)
- The importer of any warehoused goods may clear them for home consumption, if -
- (a) bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
 - (b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and
 - (c) an order for clearance of such goods for home consumption has been made by the proper officer.

However, the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.

Moreover, the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

24. (a) The Authority is a high level quasi-judicial body headed by a retired judge of the Supreme Court of India. Besides the Chairperson, there are two other members – who have wide experience in technical and legal matters; namely:-
- (a) An officer of the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Central Board of Excise and Customs.
 - (b) An officer of the Indian Legal Service who is, or is qualified to be an Additional Secretary to the Government of India.
- (b) No, the applicant is not bound to actually undertake the proposed activity in relation to which he has obtained an advance ruling. As long as an advance ruling has been obtained by an applicant in accordance with the legal provisions stipulated for this purpose, the decision thereafter to actually undertake the proposed activity would be entirely his.
- (c) An applicant may prefer an application for advance ruling at a stage when an activity is proposed to be undertaken in India by the applicant.
- (d) The rulings can be sought in respect of:-
- (i) Classification of goods under the Customs Tariff Act, 1975;
 - (ii) Principles of valuation under the Customs Act, 1962;
 - (iii) Applicability, of notifications issued in respect of duties under the Customs Act, 1962, Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under the Customs Act, 1962 having a bearing on the rate of duty;
 - (iv) Determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975 and matters relating thereto.
 - (v) Applicability of notification issued under section 25(1) of the Customs Act, 1962 having a bearing on the rate of duty.
25. As per rule 5 of the Baggage Rules, 1998, Amarnath is entitled to bring the used household articles upto an aggregate value of Rs. 12,000 free of duty. Hence, Amarnath can clear the used Microwave oven free of duty within the permissible allowance.

PAPER - 8 : INDIRECT TAXES

QUESTIONS

Nov 2009 old

EXCISE

Manufacture

1. Parsavnath Furnishers Limited (PFL) is engaged in procuring the duty paid Office Furniture System/Work Stations (OFS/WS) from the suppliers and erecting and installing them at site of customers, from whom it has procured the orders. After receiving the orders from its clients, a team of engineers prepares a lay out on computer aided design system where ready-made furniture systems and work stations manufactured by independent manufactures/suppliers are superimposed. Thereafter, based on the clients' specifications, orders are placed upon the manufacturer of the furniture for each works station. After procuring the various elements of furniture system from the manufacturer, they join the same together according to the site drawing and the project code.

The assessee contends that that they are only marketing OFS/WS. However, the Revenue alleges that PFL is liable to pay duty as the said activity amounts to manufacture.

Examine, with reference to a decided case law, if any, whether the Revenue's allegation is tenable in law?

Power of arrest under excise

2. Briefly explain the power of arrest under section 13 and section 18 of the Central Excise Act, 1944.

Appeal

3. The CESTAT passed its order on 01.01.2008. The assessee filed the application for rectification of a mistake apparent from the record in the said order on 23.05.2008. However, the Tribunal could not dispose of the application till 30.06.2008. Thereafter, the Tribunal rejected the application on the ground that the six months period had lapsed.

Do you think that the stand taken by the Tribunal is valid in law?

Settlement Commission

4. Sonata Steel Industries (SSI) manufactures 'kitchen sink' and classifies it as 'sanitary ware'. However, the Revenue insists that the said product should be classified under the heading 'household article of iron and steel'. SSI approaches you for the professional advice asking whether it can take the issue before the Settlement Commission. You are required to provide them the required advice.

Advance Ruling

5. Can a writ petition be invoked against advance rulings?

SSI

6. Cupurus Coporations - a small scale unit - has affected clearances of goods of the value of Rs. 900 lakh during the financial year 2008-09. The said clearances include the following:
- (i) Clearance of excisable goods without payment of excise duty to a 100% EOU : Rs. 250 lakh
 - (ii) Export to Nepal and Bhutan : Rs. 125 lakh
 - (iii) Job work under exemption Notification No. 214/86 C.E.: Rs. 270 lakh
 - (iv) Goods manufactured in rural area with the brand name of others: Rs. 120 lakh
- Examine, whether the benefit of exemption under the *Notification No. 8/2003 dated 01.03.2003* would be available to the unit for the financial year 2009-10.

Refund

7. What is a Consumer Welfare Fund? How is this fund utilized?

Classification under central excise

8. When entries in Harmonized System of Nomenclature (HSN) and the Excise Tariff are not aligned, can reliance be placed upon HSN for the purpose of classification of goods?

Appeal

9. An appeal filed under section 35(2) of the Central Excise Act, 1944 by the Committee of Commissioners themselves and not by subordinate officer based on authorization is not maintainable. Examine, with the help of a decided case law, if any, the validity of the statement.

Central Excise Rules, 2002

10. Can goods lost by 'theft' or 'dacoity' be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002?

Valuation

11. Dodo Foods is engaged in manufacturing Dodo soft drinks. Valuation of the soft drinks is done as per section 4A of the Central Excise Act, 1944. In order to sustain the tough market competition, the company reduced its prices from Rs. 12 to Rs. 10. Hence, on the existing stock of the soft drink bottle, MRP of Rs. 12 is scored out and MRP of Rs. 10 is printed. However, the crossed out MRP of Rs. 12 is clearly visible. Which MRP shall be considered for valuation purposes?

CENVAT Credit Rules, 2004

12. Triveni Texturisers purchased inputs from Khaitani Industries and availed the CENVAT credit of the entire excise duty paid by Khaitani Industries as reflected in the invoice. Subsequently, Khaitani Industries gave certain amount of discount for the reason of the

bulk purchases made by Triveni Texturisers during the period. This trade discount was given by issuing credit notes for the basic price. Department contends that Triveni Texturisers is not entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and should reverse the credit proportionately.

Discuss whether the contention of the Revenue is justifiable.

Removal of goods from 100% EOU to Domestic Tariff Area

13. Briefly explain the procedure for removal of goods from a hundred percent export oriented unit to the domestic tariff area.

CUSTOMS

Section 121 of the Customs Act, 1962

14. Whether custom authorities are authorized to auction the confiscated goods during the period of pendency of appeal?

Valuation

15. Gulf Corporation Limited imported some goods from USA. The details of the transaction are as follows:-

Authority	Rate of exchange
CBEC	1 US \$=Rs 45
RBI	1 US \$=Rs 46.10

CIF value of the goods is \$ 20,000

Rate of basic custom duty is 40%

Rate of education cess is 3%

If similar goods were manufactured in India, excise duty payable as per Tariff is 8%.

Calculate assessable value and total duty payable thereon.

Warehousing

16. Explain 'Warehousing without warehousing' under the Customs Act, 1962.

Appeal

17. Can there be a difference in the final order issued by Tribunal and the handwritten order in the order sheet?

Section 2 of the Customs Act, 1962

18. Define briefly, the following with reference to section 2 of the Customs Act, 1962:-

- (a) Importer
- (b) Person-in-charge

- (c) Foreign going vessel
- (d) Adjudicating authority

Confiscation of conveyances

19. Illustrate the conveyances which are liable to confiscation under section 115 of the Customs Act, 1962.

Baggage Rules, 1998

20. Answer the following question with reference to the Baggage Rules, 1998:-

Amarnath, an IT professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used microwave oven (costing approximately Rs. 4,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months back and he has been using that oven for his personal use in his kitchen. He is not aware of Indian customs rules. Could you please provide him some advice in this regard?

SERVICE TAX

Taxable services

21. Discuss, with the help of a decided case law, if any, whether the explanation inserted by Finance Act, 2008 to the definition of 'business auxiliary service' under section 65(19)(ii) of the Finance Act, 1994 as amended can be construed having retrospective effect and retroactive operation.

Credit of input services

22. M/s Ojha Cements Limited (OCL) was engaged in the business of manufacturing and selling of cement and had been duly paying the excise duty in respect of cement produced by it. OCL supplied cement to its customers "FOR destination" and bore the freight up to the door steps of the customer i.e. the destination point. The assessee had taken the CENVAT credit of the service tax paid on the aforementioned freight by it.

The Department contended that the payment of service tax on the freight incurred by the assessee was not input service as per rule 2(l) of the CENVAT Credit Rules, 2004 and hence the CENVAT credit was not admissible on it under the said rules.

Explain, with the help of a decided case law, if any, whether the stand taken by Department is tenable in law.

Refund of the service tax

23. Answer the following questions, with reference to the *Notification No. 41/2007 dated 06.10.2007* as amended:-
 - (a) What is the time limit for filing the refund claim?
 - (b) Whether the limitation period for filing the refund claim would be counted from the date of exports or from the date of receipt of remittances?

- (c) Whether refund would be admissible on specified taxable service received prior to the date it is notified in the said notification, if such services are used in relation to goods which are exported subsequent to the date on which such taxable services are notified under *Notification No. 41/2007-ST*?

Filing of return

24. Briefly answer the following questions:-

- (a) Is filing of return compulsory even if no taxable service is provided or received or no payments are received during a period (a particular half year)?
- (b) Whether a single return is sufficient when an assessee provides more than one service?
- (c) What are the returns a service tax assessee has to file?

Penal provisions

25. Briefly discuss the residual penalty under section 77 of the Finance Act, 1994 as amended.

SUGGESTED ANSWERS/HINTS

1. The facts of the given case are similar to the case of *CCE v. Blow Plast Ltd. 2009 (236) E.L.T. 631 (Del.)*. The Tribunal arrived at the conclusion that since the supplier had cleared the complete set of elements required for the work station in a knocked down condition, it could not be said that the supplier had manufactured the parts and not the complete system.

The High Court while affirming the Tribunal's order held that the same product as known to the trade could not be manufactured twice over. Consequently, nothing new had come into existence so as to bring the activities of the assessee within the parameters specified in section 2(f) of the Central Excise Act, 1944. What the assessee received was complete OFS/WS and what it left on its clients' sites was also complete OFS/WS. Nothing new had come into existence. Hence, no duty was payable by the assessee.

Therefore, it can be inferred that the Revenue's allegation is not tenable in law

2. Section 13 and section 18 of the Central Excise Act, 1944 contain the provisions relating to arrest under Central Excise Act.

Any Central Excise Officer not below the rank of Inspector can arrest any person whom he has a reason to believe to be liable to punishment under the Central Excise Act, 1944. Such an arrest can be only with the prior approval of Commissioner of Central Excise.

The arrested person must be produced before the Magistrate within twenty four hours of the arrest. Normally, the Magistrate exercises the power to grant bail.

As per section 18, all arrests shall be carried out in accordance with the provisions of the Code of Criminal Procedure relating to arrest.

3. In case of *Sree Ayyangar SPG & WVG Mills Ltd. v. CIT 2008 (229) ELT 164 (SC)*, the Supreme Court while interpreting section 254(2) of the Income Tax Act, 1961 held that once the assessee had moved the application within four years from the date of order, the Tribunal could not reject that application on the ground that four years had lapsed, which included the period of pendency of the application before the Tribunal. Therefore, it concluded that if the assessee had moved the application within four years from the date of the order, the Tribunal was bound to decide the application on the merits and not on the ground of limitation.

Applying the ratio of the aforementioned case in the given situation, it can be inferred that limitation period for filing rectification of mistake is not the time limit for deciding the rectification of mistake under section 35C(2) of the Central Excise Act, 1944. Hence, in the instant case, the Tribunal is not justified in rejecting the application on the ground that the six months period has lapsed as the application had been filed before the expiry of six months.

4. As per section 32E of the Central Excise Act, 1944, an application cannot be made in Settlement Commission for interpretation of classification of goods. Since, this case relates to interpretation of classification of goods, hence, application shall not be admitted by the Settlement Commission.
5. Recently, the Delhi High Court, in case of *UAE Exchange Centre Ltd. v. UOI 2009 (236) E.L.T. 223 (Del.)*, has held that the ruling by Advance Rulings Authority is binding on the applicant, transaction on which the ruling is sought and the departmental officers concerned. It does not exclude the jurisdiction of the Courts either expressly or by implication. There is no provision which gives finality to the decision of the Authority. The High Court viewed that the Courts would have jurisdiction to entertain actions under Article 226 of the Constitution (writ petition) impugning the ruling given by the Authority. Therefore, a writ petition can be invoked against advance rulings.
6. Cupurus Coporations will be eligible for benefit of exemption under *Notification No. 8/2003 dated 01.03.2003* only if value of clearances during preceeding financial year - 2008-09 does not exceed 400 lakhs.

Calculation of value of clearances during the financial year 2008-09:-

Particulars	Rs.
Total value of clearances	900 lakhs
Less : Clearance to 100% EOU (Note – 1)	250 lakhs
Less: Clearance under exemption Notification No. 214/86 (Note - 2)	<u>270 lakhs</u>
Total value of clearances	<u>380 lakhs</u>

Since, the value of clearances for home consumption in financial year 2008-09 didn't exceed Rs. 400 lakh, the benefit of exemption shall be available during financial year 2009-10.

Notes : For the purpose of computing the limit of 400 lakh:-

1. clearances to 100 % EOU shall be excluded as these clearances are otherwise exempt also,
 2. clearance under exemption Notification No. 214 / 86 shall be excluded,
 3. export to Nepal & Bhutan shall be treated clearance for home consumption and hence not excluded,
 4. goods bearing the brand name of others are excluded but if produced in rural area then it qualifies for exemption and hence not excluded.
7. Meaning of Consumer Welfare Fund:-

The Consumer Welfare Fund has been established by the Central Government under the provisions of section 12C of the Central Excise Act, 1944 wherein the following amounts are credited:-

- (i) the refund of duty of excise/customs, which is not to be granted to the applicant,
- (ii) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund, and
- (iii) surplus amount of service tax referred to in section 73A(6) of the Finance Act, 1994 as amended.

Utilization of funds:-

Section 12D of the Central Excise Act, 1944 provides that:-

- (1) any money credited to the fund shall be utilized by the Central Government for the welfare of the consumers in accordance with such rules framed in this behalf.
 - (2) The Central Government shall maintain or, if it thinks fit, specify the authority, which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor General of India.
8. The Supreme Court in case of *Camlin Ltd. v. CCEx., Mumbai 2008 (230) E.L.T. 193 (SC)* has held that when the entries in the Harmonised System of Nomenclature (HSN) and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff. It further added that in the instant case, the Tribunal erred in relying upon the HSN for the purpose of classification of the impugned product. The Tribunal failed to appreciate that since the entries under the HSN and the entries under the said Tariff are completely different, the Tribunal could not base its decision on the entries in the HSN.
9. The statement is not valid. The Gujarat High court, in case of *Commr. Of C.Ex. & Cus. v. Shree Ganesh Dyeing & Ptng. Works 2008 (232) ELT 775 (Guj.)*, has decided the issue as to whether the appeal filed by Commissioner himself and not by subordinate officer based on authorization, is maintainable. In the instant case, the assessee raised a preliminary objection as to maintainability of the appeal on the ground that the appeal

had been filed by Commissioner himself, instead of by the Central Excise Officer authorised by the Commissioner, as required by section 35B(2) of the Central Excise Act, 1944.

The Court, while analyzing section 35B(2) of the Central Excise Act, 1944, held that section 35B(2) is made up of two parts or two stages. The first stage is formation of an opinion by Commissioner that the order made by the appellate authority is not legal or proper. The second stage is filing of an appeal against order of appellate authority by directing any Central Excise Officer authorised by the Commissioner in this behalf to file an appeal on behalf of the Commissioner. Thus, the Commissioner is vested with a discretion, in the first instance to form an opinion as to whether appellate order is legal or proper and then exercise the discretion to decide whether an appeal should be preferred or not, having come to the conclusion that the order is not proper or legal.

The High Court further clarified that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise. Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorising another officer to file appeal on behalf of the Commissioner. The language of the latter part of sub-section (2) of section 35B of the Act itself makes this more than abundantly clear when the provision uses the phrase 'to appeal on his behalf'.

Therefore, if an appeal has been preferred by Commissioner or the authorised officer, the appeal would be valid and shall be treated to be a valid appeal in eyes of law.

Note : Section 35B(2) was amended vide the Finance Act, 2005 to provide that instead of Commissioner of Central Excise, a Committee of Commissioners of Central Excise shall review the orders of Commissioner of Central Excise (Appeals) and direct any Central Excise Officer authorized by him to appeal on its behalf to the Appellate Tribunal. However, the principle enunciated in this judgment will hold good in respect of amended section 35B (2) as well.

10. The question as to whether goods lost by 'theft' or 'dacoity' can be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002 was decided by the larger bench of the Tribunal in case of *Gupta Metal Sheets v. CCE 2008 (232) E.L.T. 796 (Tri.-LB)*. It clarified that the term 'loss' cannot be understood in the limited sense of 'loss to the manufacturer'. In the context of the Central Excise Law, it has to be understood as being unavailable for consumption in the market. In case of theft or dacoity, the goods are not 'lost' or 'destroyed'; they rather enter the market for consumption, albeit stealthily, after being removed from the approved premises or the place of storage. As per rule 49 of the erstwhile Central Excise Rules, 1944 (now rule 21 of the Central Excise Rules, 2002); loss must be attributable to any natural cause or unavoidable accident.

'Natural cause' refers to some natural phenomenon i.e. vagary of nature or some act of nature like fire, flood or a similar natural calamity. The act of forcibly removing the goods

by any means - non-violent or violent - amounting to theft or dacoity under the Indian Penal Code cannot be said to be a natural cause.

Considering the definitions of 'theft' and 'robbery' in the Indian Penal Code, the Tribunal held that 'theft' or 'dacoity' involves forcible removal of goods by non-violent or violent means, as the case may be, and this cannot be said to be a natural cause. The Tribunal opined that theft or dacoity is an incident and not an accident, much less unavoidable. Theft and dacoity are committed by a design and they cannot be said to be accident by any logic. By taking due care and caution, they can be avoided and, therefore, it cannot be said that theft or dacoity is 'unavoidable accident'.

In view of the above, the Tribunal held that 'theft' or 'dacoity' cannot be called unavoidable accident within the meaning of the rule 49 of erstwhile Central Excise Rules, 1944 (now rule 21 of the Central Excise Rules, 2002) and the goods lost in theft or dacoity would not be eligible for remission.

11. *Circular no. 673/64/2002-CX dated 28.10.2002* provides that once MRP is scored out, (even if it remains visible) and another MRP is printed on the package, it can not be said that the package has two MRPs printed on it, since the scored out MRP could not be considered as an MRP either by the seller or by the consumer. Hence, the scored out MRP is to be ignored. Therefore, in the instant case, the new MRP of Rs. 10 shall be considered for the purpose of valuation.

12. No, the contention of the Revenue is not justifiable in law.

In *ACS Hydraulics Pvt. Ltd. v. CCE 2008 (227) ELT 425 (Tri.)*, the Tribunal held that there was no loss to the Revenue as far as the payment of duty was concerned by the supplier of the goods on the proper correct assessable value. Therefore, the Department could not direct the appellant to reverse the credit or to disallow the credit as the supplier had paid the duty and taken credit which was equivalent to duty shown in the invoice issued by the supplier.

Besides, *Circular No. 877/15/2008-CX dated 17.11.2008* has also clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice, would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise.

In view of the above discussion, it can be concluded that Triveni Texturisers is entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and need not reverse the credit proportionately.

13. Rule 17 of the Central Excise Rules, 2002 provides that where any goods are removed from a hundred percent export oriented unit to domestic tariff area, such removal shall be made under an invoice in the procedure specified under rule 11 of the said rules. Further, removal shall be made only after payment of appropriate duty by crediting the duty payable to the account of the Central Government in the manner specified in rule 8 or by utilizing the CENVAT credit.

Such unit is required to maintain appropriate accounts related to production in the prescribed form giving the following details :

- (i) description of goods
- (ii) quantity removed
- (iii) duty paid.

Such unit shall submit a monthly return in the specified form (E.R - 2) in respect of the excisable goods manufactured, and receipt of inputs and capital goods, in the unit, to the Superintendent of Central Excise within 10 days from the close of the month to which the return relates.

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

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

14. Bombay High Court, in case of *Shabir Ahmed Abdul Rehman v. UOI 2009 (235) ELT 402 (Bom.)*, decided the similar issue in favour of assessee. In this case, Revenue confiscated the gold carried by the petitioner from Muscat. The petitioner informed the custom authorities that he was filing an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods.

The High Court held that handing over the confiscated gold immediately after serving the order of confiscation itself was improper. In any event, after receiving letter from the petitioner, the custom authorities ought to have stopped the auction sale of the confiscated gold. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified.

Hence, it can be concluded that the custom authorities are not authorized to auction the confiscated goods during the period of pendency of appeal.

15. Computation of assessable value and total custom duty payable:-

Particulars	
CIF Value	\$ 20,000
Add : Landing charges @ 1% of CIF value (Note – 1)	<u>\$ 200</u>
	<u>\$ 20,200</u>
Assessable value (in Rupees) = \$20,200 × Rs. 45 (Note -2)	Rs. 9,09,000
Add : Basic custom duty @ 40% (Rs. 9,09,000 × 40%)	<u>Rs. 3,63,600</u>
	Rs. 12,72,600

Add : Countervailing duty (Rs. 12,72,600 × 8.24%)	<u>Rs. 1,04,862.20</u>
	Rs.13,77,462.24
Education cess [(Rs. 3,63,600 + Rs. 1,04,862.20) × 3%]	<u>Rs. 14,053.87</u>
Total custom duty payable (Rs. 3,63,600 + Rs. 1,04,862.20 + Rs. 14,053.87)	<u>Rs. 4,82,516.11</u>

Notes :-

- (1) Landing charges at the rate of 1% of the CIF value of the imported goods, shall be added, whether ascertainable or not [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) Applicable exchange rate is Rs. 45/- per \$ as notified by CBEC because explanation to section 14(1) provides that rate of exchange shall be the rate as notified by CBEC.

16. Warehousing without warehousing (Section 49 of the Customs Act, 1962)

Section 49 allows the importer to store the goods in a public warehouse, but the goods shall not be treated as warehoused goods for the purpose of the Customs Act, 1962 and accordingly warehousing provisions shall not apply to such goods. This may arise in following two cases:-

- (i) Where due to some genuine difficulty, the importer is unable to clear the goods for home consumption within the stipulated time, the goods may be deposited in a warehouse without double duty bond. This facility is available irrespective of whether the goods are dutiable or not.
- (ii) If the importer makes a declaration and for any reason the importer is unable to furnish all the particulars of the goods, he can seek permission to deposit the goods in a public bonded warehouse appointed under section 57 pending receipt of the necessary information and the supporting documents under section 49.

17. The High Court in case of *Dinkar Khindria v. UOI 2008 (231) ELT 47 (Del.)* held that a difference in the Final Order issued by Tribunal and the Handwritten Order in Order Sheet i.e. a change of order by Members of the Tribunal, amounts to tampering with the judicial records. Once an order is passed and it is signed by the members, the same cannot be altered unless law provides for a review of the same and that too only after hearing the parties. The High court held that Tribunal should ensure that such unsavory incidents should not occur in the course of their conduct of judicial proceedings.

18. (a) Importer: [Section 2(26)]:

Importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

(b) Person-in-charge: [Section 2(31)]:

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;
- (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance.

(c) Foreign going vessel or aircraft: [Section 2(21)]:

The term is defined to mean any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

- any naval vessel of any foreign Government taking part in any naval exercise;
- any vessel engaged in fishing or any other operations outside the territorial waters of India;
- any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

(d) "Adjudicating authority" [Section 2(1)]

means any authority competent to pass any order or decision under the Customs act, 1962, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), Commissioner of Central Excise (Appeals) or Appellate Tribunal;

19. The following conveyances shall be liable to confiscation:-

- (a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;
- (b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;
- (c) any conveyance which having been required to stop or land under section 106 fails to do so, except for good and sufficient cause;
- (d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;
- (e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the

master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

20. As per rule 5 of the Baggage Rules, 1998, Amarnath is entitled to bring the used household articles upto an aggregate value of Rs. 12,000 free of duty. Hence, Amarnath can clear the used Microwave oven free of duty within the permissible allowance.
21. In a recent case, the Apex Court in the case of *Union of India & Ors v. M/s 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, 2009 as amended in view of the explanation appended to this, the Supreme Court opined that the service tax, if any, would be payable only with a prospective effect and not with retrospective effect.

It further opined that 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. As stated herein before, 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.

22. No, the stand taken by the Department is not tenable in law.

The facts of the given case are similar to the case of *Ambuja Cements Ltd. v. UOI 2009 (14) S.T.R. 3 (P & H)*. In this case, the High Court observed that the 'input service' has been defined under rule 2(l) of the CENVAT Credit Rules, 2004 to mean any service used by the manufacturer whether directly or indirectly and also includes, *inter alia*, services used in relation to inward transportation of inputs or export goods and outward transportation up to the place of removal.

Further, the Board's *Circular No. 97/8/2007-ST dated 23-8-2007* contemplates compliance of certain conditions where the sale has taken place at the destination point. These conditions are as follows:-

- (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;
- (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and
- (iii) the freight charges were an integral part of the price of goods.

The first requirement was fulfilled because:-

- (i) the supply of cement by appellant to its customer was 'FOR destination',
- (ii) the freight up to the door step of the customer was borne by the appellant, and
- (iii) the service tax on the freight charges was paid by the appellant.

Moreover, for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, the second condition also stood fulfilled.

Since, the delivery of the goods is at 'FOR destination' price, the third condition that the freight charges were integral part of the excisable goods also stood fulfilled.

In view of above discussion, the High Court opined that the questions of law deserved to be answered in favour of the assessee-appellant and against the Revenue. Hence, it held that the assessee was entitled to the credit of the service tax paid on the freight up to the door steps of the customer.

23. (a) *Notification No. 32/2008 ST dated 18.11.2008* has extended the time-limit for filing the refund claim from sixty days to six months from the end of the relevant quarter during which the said goods have been exported.
- (b) *Circular No. 112/06/2009 dated 12.03.2009* clarifies that it is clearly prescribed in the notification that limitation period of six month is to be computed from the date of exports.
- (c) *Circular No. 112/06/2009 dated 12.03.2009* clarifies that being prospective in nature refund is not admissible on such services received prior to the date they are notified in the said notification, even if the goods, in relation to which these services are used, are exported after the date when such services are notified under *Notification No. 41/2007-ST*.
24. (a) Filing of return within the prescribed time limit is compulsory, even if it may be a nil return, failing which penal action is attracted.
- (b) A single return is sufficient because the ST-3 Return is designed to capture details of each service separately with in the same return.
- (c) (i) ST-3 Return – For all the registered assessee, including input service distributors.
- (ii) ST-3A Return – The assessee who is making provisional assessment under rule 6(4) of the Service Tax Rules, 1994 is required to file a memorandum in form ST-3A accompanying the return.
25. Penalty for contravention of rules and provisions of the Finance Act, 1994 as amended for which no penalty is specified elsewhere [Section 77]:
 - (1) Any person,
 - (a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to Rs. 5,000 or Rs. 200 for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

- (b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to Rs.5,000;
 - (c) who fails to,
 - (i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or
 - (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or
 - (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to Rs. 5,000 or Rs. 200 for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;
 - (d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to Rs.5,000;
 - (e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to Rs.5,000.
- (2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to Rs.5,000.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2008 TO 30.04.2009

Students may note that the Study Material for Indirect Taxes contains all the relevant amendments made by the Finance Act, 2008. Further, circulars/notifications issued up to 30.04.2008 have also been incorporated therein. The following are the amendments which have been made between 01.05.2008 to 30.04.2009. It may be carefully noted that for the students appearing in November 2009 exams, the amendments made by the notifications, circulars and other legislations up to 30.04.2009 are relevant.

A. EXCISE

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

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

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

PAPER – 8 : INDIRECT TAX LAWS

QUESTIONS

MAY 2010 NEW

EXCISE

Manufacture

1. Discuss, with the help of a decided case law, if any, whether production of mustard oil and oil cake from mustard seeds amounts to manufacture.

CENVAT credit

2. Rokasa Ltd. was engaged in the manufacture of pharmaceutical product-Rovamox pediatric drops. Rokasa Ltd. claimed the CENVAT credit of the duty paid on the plastic droppers supplied along with the bottle containing drops on the ground that the droppers were inputs used in or in relation to manufacture of such final product. However, the Revenue argued that CENVAT credit was not admissible because these droppers were separately kept in the cartons along with the sealed bottle of the pediatric drop. These droppers were neither used in the manufacture of pediatric drop nor used in relation to its manufacture.

Briefly discuss whether the stand taken by the Department is correct, with the help of a decided case law.

Penalty

3. Discuss, with the help of a decided case law, if any, the conditions and the circumstances that would attract the imposition of penalty under section 11AC of the Central Excise Act, 1944.

Remission of duty

4. Bharat Zinc Ltd. (BZ Ltd.) was engaged in the manufacture of lead and zinc concentrates. At the time of carrying out the physical stock taking, some difference was found between the physically verified stock and the stock as per the books. According to BZ Ltd., this difference was due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks, accounting method adopted. The assessee applied for the remission of the duty under rule 21 of the Central Excise Rules, 2002. Revenue contended 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 required to examine the veracity of the Revenue's claim, with the help of a decided case law, if any.

Compounding of offences

5. Briefly enumerate the persons not eligible for compounding under section 9A(2) of the Act.

Valuation

6. Henna Export Corporation gets its product manufactured on job work basis from Meltex Ltd. - an independent processor. The details of the transaction are as follows:-

Particulars	Amount(Rs.)
Cost of material sent to job worker for processing	2,500
Processor charges (including Rs.700 as processing charges and Rs.500 as his profit)	1,200
Transport charges for receiving goods at the premises of the processor	100

After processing, goods are sold by Henna Export Corporation at Rs.5,800 from the premises of Meltex Ltd. You are required determine the assessable value of the goods under section 4 of the Central Excise Act.

Settlement Commission

7. Bawa Traders Pvt. Ltd. filed an application with the Settlement Commission under section 32E of the Central Excise Act, 1944. However, as the applicant was not willing to accept the duty liability settled by the Commission, it sent the case back to the adjudicating authority in terms of section 32L(1) of the Act. It directed the adjudicating officer to dispose the case in accordance with the provisions of the Act as if no application had been made to Settlement Commission.

When case came up before Revenue for adjudication, it decided that since as per section 32M, any order made by the Settlement Commission was conclusive; the figure of duty liability fixed by the Settlement Commission had attained finality. Hence, Bawa Traders Pvt. Ltd. was required to make payment of the said amount along with penalty and interest.

Do you think that, in the light of facts and circumstances of the instant case, Revenue was justified in considering the order passed by the Settlement Commission to be the final order of adjudication?

SSI

8. Briefly explain whether the following units are eligible for the benefits under *Notification No. 8/2003-CE, dated 1.3.2003* during the financial year 2009-10 as small scale industry:
- The turnover of Padam Infosystems for the purpose of aforesaid notification in the financial year 2008-09 was Rs. 4.2 crores. However, owing to recession in the IT industry, Padam Infosystems has anticipated a fall of 20% in the turnover in the financial year 2009-10 as compared to the turnover in the financial year 2008-09.
 - Solo Enterprises started its manufacturing operations in the year 2008-09 with an investment of Rs. 4.5 crores in plant and machinery and achieved a sales turnover of Rs. 2 crore in 2008-09.

Valuation audit

9. Explain the amendment made by the Finance (No. 2) Act, 2009 in the provisions relating to valuation audit under section 14A of the Central Excise Act, 1944.

Excisability of waste products

10. Bawana Sugar Mills Ltd. is engaged in the manufacture of sugar. During the course of manufacture of sugar, bagasse emerges as a residue. The Department has demanded duty on the bagasse treating it as excisable goods on the ground that bagasse is capable of being sold for consideration. However, the assessee contends that the waste or refuse or residue arising during the course of manufacture cannot be treated as excisable goods even if such waste fetches some price in the market.

You are required to examine the veracity of the demand raised by the Department in law.

SERVICE TAX & VAT**Penalty for failure to pay service tax**

11. Examine, with the help of a decided case law, if any, whether the Tribunal could reduce the penalty imposed under section 76 of the Finance Act, 1994 as amended, below the minimum limit prescribed under that section?

Clearing and forwarding agent's services

12. Tulip Medicines entered into an agreement with M/s. Sipla for handling and distribution of their products and was entrusted with the job of receiving, storing and distributing Sipla products to their authorised stockists and distributing centres. For the services so rendered, the Tulip Medicines was entitled to commission based on agreed percentage of sales figures and also to reimbursement of recurring expenses. Revenue contended that the services provided by the assessee attracted service tax under the category "clearing & forwarding agent's services". On the other hand, the assessee pleaded that service tax could be levied under the said category only when clearing and forwarding agent would have carried out both clearing and forwarding operations and in the given case, the assessee had not rendered any clearing services.

Examine, whether the contention of the Department is justified in law.

Appeals

13. Discuss the provisions relating to the filing of appeals to Commissioner of Central Excise (Appeals) under section 84 of the Finance Act, 1994 as amended by Finance (No. 2) Act, 2009.

Taxable services

14. Explain the validity of the following statements:-
 - (a) Money changer services provided by one Scheduled bank to another Scheduled bank in relation to sale and purchase of foreign currency is liable to service tax.

- (b) Services provided by a clearing and forwarding agent in relation to clearing and forwarding operations to a goods transport agency for transportation of goods by road are exempt from whole of the service tax.

Banking and other financial services

15. Explain, with the help of a decided case law, if any, whether the chit fund activity falls within the expression “cash management” under “banking and other financial services”?

Stock transfer

16. Briefly explain whether the input tax credit of the VAT paid on the purchases of goods which are stock transferred, is available.

Computation of VAT

17. Compute the net VAT liability of Rishabh using the information given as follows:-

Particulars	Rupees
Raw material purchased from foreign market (including duty paid on imports @ 20%)	12,000
Raw material purchased from local market (including VAT charged on the material @ 4%)	20,800
Raw material purchased from neighbouring state (including CST paid on purchases @ 2%)	7,140
Storage, transportation cost and interest	2,500
Other manufacturing expenses incurred	600

Rishabh sold the goods to Rajul and earned profit @ 10% on the cost of production. VAT rate on sale of such goods is 12.5%.

Subtraction method

18. Briefly discuss, under what circumstances subtraction method of computing VAT is normally applied?

Demerits of VAT

19. Illustrate the demerits of VAT system.

Works Contract

20. Is a works contract liable to VAT? What are the points that should be borne in mind to ascertain whether a transaction is a works contract as contemplated in Article 366(29A)(b) of the Constitution?

CUSTOMS

Refund of import duty

21. Discuss, in detail, the provisions relating to the refund of import duty under section 26A.

Compounding of offences

22. Briefly enumerate the list of persons not eligible for compounding under section 137(3) of the Act.

Valuation

23. Robotics Private Limited imported some goods from ABC Inc. of US. Compute the value of the goods for the purpose of levying the duty:-

Particulars	Dollars(\$)
CIF value	5,000
Freight paid	1,500
Insurance cost	500

The banker realized the payment from importer at the exchange rate of Rs.45 per US \$. Central Board of Excise and Customs notified the exchange rate as Rs.44.50 per US \$.

Restriction on custody of goods

24. Discuss, with the help of a decided case law, if any, is the Port Trust liable to pay duty on the goods pilfered while in their possession.

Seizure of goods

25. Krishna Telecoms were engaged in the business of providing telecommunication services in various States in India. For their business Krishna Telecoms imported Optic Fibre Cables (OFC) and classified them under Heading 85.44 of the Customs Tariff. However, the Department claimed that the goods should be classified under Heading 90.01. The Commissioner of Customs (Appeals), when the matter was brought before him, held that the impugned goods were classifiable under Heading 85.44 of the Customs Tariff. The Department has filed an appeal before CESTAT against the said order which has yet not been decided.

Meanwhile, the customs authorities (DRI officers) have seized the consignment of OFC imported and cleared by Krishna Telecom on payment of duty assessed under Heading 85.44 and forced Krishna Telecoms to pay the differential duty between Headings 85.44 and 90.01 by threat and coercion.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any.

SUGGESTED ANSWERS/HINTS

1. The question as to whether the production of mustard oil and oil cake from mustard seeds amounts to manufacture has been decided by the Supreme Court in the case of *Jai Bhagwan Oil and Flour Mills v. UOI* 2009 (239) E.L.T. 401 (S.C.). In the instant case, the Apex Court held that the true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture.

When mustard seeds were subjected to the process of extraction whereby mustard oil and oil cake were produced, the process involved manufacture of mustard oil as also the manufacture of oil cake. It was certainly not a mere process of cleaning, repairing, reconditioning, recycling or assembling. Oil cake had a distinct and different identity from mustard seeds and it had a separate name, character and use different from mustard seed. Oil cake was not a waste to be thrown away, but was a valuable product with a distinct name, character, use and marketability. Resultantly, it can be concluded that the said process amounts to manufacture.

2. No, the stand taken by the Department is not correct. The facts of the given case are similar to the case of *CCEx., Mumbai v. Okasa Ltd.* 2009 (241) E.L.T. 359 (Bom.). In the instant case, the High Court agreed with the contention of the assessee that for purpose of dispensation or administration of the drugs in proper quantity as per the medical prescription, dropper had to be affixed on the bottle containing the drug. Further, as the droppers were necessary packaging material for marketing of the drug (as per the directions given by the Controller of Drugs for India), they would be covered by the words "packing material" in the definition of inputs under explanation to rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) of the CENVAT Credit Rules, 2004]. The Tribunal, while allowing the appeal in the instant case, had relied upon the decision taken in *Heal Well Pharmaceutical v. Collector* 1994 (72) E.L.T. 446 (Tribunal) wherein it was held that where dropper was provided in the carton along with bottle containing the drug, it amounted to manufacture and the manufacturer was entitled to credit of duty paid on such product being input of the firm product.

Considering the all the facts, circumstances and the legal position, the High Court, upholding the Tribunal's decision, held that the plastic dropper packed in the pediatric drops and marketed at the factory gate should be construed to be an input used in or in relation to the manufacture of the final product.

3. The conditions and the circumstances that would attract the imposition of penalty under section 11AC of the Central Excise Act, 1944 have been laid down by the Apex Court in case of *UOI v. Rajasthan Spinning & Weaving Mills* 2009 (238) ELT 3 (SC). In the instant case, the Apex Court, overruling the decision of the Tribunal, held that mandatory penalty under section 11AC of the Central Excise Act, 1944 is not applicable to every case of non-payment or short-payment of duty. In order to levy the penalty under section 11AC, conditions mentioned in the said section should exist. Supreme Court ruled that

the Tribunal was not justified in striking down the levy of penalty against the assessee on the ground that the assessee had deposited the balance amount of excise duty (that was short paid at the first instance) before the show cause notice was issued. The Apex Court elaborated that the payment of the differential duty whether before/after the show cause notice is issued cannot alter the liability for penalty. The conditions for penalty to be imposed are clearly spelt out in section 11AC of the Act.

Supreme Court clarified that both section 11AC as well as proviso to sub-section (1) of section 11A use the same expressions : “....by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,...”. Hence, it drew the inference that the penalty provision of section 11AC would come into play only if the notice under section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under section 11A(2), there is a legally tenable finding to that effect.

4. No, Revenue’s claim is not valid in law. The facts of the given case are similar to the case of *UOI v. Hindustan Zinc Limited 2009 (233) E.L.T. 61 (Raj.)* wherein the High Court held that the expressions “natural causes” and “unavoidable accident” were required to be given, reasonable and liberal meaning, lest 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 in either of these clauses because in either case, grounds might be projected, on the anvil of requirement of appropriate storage, or safety measures, and so on and so forth. Even in cases of “unavoidable accident”, it could always be contended that the accident could have been avoided by taking recourse of one or more measures. Thus, a bit liberal rather more practical approach was required to be taken in the matter.

The aspect of satisfaction under rule 21 was essentially a subjective satisfaction of authority concerned and in the instant case; the Tribunal independently recorded its satisfaction about the loss, or destruction having been sustained by the assessee under the circumstances as covered by rule 21. Therefore, merely on the basis of method of accounting of physical stock, the remission of duty could not be denied.

5. Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 9A(2):-
 1. Person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of section 9(1).
 2. A person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985.
 3. A person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore.
 4. A person who has been convicted by the court under this Act on or after 30.12.2005.

6. As per rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer) and the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer. Hence, in the instant case, the assessable value of the goods shall be Rs.5,800.
7. No, in the light of facts and circumstances of the instant case, Revenue was not justified in considering the order passed by the Settlement Commission to be the final order of adjudication. The facts of the given case are similar to the case of *Vishwa Traders Pvt. Ltd. v. UOI 2009 (241) E.L.T. 164 (Guj.)* wherein the High Court held that under section 32L(1), once the Settlement Commission forms an opinion that any person who made an application for settlement under section 32E of the Act has not cooperated in the proceedings before the Commission, the Settlement Commission may send the case back to the adjudicating authority to dispose of the case in accordance with provisions of the Act, as if, no application under section 32E has been made. If there is no application before Settlement Commission, there can be no question of any final order of adjudication. Consequently, the order passed by the Settlement Commission under section 32L(1) cannot be considered to be the final order of adjudication.

The High Court, while interpreting section 32L(3), held that for working out the time limit prescribed under section 11A for recovery of duties, the period commencing from the date of application to the Settlement Commission to the date of receipt of the order under section 32L by the adjudicating authority, shall be excluded. Therefore, the balance period available from the date of making of application before Settlement Commission shall be available to the adjudicating authority for making an order assessing duty liability of an assessee.

Hence, the High Court pronounced that Revenue shall continue the adjudication proceedings from the stage at which the proceedings before Settlement Commission commenced.
8. (i) The units whose value of clearances computed in accordance with the notification is less than Rs. 4 crores in the previous financial year are eligible for the benefit of the *Notification No. 8/2003* in the current financial year. Thus, Padam Infosystems is not eligible to any SSI concession in 2009-10. They have to pay normal duty.
(ii) All industries, irrespective of their investment or number of employees, are eligible for concession. Concession is based on the value of turnover only. Since in the financial year 2008-09, the value of turnover is less than Rs. 4 crores, Solo Enterprises is eligible for SSI concession.
9. Prior to amendment, section 14A, inter alia, provided that only a cost accountant can be nominated by the Chief Commissioner of Central Excise to conduct the special audit in case where any Central Excise Officer not below the rank of an Assistant

Commissioner/Deputy Commissioner of Central Excise is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person.

Finance (No.2) Act, 2009 has amended section 14A so as to provide that now; the Chartered Accountants may also be nominated for the aforementioned purpose.

For the purpose of this section, "Chartered Accountant" shall have the meaning assigned to it in section 2(1)(b) of the Chartered Accountants Act, 1949.

Note : Section 2(1)(b) of the Chartered Accountants Act, 1949 defines Chartered Accountant as a person who is a member of the Institute of Chartered Accountants of India.

10. The demand raised by the Department is valid in law. *Circular No. 904/24/09-CX dated 28.10.2009* has clarified that in view of the amendment made by the Finance Act, 2008 in the definition of excisable goods, bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.

In the budget of 2008, the definition of "excisable goods" in clause (d) of section 2 of the Central Excise Act, 1944 was amended by adding an explanation that for the purposes of this clause, "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.

In the light of above discussion, it could be inferred that bagasse is excisable and hence, Bawana Sugar Mills Ltd. is liable to pay excise duty.

11. The question as to whether the Tribunal could reduce the penalty imposable under section 76 of the Finance Act, 1994 as amended, below the minimum limit prescribed under that section was decided by the Rajasthan High Court in case of *UOI v. Aakar Advertising 2008 (11) S.T.R. 5 (Raj.)*. The High Court held that if the assessee proves that there is reasonable cause for failure to pay service tax, the penalty shall not be imposed. However, if reasonable cause is not shown, and penalty is required to be levied, then, the minimum penalty prescribed cannot be further reduced, under the garb of any existing discretion, assumed to be vesting, with the authority, including the Tribunal. Where the two limits have been prescribed, being the minimum and maximum limit, then obviously the free play is available between the two limits only, and the discretion can be exercised, within those limits. However, that does not mean, that the authorities have any power to impose penalty less than the minimum prescribed by the section. Accordingly, the question was answered in favour of the Revenue, and against the assessee.
12. No, the contention of the Department is not justified in law. The facts of the given case are similar to the case of *CCEx., Panchkula v. Kulcip Medicines (P) Ltd. 2009 (14) S.T.R. 608 (P & H)*. In this case, the Tribunal held that as per the facts of the case, there was no clearing activity being undertaken by the dealer. Therefore, the services rendered by him would not satisfy the requirement of clearing and forwarding agent and consequently, no service tax liability would arise. The High Court, affirming the decision taken by the

Tribunal, held that since no clearing activity was directly undertaken by the agent from the manufacturer's (Principal) premises, he was not liable to pay the service tax under the category "clearing and forwarding agent's services". Service tax is leviable under the said category only if an agent renders both clearing and forwarding services.

The High Court further elaborated the question - whether word 'and' used after the word 'clearing' but before the word 'forwarding' in section 65(105)(j) can be considered in a conjunctive (combined) sense or disjunctive (separating) sense. The Court elucidated that if one person who has rendered service only as 'forwarding agent' without rendering any service as 'clearing agent' would be deemed to have rendered both services, it would amount to replacing the conjunctive 'and' by a disjunctive which is not possible. Besides, the learned counsel for the Revenue failed to bring on record any material to show that the word 'and' should be construed as disjunctive. Further, Revenue had also not shown any 'trade practice' which might lead to a necessary inference that service of one kind rendered was invariably considered to comprise both. Therefore, the word 'and' should be understood in a conjunctive sense.

13. Section 84 of the Finance Act, 1994 as amended by Finance (No. 2) Act, 2009 provides as follows:-

- (1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order [Sub-section (1)].
- (2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.
- (3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation — For the removal of doubts, it is hereby declared that above mentioned amendment would come into effect from 19.08.2009. All cases decided before this date would continue to be governed by the existing provisions only.

14. (a) No, the statement is incorrect. *Notification No. 19/2009 – ST dated 07.07.2009* has exempted the money changer services provided by one Scheduled bank to another Scheduled bank in relation to sale and purchase of foreign currency.

(b) Yes, the statement is absolutely correct. *Notification No. 1/2009 ST dated 05.01.2009* provides that services provided by a clearing and forwarding agent in relation to clearing and forwarding operations to a goods transport agency for transportation of goods by road has been exempted from the whole of the service tax subject to the condition that the invoice issued by such service provider, providing services should mention the name and address of the goods transport agency and also the name and date of the consignment note, by whatever name called, issued in his behalf.

15. The High Court, in case of *A.P. Federation OF Chit Funds v. UOI 2009 (13) S.T.R. 350 (A.P.)*, has decided the issue as to whether the chit fund activity falls within the expression “cash management” under “banking and other financial services”. In this case, the petitioner was engaged in the business of chit funds. The petitioner questioned the correctness of *CBEC Master Circular No. 96/7/2007-S.T. dated 23-8-2007*. Considering the definition of “chit fund” and Supreme Court decision in case of *M/s. Shriram Chits & Investment (P) Ltd. v. Union of India AIR 1993 SC 2063*, the High Court held that in the absence of a specific statutory definition of ‘cash management’ or even ‘asset management’, the question of its wider interpretation either by seeking to include or exclude any other transactions or business (chit fund activity in the given case) is not permissible. Therefore, it is amply clear that in the absence of any such inclusive definition available in the statute, it cannot be said that the petitioners would fall within the mischief of “banking and other financial services”. The entire action of the respondents of levying the service tax for the first time by way of a circular is merely an executive fiat, which is not permissible under the law.

In the light of the foregoing reasons, High Court set aside the impugned *Circular No. 96/7/2007-S.T dated 23-8-2007*. As a result, the High Court held that the chit fund activity does not fall within the expression “cash management” under “banking and other financial services”.

16. Yes, the tax paid on purchases of goods which are stock transferred will be available as input tax credit after retention of 4% of such tax by the State Governments.
17. **Computation of Sale Price and VAT payable thereon;**

Particulars	Rupees
Raw material purchased from foreign market (Note – 1)	12,000
Raw material purchased from local market (Rs. 20,800 – Rs. 800) (Note – 2)	20,000
Raw material purchased from neighbouring state (Note – 3)	7,140
Storage, transportation cost and interest	2,500
Other manufacturing expenses incurred	600
Cost of production	<u>42,240</u>

Add: Profit earned @10% on Rs. 42,240	4,224
Sale Price	<u>46,464</u>
VAT @ 12.5% on sales	<u>5,808</u>

Net VAT liability of Rishabh:-

VAT on sale price	5,808
Less: Set-off of VAT on purchases	
On imports	Nil
On local purchases	<u>800</u>
Net VAT payable by Rishabh	<u>5,008</u>

Notes:-

1. Since, the duty paid on imports is not a State VAT; it will form part of cost of input.
 2. VAT charged by the local suppliers is Rs. 800. Since, the credit of this would be available; it shall not be included in the cost of input.
 3. Credit/set-off for tax paid on inter-State purchases (inputs) is not allowed.
- 18. The subtraction method of computing VAT is normally applied where:-**
- (a) the tax is not charged separately and
 - (b) the same rate of tax is attracted on all, including consumables and services, added at all the stages of production/distribution.
- 19. Demerits of VAT system:-**
1. The merits accrue in full measure only under a situation where there is only one rate of VAT and VAT applies to all commodities without any question of exemptions whatsoever. Once concessions like differential rates of VAT, composition schemes, exemption schemes, exempted category of goods etc. are built into the system, distortions are bound to occur.
 2. In the federal structure of India in the context of sales-tax, so long as Central VAT is not integrated with the State VAT, it is difficult to put the purchases from other States at par with the State purchases. Therefore, the advantage of neutrality is confined only for purchases within the State.
 3. For complying with the VAT provisions, the accounting cost increases. The burden of this increase does not commensurate with the benefit to traders and small firms.
 4. Since VAT is imposed or paid at various stages and not on last stage, it increases the working capital requirements and the interest burden on the same. In this way, it

is considered to be non-beneficial as compared to the single stage-last point taxation system.

5. VAT is a form of consumption tax. Since, the proportion of income spent on consumption is larger for the poor than for the rich, VAT tends to be regressive.
 6. As a result of introduction of VAT, the administration cost to the State increases as the number of dealers to be administered goes up significantly.
- 20.** The works contract is a deemed sale, which involves the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. Under State VAT laws, works contract transactions too is subject to VAT within the purview of Entry 54 of the List II of the Seventh Schedule of the Constitution.

To ascertain whether a transaction is a works contract as contemplated in Article 366(29A)(b), the following points should be kept in mind:

1. There must exist an individual works contract; divisible contracts are out side the scope.
 2. Goods must be involved in the execution of the works. Transfer of property in goods does qualify as works contract when it is incorporated in the works.
 3. Transfer of property in goods must pass as goods or in some other form. Form of goods has no relevance (may have a relevance for determination of rate of tax).
 4. Property in goods must pass during the execution of works not before or after the execution of works.
 5. Some work has to be done on the property of the contractee by the contractor.
 6. In the works contract, transfer of property must be an integral part of its execution.
 7. Pure labour contracts or service contracts are out side the purview of the sales tax/VAT law.
 8. If during the execution of works contract goods are consumed and their identity is lost then no transfer of property occurs in those goods.
 9. There must be a dominant intention to effect the transfer of property in goods in execution of works contract. However, even if the dominant intention of the contract is rendering of a service, and in that process if there is a transfer of property in goods, the contract will amount to a works contract.
- 21.** Section 26A of the Customs Act, 1962, containing the provisions for refund of the import duty, provides as follows:-

Conditions for claiming the refund of duty

Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, subject to the fulfillment of the following conditions:-

(a) **Goods are defective/not as per specifications**

The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that 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;

(b) **Goods identified as imported goods**

The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) **No drawback claimed**

The importer does not claim drawback under any other provisions of this Act; and

(d) **Importer exports the goods/relinquishes title to goods and abandons them/destroys or renders them commercially valueless**

(i) The goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer,

in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.

Moreover, nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Application for refund of import duty

An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed.

22. Finance (No.2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 137(3):-

(a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;

(b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:—

- (i) the Narcotic Drugs and Psychotropic Substances Act, 1985;
- (ii) the Chemical Weapons Convention Act, 2000;
- (iii) the Arms Act, 1959;
- (iv) the Wild Life (Protection) Act, 1972;
- (c) a person involved in smuggling of goods falling under any of the following, namely:—
 - (i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;
 - (ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;
 - (iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;
- (d) person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;
- (e) person who has been convicted under this Act on or after 30.12.2005.

23. Computation of assessable value for Robotics Private Limited:-

CIF value	5000 US \$
Less: Freight	1500 US \$
Less: Insurance	<u>500 US \$</u>
Therefore, FOB value	<u>3000 US \$</u>

Assessable value for Customs purpose:

FOB value	3000 US \$
Add: Freight (20% of FOB value) (Note – 1)	600 US \$
Add: Insurance (actual)	<u>500 US \$</u>
CIF for Customs purpose	4100 US \$
Add: 1% for landing charges (Note – 2)	<u>41 US\$</u>
Value for Customs purpose	4141 US \$
Exchange rate as per CBEC (Note – 3)	Rs. 44.50 per US \$
Assessable value =	Rs. 44.50 x 4141 US \$
=	Rs. 184274.50

Notes:

- (1) As the material has been imported by air, the freight has been restricted to 20% of FOB value i.e. 600 US \$. [Second proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]
 - (2) Landing charges at the rate of 1% of the CIF value of the imported goods, shall be added, whether ascertainable or not [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (3) Applicable exchange rate is Rs. 44.50/- per \$ as notified by CBEC because explanation to section 14(1) provides that rate of exchange shall be the rate as notified by CBEC.
- 24.** The question as to whether the Port Trust is liable to pay duty on the goods pilfered while in their possession is answered in negative by the Bombay High Court in case of *Board of Trustees of the Port of Bombay v. UOI 2009 (241) E.L.T. 513*. In the instant case, the High Court viewed that considering the language of section 45(3) of the Customs Act, the liability to pay duty is of the person, in whose custody the goods remain, as an approved person under section 45 of the Customs Act. Considering that the possession of the goods by the Port Trust is by virtue of powers conferred on the Port Trust under the Port Trust Act, the Court found it impossible to hold that the Port Trust is an approved person or can be notified as an approved person. It implies that section 45(3) of the Customs Act refers to the persons who have approved warehouses in terms of sections 9 and 10 of the Customs Act.
- The High Court further opined that under section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case).
- The Court interpreted that the intention of the law might have been to check the pilferage taken place from a private warehouse or a customs warehouse run by a private party. The negligence on such private parties should not cause loss to the exchequer.
- Thus, the Court held that under section 45(1) of the Customs Act, the recovery of duty in respect of pilfered goods could only from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession.
- 25.** No, the action of the customs authorities is not valid. The facts of the given case are similar to the case of *Vodafone Essar South Ltd. v. UOI 2009 (237) E.L.T. 35 (Bom.)*. In the instant case, the Bombay High Court held that the action of the Director of Revenue Intelligence (D.R.I. officers) in the Customs Department in seizing the goods and collecting money from the petitioners was wholly unjustified and uncalled for, because of following five reasons:-
- (i) When the Commissioner of Customs (Appeals) in petitioner's own case had held that OFC imported by petitioners were classifiable under Heading 85.44 of the

Customs Tariff, the petitioners were not wrong in classifying the goods imported after the said order under Heading 85.44 *ibid*.

- (ii) Decision of Commissioner (Appeals) was neither stayed by CESTAT nor by any other competent authority. Hence, mere fact that appeal filed by Revenue against the decision of Commissioner (Appeals) was pending could not be a ground to hold the petitioner guilty of misclassification of goods.
- (iii) D.R.I. officers were bound by the decision given by Commissioner of Customs (Appeals).
- (iv) The Bills of Entry filed by the petitioners by classifying the goods under Heading 85.44 had been assessed under Heading 85.44 and the goods had been cleared only on payment of duty as assessed. Therefore, till the assessment was set aside, the customs authorities could not have seized the goods assessed and cleared under Heading 85.44, on the ground that the goods were liable to be assessed under Heading 90.01.
- (v) In the absence of any reassessment order passed determining the duty liability, there would be no question of recovering differential duty.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2009 TO 31.10.2009

Students may note that the Study Material for Indirect Tax Laws contain all the relevant amendments made by the Finance (No. 2) Act, 2009. Further, circulars/notifications issued up to 30.04.2009 and Budget notifications have also been incorporated therein. The following are the amendments which have been made between 01.05.2009 to 31.10.2009. It may be carefully noted that for the students appearing in May 2010 exams, the amendments made by the notifications, circulars and other legislations up to 31.10.2009 are relevant.

A. EXCISE

1. **Notification No. 14/2009 CE (NT) dated 10.06.2009** has amended rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 so as to cast a responsibility on the said Assistant or Deputy Commissioner of Central Excise of ensuring that the goods received are used by the manufacturer for the intended purpose. This has been done by substituting the words "The said Assistant Commissioner or Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used" for the words "Where the subject goods are not used".
2. **Notification No. 15/2009 CE (NT) dated 10.06.2009** has amended *Notification No. 32/2006 CE (NT) dated 30.12.2006*, which prescribes withdrawal of facilities or imposition of restrictions on a manufacturer, first stage or second stage dealer, or an exporter involved in any of the prescribed contraventions, in the following manner:
 - (i) Facilities may be withdrawn or restrictions may be imposed on a manufacturer, first stage or second stage dealer, or an exporter involved in removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit

PAPER - 8 : INDIRECT TAXES

QUESTIONS

MAY 2010 OLD

EXCISE

Classification

1. Dagar Ltd. manufactures coconut oil and sells them in packings of 50 ml or 100 ml. The packing of the oil specifies it to be 'pure coconut oil'. Majority of the consumers use the said coconut oil as hair oil. Dagar Ltd. classifies the coconut oil as 'vegetable oil' under Chapter 15 of the Central Excise Tariff. However, the Department contends that coconut oil manufactured by Dagar Ltd. is meant for sale as 'hair oil'; therefore, it should be classified as 'hair oil' under Chapter 33.

Explain whether the contention of the Department is correct in law?

Valuation of excisable goods

2. MB Motors manufactures motor vehicles. It gets complete motor vehicles manufactured by sending the chassis of the motor vehicles to BD Works, independent body builders (job-worker), for building the body as per the design/specification given by it. The practice followed is that the chassis is transferred to BD Works on payment of appropriate central excise duty on stock transfer basis and is not sold to them. BD Works avails the CENVAT credit of the duty paid on the chassis and clears the same on payment of duty to the Depot of MB Motors. The duty is discharged by BD Works on the assessable value comprising the value of chassis and the job charges. The Depot of MB Motors sells the vehicles at a higher price than the price on which duty had been paid.

Discuss whether the practice followed is correct in terms of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

CENVAT Credit

3. What is the quantum of CENVAT credit that can be availed in respect of inputs and capital goods cleared on or after 07.09.2009 from an export-oriented undertaking or by a unit in electronic hardware technology park or in a software technology park?
4. Rokasa Ltd. was engaged in the manufacture of a pharmaceutical product, viz. Rovamox Pediatric Drops. Rokasa Ltd. contended that the plastic droppers supplied along with the bottle containing the drops were inputs used in or in relation to manufacture of the final product and hence, claimed CENVAT credit of the duty paid on the droppers. However, the Revenue argued that CENVAT credit was not admissible as these droppers were kept separately in the cartons along with the sealed bottle of the pediatric drops and were neither used in the manufacture of pediatric drop nor used in relation to its manufacture.

Briefly discuss whether the stand taken by the Department is correct or not with the help of a decided case law.

Assessment

5. Explain the concept of provisional assessment under rule 7 of the Central Excise Rules, 2002.

Power of the Central Government to impose restrictions in certain type of cases

6. Rule 12CC of the Central Excise Rules, 2002 empowers the Central Government to withdraw facilities or impose restrictions on a manufacturer, first stage or second stage dealer, or an exporter in certain cases. State such cases.

Offences

7. List the persons in respect of whom the provisions relating to compounding of offences do not apply.

Penalty

8. A show cause notice was issued against 'P' on 12.08.2009 asking him to pay Rs.3,50,000 which was short paid by him with an intent to evade payment of excise duty. The adjudication order confirming the demand was communicated to 'P' on 15.11.2009. 'P' filed an appeal against the order with the Commissioner of Central Excise (Appeals). The appeal was decided in favour of the revenue. The order of the Commissioner of Central Excise (Appeals) asking 'P' to pay the duty, interest under section 11AB and penalty equal to duty demanded under section 11AC was communicated to 'P' on 02.01.2010. 'P' plans to pay the full duty and interest within 30 days from 02.01.2010 and avail the benefit of reduced penalty (25% of duty) under the first proviso to section 11AC. Can 'P' avail the benefit of reduced penalty? Discuss.
9. Discuss, with the help of a decided case law, the conditions and the circumstances that would attract the imposition of penalty under section 11AC of the Central Excise Act, 1944?

Remission of duty

10. Bharat Zinc Ltd. (BZ Ltd.) was engaged in the manufacture of lead and zinc concentrates. At the time of carrying out the physical stock taking, some difference was found between the physically verified stock and the stock as per the books. According to BZ Ltd., this difference was due to de-bagging, shifting of concentrates, seepage of rain water and storage and loading on trucks. BZ Ltd. applied for the 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 they were neither due to natural causes, nor due to unavoidable accident. Thus, the prayer for remission was declined.

You are required to examine the veracity of the Revenue's claim with the help of a decided case law.

Appeal

11. With reference to section 35G of the Central Excise Act, 1944, discuss whether the High Court has power to condone the delay in filing an appeal?

Advance Ruling

12. Who can apply for an advance ruling under central excise provisions?

Audit

13. Does central excise law have any audit mechanism to cover a case where the value of the excisable goods has not been correctly declared or determined by a manufacturer? Discuss.

CUSTOMS

Additional duty of customs

14. For the purpose of computing additional duty under section 3(1) of the Customs Tariff Act, 1975, what will be the value of an article imported into India where a tariff value has been fixed under section 3(2) of the Central Excise Act, 1944 for the like article manufactured in India?

Appointment of customs port, airport etc.

15. Discuss the provisions of section 7 of the Customs Act, 1962 relating to appointment of customs port, airports etc.?

Restrictions on custody and removal of imported goods

16. Who takes the custody of the imported goods which have entered the customs area but have not been cleared for home consumption or warehousing? Discuss the responsibilities and liabilities of such person.

Refund

17. The Finance (No. 2) Act, 2009 has inserted section 26A in the Customs Act, 1962, which provides for refund of import duty in certain cases. With reference to the said section, state the cases where the import duty shall be refunded to the person who has paid such duty.

Warehousing

18. Priyanshi imported certain goods in March 2009. An "Into Bond" bill of entry was presented on 14th March, 2009 and goods were cleared from the port for warehousing. Assessable value was \$10,00,000. The order permitting the deposit of the goods in warehouse for three months was issued on 21st March, 2009. Priyanshi did not clear the imported goods even after the warehousing period got over on 20th June, 2009. She did not obtain any extension of time as well.

A notice was issued under section 72 demanding duty and other charges. Priyanshi cleared the goods on 28th July, 2009. Compute the amount of duty payable by Priyanshi while removing the goods on the basis of following information:

	14.03.2009	20.06.2009	28.07.2009
Rate of Exchange	Rs.48.20	Rs.48.40	Rs.48.50

per US \$			
Basic customs duty	15%	10%	12%

Assume that no additional duty or special additional duty is payable.

Advance Rulings

19. Explain the amendments made by the Finance (No. 2) Act, 2009 in section 28F of the Customs Act, 1962.

Seizure of goods

20. Krishna Telecoms were engaged in the business of providing telecommunication services in various States in India. For their business Krishna Telecoms imported Optic Fibre Cables (OFC) and classified them under Heading 85.44 of the Customs Tariff. However, the Department claimed that the goods should be classified under Heading 90.01. The Commissioner of Customs (Appeals), when the matter was brought before him, held that the impugned goods were classifiable under Heading 85.44 of the Customs Tariff. The Department has filed an appeal before CESTAT against the said order which has yet not been decided.

Meanwhile, the customs authorities (DRI officers) have seized the consignment of OFC imported and cleared by Krishna Telecom on payment of duty assessed under Heading 85.44 and forced Krishna Telecoms to pay the differential duty between Headings 85.44 and 90.01 by threat and coercion.

Examine the validity of the action of the customs authorities, with the help of a decided case law.

Miscellaneous

21. Whether officers of the other Departments are required to assist officers of customs in the execution of the Customs act, 1962? If yes, then list such officers.

SERVICE TAX

Banking and other financial services

22. With reference to banking and other financial services, state whether service tax is applicable in the following cases:
 - (i) Services provided by State Bank of India to the Central Board of Direct Taxes in relation to collection of advance income-tax.
 - (ii) Discount charged by SB Ltd., a non-banking financial company, on the facility of bill discounting provided by it. Such discount is shown separately in the bill issued for this purpose.
 - (iii) Rich Bank, a Scheduled Bank, purchases foreign currency from Generous Bank, another Scheduled Bank.

Construction services in respect of residential complexes

23. With reference to construction services in respect of residential complexes, answer the following questions:
- (i) What does a “residential complex” mean?
 - (ii) Which activities are covered within “construction of complex”?
 - (iii) Does the service tax law provide for any exemption for this service? Explain.

Business auxiliary services

24. With reference to business auxiliary services state whether service tax is applicable in following cases:
- (i) Manufacture of non-excisable goods on behalf of the client.
 - (ii) Services provided by commission agents in relation to sale of jute.
 - (iii) Commission received by distributors for distribution of mutual fund units.

Appeals

25. The Finance (No. 2) Act, 2009 has substituted section 84 of the Finance Act, 1994 with a new section 84. Explain the provisions of new section.

SUGGESTED ANSWERS/HINTS

1. The Department’s contention is correct. *Circular No. 890/10/2009 CX dated 03.06.2009* has been issued in respect of classification of coconut oil sold in small packs say of 50 ml or 100 ml. When the coconut oil is sold in small containers, following indications are found on containers or labels:

- A. ‘hair oil’
- B. ‘edible oil’
- C. ‘pure coconut oil’ or ‘coconut oil’

When ‘hair oil’ is printed on the container/label, it is classified as ‘hair oil’ under chapter 33. Further, the coconut oil falling under the other two categories (‘edible oil’, ‘pure coconut oil’ or ‘coconut oil’) should also be classified as ‘hair oil’ under Chapter 33 as they are meant for sale as ‘hair oil’.

The circular explains that Chapter Note 2 of Chapter 33 prescribes a condition that Heading No.3305 (which covers hair oil also) applies to products **put up in packing of a kind sold by retail for such use**. Thus, if a particular packing of coconut oil is generally sold in retail as hair oil, in that case, the said product would be classified under heading 3305.

Further, Section Note 2 to Section VI also provides that goods classifiable in Heading 3305 by reason of being put up for retail sales are to be classified in the said heading

and in no other heading of the schedule. This Section Note further supports the interpretation that though a product is capable of being classified under more than one heading, even then because of the nature of its retail packing, which is indicative of its use as hair oil, the classification under heading 3305 would get priority. However, if the same coconut oil is packed in say 1 litre or 2 litre packages, which are generally used by consumers for edible purposes (even though some customers may use it as hair oil), it would be classified under Chapter 15.

Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under Heading 3305, even though few consumers may use it as edible oil.

Thus, the circular settles that coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil and shall be classified under Heading 3305.

2. As per rule 10A (ii) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 the assessable value for the purpose of charging central excise duty, in cases where the job-worker transfers the excisable goods to the Depot/Sale office/Distributor and/or any other sale point of the principal manufacturer, shall be the transaction value on which goods are sold by the principal manufacturer from such a place. Accordingly, after the insertion of Rule 10A, the practice of discharging the duty on cost construction method by BD Works is not legally correct.

Circular No. 902/22/2009 CX dated 20.10.2009 also clarifies that wherever goods are manufactured by a person on job work basis on behalf of a principal, then value for the purpose of payment of excise duty may be determined in terms of the provisions of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 subject to fulfilment of the requirements of the said rule.

Thus, BD Works should pay the duty on the transaction value on which vehicles are sold by MB Motors from its depot.

3. Sub-rule (7) of the CENVAT Credit Rules, 2004 *inter alia* provides that credit in respect of inputs and capital goods cleared on or after 07.09.2009 from an export-oriented undertaking or by a unit in electronic hardware technology park or in a software technology park, as the case may be, on which such undertaking or unit has paid –
 - A. excise duty leviable under section 3 of the Excise Act read with serial number 2 of the *Notification No. 23/2003 CE, dated 31.03.2003*; and
 - B. the education cess and the secondary and higher education cess on the excise duty referred to in (A),shall be the aggregate of –
 - I. that portion of excise duty referred to in (A), as is equivalent to –
 - i. the additional duty leviable under section 3(1) of the Customs Tariff Act, which is equal to the duty of excise under section 3(1)(a) of the Excise Act;

- ii. the additional duty leviable under section 3(5) of the Customs Tariff Act; and
- II. the education cess and the secondary and higher education cess referred to in (B).

4. No, the stand taken by the Department is not correct. The facts of the given case are similar to the case of *CCEx., Mumbai v. Okasa Ltd. 2009 (241) E.L.T. 359 (Bom.)*. In the instant case, the High Court has observed that for the purpose of dispensation or administration of the drugs in proper quantity as per the medical prescription, dropper has to be supplied along with the bottle containing the drug. Further, since as per the directions given by the Controller of Drugs for India, such droppers were mandatory for sale of the drug, they would be considered as “packing material”.

Therefore, the High Court held that the plastic dropper packed with the pediatric drops should be construed to be an input used in or in relation to the manufacture of the final product.

5. Rule 7 of the Central Excise Rules, 2002 contains the provisions in respect of provisional assessment. Provisional assessment can be requested by the assessee. Department itself cannot order provisional assessment.

An assessee can request for provisional assessment if he:

- (i) is unable to determine the value of the excisable goods or
- (ii) is unable to determine the applicable rate of duty.

In aforesaid cases, assessee may request Assistant/Deputy Commissioner in writing giving reasons for provisional assessment of duty. After such request, the Assistant/Deputy Commissioner may by order allow payment of duty on provisional basis. The Assistant/Deputy Commissioner shall also specify the rate or value at which duty will be provisionally paid. Payment of duty on provisional basis will be allowed subject to execution of bond for payment of differential duty.

The Assistant/Deputy Commissioner should pass the order for final assessment within 6 months from the date of order of provisional assessment. If after final assessment, any differential amount becomes payable, interest shall be payable from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof. However, if a refund arises consequent to the order of final assessment, interest shall be payable on such refund from the first day of the month succeeding the month for which such refund is determined, till the date of refund. The refund shall be subject to the provisions of unjust enrichment.

6. *Notification No. 32/2006 CE(NT) dated 30.12.2006* issued under rule 12CC specifies that Member (Central Excise), Central Board of Excise and Customs may order for withdrawal of facilities or impose restrictions where a manufacturer, first stage or second stage dealer, or an exporter including a merchant exporter is prima facie found to be knowingly involved in any of the following:
 - (a) removal of goods without the cover of an invoice and without payment of duty;

- (b) removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
 - (c) taking of CENVAT credit without the receipt of goods specified in the document based on which the said credit has been taken;
 - (d) taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;
 - (e) issue of excise duty invoice without delivery of goods specified in the said invoice;
 - (f) claiming of refund or rebate based on the excise duty paid invoice or other documents which a person has reason to believe as not genuine;
 - (g) removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs in terms of sub-rule (5) of rule 3 of the CENVAT Credit Rules, 2004.
7. Finance (No. 2) Act, 2009 has inserted a proviso in section 9A(2) to provide that in the case of following persons the provisions relating to compounding of offences will not apply:
- (a) a person who has been allowed to allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of section 9(1);
 - (b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985.
 - (c) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore.
 - (d) a person who has been convicted by the court under this Act on or after 30.12.2005.
8. No, 'P' cannot avail the benefit of reduced penalty. *Circular No. 898/18/09 CX dated 15.09.2009* has clarified that the benefit of reduced penalty under provisos to section 11AC is not available at appeal stage, i.e. the reduced penalty cannot be paid *within 30 days of the communication of the order in appeal*. The circular explains that in order to avail the benefit of 25% penalty, the duty, interest and penalty are required to be paid *within 30 days of communication of the order passed by the adjudicating authority*.

Further, the reading of proviso (4) would also support this interpretation because the said proviso stipulates that wherever duty amount is increased at any appellate stage, in that case in order to avail the benefit of 25% penalty, the assessee is required to pay differential amount within 30 days of the passing of the order by the appellate authority. A combined reading of all the four provisos would, therefore, make it clear that the benefit of 25% penalty is applicable only when the assessee has paid duty, interest and the reduced penalty within 30 days of communication of the order passed by the adjudicating authority. However, if the penalty amount is increased at the appellate stage, in that case

the 25% of differential amount of penalty can be paid within 30 days of communication of said appellate order.

9. The conditions and the circumstances that would attract the imposition of penalty under section 11AC of the Central Excise Act, 1944 have been laid down by the Apex Court in case of *UOI v. Rajasthan Spinning & Weaving Mills 2009 (238) ELT 3 (SC)*.

In the instant case, the Apex Court has observed that mandatory penalty under section 11AC of the Central Excise Act, 1944 is not applicable to every case of non-payment or short-payment of duty. In order to levy the penalty under section 11AC, conditions mentioned in the said section should exist. Supreme Court ruled that the penalty would not be waived on the ground that the assessee had deposited the balance amount of excise duty (that was short paid at the first instance) before the show cause notice was issued. The Apex Court elaborated that the payment of the differential duty whether before/after the show cause notice is issued cannot alter the liability for penalty. The conditions for penalty to be imposed are clearly spelt out in section 11AC of the Act.

Supreme Court clarified that both section 11AC as well as proviso to sub-section (1) of section 11A use the same expressions : “....by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,...”. Hence, it drew the inference that the penalty provision of section 11AC would come into play only if the notice under section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under section 11A(2), there is a legally tenable finding to that effect.

10. No, Revenue’s claim is not valid in law. The facts of the given case are similar to the case of *UOI v. Hindustan Zinc Limited 2009 (233) E.L.T. 61 (Raj.)* wherein the High Court has 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 has observed that if the contention of Revenue is 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 cases of “unavoidable accident”, it could always be contended 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 the matter.

The High Court further elaborated that the aspect of satisfaction under rule 21 is essentially a subjective satisfaction of authority concerned and in the instant case; the Tribunal had independently recorded its satisfaction about the loss, or destruction having been sustained by the assessee under the circumstances as covered by rule 21.

11. Section 35G(2) of the Act provides that the Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be filed within 180 days from the

date on which the order appealed against is received by the Commissioner of Central Excise or the other party.

With effect from 01.07.2003, the Finance (No. 2) Act, 2009 has inserted sub-section (2A) to provide that the High Court may admit an appeal after the expiry of the period of 180 days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

- 12.** An applicant as defined under section 23A(c) of the Central Excise Act, 1944 can apply for advance ruling. As per section 23A(c), the following can apply for advance ruling:

- (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
- (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
- (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

who or which, as the case may be, proposes to undertake any business activity in India;

- (ii) a joint venture in India; or

- (iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf (a public sector company has been notified for this purpose),

and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 23C.

Here, "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement.

- 13.** Section 14A of the Central Excise Act, 1944 provides for a special audit for valuation purposes. Section 14A lays down that any Central Excise Officer not below the rank of an Assistant/Deputy Commissioner of Central Excise can order for valuation audit at any stage of enquiry, investigation or any other proceedings before him if he is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person. However, for ordering such an audit prior approval of the Chief Commissioner of Central Excise is necessary.

The Central Excise officer will direct such manufacturer/person to get the accounts of his factory, office, depots, distributors or any other place, as may be specified by the said Central Excise Officer, audited by a Cost Accountant or Chartered Accountant. Such Cost Accountant or Chartered Accountant will be nominated by the Chief Commissioner of Central Excise in this behalf.

The Cost Accountant or the Chartered Accountant has to submit the duly signed and certified audit report within the period specified by the Central Excise Officer. Such period can be extended by the Central Excise Officer at the request of the manufacturer/person for material and sufficient reason. However, the maximum period of submission of audit report shall be 180 days from the date of receipt of the cost audit order by the manufacturer. This audit shall be in addition to any other audit under any other law for the time being in force or otherwise.

The manufacturer/person shall be given an opportunity of being heard in respect of any material gathered on the basis of audit and proposed to be utilized in any proceedings under the Central Excise Act or rules made thereunder.

14. Section 3(1) of the Customs Tariff Act, 1975 levies on any article which is imported into India, an additional duty of customs, equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. Finance (No.2) Act, 2009 has inserted a second proviso after the first proviso in section 3(2). The new proviso lays down that in the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value.
15. Section 7 of the Customs Act, 1962 empowers the Board to appoint by notification in the Official Gazette:
 - (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
 - (b) the places which alone shall be inland container depots for the unloading of imported goods and the loading of export goods or any class of such goods;
 - (c) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
 - (d) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
 - (e) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.
16. Section 45(1) of the Customs Act, 1962 provides that all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transshipped. This person is called the custodian.

Responsibility of custodian of goods [Section 45(2)]: During the time the goods are in the custody of the custodians, they have the following responsibilities:

- (i) maintaining a proper record of goods received from the carriers and sending a copy of the same to the customs authorities;

- (ii) not permitting such goods to be removed from the customs area or allowing them to be dealt with otherwise except under the specific permission of the Customs Authorities.

Liability of the custodian [Section 45(3)]: If any imported goods are pilfered after unloading in any customs area, while in the custody of the custodian, such custodian shall be liable to pay duty on such goods. The duty shall be paid at the rate prevailing on the day of delivery of the import manifest/import report to the proper officer under section 30 for the arrival of the conveyance in which such goods were carried.

17. Sub-section (1) of section 26A provides that in the following cases the import duty paid on clearance of imported goods for home consumption shall be refunded to the person who has paid such duty if on importation the goods are capable of being easily identified as such imported goods:
- (a) *Goods are defective/not as per specifications:* The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods. Further, the goods should not have been worked upon, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
 - (b) *Goods identified as imported goods:* The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;
 - (c) *No drawback claimed:* The importer does not claim drawback under any other provisions of this Act; and
 - (d) *Importer exports the goods/relinquishes title to goods/destroys or renders them commercially valueless:*
 - (i) the goods are exported; or
 - (ii) the importer relinquishes his title to the goods and abandons them to customs; or
 - (iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer

in the prescribed manner within 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47. However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding 3 months.

It may be noted that the provisions of this section do not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

18. Computation of customs duty

Applicable rate of duty (Note 1)	10%
Relevant rate of exchange (Note 2)	Rs.48.20
Assessable Value	US \$ 10,00,000 × Rs.48.20
	= Rs.4,82,00,000
Customs duty @ 10%	Rs.48,20,000
Add: Education cess @ 2% and secondary and higher education cess @ 1% of customs duty	Rs.1,44,600
Total duty payable	Rs.49,64,600

Note 1: In *Kesoram Rayon v. CC 86 ELT 464* = (1996) 5 SCC 576, it has been held that goods which are not removed from the warehouse within the permissible period are deemed to be improperly removed on the day they ought to have been removed. In other words, the last date on which goods should have been removed is taken as the 'deemed date of removal' and the relevant rate of duty is the rate prevalent on that date. Hence, the applicable rate of duty is 10%, the rate prevalent on 20.06.2009, the last date when warehousing period gets over.

Note 2: The relevant rate of exchange will be the rate as in force on the date on which bill of entry for warehousing is presented. Subsequent changes in foreign exchange rate are not relevant. Hence, relevant exchange rate is 1 US \$ = Rs.48.20 prevalent on 14.03.2009, the date on which bill of entry for warehousing is presented .

19. Section 28F of the Customs Act, 1962 contains the provisions relating to constitution of Authority for Advance Rulings. Sub-section (1) of section 28F empowers the Central Government to constitute an Authority for giving advance rulings to be called as "the Authority for Advance Rulings (Central Excise, Customs and Service Tax)", by notification in the Official Gazette. Sub-section (2) provides that the Authority shall consist of certain Members appointed by the Central Government. With effect from such date as the Central Government may, by notification in the Official Gazette, specify, the Finance (No. 2) Act, 2009 has inserted sub-sections (2A), (2B), (2C) and (2D) after sub-section (2) in section 28F of the Customs Act. The said sub-sections are discussed as under:

Sub-section (2A)

Notwithstanding anything contained in sub-sections (1) and (2), or any other law for the time being in force, the Central Government may, by notification in the Official Gazette, authorise an Authority constituted under section 245-O of the Income-tax Act, 1961, to act as an Authority under this Chapter.

Sub-section (2B)

On and from the date of publication of notification under sub-section (2A), the Authority constituted under sub-section (1) shall not exercise jurisdiction under Chapter V-B of the Act.

Sub-section (2C)

For the purposes of sub-section (2A), the reference to “an officer of the Indian Revenue Service who is qualified to be a Member of Central Board of Direct Taxes” in clause (b) of sub-section (2) of section 245-O of the Income Tax Act, 1961 shall be construed as reference to “an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board”.

Sub-section (2D)

On and from the date of the authorization of Authority under sub-section (2A), every application and proceeding pending before the Authority constituted under sub-section (1) shall stand transferred to the Authority so authorised from the stage at which such proceedings stood before the date of such authorization.

20. The action of the customs authorities is not valid. The facts of the given case are similar to the case of *Vodafone Essar South Ltd. v. UOI 2009 (237) E.L.T. 35 (Bom.)*. In the instant case, the Bombay High Court has held that the action of the Directorate of Revenue Intelligence (D.R.I. officers) in seizing the goods and collecting money from the petitioners is wholly unjustified and uncalled for, because of the following five reasons:-
- (i) When the Commissioner of Customs (Appeals) in petitioner's own case had held that OFC imported by them were classifiable under Heading 85.44 of the Customs Tariff, the petitioners were not wrong in classifying the goods imported after the said order under Heading 85.44 *ibid*.
 - (ii) Decision of Commissioner (Appeals) was neither stayed by CESTAT nor by any other competent authority. Hence, mere fact that appeal filed by Revenue against the decision of Commissioner (Appeals) was pending could not be a ground to hold the petitioner guilty of misclassification of goods.
 - (iii) D.R.I. officers were bound by the decision given by Commissioner of Customs (Appeals).
 - (iv) The OFCs were cleared on payment of duty assessed under Heading 85.44. Therefore, till the assessment was set aside, the customs authorities could not have seized the goods assessed and cleared under Heading 85.44, on the ground that the goods were liable to be assessed under Heading 90.01.
 - (v) In the absence of any reassessment order passed determining the duty liability, there would be no question of recovering differential duty.
21. Section 151 of the Customs Act, 1962 provides that the following officers are empowered and required to assist officers of customs in the execution of the Customs Act, 1962:
- (a) officers of the Central Excise Department;

- (b) officers of the Navy;
 - (c) officers of Police;
 - (d) officers of the Central or State Governments employed at any port or airport;
 - (e) such other officers of the Central or State Governments or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.
- 22. (i)** Service tax will not be applicable in this case as *Notification No. 13/2004 ST dated 10.09.2004* exempts the taxable services provided by a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person to the Government of India or a State Government in relation to collection of any duties or taxes levied by the Government of India or a State Government from the whole of service tax leviable thereon.
- (ii)** Service tax will not be applicable in this case as *Notification No. 29/2004 ST dated 22.09.2004* exempts the value of taxable service provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, in relation to,-
- (a) overdraft facility;
 - (b) cash credit facility; or
 - (c) discounting of bills, bills of exchange or cheques,
- which is equivalent to the amount of interest on such overdraft, cash credit or, as the case may be, discount from the service tax subject to the condition that the said interest amount is shown separately in an invoice, a bill or, as the case may be, a challan issued for this purpose.
- (iii)** Service tax will not be applicable in this case as *Notification No 19/2009 ST dated 07.07.2009* exempts taxable services of the nature referred to in sub-clause (zm) or (zzk), as the case may be, of clause (105) of section 65 of the Finance Act, provided to a Scheduled bank, by any other Scheduled bank, in relation to inter-bank transactions of purchase and sale of foreign currency from the whole of the service tax leviable thereon.
- 23. (i)** As per section 65(91a) of the Finance Act, 1994, a “residential complex” means any complex comprising of—
- (i) a building or buildings, having more than twelve residential units;
 - (ii) a common area; and
 - (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,
- located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing

or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Here,

- (a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;
 - (b) "residential unit" means a single house or a single apartment intended for use as a place of residence.
- (ii) As per section 65(30)(a) of the Finance Act, 1994, "construction of complex" means—
- (a) construction of a new residential complex or a part thereof; or
 - (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
 - (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex.
- (iii) Yes. *Notification No. 1/2006 ST dated 01.03.2006* exempts 67% of the value of the taxable service provided to any person by any other person in relation to construction of complex from the service tax leviable thereon. This exemption shall not apply in cases where the taxable services provided in relation to a residential complex are only completion and finishing services. Further, this exemption is not available in cases where,
- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or
 - (ii) the service provider has availed the benefit under *Notification No. 12/2003 ST dated 20.06.2003*.

The "gross amount charged" shall include the value of goods and materials supplied or provided or used for providing the said taxable service by the service provider.

24. (i) The Finance (No. 2) Act, 2009 has amended the definition of business auxiliary service 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 the client shall attract service tax.
- (ii) *Notification No. 13/2003 ST dated 20.06.2003* exempts the business auxiliary services provided by commission agents in relation to sale or purchase of agricultural produce from service tax.

Agricultural produce means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but makes it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, **jute**, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco.

Therefore, services provided by commission agents in relation to sale of jute shall not attract service tax.

- (iii) Distributors receive commission from mutual fund for providing services relating to purchase and sale of mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [*Circular No. 96/7/2007 ST dated 23.08.2007*].

25. The Finance (No. 2) Act, 2009 has amended section 84 of the Finance Act, 1994 to abolish the revision procedure prescribed therein and to prescribe the procedure of filing departmental appeals before the Commissioner (Appeals) in service tax cases similar to the central excise procedure. Accordingly, section 84 pertaining to revision by Commissioner has been substituted with a new section relating to appeals to Commissioner of Central Excise (Appeals). The provisions of new section 84 are:

- (1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.
- (2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.
- (3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation — For the removal of doubts, it is hereby declared that above mentioned provision would come into effect from 19.08.2009. All cases decided before this date would continue to be governed by the existing provisions only.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2009 TO 31.10.2009

Students may note that the Study Material for Indirect Tax Laws contain all the relevant amendments made by the Finance (No. 2) Act, 2009. Further, circulars/notifications issued up to 30.04.2009 and Budget notifications have also been incorporated therein. The following are the amendments which have been made between 01.05.2009 to 31.10.2009. It may be carefully noted that for the students appearing in May 2010 exams, the amendments made by the notifications, circulars and other legislations up to 31.10.2009 are relevant.

A. EXCISE

1. **Notification No. 14/2009 CE (NT) dated 10.06.2009** has amended rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 so as to cast a responsibility on the said Assistant or Deputy Commissioner of Central Excise of ensuring that the goods received are used by the manufacturer for the intended purpose. This has been done by substituting the words “The said Assistant Commissioner or Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used” for the words “Where the subject goods are not used”.
2. **Notification No. 15/2009 CE (NT) dated 10.06.2009** has amended *Notification No. 32/2006 CE (NT) dated 30.12.2006*, which prescribes withdrawal of facilities or imposition of restrictions on a manufacturer, first stage or second stage dealer, or an exporter involved in any of the prescribed contraventions, in the following manner:
 - (i) Facilities may be withdrawn or restrictions may be imposed on a manufacturer, first stage or second stage dealer, or an exporter involved in removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs in terms of sub-rule (5) of rule 3 of the CENVAT Credit Rules, 2004. This has been done by inserting clause (g) after clause (f) in paragraph 1 of the notification.
 - (ii) Two more restrictions have been imposed if a manufacturer is prima facie found to be knowingly involved in committing the prescribed offences, namely:
 - (a) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken.
 - (b) the assessee may be required to intimate the Superintendent of Central Excise regarding the receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order.

PAPER – 8: INDIRECT TAX LAWS

QUESTIONS

NOV 2010 NEW

Manufacture

1. Parsvnath Music Systems Ltd. imported recorded audio and video discs in boxes each containing 50 discs. Each individual disc was then packed in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the compact disc was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. The Department contended that the said process amounted to manufacture.

Explain, with the help of a decided case law, if any, whether Department's contention is justified in law.

Annual Installed Capacity Statement

2. Madhav Bidi Company is engaged in the manufacture of biris, without the aid of machines, falling under tariff item 2403 10 31 of the Excise Tariff. It approaches you for advice whether it is required to submit Annual Installed Capacity Statement in Form ER-7 for the financial year 2010-11. You are required to advise Madhav Bidi Company regarding the same.

Marketability

3. The theoretical possibility of product being sold is sufficient to establish the marketability of a product. Critically examine the said statement.

Payment of duty and filing of return

4. The excise duty liability of Bindal Steel Industries for the month of April, 2010 is Rs. 50,000. The details of payment of excise duty by Bindal Steel Industries in the financial year 2009-10 are as follows:-

S.No.	Particulars	Amount (Rs.)
1.	Amount of excise duty paid in cash	5,60,000
2.	Amount of excise duty paid by utilising the CENVAT credit available on the inputs and capital goods	4,50,000

Using the information furnished above, answer the following questions:-

- (i) What is the due date for payment of excise duty by Bindal Steel Industries for the month of April, 2010?
- (ii) Central Excise Officer argues that Bindal Steel Industries is required to file the return for the month of April, 2010 in the electronic form. Discuss, whether the said argument is correct?

CENVAT Credit Rules, 2004

5. Solidmec Ltd. purchased 25 computer systems, eligible as capital goods under the CENVAT Credit Rules, 2004, on 01.07.2008 paying a duty of Rs. 2,600 on each computer system. However, since these systems became outdated, it sold 20 computer systems out of 25 on

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

30.06.2010 at a residual value of Rs. 2,000 each. Determine the amount of CENVAT credit required to be reversed in the financial year 2010-11.

6. State the validity of the following statements with reference to the CENVAT Credit Rules, 2004:-
 - (a) CENVAT credit of the service tax paid can be claimed in a case where a service receiver does not pay the full invoice value and the service tax indicated thereon due to certain reasons.
 - (b) Where the finished goods are written off in the books of accounts and the amount of excise duty has been remitted, the manufacturer would not be required to reverse the credit on the inputs used.
 - (c) Items, namely, bolting cloth/ screens/ silicon cylinders which carry designs and which are fitted on the machines used in ceramic tiles industry for printing of design over the surface of the ceramic tiles, cannot be considered as capital goods/inputs for CENVAT credit purposes.

Settlement Commission

7. Is the Settlement Commission empowered to grant the benefit under the proviso to section 11AC in cases of settlement?

Rule 18 of the Central Excise Rules, 2002

8. Whether the rebate under rule 18 of the Central Excise Rules, 2002 read with *Notification No.19/2004- CE (NT) dated 06.09.2004* is admissible when the goods are supplied from units in Domestic Tariff Area (DTA) to Special Economic Zone (SEZ)?

Movability

9. Rotomac Corporations Ltd. was engaged in the assembling and installing the parts and components of asphalt batch mix, drum mix/hot mix plant. The Department alleged that the assembling and installation of asphalt batch mix, drum mix/hot mix plant amounted to manufacture. It contended that the said plant was not per se immovable. Attachment of plant with nuts and bolts was only intended to provide stability and prevent vibration. The attachment was easily detachable from foundation and was not permanent. Therefore, the assessee was liable to pay duty on the said plant.

Explain, with the help of a decided case law, if any, whether Department's allegation is justified in law.

Valuation of goods on the basis of capacity of production

10. Urvashi Tobacco Pvt. Ltd. manufactures chewing tobacco, falling under tariff item 2403 99 10 of the First Schedule to the Central Excise Tariff Act, 1985, manufactured with the aid of packing machine and packed in pouches. You are required to advise the basis for valuation of the said goods.

Taxability of services

11. Which of the following services are liable to service tax?

PAPER – 8 : INDIRECT TAX LAWS

- (a) Service provided by a self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering.
- (b) The business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange.

Business auxiliary service

12. Briefly explain the exemption from service tax available in relation to the inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages.

Manpower recruitment and supply agency's services

13. Anthrix Consultants is engaged in providing manpower recruitment and supply agency's services. For the financial year 2009-10, its receipts are as follows:-

Particulars	Amount (Rs.)
Pre-recruitment screening of the prospective candidates	12,00,000
Verification of the credentials of the candidates	7,00,000
Supply of contractual employees to big business houses	15,00,000
Manpower recruitment services provided to Sindhu Transporters-a goods transport agency	2,25,000

On the basis of the above information, compute the service tax payable by Anthrix Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2009-10.

Note: Anthrix Consultants enjoys a good reputation among its clients. Resultantly, its aggregate value of taxable services amounted to Rs. 23 lakh in the financial year 2008-09. Further, the amount of service tax has been charged separately.

Custom house agent's service

14. Aqua Associates Ltd. is a custom house agent (CHA). It gets the import/export consignments cleared through customs. However, at times it also provides services for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for its customers (i.e. importers or exporters). Aqua Associates Ltd. initially pays the service charges to these agencies and later recovers these charges from the customer along with its charges. Similar arrangement is there for payment of statutory levies like custom duties, port charges, cesses etc. leviable on the said goods.

Aqua Associates Ltd. excludes the aforesaid reimbursable charges while computing the value of taxable service. The Department contends that the charges which are said to be paid by Aqua Associates Ltd. and later recovered from the customers (i.e. reimbursable charges) should be added to the value of taxable service.

Examine the veracity of the Department's contention in law.

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

Applicability of provisions of Chapter V

15. Some taxable services are provided by an oil rig of Global Oil and Natural Gas Company (GONC) established in the Continental Shelf of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas. The Department raised the demand for service tax on the said service.

Examine whether the demand raised by Revenue is valid in law.

Commercial or industrial construction service

16. Birla Engineering Ltd. (BEL) entered into a construction contract with MTPC. MTPC supplied some material free of charge to be used in the execution of the said contract to BEL. BEL decided to pay service tax under the category 'commercial or industrial construction services' on 33% of the gross amount as per Notification No. 1/2006 dated 01.03.2006. The Department claimed that material supplied free of cost by MTPC to BEL would be included in the "gross amount charged". However, BEL contended that material supplied free of cost could not be included in the "gross amount charged". Therefore, it could not be included in the value of taxable service.

Examine the veracity of the Department's claim with the help of a decided case law.

VAT computation

17. Compute the VAT payable at each stage using 'invoice method' from the particulars given below:-

Stage	Particulars	Profit (as % of cost price)
I	Sambhav Medicaids Ltd. sold the medicines manufactured by it to the distributors of medicines- Rishabh Pharmacy- at Rs. 4,000.	--
II	Rishabh Pharmacy sold the medicines to the wholesalers-Suhani Medicos.	56.25%
II	Suhani Medicos sold the medicines to the retailers- Galaxy Medicines.	25%
IV	Galaxy Medicines sold the medicines to the ultimate consumers	25%

Assume that the VAT rate is 4% and that there was no value addition at various stages of sale except profit margin.

Computation of VAT

18. Rosesh Ltd. of Gujarat made a total purchases of input and capital goods of Rs. 55,00,000 during the month of January, 2010. The following further information is available:
- (i) Goods worth Rs. 15,00,000 were purchased from Assam on which C.S.T. @ 2% was paid.

PAPER – 8 : INDIRECT TAX LAWS

- (ii) The purchases made in January, 2010 include goods purchased from unregistered dealers amounting to Rs. 18,50,000.
- (iii) It purchased capital goods (not eligible for input credit) worth Rs. 6,50,000 and those eligible for input credit for Rs. 9,00,000.
- (iv) Sales made in Gujarat during the month of January, 2010 is Rs. 10,00,000 on which VAT @ 12.5% is payable.

Assuming that all purchases given are exclusive of tax and VAT @ 4% is paid on them, calculate

- (i) the amount of input tax credit available for the month of January, 2010
- (ii) VAT payable for the month of January, 2010 and
- (iii) input tax credit carried forward.

Note: The input VAT credit on eligible capital goods is available in 36 equal monthly installments.

VAT and CST

19. The central sales tax paid on inputs cannot be set off against the VAT liability, whereas the liability for CST can be set off against the input tax credit earned on other eligible purchases. Examine the validity of the statement.

Composition scheme

20. List any two disadvantages of the composition scheme under VAT.

Indian customs waters

21. Some custom officers received the information from a reliable source that a vessel was carrying smuggled goods. The custom officers located the said vessel in the sea when it was around 6 nautical miles away from the outer limit of territorial waters. The custom officers wish to stop the vessel there and examine and search the goods in the vessel.

You are required to examine whether the custom officers have the authority to stop the vessel and examine and search the goods in the vessel?

Warehousing

22. Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:-
- (a) The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.
 - (b) The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.
 - (c) Assistant Commissioner of Customs or Deputy Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

Sale of goods during pendency of appeal against confiscation of goods

23. The custom authorities confiscated the gold carried by Rafiq (assessee) from Muscat. Rafiq informed the custom authorities that he was filing an appeal against the order of confiscation. The custom authorities informed Rafiq that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any.

Section 141 of the Customs Act, 1962

24. Briefly explain the provisions relating to the conveyance and goods in a customs area being subject to control of officers of customs under section 141 of the Customs Act, 1962.

Classification of goods under customs

25. Flextonics Private Limited imported artemia cyst (brine shrimp eggs). It classified it as 'prawn feed' under the heading 2309 which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 which refers to other products in the category of non edible animal products. In reply, the importer pleaded that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the nature and character of this product was not changed by nurturing or incubation.

You are required to examine whether the contention of the Department is justified in law.

SUGGESTED ANSWERS/HINTS

1. The Department's contention is not justified in law. The said process does not amount to manufacture. The facts of the given case are similar to the case of *CCE v. Sony Music Entertainment (I) Pvt. Ltd.* 2010 (249) E.L.T. 341 (Bom.). In the instant case, the High Court observed that none of the activity that the assessee undertook involved any process on the compact discs that were imported. It held that the activities carried out by the assessee did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished and completed form.
2. Notification No. 26/2009 CE (NT) dated 18.11.2009 has exempted the assessee who manufactures the biris without the aid of machines (falling under tariff item 2403 10 31) from the submission of Annual Installed Capacity Statement. Therefore, Madhav Bidi Company is not required to file Annual Installed Capacity Statement for the financial year 2010-11.
3. The statement, that the theoretical possibility of product being sold is sufficient to establish the marketability of a product, is not correct. The Apex Court, in case of *Bata India Ltd. v. CCE 2010 (252) ELT 492 (SC)*, observed that marketability is essentially a question of fact to be decided on the facts of each case and there can be no generalization. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. The question is not whether there is a hypothetical possibility

PAPER – 8 : INDIRECT TAX LAWS

of a purchase and sale of the commodity, but whether there is sufficient proof that the product is commercially known. The mere theoretical possibility of the product being sold is not sufficient, but there should be commercial capability of being sold. Theory and practice will not go together when one examines the marketability of a product. Hence, the theoretical possibility of product being sold is not sufficient to establish the marketability of a product.

4. (i) As per third proviso to rule 8(1) amended by *Notification No. 04/2010-CE (NT) dated 19.02.2010*, an assessee shall deposit the excise duty electronically through internet banking if he has paid the total duty of Rs. 10 lakh or more (including the amount of duty paid by utilisation of CENVAT credit) in the preceding financial year. Therefore, Bindal Steel Industries is required to pay the duty electronically.

Further, rule 8(1) provides that the duty on the goods removed from the factory during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking. Thus, Bindal Steel Industries is required to pay duty for April, 2010 by 6th May, 2010.

- (ii) The argument of the Central Excise Officer is not correct in the light of the provisions of third proviso inserted to rule 12(1) by *Notification No. 04/2010-CE (NT) dated 19.02.2010*. It has now made the electronic filing of returns mandatory for the assessee who has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year. Therefore, Bindal Steel Industries is required to file the return for the month of April, 2010 in the electronic form by 10th May, 2010.
5. *Notification No. 6/2010-CE (NT) dated 27.02.2010* has substituted the second proviso to rule 3(5) with the new proviso which provides as follows:-

If the capital goods, on which the CENVAT credit has been taken, are removed after being used, the manufacturer/output service provider shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT credit, namely:-

Type of capital goods	Percentage points calculated by straight line method	
	For each quarter in	Percentage
Computers and computer peripherals	Year 1	10 %
	Year 2	8 %
	Year 3	5 %
	Year 4 & 5	1 %

Therefore, the amount of CENVAT credit required to be reversed in the financial year 2010-11 is as follows:

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

Particulars	Amount (Rs.)
Amount of CENVAT credit availed on 20 computers=Rs. 2,600 × 20	52,000
Less: Amount computed as per second proviso to rule 3(5) (Refer to Note below)	<u>29,120</u>
Amount of CENVAT credit required to be reversed in the financial year 2010-11	<u>22,880</u>

Note: The computation of the amount as per second proviso to rule 3(5):-

Year	Amount of CENVAT credit availed in each year*	Amount as per proviso to rule 3(5)	Amount (Rs.)
1 (01.07.2008-30.06.2009)	50% of Rs. 52,000 = Rs. 26,000 (A)	=10% of (A) × 4 quarters =Rs. 26,000 × 10% × 4 = Rs. 10,400	10,400
2 (01.07.2009-30.06.2010)	Balance 50% of Rs. 52,000 = Rs. 26,000 (B)	(i) 8% of (A) × 4 quarters =Rs. 26,000 × 8% × 4 = Rs. 8,320 (ii) 10% of (B) × 4 quarters =Rs. 26,000 × 10% × 4 = Rs. 10,400	<u>18,720</u>
			<u>29,120</u>

*Rule 4(2)(a) restricts the quantum of credit in respect of capital goods received in a factory or in the premises of output service provider at any point of time in a given financial year as 50% in the same financial year and balance in one or more subsequent financial years provided the capital goods is still in the possession and use of the manufacturer or the output service provider. Therefore, the CENVAT credit availed on the computer systems would be Rs. 26,000 in Year 1 and and balance Rs. 26,000 in Year 2.

6. (a) The statement is absolutely valid. *Circular No. 122/03/2010 – ST dated 30.04.2010* clarifies that CENVAT credit of service tax can be availed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to reasons like discount, unsatisfactory service etc. provided he has paid the amount of service tax (whether proportionately reduced or the original amount) to the service provider. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would have to be altered accordingly.
- (b) The statement is absolutely incorrect. *Circular No. 907/27/2009-CX dated 07.12.2009* has clarified that where the finished goods are written off in the books of

PAPER – 8 : INDIRECT TAX LAWS

accounts and the amount of excise duty has been remitted, the manufacturer would be required to reverse the credit on the inputs used.

- (c) The statement is absolutely incorrect. *Circular No. 920/10/2010-CX dated 01.04.2010* clarifies that these items are essential for operation of the machines. Therefore, being part/component of the machines, they would be considered as capital goods for the CENVAT credit purposes.

7. The Court, in case of *Ashwani Tobacco Co. Pvt. Ltd. v. UOI 2010 (251) E.L.T. 162 (Del.)*, ruled that benefit under the proviso to section 11AC could not be granted by the Settlement Commission in the cases of settlement.

It elucidated that the order of settlement made by the Settlement Commission is distinct from the adjudication order made by the Central Excise Officer. The scheme of settlement is contained in Chapter-V of the Central Excise Act, 1944 while adjudication undertaken by a Central Excise Officer is contained in the other Chapters of the said Act.

Once the petitioner has adopted the course of settlement, he has to be governed by the provisions of Chapter V. Therefore, the benefit under the proviso to section 11AC, which could have been availed when the matter of determination of duty was before a Central Excise Officer would not be attracted to the cases of a settlement, undertaken under the provisions of Chapter-V of the said Act.

8. *Circular No. 06/2010-Cus dated 19.03.2010* has affirmed that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ even though rule 18 does not refer to such supplies in clear terms. Further, the circular clarifies that section 26 of the Special Economic Zone Act, 2005 allows the clearance of duty free goods for authorized operations in the SEZ and the procedure laid down under rule 18 of the Central Excise Rules, 2002 gives effect to the said provision of the SEZ Act.
9. The Department's allegation is justified in law. The facts of the given case are similar to the case of *CCE v. Solid & Correct Engineering Works and Ors 2010 (252) ELT 481 (SC)* wherein the Supreme Court observed that the machine was fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine.

In this regard, the Court opined that an attachment where the necessary intent of making the same permanent is absent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.

Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.

10. *Notification No. 10/2010 CE (NT) dated 27.02.2010* has notified the chewing tobacco falling under tariff item 2403 99 10 of the First Schedule to the Central Excise Tariff Act, 1985 manufactured with the aid of packing machine and packed in pouches for the purposes of section 3A of the Central Excise Act, 1944. Therefore, the duty on the said products would be charged on the basis of capacity of production.

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

11. (a) Service provided by a self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering are liable to service tax. *Circular No. 96/7/2007 ST dated 23.08.2007* clarified that consulting engineers include self-employed professionally qualified engineer, whether or not employing others for assistance. Further, services provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service.
- (b) The business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange is not liable to service tax. *Notification No. 31/2009 ST dated 01.09.2009* has exempted the business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange from whole of the service tax leviable thereon.
12. *Notification No. 39/2009 ST dated 23.09.2009* has exempted the business auxiliary service provided by a person (service provider) to any other person (service receiver) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, from so much of value which is equivalent to the value of inputs, excluding capital goods, used for providing the same service, subject to the following conditions, namely:-
- (a) that no CENVAT credit has been taken under the provisions of the CENVAT Credit Rules, 2004;
- (b) that there is documentary proof specifically indicating the value of such inputs; and
- (c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, despatches of goods as well as financial transactions relating thereto.

Meaning of 'input' and 'capital goods'

Here, 'input' and 'capital goods' shall have the meaning as is assigned to them under rule 2 of the CENVAT Credit Rules, 2004.

13. **Computation of service tax payable by Anthrix Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2009-10:-**

Particulars	Amount (Rs.)
Pre-recruitment screening of the prospective candidates	12,00,000
Verification of the credentials of the candidates	7,00,000
Supply of contractual employees to big business houses	<u>15,00,000</u>
Value of taxable services	<u>34,00,000</u>

PAPER – 8 : INDIRECT TAX LAWS

Service tax @ 10% = Rs. 34,00,000 × 10%	3,40,000
Add: Education cess payable @ 2% = Rs. 3,40,000 × 2%	6,800
Add: Secondary and education cess payable @ 1% = Rs. 3,40,000 × 1%	3,400
Amount of service tax payable	3,50,200

Note:

1. Notification No. 1/2009 ST dated 05.01.2009 has exempted the services provided by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise provided to a goods transport agency for transportation of goods by road in the said goods carriage from the whole of the service tax. Therefore, Rs. 2,25,000 would not be included in the value of the taxable services.
 2. Exemption from service tax under Notification No. 6/2005-ST dated 01.03.2005 is not available to Anthrix Consultants for the financial year 2009-10 because the aggregate value of taxable services exceeds Rs. 10 lakh in the preceding financial year 2008-09.
14. The contention of the Department is not valid in law. As per the clarification provided by Circular No. 119/13/2009-S.T., dated 21-12-2009, the said reimbursable charges paid by Aqua Associates Ltd. would be excluded from the value of taxable service if all the following conditions are satisfied -
- (a) The activity/service for which a charge is made should be in addition to provision of CHA service.
 - (b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to:-
 - (i) arrange for such activities/services for the customer; and
 - (ii) make payments to other service providers on his behalf;
 - (c) The CHA does not use the activities/services for his own benefit or for the benefit of his other customers;
 - (d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin.
 - (e) CHA should provide evidence to prove nexus between such other (than CHA) services provided and the reimbursable amounts. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like.
 - (f) Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice.
- Any other miscellaneous/out of pocket expenses charged by the CHA would not be excluded.

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

15. The demand raised by Revenue is valid in law. The provisions of Chapter V have been extended to any service provided or to be provided by or to the installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas vide *Notification No. 14/2010-S.T. dated 27-2-2010*. Therefore, GONC is liable to pay service tax in the given case.
16. No, the Department's claim is not valid in law. The facts of the given case are similar to the case of *Era Infra Engineering Ltd. v. UOI 2008 (11) S.T.R. 3 (Del.)*. In the instant case, the High Court held that prima facie it appears that any material that is supplied free of charge by NTPC or by any other party in respect of a contract of service cannot be included in the gross amount charged. It further referred to a decision of Madras High Court in *M/s. Larsen and Toubro Ltd. v. Union of India 2007 (7) STR 123* wherein the High Court had come to the view that value of goods supplied and provided free by the client of an assessee cannot be included for the purposes of calculating the value of taxable service.

In view of the above discussion, the High Court opined that for the purposes of determining the value of taxable service, the value of materials supplied free of cost by NTPC shall not be included and to this extent the **Explanation* to Serial No. 7 in the Notification No. 1/2006 dated 01.03.2006** will not be applied to the detriment of the petitioner.

Note: Notification No. 1/2006 ST dated 01.03.2006 provides that in case of commercial or industrial construction services [taxable under section 65(105)(zzq) of the Finance Act, 1994], service tax shall be levied only on 33% of the gross charges. This exemption shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure. Further, this exemption shall also not apply in such cases where:

- (i) *the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or*
- (ii) *the service provider has availed the benefit under the Notification No. 12/2003-S.T., dated 20.06.2003.*

***Explanation - The "gross amount charged" shall include the value of goods and materials supplied or provided or used for providing the said taxable service by the service provider.**

17. Computation of VAT payable:-

Stage	Particulars	VAT Liability	Less VAT Credit	Tax to Government
I	Medicines sold by Sambhav Medicaids Ltd. to Rishabh Pharmacy at Rs. 4,000	=4,000 × 4% =160	--	160

PAPER – 8 : INDIRECT TAX LAWS

II	Medicines sold by Rishabh Pharmacy to Suhani Medicos at Rs. (4,000+160) × 156.25%	=6,500 × 4% =260	160	100
II	Medicines sold by Suhani to Galaxy Medicines at Rs. (6,500+100) × 125%	=8,250 × 4% =330	260	70
IV	Medicines sold by Galaxy Medicines to ultimate consumers at Rs. (8,250+70) × 125%	=10,400 × 4% =416	330	86

18.

		Rs.	Rs.
A.	Purchases made in January, 2010		55,00,000
	Less: (i) Inter-State purchases (input credit not available)	15,00,000	
	(ii) Purchase from unregistered dealer (input credit not available)	18,50,000	
	(iii) Capital goods (not eligible for input credit)	<u>6,50,000</u>	<u>40,00,000</u>
	Total purchases eligible for tax credit		<u>15,00,000</u>
B.	Input tax credit available		
	VAT credit on input @ 4%		
	4% of (Rs.15,00,000 – Rs.9,00,000)		
	i.e. 4% of Rs.6,00,000		24,000
	VAT credit on eligible capital goods		
	(4% of Rs.9,00,000) × $\frac{1}{36}$		<u>1,000</u>
	Input credit available for January, 2010		<u>25,000</u>
C.	VAT on sales @ 12.5% of Rs.10,00,000		1,25,000
	Less: Input tax credit		<u>25,000</u>
	Net VAT payable		<u>1,00,000</u>
	Input tax credit carried forward to February, 2010		<u>Nil</u>

19. The statement is absolutely valid. It can be explained with the help of following example.

A dealer of Karnataka purchases goods from another dealer of Maharashtra. The Maharashtra dealer charges CST @ 2% on this sale against the C-form produced by the dealer of Karnataka. The tax is deposited in the treasury of Maharashtra and thus forms part of Maharashtra's revenue. Though its name is central sales tax but the Central Government does not get any part of this revenue and it is totally a revenue receipt of the

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

selling state. The Karnataka dealer later sells these goods in the State of Karnataka to any other dealer or consumer and collects VAT on the same. Now the question arises whether the Karnataka dealer can claim input tax credit of the CST paid by him against his VAT liability. The answer is no as Karnataka (purchasing State) would not allow set off of a tax paid in Maharashtra (another State) against the tax levied by it as it would result in revenue loss for the Karnataka (purchasing State). This is the main reason why CST is not vatable or why it cannot be made vatable.

However, when liability of CST arises on an inter-state sale, the input tax credit can be used for set off as the revenue in this case the revenue does not go to any other State.

- 20.** Two disadvantages of the composition scheme under VAT are as follows:-

(a) Loss to the seller

If the composition scheme is availed by a dealer then such dealer cannot avail input tax credit in respect of input tax paid. Hence the dealer will be losing the input tax credit on purchases made by him. He will not be able to pass on the benefit of input tax credit, which will add to the cost of the goods.

(b) Loss to the purchaser

The purchaser shall not get any tax credit for the purchases made by him from the dealer operating under the composition scheme. Therefore, as soon as a dealer opts for the composition scheme, the VAT chain will be broken, and the benefit of tax paid earlier will not be passed on to the subsequent buyers.

- 21.** Section 106(1)(b) of the Customs Act, 1962, *inter alia*, provides that where the proper officer has reason to believe that any vessel in India/within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vessel and examine and search any goods in the vessel.

Further, section 2(28) defines the Indian customs waters as waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

Indian customs waters cover both the Indian territorial waters and contiguous zone as well. Indian territorial waters extend up to 12 nautical miles from the base line whereas contiguous zone extend to a further 12 nautical miles from the outer limit of territorial waters.

Thus, in the given case, since the vessel is within the Indian custom waters, the custom officers have the authority to stop the vessel and examine and search the goods in the vessel under section 106(1)(b) of the Customs Act, 1962.

- 22. (a)** The statement is absolutely incorrect. Under section 62(3) of the Customs Act, 1962, the proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

PAPER – 8 : INDIRECT TAX LAWS

- (b) The statement is absolutely incorrect. Under section 57 of the Customs Act, 1962, Assistant Commissioner of Customs/Deputy Commissioner of Customs can appoint public warehouses wherein dutiable goods may be deposited.
- (c) The statement is absolutely correct. Under section 58(2)(b) of the Customs Act, 1962, Assistant Commissioner of Customs or Deputy Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act.
23. The action of the custom authorities is not valid in law. The facts of the given case are similar to the case of *Shabir Ahmed Abdul Rehman v. UOI 2009 (235) ELT 402 (Bom.)*. The High Court, in the instant case, held that handing over the confiscated gold immediately after serving the order of confiscation itself was improper. In any event, after receiving letter from the petitioner intimating that he was filing an appeal against the order of confiscation, the custom authorities ought to have stopped the auction sale of the confiscated gold. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified.
24. All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of the Customs Act, 1962, are subject to the control of officers of customs.
- The imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.
25. The contention of the Department is not justified in law. The facts of the given case are similar to the case of *Atherton Engineering Co. Pvt. Ltd. v. UOI 2010 (256) ELT 358 (Cal.)*. In the instant case, the Court noted that it was the use of the product that had to be considered in the instant case. If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the instant case, it examined whether the nature and character of the product remained the same.
- The Court opined that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.
- Hence, the Court held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2009 TO 31.10.2009

Students may note that the Study Material for Indirect Tax Laws contains all the relevant amendments made by the Finance (No. 2) Act, 2009. Further, circulars/notifications issued up to 30.04.2009 and Budget notifications have also been incorporated therein. The following are the amendments which have been made between 01.05.2009 to 31.04.2010. It may be carefully noted that for the students appearing in November 2010 exams, the amendments made by the notifications, circulars and other legislations up to 30.04.2010 are relevant.

PAPER – 8 : INDIRECT TAXES

QUESTIONS

Manufacture

1. Parsvnath Music Systems Ltd. imported recorded audio and video discs in boxes each containing 50 discs. Each individual disc was then packed in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the compact disc was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. The Department contended that the said process amounted to manufacture.

Explain, with the help of a decided case law, if any, whether Department's contention is justified in law.

Annual Installed Capacity Statement

2. Madhav Bidi Company is engaged in the manufacture of biris, without the aid of machines, falling under tariff item 2403 10 31 of the Excise Tariff. It approaches you for advice whether it is required to submit Annual Installed Capacity Statement in Form ER-7 for the financial year 2010-11. You are required to advise Madhav Bidi Company regarding the same.

Marketability

3. The theoretical possibility of product being sold is sufficient to establish the marketability of a product. Critically examine the said statement.

Payment of duty and filing of return

4. The excise duty liability of Bindal Steel Industries for the month of April, 2010 is Rs. 50,000. The details of payment of excise duty by Bindal Steel Industries in the financial year 2009-10 are as follows:-

S.No.	Particulars	Amount (Rs.)
1.	Amount of excise duty paid in cash	5,60,000
2.	Amount of excise duty paid by utilising the CENVAT credit available on the inputs and capital goods	4,50,000

Using the information furnished above, answer the following questions:-

- (i) What is the due date for payment of excise duty by Bindal Steel Industries for the month of April, 2010?
- (ii) Central Excise Officer argues that Bindal Steel Industries is required to file the return for the month of April, 2010 in the electronic form. Discuss, whether the said argument is correct?

FINAL (OLD) EXAMINATION: NOVEMBER, 2010

CENVAT Credit Rules, 2004

5. Solidmec Ltd. purchased 25 computer systems, eligible as capital goods under the CENVAT Credit Rules, 2004, on 01.07.2008 paying a duty of Rs. 2,600 on each computer system. However, since these systems became outdated, it sold 20 computer systems out of 25 on 30.06.2010 at a residual value of Rs. 2,000 each. Determine the amount of CENVAT credit required to be reversed in the financial year 2010-11.
6. State the validity of the following statements with reference to the CENVAT Credit Rules, 2004:-
 - (a) CENVAT credit of the service tax paid can be claimed in a case where a service receiver does not pay the full invoice value and the service tax indicated thereon due to certain reasons.
 - (b) Where the finished goods are written off in the books of accounts and the amount of excise duty has been remitted, the manufacturer would not be required to reverse the credit on the inputs used.
 - (c) Items, namely, bolting cloth/ screens/ silicon cylinders which carry designs and which are fitted on the machines used in ceramic tiles industry for printing of design over the surface of the ceramic tiles, cannot be considered as capital goods/inputs for CENVAT credit purposes.

Settlement Commission

7. Is the Settlement Commission empowered to grant the benefit under the proviso to section 11AC in cases of settlement?

Rule 18 of the Central Excise Rules, 2002

8. Whether the rebate under rule 18 of the Central Excise Rules, 2002 read with *Notification No. 19/2004- CE (NT) dated 06.09.2004* is admissible when the goods are supplied from units in Domestic Tariff Area (DTA) to Special Economic Zone (SEZ)?

Movability

9. Rotomac Corporations Ltd. was engaged in the assembling and installing the parts and components of asphalt batch mix, drum mix/hot mix plant. The Department alleged that the assembling and installation of asphalt batch mix, drum mix/hot mix plant amounted to manufacture. It contended that the said plant was not per se immovable. Attachment of plant with nuts and bolts was only intended to provide stability and prevent vibration. The attachment was easily detachable from foundation and was not permanent. Therefore, the assessee was liable to pay duty on the said plant.

Explain, with the help of a decided case law, if any, whether Department's allegation is justified in law.

Valuation of goods on the basis of capacity of production

10. Urvashi Tobacco Pvt. Ltd. manufactures chewing tobacco, falling under tariff item 2403 99 10 of the First Schedule to the Central Excise Tariff Act, 1985, manufactured with the

PAPER – 8 : INDIRECT TAXES

aid of packing machine and packed in pouches. You are required to advise the basis for valuation of the said goods.

Valuation of samples

11. Nerelac Foods India Ltd. is engaged in manufacturing the baby food. The valuation of said product is done on the basis of maximum retail price under section 4A. In order to promote its sales, it distributed the free samples of its product to various chemists and general store owners. Nerelac Foods India Ltd. approaches you to ascertain how the value of the samples of the said product will be determined? You are requested to advise the same.

SSI

12. Bhola Plastics Ltd. is a plastic manufacturing company. Following information is available for the financial year 2009-10:-

	Particulars	Rs. (in lakh)
(1)	Total value of clearances of goods bearing the brand name of Bhola Plastics Ltd.	75
(2)	Total value of clearances of plastic containers bearing the brand name of Teebok Jams. Teebok Jams use these plastic containers for packing the jam produced by them.	200
(3)	Job work under <i>Notification No. 84/94-CE dated 11.4.94</i>	30
(4)	Job work under <i>Notification No. 214/86-CE dated 25.3.86</i>	40
(5)	Clearances of excisable goods without payment of duty to a unit in Special Economic Zone	20
(6)	Clearances of certain non-excisable goods manufactured by it	50
(7)	Total exports (including for Nepal and Bhutan Rs. 200 lakhs)	500

On the basis of above information, you are required to ascertain whether Bhola Plastics Ltd. is eligible for the benefit of small scale exemption under *Notification No. 8/2003-C.E. dated 01.03.2003* during the year 2010-11.

Indian customs waters

13. Some custom officers received the information from a reliable source that a vessel was carrying smuggled goods. The custom officers located the said vessel in the sea when it was around 6 nautical miles away from the outer limit of territorial waters. The custom officers wish to stop the vessel there and examine and search the goods in the vessel.

You are required to examine whether the custom officers have the authority to stop the vessel and examine and search the goods in the vessel?

FINAL (OLD) EXAMINATION: NOVEMBER, 2010

Warehousing

14. Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:-
- (a) The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.
 - (b) The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.
 - (c) Assistant Commissioner of Customs or Deputy Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.

Sale of goods during pendency of appeal against confiscation of goods

15. The custom authorities confiscated the gold carried by Rafiq (assessee) from Muscat. Rafiq informed the custom authorities that he was filing an appeal against the order of confiscation. The custom authorities informed Rafiq that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any.

Section 141 of the Customs Act, 1962

16. Briefly explain the provisions relating to the conveyance and goods in a customs area being subject to control of officers of customs under section 141 of the Customs Act, 1962.

Classification of goods under customs

17. Flextonics Private Limited imported artemia cyst (brine shrimp eggs). It classified it as 'prawn feed' under the heading 2309 which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 which refers to other products in the category of non edible animal products. In reply, the importer pleaded that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the nature and character of this product was not changed by nurturing or incubation.

You are required to examine whether the contention of the Department is justified in law.

Powers of CBEC and Commissioner of Customs

18. Answer the following questions with reference to the Customs Act, 1962:-
- (a) Who has the power to approve landing places and specify limits of customs area?
 - (b) Who has the power to declare places to be warehousing stations?

PAPER – 8 : INDIRECT TAXES

- (c) Who has the power to appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India?

Settlement Commission

19. The Custom House Agent License of Barbara Shipping Agency (BSA) was suspended on the ground that authorised agent of BSA had committed misconduct by taking active part in the act of smuggling and has thus violated the Custom House Agent Licensing Regulations, 2004. During pendency of the misconduct proceedings, BSA approached Settlement Commission. The Settlement Commission after hearing all the parties held that Revenue had failed to prove that the authorised agent of BSA i.e. Custom House Agent (CHA) had a conscious knowledge of mis-declaration of goods. Thus, Tribunal decided the case in favour of BSA on the basis of the order of the Settlement Commission and dropped the misconduct proceedings against them. Revenue challenged the Tribunal's order alleging that the order passed by the Settlement Commission was ab-initio, null and void being without jurisdiction.

Examine, with the help of a decided case law, whether the order passed by the Settlement Commission is ab-initio null and void being without jurisdiction?

Appeal

20. Whether Revenue can prefer an appeal in case of a consent order?

Taxability of services

21. Which of the following services are liable to service tax?
- (a) Service provided by a self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering.
 - (b) The business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange.

Business auxiliary service

22. Briefly explain the exemption from service tax available in relation to the inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages.

Manpower recruitment and supply agency's services

23. Anthrix Consultants is engaged in providing manpower recruitment and supply agency's services. For the financial year 2009-10, its receipts are as follows:-

Particulars	Amount (Rs.)
Pre-recruitment screening of the prospective candidates	12,00,000
Verification of the credentials of the candidates	7,00,000
Supply of contractual employees to big business houses	15,00,000
Manpower recruitment services provided to Sindhu Transporters-a	

FINAL (OLD) EXAMINATION: NOVEMBER, 2010

goods transport agency	2,25,000
------------------------	----------

On the basis of the above information, compute the service tax payable by Anthrix Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2009-10.

Note: Anthrix Consultants enjoys a good reputation among its clients. Resultantly, its aggregate value of taxable services amounted to Rs. 23 lakh in the financial year 2008-09. Further, the amount of service tax has been charged separately.

Custom house agent's service

24. Aqua Associates Ltd. is a custom house agent (CHA). It gets the import/export consignments cleared through customs. However, at times it also provides services for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for its customers (i.e. importers or exporters). Aqua Associates Ltd. initially pays the service charges to these agencies and later recovers these charges from the customer along with its charges. Similar arrangement is there for payment of statutory levies like custom duties, port charges, cesses etc. leviable on the said goods.

Aqua Associates Ltd. excludes the aforesaid reimbursable charges while computing the value of taxable service. The Department contends that the charges which are said to be paid by Aqua Associates Ltd. and later recovered from the customers (i.e. reimbursable charges) should be added to the value of taxable service.

Examine the veracity of the Department's contention in law.

Applicability of provisions of Chapter V

25. Some taxable services are provided by an oil rig of Global Oil and Natural Gas Company (GONC) established in the Continental Shelf of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas. The Department raised the demand for service tax on the said service.

Examine whether the demand raised by Revenue is valid in law.

SUGGESTED ANSWERS/HINTS

1. The Department's contention is not justified in law. The said process does not amount to manufacture. The facts of the given case are similar to the case of *CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (249) E.L.T. 341 (Bom.)*. In the instant case, the High Court observed that none of the activity that the assessee undertook involved any process on the compact discs that were imported. It held that the activities carried out by the assessee did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished and completed form.

PAPER – 8 : INDIRECT TAXES

2. *Notification No. 26/2009 CE (NT) dated 18.11.2009* has exempted the assessee who manufactures the biris without the aid of machines (falling under tariff item 2403 10 31) from the submission of Annual Installed Capacity Statement. Therefore, Madhav Bidi Company is not required to file Annual Installed Capacity Statement for the financial year 2010-11.
3. The statement, that the theoretical possibility of product being sold is sufficient to establish the marketability of a product, is not correct. The Apex Court, in case of *Bata India Ltd. v. CCE 2010 (252) ELT 492 (SC)*, observed that marketability is essentially a question of fact to be decided on the facts of each case and there can be no generalization. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. The question is not whether there is a hypothetical possibility of a purchase and sale of the commodity, but whether there is sufficient proof that the product is commercially known. The mere theoretical possibility of the product being sold is not sufficient, but there should be commercial capability of being sold. Theory and practice will not go together when one examines the marketability of a product. Hence, the theoretical possibility of product being sold is not sufficient to establish the marketability of a product.
4. (i) As per third proviso to rule 8(1) amended by *Notification No. 04/2010-CE (NT) dated 19.02.2010*, an assessee shall deposit the excise duty electronically through internet banking if he has paid the total duty of Rs. 10 lakh or more (including the amount of duty paid by utilisation of CENVAT credit) in the preceding financial year. Therefore, Bindal Steel Industries is required to pay the duty electronically.

Further, rule 8(1) provides that the duty on the goods removed from the factory during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking. Thus, Bindal Steel Industries is required to pay duty for April, 2010 by 6th May, 2010.

(ii) The argument of the Central Excise Officer is not correct in the light of the provisions of third proviso inserted to rule 12(1) by *Notification No. 04/2010-CE (NT) dated 19.02.2010*. It has now made the electronic filing of returns mandatory for the assessee who has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year. Therefore, Bindal Steel Industries is required to file the return for the month of April, 2010 in the electronic form by 10th May, 2010.
5. *Notification No. 6/2010-CE (NT) dated 27.02.2010* has substituted the second proviso to rule 3(5) with the new proviso which provides as follows:-

If the capital goods, on which the CENVAT credit has been taken, are removed after being used, the manufacturer/output service provider shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT credit, namely:-

FINAL (OLD) EXAMINATION: NOVEMBER, 2010

Type of capital goods	Percentage points calculated by straight line method	
	For each quarter in	Percentage
Computers and computer peripherals	Year 1	10 %
	Year 2	8 %
	Year 3	5 %
	Year 4 & 5	1 %

Therefore, the amount of CENVAT credit required to be reversed in the financial year 2010-11 is as follows:

Particulars	Amount (Rs.)
Amount of CENVAT credit availed on 20 computers=Rs. 2,600 × 20	52,000
Less: Amount computed as per second proviso to rule 3(5) (Refer to Note below)	<u>29,120</u>
Amount of CENVAT credit required to be reversed in the financial year 2010-11	<u>22,880</u>

Note: The computation of the amount as per second proviso to rule 3(5):-

Year	Amount of CENVAT credit availed in each year*	Amount as per proviso to rule 3(5)	Amount (Rs.)
1 (01.07.2008-30.06.2009)	50% of Rs. 52,000 = Rs. 26,000 (A)	=10% of (A) × 4 quarters =Rs. 26,000 × 10% × 4 = Rs. 10,400	10,400
2 (01.07.2009-30.06.2010)	Balance 50% of Rs. 52,000 = Rs. 26,000 (B)	(i) 8% of (A) × 4 quarters =Rs. 26,000 × 8% × 4 = Rs. 8,320 (ii) 10% of (B) × 4 quarters =Rs. 26,000 × 10% × 4 = Rs. 10,400	<u>18,720</u>
			<u>29,120</u>

*Rule 4(2)(a) restricts the quantum of credit in respect of capital goods received in a factory or in the premises of output service provider at any point of time in a given financial year as 50% in the same financial year and balance in one or more subsequent financial years provided the capital goods is still in the possession and use of the manufacturer or the output service provider. Therefore, the CENVAT credit availed on

PAPER – 8 : INDIRECT TAXES

the computer systems would be Rs. 26,000 in Year 1 and and balance Rs. 26,000 in Year 2.

6. (a) The statement is absolutely valid. *Circular No. 122/03/2010 – ST dated 30.04.2010* clarifies that CENVAT credit of service tax can be availed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to reasons like discount, unsatisfactory service etc. provided he has paid the amount of service tax (whether proportionately reduced or the original amount) to the service provider. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would have to be altered accordingly.
 - (b) The statement is absolutely incorrect. *Circular No. 907/27/2009-CX dated 07.12.2009* has clarified that where the finished goods are written off in the books of accounts and the amount of excise duty has been remitted, the manufacturer would be required to reverse the credit on the inputs used.
 - (c) The statement is absolutely incorrect. *Circular No. 920/10/2010-CX dated 01.04.2010* clarifies that these items are essential for operation of the machines. Therefore, being part/component of the machines, they would be considered as capital goods for the CENVAT credit purposes.
7. The Court, in case of *Ashwani Tobacco Co. Pvt. Ltd. v. UOI 2010 (251) E.L.T. 162 (Del.)*, ruled that benefit under the proviso to section 11AC could not be granted by the Settlement Commission in the cases of settlement.

It elucidated that the order of settlement made by the Settlement Commission is distinct from the adjudication order made by the Central Excise Officer. The scheme of settlement is contained in Chapter-V of the Central Excise Act, 1944 while adjudication undertaken by a Central Excise Officer is contained in the other Chapters of the said Act.

Once the petitioner has adopted the course of settlement, he has to be governed by the provisions of Chapter V. Therefore, the benefit under the proviso to section 11AC, which could have been availed when the matter of determination of duty was before a Central Excise Officer would not be attracted to the cases of a settlement, undertaken under the provisions of Chapter-V of the said Act.
 8. *Circular No. 06/2010-Cus dated 19.03.2010* has affirmed that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ even though rule 18 does not refer to such supplies in clear terms. Further, the circular clarifies that section 26 of the Special Economic Zone Act, 2005 allows the clearance of duty free goods for authorized operations in the SEZ and the procedure laid down under rule 18 of the Central Excise Rules, 2002 gives effect to the said provision of the SEZ Act.
 9. The Department's allegation is justified in law. The facts of the given case are similar to the case of *CCE v. Solid & Correct Engineering Works and Ors 2010 (252) ELT 481 (SC)* wherein the Supreme Court observed that the machine was fixed by nuts and bolts to a

FINAL (OLD) EXAMINATION: NOVEMBER, 2010

foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine.

In this regard, the Court opined that an attachment where the necessary intent of making the same permanent is absent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.

Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.

10. *Notification No. 10/2010 CE (NT) dated 27.02.2010* has notified the chewing tobacco falling under tariff item 2403 99 10 of the First Schedule to the Central Excise Tariff Act, 1985 manufactured with the aid of packing machine and packed in pouches for the purposes of section 3A of the Central Excise Act, 1944. Therefore, the duty on the said products would be charged on the basis of capacity of production.
11. Earlier, *Circular No. 813/10/2005-CX dated 25.4.2005* clarified that in the case of free samples, the value should be determined under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

The CBEC has now clarified vide *Circular No. 915/05/2010 CX dated 19.02.2010* that in respect of the free samples of the products covered under MRP based assessment that the valuation of these samples shall also be done under rule 4 of the valuation rules by taking into consideration the deemed value under section 4A(1) notwithstanding the non availability of normal price under section 4(1)(a) of the Act. Accordingly, the value for excise duty would be determined under section 4A for the similar goods (subject to adjustment for size, pack etc.).

12. 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:-
 - (i) clearances of goods bearing the own brand name would be included. Hence, clearances of Rs. 75 lakh of goods bearing the brand name of Bhola Plastics Ltd. would be included.
 - (ii) clearances of plastic containers bearing the brand name of others, provided that such plastic containers are meant for use as packing materials by the person whose brand name such goods bear. Hence, clearances of plastic containers bearing the brand name of Teebok Jams of worth Rs. 200 lakh would be included.
 - (iii) clearances to EOU, STP, SEZ etc. will not be considered. Therefore, clearances of excisable goods without payment of duty to a unit in Special Economic Zone of Rs. 20 lakh will not be included.

PAPER – 8 : INDIRECT TAXES

- (iv) turnover of non-excisable goods has to be excluded. Therefore, clearances of non-excisable goods of worth Rs.50 lakh shall be excluded.
- (v) clearances exempted under job work notifications should not be considered. Therefore, exempted clearances of Rs. 70 lakh (30+40) lakh under job work notification will not be taken into account.
- (vi) export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as “clearance for home consumption”. Therefore, clearances worth Rs.300 lakh exported to other countries will be excluded while clearances worth Rs.200 lakh exported to Nepal and Bhutan will be included.

Therefore, for the year 2009-10, the turnover of Bhola Plastics Ltd., for claiming the SSI exemption will be:-

=Rs. (75 + 200 + 200) lakh = Rs. 475 lakh

Since the turnover of Bhola Plastics Ltd. exceeds Rs. 400 lakh in the previous year 2009-10, it will not be eligible for SSI exemption under *Notification No. 08/2003 dated 01.03.2003* in the financial year 2010-11.

13. Section 106(1)(b) of the Customs Act, 1962, *inter alia*, provides that where the proper officer has reason to believe that any vessel in India/within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vessel and examine and search any goods in the vessel.

Further, section 2(28) defines the Indian customs waters as waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

Indian customs waters cover both the Indian territorial waters and contiguous zone as well. Indian territorial waters extend up to 12 nautical miles from the base line whereas contiguous zone extend to a further 12 nautical miles from the outer limit of territorial waters.

Thus, in the given case, since the vessel is within the Indian custom waters, the custom officers have the authority to stop the vessel and examine and search the goods in the vessel under section 106(1)(b) of the Customs Act, 1962.

14. (a) The statement is absolutely incorrect. Under section 62(3) of the Customs Act, 1962, the proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.
- (b) The statement is absolutely incorrect. Under section 57 of the Customs Act, 1962, Assistant Commissioner of Customs/Deputy Commissioner of Customs can appoint public warehouses wherein dutiable goods may be deposited.

FINAL (OLD) EXAMINATION: NOVEMBER, 2010

- (c) The statement is absolutely correct. Under section 58(2)(b) of the Customs Act, 1962, Assistant Commissioner of Customs or Deputy Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act.
15. The action of the custom authorities is not valid in law. The facts of the given case are similar to the case of *Shabir Ahmed Abdul Rehman v. UOI 2009 (235) ELT 402 (Bom.)*. The High Court, in the instant case, held that handing over the confiscated gold immediately after serving the order of confiscation itself was improper. In any event, after receiving letter from the petitioner intimating that he was filing an appeal against the order of confiscation, the custom authorities ought to have stopped the auction sale of the confiscated gold. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified.
16. All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of the Customs Act, 1962, are subject to the control of officers of customs.
- The imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.
17. The contention of the Department is not justified in law. The facts of the given case are similar to the case of *Atherton Engineering Co. Pvt. Ltd. v. UOI 2010 (256) ELT 358 (Cal.)*. In the instant case, the Court noted that it was the use of the product that had to be considered in the instant case. If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the instant case, it examined whether the nature and character of the product remained the same.
- The Court opined that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.
- Hence, the Court held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.
18. (a) Under section 8 of the Customs Act, 1962, the Commissioner of Customs may, —
- (i) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
 - (ii) specify the limits of any customs area.
- (b) As per section 9 of the Customs Act, 1962, the Central Board of Excise and Customs, may, by notification in the Official Gazette, declare places to be

PAPER – 8 : INDIRECT TAXES

warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

- (c) Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Excise and Customs, may, by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.
19. The order passed by the Settlement Commission is not null and void and is within the jurisdiction. The facts of the given case are similar to the case of *UOI v. East and West Shipping Agency 2010 (253) ELT 12 (Bom.)*. The High Court observed that as per section 127M of the Customs Act, 1962, the order passed by the Settlement Commissioner is in judicial proceedings and it is a judicial order. Further, Revenue had not challenged the said order. Hence, the order passed by the Settlement Commissioner could not be brushed aside considering the scheme of Chapter XVIA. It must be held good in law so long as it is not set aside. Considering the facts and circumstances of the case, the High Court answered the question of law in affirmative in favour of the assessee and against Revenue.
20. In case of *CCus v. Trilux Electronics 2010 (253) ELT 367 (Kar.)*, High Court held that if an order was passed by CESTAT based on consent and the matter was remanded at the instance of Revenue, then Revenue could not pursue an appeal against such order in a higher forum.

In the instant case, the Tribunal had remanded the matter in order to re-compute the duty payable by the assessee on the basis of representation of Revenue. Thereafter, the Revenue filed an appeal against the said order.

The assessee contended that the appeal filed by the Revenue was not maintainable since the order had been passed by the Tribunal on the submission of the representative of the Revenue. Further, since it is a consent order, no appeal would lie. The High Court held that an appeal against the consent order cannot be filed by the Revenue.

Note: A consent order is a judicial decree expressing a voluntary agreement between parties to a suit, especially an agreement by a defendant to cease activities alleged by the Government to be illegal in return for an end to the charges.

21. (a) Service provided by a self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering are liable to service tax. *Circular No. 96/7/2007 ST dated 23.08.2007* clarified that consulting engineers include self-employed professionally qualified engineer, whether or not employing others for assistance. Further, services provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service.
- (b) The business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange is not liable to service tax. *Notification No. 31/2009 ST dated 01.09.2009* has exempted the business auxiliary service provided by a sub-broker, to a stock-broker in relation

FINAL (OLD) EXAMINATION: NOVEMBER, 2010

to sale or purchase of securities listed on a registered stock exchange from whole of the service tax leviable thereon.

- 22.** Notification No. 39/2009 ST dated 23.09.2009 has exempted the business auxiliary service provided by a person (service provider) to any other person (service receiver) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, from so much of value which is equivalent to the value of inputs, excluding capital goods, used for providing the same service, subject to the following conditions, namely:-
- (a) that no CENVAT credit has been taken under the provisions of the CENVAT Credit Rules, 2004;
 - (b) that there is documentary proof specifically indicating the value of such inputs; and
 - (c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, despatches of goods as well as financial transactions relating thereto.

Meaning of 'input' and 'capital goods'

Here, 'input' and 'capital goods' shall have the meaning as is assigned to them under rule 2 of the CENVAT Credit Rules, 2004.

- 23. Computation of service tax payable by Anthrix Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2009-10:-**

Particulars	Amount (Rs.)
Pre-recruitment screening of the prospective candidates	12,00,000
Verification of the credentials of the candidates	7,00,000
Supply of contractual employees to big business houses	<u>15,00,000</u>
Value of taxable services	<u>34,00,000</u>
Service tax @ 10% = Rs. 34,00,000 × 10%	3,40,000
Add: Education cess payable @ 2% = Rs. 3,40,000 × 2%	6,800
Add: Secondary and education cess payable @ 1% = Rs. 3,40,000 × 1%	3,400
Amount of service tax payable	3,50,200

Note:

1. Notification No. 1/2009 ST dated 05.01.2009 has exempted the services provided by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise provided to a goods transport agency for transportation of goods by road in the said goods carriage from the whole of the

PAPER – 8 : INDIRECT TAXES

service tax. Therefore, Rs. 2,25,000 would not be included in the value of the taxable services.

2. Exemption from service tax under *Notification No. 6/2005-ST dated 01.03.2005* is not available to Anthrix Consultants for the financial year 2009-10 because the aggregate value of taxable services exceeds Rs. 10 lakh in the preceding financial year 2008-09.
24. The contention of the Department is not valid in law. As per the clarification provided by *Circular No. 119/13/2009-S.T., dated 21-12-2009*, the said reimbursable charges paid by Aqua Associates Ltd. would be excluded from the value of taxable service if all the following conditions are satisfied -
 - (a) The activity/service for which a charge is made should be in addition to provision of CHA service.
 - (b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to:-
 - (i) arrange for such activities/services for the customer; and
 - (ii) make payments to other service providers on his behalf;
 - (c) The CHA does not use the activities/services for his own benefit or for the benefit of his other customers;
 - (d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin.
 - (e) CHA should provide evidence to prove nexus between such other (than CHA) services provided and the reimbursable amounts. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like.
 - (f) Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice.

Any other miscellaneous/out of pocket expenses charged by the CHA would not be excluded.

25. The demand raised by Revenue is valid in law. The provisions of Chapter V have been extended to any service provided or to be provided by or to the installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas vide *Notification No. 14/2010-S.T. dated 27-2-2010*. Therefore, GONC is liable to pay service tax in the given case.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2009 TO 31.10.2009

Students may note that the Study Material for Indirect Tax Laws contains all the relevant amendments made by the Finance (No. 2) Act, 2009. Further, circulars/notifications